2023

NORTH DAKOTA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM DISTRIBUTION STATEMENT

04/2023

Prepared By

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EQUAL HOUSING OPPORTUNITY

ALTERNATIVE FORMATS FOR DISABLED PERSONS ARE AVAILABLE UPON REQUEST

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Preface

The Division of Community Services (DCS) will follow the Citizen Participation Plan to amend this Program Distribution Statement (PDS) if needed.

1. What constitutes an amendment to the Action Plan? (the following are examples, but the list is not inclusive)
    a. A change in the method of distribution or grant selection criteria.
    b. The addition of an activity not initially identified in the Consolidated Plan.
    c. Funding of an activity not identified in the Consolidated Plan as a high or medium priority.

This PDS contains information about the State's Community Development Block Grant (CDBG) Program. CDBG funds must be used to achieve one of the following national objectives:

1. Activities benefiting low (L) and moderate (M) income (I) persons.
2. Activities which aid in the prevention or elimination of slums or blight.

The following priorities and objectives have been established for the distribution of CDBG funds in North Dakota:

1. Objectives for economic development will focus on:
    a. 51% Creation of permanent jobs must be available for low and moderate income persons;
    b. Economic diversification;
    c. Leveraging of private and local investment; and
    d. Benefit to the state's economy.

2. Funding for Public Facilities activities will primarily focus on:
    a. Water and sewer activities which currently present a threat to health and safety;
    b. Removal of architectural barriers which will permit access for the handicapped;
    c. Direct benefit to a locality's low and moderate income persons; and
    d. Leveraging local and other available financial resources to finance the cost of the activity.

3. Funding for Housing Activities will primarily focus on:
    a. Meeting the health and safety needs of low and moderate income persons by bringing the rehabilitated housing up to a minimum of the Section 8 Housing Quality Standards; and
    b. Making more affordable housing available for low and moderate income persons. Emphasis will be given to encouraging applicants to use other public and private funds to complement Community Development Block Grant funds.

4. Funding for Public Services will primarily focus on:
    a. Strengthening communities by addressing the needs of specific populations.
    b. Supporting economic development

SECTION I – INTRODUCTION

Purpose of Program Distribution Statement

The purpose of the Community Development Block Grant (CDBG) and Community Development Loan Fund (CDLF) Program Distribution Statement is to describe how the state of North Dakota intends to distribute its CDBG Public Facilities, Housing, and Economic Development funds. Specifically, the Statement describes the two National Objectives of the CDBG program, eligible applicants, eligible activities, special eligibility requirements, distribution of funds, policies and procedures, and the grant submission and selection process.

For fiscal year 2023 the North Dakota CDLF program for Economic Development is designed to more effectively meet the goals set by the Governor. The program is targeted to business proposals which will operate within the primary sector of the North Dakota economy. CDLF assistance is intended to be used in situations where a funding gap exists and alternative sources and/or terms and conditions of public and private financing are not adequate. To access the CDLF program, applicants should contact the Division of Community Services.

Purpose of the Community Development Block Grant Program

The Community Development Block Grant was established by Congress in the Housing and Community Development Acts of 1974. In 1981, Congress amended the act to authorize state governments to administer the State Community Development Block Grant Program.

Nationally, the CDBG Program is divided into two categories:

A. The Department of Housing and Urban Development (HUD) continues to administer the "entitlement" program which is for cities over 50,000 and counties over 200,000 population. These entities receive CDBG Program funds on an annual formula basis directly from the Department of HUD. In North Dakota, the entitlement cities are Fargo, Bismarck, and Grand Forks.

B. The State administers the "nonentitlement" CDBG Program for cities under 50,000 and counties under 200,000 population. Allocation for the nonentitlement program is based on a formula and each state must submit a "Notice of Election" each year to administer the program. In North Dakota, there are approximately 449 eligible cities and counties capable of competing for state CDBG funds. No State CDBG funds will be spent in entitlement jurisdictions.

National Objectives

The primary purpose of the CDBG Program, as declared by Congress in Title I of the Housing and Community Development Act of 1974, as amended (HCD ACT), is "the development of viable communities, by providing decent housing and suitable living environment and expanding economic opportunities, principally for persons of low and moderate income."

Therefore, in providing assistance, the fundability of any eligible community activity is dependent upon its meeting at least one of the following national objectives as established by Congress. The State allows the following:

A. Activities benefiting low and moderate income persons. An activity will be considered to address the objective of benefiting low and moderate income persons if it meets one of the criteria in this paragraph, unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. The activities, when taken as a whole, must not benefit moderate income persons to the exclusion of low income persons:

    a. Area Benefit Activities
        i. An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income per- sons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion. The local share for this type of activity cannot be special assessed.
        i. An activity, where the assistance is to a public improvement that provides benefits to all the residents of an area.
        ii. An activity to develop, establish and operate (not to exceed two years after establishment), a uniform emergency telephone number system serving an area having less than 51 percent of low and moderate income residents, when the system has not been made operational before the receipt of CDBG funds, provided a prior written determination is obtained from HUD. HUD's determination will be based upon several certifications by the State [(See 24 CFR 570.483(b)(iii)].

    - Limited Clientele Activities
        i. An activity which benefits a limited clientele, at least 51 percent of whom are low and moderate income persons. (The following kinds of activities may not qualify under this paragraph: activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low and moderate income persons to be considered is the creation or retention of jobs.) To qualify under this paragraph, the activity must meet one of the following tests:
            - It must benefit a clientele who are generally presumed to be principally low and moderate income persons. The following groups are presumed by HUD to meet this criterion: abused children, battered spouses, elderly persons, severely disabled

adults, homeless persons, illiterate persons, persons with AIDS, and migrant farm workers; or

- It must require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit (i.e., water meters); or
- It must have income eligibility requirements which limit the activity exclusively to low and moderate income persons (i.e., water meters); or
- It must be of such a nature, and be in such a location, that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

ii. A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or disabled persons to publicly owned and privately owned non-residential buildings, facilities and improvements, and the common areas of residential structures containing more than one dwelling unit.

- Housing Activities
  i. An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction as described in Section X. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:
    - When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:
      a. The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; and

b. Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and
c. The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

- Where CDBG funds are used to assist rehabilitation delivery services or in direct support of the unit of general local government's Rental Rehabilitation Program authorized under 24 CFR part 511, the funds shall be considered to benefit low and moderate income persons were not less than 51 percent of the units assisted, or to be assisted, by the Rental Rehabilitation Program overall are for low and moderate income persons.

- Job Creation or Retention Activities
  i. An activity designed to create permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involved the employment of low and moderate income persons. For an activity that creates jobs, the unit of general local government must document that at least 51 percent of the jobs will be held by, or will be made available to low and moderate income persons.
  ii. For an activity that retains jobs, the unit of general local government must make public and document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover.
  iii. Jobs will be considered to be available to low and moderate income persons for these purposes only if:
    - Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and
    - The unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.
  iv. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

- In certain cases, such as where CDBG funds are used to acquire, develop or improve a real property (e.g. a business incubator or an industrial park), the requirement may be met by measuring jobs in the aggregate for all the busi- nesses that locate on the property, provided the businesses are not otherwise assisted by CDBG funds.
- Where CDBG funds are used to pay for the staff and overhead costs of a sub- recipient specified in section 105(a)(15) of the Housing and Community Development Act of 1974 making loans to businesses from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.
- In any case where CDBG funds are used for public improvements (e.g., water, sewer and road) and the national objective is to be met by job creation or retention as a result of the public improvement, the requirement shall be met as follows:
    a. The assistance must be reasonable in relation to the number of jobs expected to be created or retained by the affected business(es) within three years from the completion of the public improvement. Before CDBG assistance is provided for such an activity, the unit of general local government shall develop an assessment which identifies the businesses located or expected to locate in the area to be served by the public improvement. The assessment shall include for each identified business a projection of the number of jobs to be created or retained as a result of the public improvement; and
    b. The jobs to be considered for purposes of meeting the requirement shall be all jobs created or retained as a result of the public improvement by the business(es) identified in the assessment as well as any other business that locates in the area within a period of three years following the completion of the activity; except that, in any case where the amount of CDBG assistance provided for the public improvement in relation to the number of jobs projected to be created or retained by the business(es) identified in the assessment is such that the amount per job does not exceed $10,000, jobs created by businesses not identified in the assessment need not be considered. (See Section XI for Economic Development Infrastructure Guidelines)

2. Activities which aid in the prevention or elimination of slums or blight. A slum and blight area is defined as having a significant amount of structures that demonstrate major deterioration. The boundary is exhibited by a survey of the area.

- "Slum area" means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals, or welfare. (N.D.C.C. 40-58-01.1(23))
- "Blighted area" means an area other than a slum area which by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use. "Blighted area" does not include any land that has been assessed as agricultural property within the last ten years unless it was located within the interior boundaries of a city for at least ten years The applicant must provide architectural renderings of the proposed design. Renovations to a historic property must maintain its historic character and must also conform to guidelines established in the "Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings". (N.D.C.C. 40-58-01.1(2))

Activities meeting the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

1. Activities to address slums or blight on a spot basis. Acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.
    a. The Unit of General Local Government (UGLG) will need to concur with the engineer/architect that there are specific conditions of blight or physical decay that are detrimental to public health and safety.

SECTION II – ELIGIBLE ACTIVITIES & INELIGIBLE ACTIVITIES

Eligible Activities
Eligible activities must address at least one National Objective listed in the FY2023 Program Distribution Statement, in order to be considered for funding. In addition, some activities have qualifying requirements (i.e. economic development activities) which are specified in Section 105 and in the Entitlement Regulations. If assistance is needed for interpretation, please contact the DCS for guidance. Title I Eligible Activities, Section 105(a) Activities assisted under this title may include only:

A. The acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or (E) to be used for other public purposes;

B. The acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except buildings for the general conduct of government), and site or other improvements (due to a recent interpretation water meter replacement projects are direct benefit activities, the national objective is LMI);

C. Code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area;

D. Clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for rehabilitation, and reconstruction or rehabilitation, of privately owned properties and including the renovation or reconstruction of closed school buildings);

E. Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

F. Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

G. Disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

H. Provisions of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 percent of the amount of any assistance to a unit of general local government under this title may be used for activities under this paragraph unless such unit of general local government (or in the case of nonentitled communities not more than 15 percent statewide) under this title including program income may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this title for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount;

I. Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this title;

J. Payment of the cost of completing a project funded under Title I of the Housing Act of 1949;

K. Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations; 49 CFR Part 24 or Section 104(d) of the Housing and Community Development (HCD) Act of 1974;

L. Provision of assistance including grants for activities which are carried out by public or private nonprofit entities, including (a) acquisition of real property; (b) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements;

M. Assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of communities of nonentitlement areas, or entities organized under section 681(d) of Title 15 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 5301(c) of this title, and assistance to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development; the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 1437a(b)(3) of this title) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

N. Activities necessary to the development of energy use strategies related to recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as:
    a. An analysis of the manner in, and the extent to which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation functions;
    b. A statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low and moderate income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities;

O. Provision of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods) that:
    a. Creates or retains jobs for low and moderate income persons;
    b. Prevents or eliminates slums and blight;
    c. Creates or retains businesses owned by community residents;
    d. Assists businesses that provide goods or services needed by, and affordable to, low and moderate income residents; or
    e. Provides technical assistance to promote any of the activities under subparagraphs i. through iv.

P. The rehabilitation or development of housing assisted under Section 1437 of this title;

Q. Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities, which assistance shall not be considered a planning cost.

R. Housing services, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under Title II of Cranston-Gonzalez National Affordable Housing Act, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities assisted under Title II of the Cranston-Gonzales National Affordable Housing Act;

S. Provision of assistance by recipients under this title to institutions of higher education having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities;

T. Activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low and moderate income neighborhoods; and

U. Lead-based paint hazard evaluation and reduction, as defined in Section 4851b of this title.

Ineligible Activities
The activities listed below are ineligible for CDBG and CDLF assistance. This list in not inclusive.

A. Public works, facilities, and site or other improvements
    a. For buildings and facilities for the general conduct of government, and/or which are predominantly used for municipal purposes. Except for removal of architectural barriers for handicapped accessibility.
        i. City/Town Halls
        ii. Courthouses
        iii. Other headquarters of government where the governing body meets regularly

B. Purchase of equipment
    a. The purchase of furnishings and personal property, except when necessary for use by a recipient or its subgrantees in the administration of its community development program, is generally ineligible (except for certain economic development projects). Examples are:
        i. The purchase of office equipment and fixtures

ii. Motor vehicles
iii. Furnishings
iv. Personal property not an integral structural fixture

C. Operating and maintenance expenses
   a. The general rule is that any expense associated with operating, maintaining, or repairing Public Facilities and works, or any expense associated with providing public services not assisted with block grant funds is ineligible for assistance. However, operating and maintenance expenses associated with providing public services or interim assistance otherwise eligible for assistance under this part may be assisted. Examples of activities which are not eligible for block grant assistance are:
      i. Routine maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar Public Facilities, filling of holes in streets, repairing of cracks in side-walks, mowing of recreational areas, and replacement of expended street light bulbs.
      ii. Regular payments of salaries for staff, utility costs, and similar expenses necessary for the operation of public works and facilities.

D. General Government expenses
   a. Except for where specifically authorized in this subpart or under state law, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

E. Political activities
   a. No expenditure may be made for the use of equipment or premises for political purposes, sponsoring or conducting candidate meetings, engaging in voter registration activity or voter transportation, or other partisan political activities.

F. Religious Purposes
   a. Renovation, rehabilitation or conversion of buildings owned by primarily religious organizations or entities are generally ineligible activities. (Contact the DCS for guidance pertaining to eligible uses of CDBG and CDLF funds involving primarily religious organizations or entities.)

G. Nursing homes
   a. Except for removal of architectural barriers for handicapped accessibility CDBG funds will not be utilized in nursing homes for expansion, renovation or general operation.

H. Urgent need
   a. Use of the urgent need national objective category is rare. It is designed only for activities that alleviate emergency conditions.

I. Microenterprises/Micro Loan Funds

a. Activities designed to foster the development, support, and expansion of microenterprise businesses

J. Manufactured homes
   a. A type of prefabricated residence that has its standardized parts constructed and assembled in a factory; it's then transported and affixed to a location.

K. Special Assessments
   a. CDBG will not assist in any projects that special assessing residents to help pay for a project.
      i. Special assessments are the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs and gutters, through:
         - A tax levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement

L. Income payments
   a. Payments to an individual or family, which are used to provide basic services such as food, shelter (including payment for rent, mortgage, and/or utilities) or clothing

M. Provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income (except that such assistance shall not be considered a public service of purposes of paragraph (8) by using such assistance to:
   a. Subsidize interest rates and mortgage principal amounts for low and moderate income homebuyers;
   b. Finance the acquisition by low and moderate income homebuyers of housing that is occupied by the homebuyers;
   c. Acquire guarantees for mortgage financing obtained by low and moderate income homebuyers from private lenders (except that amounts received under this title may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees);
   d. Provide up to 50 percent of any down payment required from low or moderate income homebuyer; or
   e. Pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low or moderate income homebuyer.

N. Working capital for economic development projects.
   a. Funds available to meet current, short-term obligations.

O. Purchase of stocks for economic development projects.

SECTION III – GENERAL INFORMATION FOR APPLICANTS

A. Eligible Applicants

Eligible applicants under the North Dakota Community Development Loan Fund and Community Development Block Grant Program are limited to counties and incorporated cities:

1. A city is the eligible applicant for activities designed to take place within city limits. A city may apply for a project which would include an activity to be located outside city limits if the proposed activity will principally benefit residents within the city's jurisdiction, such as a solid waste disposal site, a water or sewage treatment facility, an economic development project or if the activity involves property/facilities over which the city has direct control as the owner/operator, and for which a county could not apply.

2. A county is the eligible applicant for activities designed to take place outside the limits of an incorporated city and in unincorporated areas. A county, however, may apply for an activity within an incorporated city that involves property/facilities over which the county has direct control as the owner/operator, and for which a city could not apply, such as a county courthouse. A county will not be limited to the number of unincorporated areas for which it may submit an application.

3. A city or county may also submit an "on-behalf of" (multi-jurisdictional) application for an incorporated city which has determined that it lacks the administrative capacity to apply for and administer a grant. If an incorporated city permits a county or another city to submit an "on-behalf of" application, it may not submit an application on its own for any emphasis area. An "on-behalf of" application may consist of more than one city, but the activity must be the same in each city. In addition, each city must be discussed separately, each must include a written agreement with the on behalf of applicant, each must do a needs assessment and undertake actions to affirmatively further fair housing, each must sign the anti-displacement policy and all program assurances, and each must fulfill all citizen participation requirements. Such an arrangement must be identified in advance of an application in order to permit the Secretary of HUD to grant recognition to the combination of governments as a unit of local government.

4. Where two or more eligible local governments (cities or counties) face a common community development problem, a joint application may be submitted with one local government designated as the lead applicant. To submit this type of application, the following conditions must be met:
    a. The problem to be addressed involves joint ownership and lies in an area of contiguous or overlapping jurisdiction;
    b. The solution to the common problem clearly requires cooperative action and is the most efficient strategy;
    c. The local governments involved must submit a signed cooperative agreement which defines who will be responsible for the administration and implementation of the grant if awarded.

5. When submitting an application for a fire department/fire district, the following guidance for determining the eligible, or lead applicant is applicable:
    a. If a fire department/fire district primarily serves an eligible community, that community is the eligible applicant.
    b. If a fire department/fire district serves an eligible community, as well as the immediate surrounding area, then the community is the eligible applicant.
    c. If a fire department/fire district serves an area consisting of two or more counties, then the parent county (that county in which a majority of the area of the fire district is located) is the eligible applicant.
    d. A county is the eligible applicant for rural fire departments/districts not primarily serving an incorporated area.

B. Eligible Applicants for Multi-Jurisdictional Housing

1. County wide projects
    a. A county may submit a multi-jurisdictional application to address housing needs throughout its jurisdiction to include incorporated cities within the county.
    b. The county must have a written multi-jurisdictional/joint agreement with all incorporated cities within the county. The application must contain a written statement from each city that chooses not to participate in the activity.
    c. The county must complete a county wide needs assessment and undertake actions to affirmatively further fair housing.
    d. To fulfill the citizen participation requirements, the County must hold one public hearing no earlier than 180 days prior to submitting the grant application and one public hearing prior to grant closeout. The County will be required to publish the notice of public hearing in the county's official newspaper and in all official newspapers of each participating jurisdiction.

2. Multi-County projects
    a. A county may submit a multi-county application to address housing needs to include incorporated cities within those counties.
    b. The multi-county application will include a multi-jurisdictional/joint agreement executed by all participating jurisdictions to include all incorporated cities and participating counties and must include a designation of the lead county. The application must contain a written statement from each jurisdiction that chooses not to participate in the activity.
    c. Each participating county must complete a county wide needs assessment and undertake actions to affirmatively further fair housing.
    d. To fulfill the citizen participation requirements, each County must hold one public hearing no earlier than 180 days prior to submitting the grant application and one public hearing prior to grant closeout. Each County will be required to publish the notice of public hearing in the county's official newspaper and in all official newspapers of each participating jurisdiction. (i.e., if three counties are included in the multi-county project, three public hearings will be held).

C. Types of Grants Available

1. Applicants may only apply for a single activity per application.

SECTION IV – ALLOCATION OF FUNDS

This section of the Program Distribution Statement describes the estimated allocation of funds the state will receive in FY2023.

A. Funds Available

FY2023 Allocation	$ 3,849,554.00
Plus Program Income	$ 225,000.00
Total Funding	$ 4,074,554.00
Less State Administration	$ 181,491.08
Less Technical Assistance	$ 40,745.54
Total Allocation Available for Projects	$ 3,852,317.38
Less 10% Unallocated Funds	$ 407,455.40
Total Allocation Available	$ 3,444,861.98
Plus Prior Years Unobligated Funds	$ 55,530.00
Total Allocation Available for DCS Funding Round	**$ 3,500,391.98**

The State is leaving 10% of the allocation unobligated. These funds will be used for amendments during the fiscal year on projects that may arise with unexpected circumstances, such as an environmental review that needs an ASTM Phase 1, increase in materials from time of pre-application to actual bidding, etc. Amendments will be approved/disapproved on a case-by-case basis and may vary based on the amount of unallocated funds at that time. Any unobligated and deobligated funds as of July 31, 2024, will be recaptured. These funds will be made available in Fall 2024 through the DCS funding round for FY2024 and/or a special funding round. All CDLF projects will be funded with CDLF Program Income prior to CDBG allocation funds. Projects awarded through the Governor's Funds will come out of the revolving loan fund. The revolving loan fund has approximately $10 million and will decrease year after year as projects are awarded.

Prior to actual funding decisions and from time to time as necessary, the Estimated Funds Available for Distribution will be adjusted to reflect any unobligated and returned funds that may be available.

For loans awarded prior to fiscal year 2022, loan repayments generated by previously funded projects (from allocation funds or revolving loan funds) will be deposited to the statewide fund.

Should the state receive recaptured funds from the Department of Housing and Urban Development, those funds will be available for distribution during the year in which those funds are received. (Recaptured funds are funds that the Department of HUD deobligates from other States for infractions such as not meeting timely distribution of funds, disallowed cost, etc.).

B. Project Administration Cap

North Dakota encourages Units of Local Government to apply for grant CDBG funds to help offset the cost of administering projects funded by CDBG grants. The State will follow the HUD regulation and not exceed 20% of the allocation:

FY2023 Allocation	$ 3,849,554.00
+Program Income	$ 225,000.00
Total	$ 4,074,554.00
Project Administration Cap	**$ 814,910.80**

Refer to Section V General Policies and Procedures for further guidance on the maximum amount allowed per project.

C. Public Service Cap

North Dakota will follow the HUD regulation and not exceed 15% of the allocation:

FY2023 Allocation	$ 3,849,554.00
+Program Income	$ 225,000.00
Total Funding	$ 4,074,554.00
15% Public Service Cap	**$ 611,183.10**

D. Estimate of Funds to Benefit Low and Moderate Income Persons

Title I of the Housing and Community Development Act of 1974, as amended (HCD ACT), requires that the State must estimate the amount of funds to be used to benefit low and moderate income persons. Since the State must assure that for the three-year period 2022, 2023, and 2024, its funds benefit low and moderate income persons, the following depicts the minimum amount that must directly benefit such persons:

FY2024 Allocation	$ 3,927,948.00	
- State Administration	$ 178,558.96	
- Local Administration	$ 607,030.64	
- Technical Assistance	$ 39,279.48	
	$ 3,103,078.92	
	$ 2,172,155.24	**for LMI activities**
FY2023 Allocation	$ 3,849,554.00	
+Program Income	$ 225,000.00	
Total Funding	$ 4,074,554.00	
- State Administration	$ 181,491.08	
- Local Administration	$ 592,674.18	
- Technical Assistance	$ 40,745.54	
	$ 3,259,643.20	
	$ 2,281,750.24	**for LMI activities**
FY2022 Allocation	$ 3,927,948.00	
- State Administration	$ 178,558.96	
- Local Administration	$ 567,751.16	
- Technical Assistance	$ 39,279.48	
	$ 3,142,358.40	
	$ 2,199,650.88	**for LMI activities**

North Dakota will assure that 70 percent of the funds spent during the three-year period beginning with the 2022 program year, will be spent on projects benefiting low and moderate income persons. This will be achieved through the State's funding distribution system.

E. Grant Minimum and Maximum

Waivers may be requested for situations where one applicant is being offered the remaining funds in the allocation. Minimum and maximum grant levels (excluding administration) are as follows:

<u>Public Facilities & Public Services</u>	
Minimum Amount	$75,000
Maximum Amount	No Maximum
<u>Housing – Single Family</u>	
Minimum Amount	$200,000
Maximum Amount	No Maximum
<u>Housing – Multi-Family</u>	
Minimum Amount	$100,000
Maximum Amount	No Maximum
<u>Economic Development</u>	
Minimum Amount	$100,000
Maximum Amount	No Maximum

F. Limitation of Award of Funds for Economic Development Projects

Applicants who have previously received an award for economic development and need additional funds for expansion, may apply for additional funds if:

1. The existing CDLF is current;
2. All other requirements of the program are met; and
3. The total outstanding at any time is not more than $500,000.
4. Eligible under environmental review regulations. Reach out to DCS staff for this determination.

These applications will be considered using the same criteria used for all other economic development applications.

No individual, corporation, or organization with an existing program loan or has defaulted on a loan that is not in good standing at the local and/or state levels may receive additional or new financing from the program.

G. Timely Distribution of Funds

One hundred percent (100%) of FY2023 CDBG funds must be obligated and announced to units of general local governments within 15 months of the State signing its grant agreement with HUD.

At the Governor's direction, any unobligated and deobligated funds as of July 31, 2024, will be recaptured. These funds will be made available in Fall 2024 through the DCS funding round for FY2024 and/or a special funding round.

All CDBG applications and amendments must contain original signatures and be received in the DCS office by June 14, 2024 for the 2023 program year.

SECTION V – GENERAL POLICIES AND PROCEDURES

This section identifies general policies and procedures that are applicable to all applicants and activities.

A. Policies and Procedures

1. A grant recipient must sign and return its Financial Award within 60 days of the effective date of the award, or the award may be terminated.

2. **Federal funds may not be obligated prior to a Financial Award and the completion of the environmental requirements.** Once a financial award has been issued but prior to completion of the environmental review requirements the grantee may only incur eligible administrative, engineering, and architectural costs. If CDBG funds are being used for administration, an environmental review form for exemption must be filled out and approved by the Division of Community Services before procuring out for administration. For further guidance on this environmental exemption, please refer to Chapter 7 of the CDBG Administrative Manual. To ensure compliance with the federal environmental regulations, consultation with the DCS should commence prior to any commitment of funds.

3. A grantee may not change the activities of an approved project without first obtaining written approval from the DCS. A request for amendment form (SFN52355) must be completed for this approval. If requesting additional funding and approved by DCS staff, the additional funds will come out of the 10% of unallocated funds.

4. If a grantee has not incurred eligible project costs for other than administrative activities within **twelve** months of the effective date of the Financial Award, the award can be terminated at the option of the DCS. If project dollars are deobligated, administrative funds will be deobligated proportionately. Administrative dollars will be allowed on projects that do not come to fruition. Based on documented expenses, up to 10 percent of CDBG administrative funds budgeted will be allowed.

5. The State of North Dakota is required to use the U.S. Department of Housing and Urban Development's (HUD) Integrated Disbursement and Information System (IDIS) for drawing funds and reporting accomplishments. As a result of an Inspector General's audit, HUD has enhanced IDIS to improve oversight of CDBG activities. The enhanced system requires justification along with field office approval for the following conditions:
    a. Activities that have had no draws two years from the initial funding date;
    b. Activities that have had no draws for a year, subsequent to the first draw for an activity;
    c. Activities that have not reported accomplishments for three years;

d. Activities that have 80 percent of their funded amount disbursed and no accomplishments reported;
e. Activities that are cancelled after funds have been drawn; and
f. Draws revised from one activity to another.

This change requires CDBG sub-recipients to proceed with projects in a timely manner.

6. Affirmatively Furthering Fair Housing: Each applicant must develop a positive program to affirmatively further fair housing. The application contains a section to be completed indicating what action(s) will be undertaken by the applicant if funded. The requirement to affirmatively further fair housing is a Congressional mandate which pertains to any use of CDBG/CDLF funds.

7. Reasonable fees may be charged for the use of facilities assisted with CDBG/CDLF funds, but charges such as membership fees which will have the effect of precluding lower income persons from using the facilities are not permitted.

8. If the final activity costs are less than originally funded, the amount of CDBG funds awarded and local funds will be adjusted proportionately.

9. In-kind contributions will not be considered as eligible match dollars except for land purchased within a twelve-month period prior to a grant application in association with a proposed Public Facilities activity. In-kind contributions are those that represent the value of noncash contributions provided by or to the grantee, regardless of the source.

10. The legislature adopted a moratorium on the expansion of basic care and nursing home beds and to be consistent with legislative intent (NDCC 23-09.3-01.1). CDBG funds will not be used in this area. Definitions regarding these facilities are as follows:

    a. Assisted Living
        i. A building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate an individual's needs and abilities to maintain as much independence as possible. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16 or 25-16 or section 50-11-01.4.
    b. Basic Care
        i. A facility licensed by the department under North Dakota Century Code chapter 23-09.3 whose focus is to provide room and board and health,

social, and personal care to assist the residents to attain or maintain their highest level of functioning, consistent with the resident assessment and care plan, to five or more residents not related by blood or marriage to the owner or manager. These services shall be provided on a twenty-four-hour basis within the facility, either directly or through contract, and shall include assistance with activities of daily living and instrumental activities of daily living; provision of leisure, recreational, and therapeutic activities; and supervision of nutritional needs and medication administration.

c. Nursing Facility
    i. An institution or a distinct part of an institution established to provide health care under the supervision of a licensed health care practitioner and continuous nursing care for twenty-four or more consecutive hours to two or more residents who are not related to the licensee by marriage, blood, or adoption; and who do not require care in a hospital setting

11. Administrative funds may be requested at the following levels:
    a. Housing Rehabilitation and Conversion – 20% of CDBG project funds requested, up to a maximum of $30,000
    b. Public Facilities Construction, Public Facilities in support of new Housing, - 15% of CDBG project funds requested, up to a maximum of $20,000 and a minimum of $1,000.
    c. Public Facilities Non-Construction – 10% of CDBG project funds requested, up to a maximum of $10,000 and a minimum of $1,000
    d. Public Services – 15% of CDBG project funds requested, up to a maximum of $15,000 and a minimum of $1,000
    e. Economic Development Construction – 18% of CDBG project funds requested, up to a maximum of $20,000 and a minimum of $1,000.
    f. Economic Development Purchase of Inventory, Economic Development Purchase of Equipment, Economic Development Acquisition of Buildings – 15% of CDBG project funds requested, up to a maximum of $15,000 and a minimum of $1,000

Because of a HUD regulated cap on administration funds for projects, DCS has the authority to not award out all and/or any on any project requesting CDBG administration funds at time of pre-application. On a case-by-case basis, a project may need to request administration funds that is over the cap amount allowed. A request for amendment form (SFN 52355) must be submitted to DCS with justification. DCS will evaluate the request for amendment to determine whether an adjustment in administration dollars is approved or denied.

Administrative dollars will be paid to the Recipient on a reimbursement basis. Supporting documentation for administrative expenses must be available in the Recipient file and may be a required submission with the Recipient's administrative Request for Funds

(SFN 4630). Documentation should support how administration was procured out. Should the Recipient have more than one source of administrative funds, CDBG funds will reimburse the Recipient proportionally to the other funding.

DCS will hold 10% of the authorized administrative funds until the project final report has been received and approved.

Administration dollars will be allowed on projects that do not come to fruition, based on documented expenses. The amount allowed will be determined on a case-by-case basis.

If the unit of general local government chooses not to administer the project itself, Procurement Methods in the CDBG Admin Manual must be followed. Please reference Section 6.

12. Income verification must be completed on 100 percent of the households receiving direct benefit from CDBG activities. Acceptable verification consists of: income tax forms for the last 12-month period or income tax forms closest to verification date; SSA 1099 forms; and State of North Dakota Department of Human Services/Social Service Income Statement. Other sources of documentation must be first approved by the DCS.

13. **Amendments for more funds.** The State is leaving 10% of the allocation unobligated. These funds will be used for amendments during the fiscal year on projects that may arise with unexpected circumstances, such as an environmental review that needs an ASTM Phase 1, increase in materials from time of pre-application to actual bidding, administration on the project, etc. Amendments will be approved/disapproved on a case-by-case basis and may vary based on the amount of unallocated funds at that time.

14. All projects require a preliminary engineering/architectural report. This must be submitted with the pre-application and if not the application will be considered incomplete and will not be scored.

    a. A waiver to not submit this may be approved on a case-by-case basis. DCS staff must be notified, and approval given to submit waiver no later than July 10, 2023. If approved, you will need to include your approval from DCS in the pre-application.

B. Statement of Assurances

The applicant hereby assures and certifies that:

1. Resolution of Authority
    a. Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the submission of the application, including

all understandings and assurances contained herein, and directing and authorizing the signatory to additional information as may be required.

2. Access to Records
    a. It will give the State of North Dakota, DCS, State Auditor's Office, and the Comptroller General of the United States, through any authorized representatives, access to and the right to examine all records, books, papers, or documents related to the grant.

3. Legal Authority
    a. It possesses legal authority to apply for the grant and to execute the proposed project under North Dakota law and, if selected to receive a CDBG, will make all efforts necessary to assure timely and effective implementation of the project activities described in the attached application.

4. Financial Management
    a. It will comply with the applicable requirements of Office of Management and Budget (OMB) 2 CFR Part 200 Uniform Guidance or any equivalent procedures and requirements that the DCS may prescribe. The circular is the basis for a number of specific requirements on the financial management cost principles and recordkeeping of CDBG funds. The directive applies to cash depositories, bonding insurance, recordkeeping, program income, property management, procurement, allowability of costs closeout, audit, and other requirements.

5. HUD Disclosure
    a. It will comply with HUD Disclosure Requirements (Subpart C of 24 CFR Part 12) prior to receiving a financial award from the Division of Community Services.

6. Assessments for Public Improvements
    a. It will not attempt to recover any capital costs of public improvements assisted in whole or part with CDBG funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.
7. Citizen Participation
    a. Provide for and encourage citizen participation, particularly by the LMI persons who will benefit from the activities and reside in blighted areas.
    b. Ensure that residents, including minorities, non-English speaking persons, and persons with disabilities have reasonable and timely access to local meetings consistent with accessibility and reasonable accommodation requirements in accordance with section 504 of the Rehabilitation Act of 1973 and the regulations

at 24 CFR part 8, and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36 and information relating to:
   i. Proposed and actual use of CDBG funds.
   ii. Amount of CDBG funds expected to be made available.
   iii. The range of activities that may be undertaken with CDBG funds.
   iv. The estimated amount that will go to LMI benefit.
   v. The anti-displacement and relocating plans, as necessary.
c. Provide technical assistance to groups that are represented of persons of LMI that request assistance in developing proposals (including proposed strategies and actions to affirmatively further fair housing) in accordance with the procedures developed by the State. Such assistance need not include providing funds to such groups.
d. Conduct a minimum of two public meetings. Public hearings will be announced at least 15 calendar days prior to occurrence.
   i. The first public meeting must be before the submission of the local government's application, regarding community development and housing needs, and proposed activities.
   ii. The second public meeting must be after the completion of the project, regarding the final program performance report.
e. Provide residents with reasonable advance notice of, and an opportunity to comment on proposed activities in an application to the State and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the unit of general local government's application to the State.
f. Provide residents the address, phone number, and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances, within 15 working days where practicable.

8. Building Standards
   a. The grantee must assure that activities involving new building construction, alterations, or rehabilitation comply with the State Building Code (NDCC Chapter 54-21.3). Uniform Building Code and Uniform Mechanical Code and Section 54-21.3-04.1 requires compliance with the Americans with Disabilities Act Guidelines (ADAAG). For new construction of multi-family dwellings containing four or more units, the grantee must assure compliance with the Fair Housing Accessibility Guidelines for implementation of the accessibility requirements of the Fair Housing Act.

9. Conflict of Interest
   a. Conflicts prohibited.
      i. Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (b) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart or who are in a position to

participate in a decision- making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure and for one year thereafter.

b. Persons covered.
    i. The conflict of interest provisions for paragraph (a) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds.
c. Exceptions - Thresholds requirements
    i. Upon written request by the State, an exception to the provisions of paragraph (a) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the state may be granted by HUD on a case-by-case basis. In all other cases, the state may grant such an exception upon written request of the unit of general local government provided the state shall fully document its determination in compliance with all requirements of this paragraph including the state's position with respect to each factor to be considered for exceptions and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the state or unit of general local government as appropriate. An exception may be considered only after the unit of general local government has provided the following and the state has considered all factors for the exception found in 570.489 (h)(5):
        - 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
        - An opinion of the attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local law.
d. Factors to be considered for exceptions. In determining whether to grant a requested exception after the requirements of paragraph (c) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:
    i. 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;

ii. Whether an opportunity was provided for open competitive bidding or negotiation;
iii. Whether the person affected is a member of a group or class of low or moderate 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;
iv. 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;
v. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;
vi. Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
vii. Any other relevant considerations.

10. Anti-Displacement
  a. In the event an applicant is awarded CDBG funds by the State, it will follow a residential anti-displacement and relocation assistance plan. In the event of such displacement, provide that:
    i. Governmental agencies or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low and moderate income dwelling units demolished or converted to a use other than for housing for low and moderate income persons, and provide that such replacement housing may include existing housing assisted with project based assistance provided under section 8 of the United States Housing Act of 1937;
    ii. Such comparable replacement dwellings shall be designed to remain affordable to persons of low and moderate income for 10 years from the time of initial occupancy;
    iii. Relocation benefits shall be provided for all low or moderate income persons who occupied housing demolished or converted to a use other than for low or moderate income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving-related expenses, including any interim living costs; and, in the case of displaced persons of low and moderate income, provide either:
      - Compensation sufficient to ensure that, for a 5-year period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent; or

- If elected by a family, a lump-sum payment equal to the capitalized value of the benefits available under subclause (i) to permit the household to secure participation in a housing cooperative or mutual housing association.

iv. Persons displaced shall be relocated into comparable replacement housing that is:
- Decent, safe, and sanitary;
- Adequate in size to accommodate the occupants;
- Functionally equivalent; and
- In an area not subject to unreasonably adverse environmental conditions.

v. Persons displaced shall have the right to elect, as an alternative to the benefits under this subsection to receive benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 if such persons determine that it is in their best interest to do so; and

vi. Where a claim for assistance under subparagraph (1)(d) is denied by grantee, the claimant may appeal to the State, and that the decision of the State shall be final unless a court determines the decision was arbitrary and capricious.

vii. Refer to the Residential Anti-Displacement and Relocation Assistance Plan for further guidance.

11. Displacement and Relocation
    a. It will minimize displacement as a result of activities assisted with CDBG funds and comply with:
        i. All sections of URA (Uniform Relocation Assistance) 49 CFR Part 24.
        ii. URA (Uniform Relocation Assistance) 49 CFR Part 24 Subpart B.
        iii. Will comply with section 104(d) of the Housing and Community Development Act of 1974, as amended, which requires the replacement of low and moderate income housing units that are demolished or converted to another use in connection with an assisted activity and the provision of specified relocation assistance to certain low and moderate income persons.
        iv. Refer to the Uniform Relocation Act Policy Guide for further guidance.

12. Civil Rights
    a. 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.

13. Excessive Force Policy
    a. The grantee adopts and will enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non- violent civil right demonstrations and the grantee will enforce applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

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

f. 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 CDBG 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.

g. 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.

15. Affirmatively Further Fair Housing

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. CDBG 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 CDBG 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.

16. Labor Standards

a. Section 110 of the Housing and Community Development Act of 1975, as amended, 24 CFR 570.605, and State regulations regarding the administration and enforcement of labor standards. Section 110 requires that all laborers and mechanics employed by contractors or subcontractors on construction work assisted under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276-a-276a-5). By reason of the foregoing requirement the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to rehabilitation of residential property only if such property is designed for residential use for eight or more families;
b. Davis-Bacon Act, as amended (40 U.S.C. a- et seq.), Section 2; June 13, 1934, as amended (48 Stat. 948.40 U.S.C. 276(C), popularly known as The Copeland Anti-Kickback Act. The Act mandates that all laborers and mechanics be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account except "permissible" salary deductions, the full amounts due at the time of payments, computed at wage rates not less than those contained in the wage determination issued by the U.S. Department of Labor. Weekly compliance statements and payrolls are required to be submitted to the federally-funded recipient by the contractor;
c. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) According to the Act, no contract work may involve or require laborers or mechanics to work in excess of eight hours in a calendar day, or in excess of 40 hours in a work week, unless compensation of not less than one and one-half times the basic rate is paid for the overtime hours. If this Act is violated, the contract or subcontractor is liable to any affected employee for unpaid damages as well as to the United State for liquidated damages; and
d. Federal Fair Labor Standards Act, (29 U.S.C.S. 201 et seq.). The act requires that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week.

17. EPA Listing of Violating Facilities

a. It will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the U.S. Environmental Protection Agency's (EPA) List of Violating Facilities and that it will notify the Department of Commerce of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by EPA.

18. Environmental Impact
  a. Section 104(f) of the Housing and Community Development Act of 1974, as amended through 1981. This section expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act be most effectively implemented in connection with the expenditure of funds under" the Act. Such other provisions of law which further the purpose of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to Section 104(f) of the Act and contained in 24 CFR Part 58; and
  b. The National Environmental Policy Act of 1969 (42 U.S.C. Section 4321, et seq. and 24 CFR Part 58). The purpose of this Act is to attain the widest use of the environment without degradation, risk to health or safety or other undesirable and unintended consequences. Environmental review procedures are a necessary part of this process. The grantee must certify that the proposed project will not significantly impact the environment and that the grantee has complied with environmental regulations and fulfilled its obligations to give public notice of the funding request, environmental findings and compliance performance.

Its chief executive officer or other officer of applicant approved by the State:

1. Consents to assume the status of responsible federal official under the National Environmental Policy Act of 1969 (NEPA) and other provisions of federal law, as specified in 24 CFR Part 58, which further the purposes of NEPA, insofar as the provisions of such federal law apply to the North Dakota Community Development Block Grant Program; and

2. Is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the federal courts for the purpose of enforcement of his responsibilities as such an official.

19. Floodplain Management and Wetlands Protection
  a. The Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) required, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of HUD as an area having special flood hazards. The phase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;
  b. Executive Order 11988, May 24, 1978: Floodplain Management (42 F.R. 26951, et seq.) The intent of this Executive Order is to (1) avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplains

and (2) avoid direct or indirect support of floodplain development wherever there is a practical alternative. If the grantee proposes to conduct, support or allow an action to be located in the floodplain, the grantee must consider alternatives to avoid adverse effects and incompatible involvement in the floodplains. If siting in a floodplain is the only practical alternative, the grantee must, prior to taking an action: (1) design or modify its actions in order to minimize a potential harm to the floodplain; and (2) prepare and circulate a notice containing an explanation of why the action is proposed to be located in a floodplain; and

c. Executive Order 11990, May 24, 1977: Protection of Wetlands (42 F.R. 26961, et seq.). The intent of this Executive Order is to avoid adverse impacts associated with the destruction or modification of wetlands and direct or indirect support of new construction in wetlands, wherever there is a practical alternative. The grantee must avoid undertaking or providing assistance for new construction located in wetlands unless there is no practical alternative to such construction and the proposed action includes all practical measures to minimize harm to wetlands which may result from such use.

20. Historic Preservation
   a. Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, as amended) through completion of the procedures outlined in 36 CFR 800 and 36 CFR 63. Compliance with these procedures should include:
      i. Consulting with the State Historic Preservation Office (SHPO) to identify properties listed in or eligible for inclusion in the National Register of Historic Places that exist with a proposed CDBG project's area of potential environmental impact; and
      ii. Consulting, as needed with the SHPO, Keeper of the National Register of Historic Places, and the Advisory Council on Historic Preservation to evaluate the significance of historic or prehistoric properties which could be affected by CDBG work and to determine how to avoid or mitigate adverse effects to significant properties from project work.

21. Farmlands Protection
   a. It will comply with the Farmland Protection Policy Act (1981) (PL 97-98, Dec. 22, 1981) (Subtitle I Sec. 1539-1554) which requires recipients of federal assistance to minimize the extent to which their projects contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses.

22. Lead-Based Paint
   a. It will comply with Sections 1012 and 1013 of Title X of the Housing and Community Development Act of 1992. The new regulation appears within Title 24 of the Code of Federal Regulations as part 35. (24 CFR 35). The purpose of this regulation is to protect young children from lead-based paint hazards in

housing that is financially assisted by the Federal government or sold by the government. This regulation applies only to structures built prior to 1978.

23. Solid Waste
    a. It will comply with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.). The purpose of this Act is to promote the protection of health and the environment and to conserve valuable material and energy resources.

24. Air Quality
    a. It will comply with the Clean Air Act (42 U.S.C. 7401, et seq.) which prohibits engaging in, supporting in any way or providing financial assistance for licensing or permitting, or approving any activity which does not conform to the North Dakota Air Pollution Control Rules (NDCC Article 33-15), which includes standards for asbestos and other hazardous air pollutants, and the State implementation plan for the control of air pollution.

25. Water Quality
    a. The Safe Drinking Water Act of 1974 (42 U.S.C. Section 201, 300(f) et seq. and U.S.C. Section 349), as amended, particularly Section 1424(e)(42 U.S.C. Section 300H-303(e)) which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal draining water source for an area; and
    b. The Federal Water Pollution Control Act of 1972, as amended, including The Clear Water Act of 1977, Public Law 92-212 (33 U.S.C. Section 1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation's water.

26. Noise, Facility Siting
    a. It will comply with HUD Environmental Standards (24 CFR, Part 51, Environmental Criteria and Standards and 44 F.R. 40860-40866, July 12, 1979) which prohibit HUD support for most new construction of noise-sensitive uses on sites having unacceptable noise exposure. HUD assistance for the construction of new noise-sensitive uses is prohibited in general for projects with unacceptable noise exposures and is discouraged for projects with normally unacceptable noise exposure. Additionally, projects may not be located near facilities handling materials of an explosive or hazardous nature, or in airport clear zones.

27. Wildlife
    a. The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The intent of this Act is to ensure that all federally assisted projects seek to preserve endangered or threatened species. Federally authorized and funded projects must

not jeopardize the continued existence of endangered and threatened species or result in the destruction of or modification of habitat of such species which is determined by the U.S. Department of the Interior, after consultation with the state, to be critical; and

b. The Fish and Wildlife Coordination Act of 1958, as amended, (U.S.C. 661 et seq.) which requires that wildlife conservation receives equal consideration and is coordinated with other features of water resource development programs.

28. Monitoring Findings

a. Findings that are identified during annual systems and compliance reviews must be cleared within six months of the date of the monitoring visit.

SECTION VI – PRE-APPLICATION

A. Pre-Application Requirements

This section describes the pre-application submission requirements applicable to all Public Facilities, Housing, and Public Services. Economic Development pre-application requirements are different and can be referenced in Part E of this section.

1. To be considered for scoring, the minimum requirements of a pre-application must be met.

2. Although specific match amounts are not required, if project costs are more than the CDBG allocated amount by the committee, at a minimum local match is required to fully cover the remainder of the project costs.

3. Proposals requesting grant assistance for administration will be required to submit additional budget and financial information.

4. Cities and counties have the option to administer their own projects. Refer to Section V of this program distribution statement for administrative funds guidance.

5. All projects require a preliminary engineering/architectural report. This must be submitted with the pre-application and if not the application will be considered incomplete and will not be scored.

    i. A waiver to not submit this may be approved on a case-by-case basis. DCS staff must be notified, and approval given to submit waiver no later than July 10, 2023. If approved, you will need to include your approval from DCS in the pre-application.

6. All projects (excluding Economic Development) must submit the CDBG Pre-Application form.

7. Public Facilities, Housing, and Public Services must score a minimum 200 average to be considered for funding. Economic Development must score a minimum 50 average to be considered for funding. DCS has the authority to make an exception if:

    i. There is additional funding left after all projects have been awarded.

B. Public Facilities

1. An open funding round for public facilities will be held. Dates will be published through a public announcement.

2. The CDBG Committee will be responsible for reviewing, scoring, ranking and making grant award recommendations. This committee will include state or federal agencies such as the ND Department of Commerce Division of Community Services (DCS), State Water Commission, USDA/Rural Development, ND Department of Environmental Quality, ND Department of Transportation, North Dakota Housing Finance Agency, and Bank of North Dakota. The score sheet will identify the committee member scoring the application.
3. A copy of the State Department of Environmental Quality's letter of design approval must be submitted for all water and sewer projects prior to the first draw down of project funds.
4. Public Facilities projects are eligible for CDBG funds to pay for construction costs of the project if the population in the project area is 51% or greater low to moderate income (LMI). If the population is less than 51% LMI the community is not eligible to receive CDBG funds.
5. 15 percent of CDBG project funds can be requested for administration, up to a maximum of $20,000 and a minimum of $1,000.

PUBLIC FACILITIES SCORING CRITERIA

Public Facilities Projects – Maximum 400 points

1. Project Need – maximum 100 points
   - High Need: 76 to 100 points will be awarded to applications which:
     - 93 – 100 points address an already demonstrated significant problem which clearly affects health, and/or safety of the community or a targeted LMI group within the community;
     - 85 – 92 points address a significant problem which in the immediate future is likely to affect health and/or safety; or
     - 76 – 84 points address a situation in which all or the most critical services otherwise available cannot be provided.
   - Moderate Need: 26 to 75 points will be awarded to application which:
     - 65 – 75 points address a potentially significant problem which could clearly and significantly affect health and/or safety, but the likelihood or immediacy is not clear or apparent;
     - 41 – 64 points address an immediate problem of health and/or safety but where no life- threatening or serious health/safety problems can be anticipated; or
     - 26 – 40 points address a situation in which services can be provided, but not fully, or only with major inconvenience and/or additional costs.
   - Low Need: 0 to 25 points will be awarded to application which

- 20 – 25 points address a problem which could significantly affect health and/or safety of the community, but the likelihood or immediacy is not clearly documented or apparent.
- 11 – 19 points have not shown that services cannot be provided with any more than minor inconvenience and/or costs.
- 0 – 10 points have not clearly shown that immediate or serious health and/or safety problems exist.

2. Financial Need – maximum 100 points
   - High Need: 75 to 100 points will be awarded to pre-applications that demonstrate the applicant has exhausted all other options for other sources of funding and CDBG funding is the last option. Project cannot move forward without CDBG funding. The UGLG must demonstrate that local funds outside of what is required would not be feasible through their financial reports.
   - Moderate Need: 36 to 74 points will be awarded to pre-applications that demonstrate the applicant has looked for more than one other sources of funding but did not exhaust all efforts to search for other options of funding. Project might be able to move forward without CDBG funding. The UGLG must demonstrate that local funds outside of what is required could be somewhat feasible through their financial reports.
   - Low Need: 0 to 35 points will be awarded to pre-applications that do not show any efforts of searching for other options of funding. Project can move forward without CDBG funding. A loan for local funds outside of what is required is demonstrated as feasible through the UGLG's financials reports.

3. Percentage of Minority Living in Project Area (Taken from 2015 American Community Survey) – maximum 100 points
   - 100 points - Communities with above 76% minority population
   - 75 points - Communities with 51% to 75% minority population
   - 50 points - Communities with 26% to 50% minority population
   - 25 points - Communities with below 26% minority population

4. Percentage of LMI in the Project Area – maximum 50 points
   - One point for every percentage point of LMI population over 50% will be awarded

5. Project Readiness – maximum 50 points
   - 36-50 points – complete plans, other sources of funding secured (if needed), sites identified, project could start right away and be completed within 18 months
   - 20-35 points – tentative plans but might change, have other sources of funding that are not secured, potential site options

- 0-19 points – incomplete plans, still looking for more funding, sites not identified, will not be able to complete project in 18 months

C. Housing

1. An open funding round for housing will be held. Dates will be published through a public announcement.

2. The CDBG Committee will be responsible for reviewing, scoring, ranking and making grant award recommendations. This committee will include state or federal agencies such as the ND Department of Commerce Division of Community Services (DCS), State Water Commission, USDA/Rural Development, ND Department of Environmental Quality, ND Department of Transportation, North Dakota Housing Finance Agency, and Bank of North Dakota. The score sheet will identify the committee member scoring the application.

3. 20 percent of CDBG project funds can be requested for administration, up to a maximum of $30,000 and a minimum of $1,000

HOUSING SCORING CRITERIA

Housing Projects – Maximum 400 points

1. Project Need – maximum 100 points
   - 76-100 points will be applied to proposals that demonstrate the project will address **all** the following criteria:
     - Thorough documentation is provided for the type of housing or work proposed, utilizing assessments, census, survey, market study, occupancy rates or other reliable and pertinent statistical data; and,
     - Meets both current and long-term benefit in addressing existing and future needs; and,
     - Addresses, directly or indirectly, health and safety issues; and,
     - The project will have significant impact on meeting the needs as documented.
   - 26-75 points will be awarded to proposals that substantially meet most of the above criteria and no major concerns are apparent with criteria it does not clearly meet.
   - 0-25 points will be awarded to proposals which meet few of the above criteria, or which significantly fail to meet one or more of the criteria.

2. Financial Need – maximum 100 points
   - High Need: 75 to 100 points will be awarded to pre-applications that demonstrate the applicant has exhausted all other options for other sources of funding and CDBG funding is the last option. Project cannot move forward without CDBG

funding. The UGLG must demonstrate that local funds outside of what is required would not be feasible through their financial reports.

- Moderate Need: 36 to 74 points will be awarded to pre-applications that demonstrate the applicant has looked for more than one other sources of funding but did not exhaust all efforts to search for other options of funding. Project might be able to move forward without CDBG funding. The UGLG must demonstrate that local funds outside of what is required could be somewhat feasible through their financial reports.
- Low Need: 0 to 35 points will be awarded to pre-applications that do not show any efforts of searching for other options of funding. Project can move forward without CDBG funding. A loan for local funds outside of what is required is demonstrated as feasible through the UGLG's financials reports.

3. Percentage of Minority Living in Project Area (Taken from 2015 American Community Survey) – maximum 100 points
    - 100 points - Communities with above 76% minority population
    - 75 points - Communities with 51% to 75% minority population
    - 50 points - Communities with 26% to 50% minority population
    - 25 points - Communities with below 26% minority population

4. Percentage of LMI in the Project Area – maximum 50 points
    - One point for every percentage point of LMI population over 50% will be awarded

5. Project Readiness – maximum 50 points
    - 36-50 points – complete plans, other sources of funding secured (if needed), sites identified, project could start right away and be completed within 18 months
    - 20-35 points – tentative plans but might change, have other sources of funding that are not secured, potential site options
    - 0-19 points – incomplete plans, still looking for more funding, sites not identified, will not be able to complete project in 18 months

D. Public Services

1. No more than 15% of the total CDBG allocation will be awarded out to the public services activity.

2. An open funding round for public services will be held. Dates will be published through a public announcement.

3. The CDBG Committee will be responsible for reviewing, scoring, ranking and making grant award recommendations. This committee will include state or federal agencies such as the ND Department of Commerce Division of Community Services (DCS), State

Water Commission, USDA/Rural Development, ND Department of Environmental Quality, ND Department of Transportation, North Dakota Housing Finance Agency, and Bank of North Dakota. The score sheet will identify the committee member scoring the application.

4. 15 percent of CDBG project funds can be requested for administration, up to a maximum of $15,000 and a minimum of $1,000.

PUBLIC SERVICES SCORING CRITERIA

Public Services Projects – Maximum 400 points

1. Project Need – maximum 100 points
    - High Need: 76 to 100 points will be awarded to applications which:
        - 93 – 100 points address an already demonstrated significant problem which clearly affects health, and/or safety of the community or a targeted LMI group within the community;
        - 85 – 92 points address a significant problem which in the immediate future is likely to affect health and/or safety; or
        - 76 – 84 points address a situation in which all or the most critical services otherwise available cannot be provided.
    - Moderate Need: 26 to 75 points will be awarded to application which:
        - 65 – 75 points address a potentially significant problem which could clearly and significantly affect health and/or safety, but the likelihood or immediacy is not clear or apparent;
        - 41 – 64 points address an immediate problem of health and/or safety but where no life- threatening or serious health/safety problems can be anticipated; or
        - 26 – 40 points address a situation in which services can be provided, but not fully, or only with major inconvenience and/or additional costs.
    - Low Need: 0 to 25 points will be awarded to application which
        - 20 – 25 points address a problem which could significantly affect health and/or safety of the community, but the likelihood or immediacy is not clearly documented or apparent.
        - 11 – 19 points have not shown that services cannot be provided with any more than minor inconvenience and/or costs.
        - 0 – 10 points have not clearly shown that immediate or serious health and/or safety problems exist.

2. Financial Need – maximum 105 points
    - High Need: 75 to 100 points will be awarded to pre-applications that demonstrate the applicant has exhausted all other options for other sources of funding and CDBG funding is the last option. Project cannot move forward without CDBG

funding. The UGLG must demonstrate that local funds outside of what is required would not be feasible through their financial reports.

- Moderate Need: 36 to 74 points will be awarded to pre-applications that demonstrate the applicant has looked for more than one other sources of funding but did not exhaust all efforts to search for other options of funding. Project might be able to move forward without CDBG funding. The UGLG must demonstrate that local funds outside of what is required could be somewhat feasible through their financial reports.
- Low Need: 0 to 35 points will be awarded to pre-applications that do not show any efforts of searching for other options of funding. Project can move forward without CDBG funding. A loan for local funds outside of what is required is demonstrated as feasible through the UGLG's financials reports.

3. Percentage of Minority Living in Project Area (Taken from 2015 American Community Survey) – maximum 100 points
    - 100 points - Communities with above 76% minority population
    - 75 points - Communities with 51% to 75% minority population
    - 50 points - Communities with 26% to 50% minority population
    - 25 points - Communities with below 26% minority population

4. Percentage of LMI in the Project Area – maximum 50 points
    - One point for every percentage point of LMI population over 50% will be awarded

5. Project Readiness – maximum 50 points
    - 36-50 points – complete plans, other sources of funding secured (if needed), sites identified, project could start right away and be completed within 18 months
    - 20-35 points – tentative plans but might change, have other sources of funding that are not secured, potential site options
    - 0-19 points – incomplete plans, still looking for more funding, sites not identified, will not be able to complete project in 18 months

E. Economic Development

1. Pre-applications can be received at any time.

2. The DCS staff will be responsible for reviewing, scoring, and making awards.

3. Pre-Application
    a. The pre-application includes submitting a pre-application and a business plan to DCS which will be accepted any time during the
    b. program year. It shall contain all information required by the current State action plan.

c. DCS staff will review each pre-application for compliance with Program Distribution Statement-Economic Development guidelines.
d. Pre-Application Requirements
    i. Business plan as stated in Section VIII of the PDS
    ii. Staff review (SFN 52340)
    iii. Job creation commitment (SFN 59509)
    iv. Letter of commitment for funding for all other source
    v. Financial documents
        1. Historical numbers
        2. Three years of historical financials
        3. Three years of tax returns
        4. Personal financial statement of owners (over 20% ownership)
        5. Three years of personal tax returns on owners (over 20% ownership)
    vi. Monthly projects for 3 years with assumptions (including new financing structure)
        1. Balance sheet
        2. Income statement
        3. Cash flow statement

The results of the DCS pre-application review may consist of any of the following:

- The applicant and/or business may be asked to provide more information.
- The business may be asked to pursue other sources of funding before giving further consideration.
- The business may be asked to restructure the financial package.
- The business may be asked to rework/revise its business plan.
- The DCS staff may request a visit to the business locale and/or a meeting with the business.
- The DCS staff may decide that the business is not feasible as structured with the negative recommendation provided in writing.
- The DCS staff may decide to develop a positive funding recommendation with conditions.
- The DCS staff may recommend that the business not be funded and not be permitted to restructure its proposal, and
- The DCS staff may recommend funding as requested. The above list or potential actions are not all-inclusive and other actions may be taken as the situation may dictate.

ECONOMIC DEVELOPMENT SCORING CRITERIA

Economic Development – Maximum 100 points

1. Point System utilized for economic development requests;
    a. Need for funds and terms (20 pts max)
    b. Financial strength and reasonableness (20 pts max)
    c. Management expertise and past performance (20 pts max)
    d. Marketing (10 pts max)
    e. Degree of likely benefit to the economy (20 pts max)
        i. Community/region does not have a comparable business (10 pts max)
        ii. Workforce training/development (10 pts max)
    f. Anticipated impact of addressing national objectives as defined in the state program statement (10 pts max)
        i. Ability to meet job creation requirements (5 pts max)
        ii. Availability of jobs to LMI persons (5 pts max)

SECTION VII – FINAL GRANT APPLICATION

A. Full Application Requirements

All applicants that are awarded funds based off the pre-application requirements, is then required to submit a full application in order to receive a financial award. This section describes the application submission requirements applicable to all Public Facilities, Housing, and Public Services. Economic development projects have its own requirements and can be found in Part B of this section.

Each applicant must:

1. Provide a map which delineates the boundaries of the entire jurisdiction and identifies the location of the proposed activity. In most cases a map is not included in the business plan for economic development projects.

2. Conduct a local Community Needs Assessment in accordance with the requirements described in the application package.

3. Provide evidence that a minimum of one public hearing was conducted prior to submitting the application to the state. A second public hearing will be required prior to grant closeout. The format is on the DCS website https://www.communityservices.nd.gov/uploads/17/SFN52663PublicNoticeandNoticeofPublicHearing.pdf and required to be adopted by each city and county. The evidence of public hearing must include an affidavit of publication, a list of the persons attending and signed minutes of the public hearing. The public hearing must be announced 15 calendar days prior to occurrence.

4. Complete the Resolution of Sponsorship.

5. Acknowledge by signature the Applicant Assurance Certifications.

6. Indicate the activity(s) it will undertake to "affirmatively further fair housing" in accordance with Title VIII of the Civil Rights Act of 1968, as amended. This activity will be made a part of the Financial Award.

7. Justify which national objective is to be achieved for each proposed activity in accordance with the definitions in Section I. Income surveys will be accepted only if they meet the following criteria:

   Surveys must be completed prior to the submission of pre-applications and must be completed according to the guidelines included on the DCS website, https://www.communityservices.nd.gov/communitydevelopment/ under additional resources. This guidance contains complete guidelines to be used in completing income surveys.

8. Complete the requirements of Subpart C of 24 CFR Part 12 "Accountability in the Provisions of HUD Assistance." (HUD Disclosure Report on the DCS website at https://www.communityservices.nd.gov/uploads/17/SFN52659FinalApplication.pdf

9. All final applications must be submitted by the deadline date identified in Section IV G. with the original signatures to the DCS.

10. A Housing Rehabilitation Program Application or a form containing equivalent information for each potential household must be submitted with the application. A Housing Rehabilitation Program Application Summary Sheet must also be submitted.

11. All multi-family housing rehabilitation applicants that participate in Project Based Assistance Programs must complete a release of information form and include it in their application.

12. Each application must contain documentation of who prepared the application, and if they will administer themselves or procure out for administration. This includes Economic Development if applicable.

13. Each applicant, requesting the Removal of Architectural Barrier(s), that has not completed a Section 504 Self Evaluation/Transition Plan will be required to submit a completed plan prior to the DCS issuing a financial award.

14. Each applicant for removal of architectural barriers will be required to update their Transition Plan if the project applied for is not reflected in their Section 504 Self Evaluation/Transition Plan on file with the DCS.

15. For area benefit activities (i.e., Lift Station, Water Tower Repair) a copy of the United States Census Bureau (https://www.census.gov/) results that contain the information required to complete the Direct/Indirect Benefit Activities form must be submitted with the application.

16. An environmental review will be required but does not need to be submitted at time of full application.

B. Economic Development Full Application Requirements

1. Financial information checklist (SFN 61491)

2. CDBG final application (SFN 52659)

3. Public notice and notice of public hearing (SFN 52663)

4. Citizen Participation Plan (SFN 52662)

5. Code of conduct (SFN 52357)

6. Business plan (requirements listed in Section VIII)

7. Economic development staff review (SFN 52340)

8. Job creation commitment (SFN 59509)

9. An environmental review will be required but does not need to be submitted at time of full application.

SECTION VIII – PUBLIC FACILITIES PROGRAM DESIGN

The Division of Community Services will have the authority to deny any public facility project that is not well conceived and fully developed.

A. Public Facilities Special Requirements

1. Requirement for Public Improvements
   a. All public improvement projects funded under the CDBG Public Facilities category shall procure plans, drawings and specifications for the work from a licensed architect or registered professional engineer.
   b. A copy of the State Health Department's letter of design approval must be submitted for all water and sewer projects prior to the first draw down of project funds.

2. Requirement for Infrastructure
   a. All infrastructure projects will require a preliminary engineering/architectural report.

3. Requirement for projects purchasing equipment
   a. No engineering/architectural report is required; however cost estimates are required.

4. Contents of a preliminary engineering/architectural report are as follows:
   a. Name, address, telephone of the person who prepared the report.
   b. Date the report was prepared.
   c. Age of the existing facility (if a replacement project).
   d. Description of the problem.
   e. Detailed discussion of alternatives and the scope of work for the proposed activity.
   f. Detailed cost estimate (by line item) for the proposed project. (If scope of work includes more activities than proposed for the CDBG part of the project, please separate these activities and costs.)
   g. Discuss the long-term operation and maintenance plan for the proposed facility. Include in the discussion future operation and maintenance costs. The discussion must provide a description of the plan to technically and financially maintain the proposed public facility project, or the total system of which the project is a component, for the long term after construction.

5. It is highly recommended that each applicant proposing significant water, sewer or solid waste disposal activities discuss the proposed project with the State Health Department prior to submitting the preliminary engineering report in order to prevent any disagreements in the design of the solution.

B. Eligible Activities

1. Reference Section II,

C. Ineligible Activities

1. Reference Section II, Part B. Ineligible Activities

SECTION IX – HOUSING PROGRAM DESIGN

This section describes specific requirements applicable to basic Rehabilitation and New Construction Housing activities. The Division of Community Services will have the authority to deny any housing project that is not well conceived and fully developed.

A. Housing Policy and Procedures

1. All housing projects will require a preliminary engineering/architectural report

2. Applicants are encouraged to determine the eligibility of potential household recipients by considering total net worth in addition to gross income.

3. Applicants must include in their application evidence of the following:
    a. All residents of the city/county were notified of the availability of CDBG funds.
    b. All eligible residents were given the opportunity to apply for program assistance.
    c. The applicant review process was conducted in a manner which eliminates conflict of interest. This is accomplished by removing from the decision-making process anyone who is a direct applicant, or related to an applicant.

4. The Section 8 Housing Quality Standards (HQS) Checklist must be used to identify housing rehabilitation needs. All inspectors must be Section 8 HQS Certified or be an individual who has demonstrated knowledge of the State Building Code. If the inspector is not HQS certified, the application must include the inspector's qualifications demonstrating knowledge of the State Building Code. The State requires that all rehabilitation work must meet Section 8 Housing Quality Standards or the State Building Code, whichever is more restrictive.

5. North Dakota CDBG Affordable Rent Policy for Multi-Dwelling Units
    a. Rental units rehabilitated totally or in part with CDBG funds must be occupied by low and moderate income persons at affordable rents. Affordable rent is defined as 30 percent of the gross household income as determined by Section 8 of Title I of the Housing and Community Development Act of 1974.
    b. A "majority" of the units in a building after rehabilitation must be occupied by low and moderate income persons at affordable rents.

6. In the event that financial assistance is provided to a non-low and moderate income property owner for the benefit of a low and moderate income renter, the grantee must secure a written agreement from the owner to:
    a. Limit rent increases for five years to the rate of inflation; and
    b. Continue to rent to low and moderate income persons for a period of five years.

7. Single family rehab
    a. Two or more houses in the same city or county
    b. LMI
    c. Follow fair market rents

B. Creation of New Housing Units

1. CDBG funds cannot generally be used for the construction of new permanent residential structures or for any program to finance new construction, except for:
    a. Last resort housing provisions in relocation;
    b. Provision of assistance through Community Based Development Organization (CBDO); or
    c. Activities which facilitate the development of housing, including clearance, site and public improvements, and property acquisition.

    For further guidance refer to CPD Notice 07-08 dated November 21, 2007.

2. Detailed information must be provided concerning financial feasibility, management, tenant occupancy, start-up costs, preliminary architectural plans, cost estimates, and ownership or nonprofit data.

3. Any activity carried out with CDBG funds that involves the acquisition or rehabilitation of property to provide housing is considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons at affordable rents. In addition, a "majority" of the units in a multi-dwelling building must be occupied by low and moderate income persons at affordable rents.

C. Relocation

1. For detailed guidance, reference the Residential Anti-displacement and Relocation Assistance Plan, the Uniform Relocation Act Policy Guide, and the HUD URA Handbook 1378.

D. Eligible Activities

a. Reference Section II

E. Ineligible Activities

a. Reference Section II, Part B. Ineligible Activities

SECTION X – PUBLIC SERVICES PROGRAM DESIGN

This section describes specific requirements applicable to basic public service activities. The Division of Community Services will have the authority to deny any public service that is not well conceived and fully developed.

A. General Public Services Policies and Procedures

1. Must meet a national objective.

2. Statutory and regulatory limitation on the amount of CDBG funds that may be used for activities assisted under this category is 15% of the total award to the State. Some services that are assisted under this program may also be eligible under a category other than Public Services, and if properly classified under another category, would not be subject to the 15% public service cap.

3. Activities assisted under Section 105(a)(8) may include only:
    a. Provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 per centum of the amount of any assistance to a unit of general local government (or in the case of nonentitled communities not more than 15 per centum statewide).

4. Public services that are not subject to the cap:
    a. Certain types of services fall under other categories of basic eligibility (such as Sections 105(a)(15) and 105(a)(23)) and are not subject to the limitation that applies to services carried out under Section 105(a)(8).

B. Eligible Activities

1. Under this category, CDBG funds may be used to provide public services (including labor, supplies, materials, and other costs), provided that each of the following criteria is met:
    a. The public service must be either:
        i. A new services; or

ii. A quantifiable increase in the level of a service above that which has been provided by or on behalf of the unit of general local government through funds raised by such unit, or received by such unit from the state in which it is located during the 12 months prior to submission of the grant recipient's applicable Action Plan. (This requirement is intended to prevent the substitution of CDBG funds for recent support of public services by the grant recipient using local or state government funds.)

b. No more than 15 percent of a state's yearly allocation of funds, plus program income distributed by the state as part of that year's method-of-distribution, may be expended for public service activities. Note that the 15 percent cap applies to the state, not to individual local governments receiving state CDBG funds. A state could make a grant to a town solely for public services activities. In the State CDBG program, compliance with the 15 percent cap is determined by expenditures over the life of a given fiscal year's allocation of funds (plus program income).

2. Public services include, but are not limited to:
   a. Child care, health care, job training (including training a qualified pool of candidates for unspecified jobs), recreation programs, education programs, public safety services, fair housing activities, services for senior citizens, services for homeless persons, and victims of domestic violence, drug abuse counseling and treatment, energy conservation counseling and testing, homebuyer down payment assistance, emergency assistance payments, legal services.
   b. Paying the cost of operating and maintaining that portion of a facility in which the service is located is also considered to fall under the basic eligibility category of Public Services, even if such costs are the only CDBG-funded contributions for those services.

C. Ineligible Activities

1. Reference Section II, Part B. Ineligible Activities

SECTION XI – ECONOMIC DEVELOPMENT PROGRAM DESIGN

This program is targeted to the Primary Sector business proposals which will operate within North Dakota. CDLF assistance is intended to be used in situations where a funding gap exists, and alternative sources of public and private financing are not adequate.

On a case-by-case basis, a request to waive any of the policy and procedures must be approved and granted by the Division of Community Services. The Division of Community Services will have the authority to deny any economic development project that is not well conceived and fully developed. All CDLF projects will be funded with Revolving Loan funds prior to CDBG allocation of funds.

A. General Economic Development Policies & Procedures

1. Request for economic development are accepted anytime throughout the year. All requests must go through the Division of Community Services. The Pre-Application must be reviewed and approved by the Division of Community Services. The Division of Community Services will make their recommendation based on the scoring criteria.

2. The decision to fund Economic Development related project(s) will be based on the significant impact to the state's economy and must meet one of the following criteria: (1) does the project create jobs; (2) is the business viable; (3) will the project have a positive impact on the community and state; and (4) will the business create new wealth in the community and state.

3. The proposed activity must be CDBG eligible and meet a national objective. The State is not allowing urgent need projects for the current fiscal year and therefore will not qualify as meeting a national objective. The Program Design for Economic Development must be followed.

4. Administrative funds will be awarded based on the same formula as other CDBG projects.

5. Any program income returned will be redistributed to the statewide fund in which the funds originated or to the Governor's Revolving Loan Fund. The program income funds will be used for economic development activities in the state.

6. For loans before FY2022 the city/county may retain 50 percent of the interest on the loan repayment after all jobs have been created and an Administrative or Final Closeout has been issued by the DCS. Until this occurs 100 percent of the interest must be returned to the State.

7. A bank must be involved in financing of an economic development project unless in a disaster situation.

8. Applicants may apply for grants for activities which are carried out by public or private nonprofit entities, including (a) acquisition of real property; (b) acquisition, construction, reconstruction, rehabilitation, or installation of 1) public facilities (except for building for the general conduct of government), site improvements (water, sewer, roads, railroad spurs), and utilities; 2) commercial or industrial buildings or structures and other commercial or industrial real property improvements

9. The North Dakota Economic Development Program will not assist projects that facilitate the relocation of industrial or commercial facilities within the state, unless the region finds such relocation does not adversely affect the level of unemployment, available jobs or the economic base of the area from which the industrial or commercial plant or facility is to be re-located. In order to satisfy this requirement, the grant applicant must submit sufficient evidence that:
    a. The relocation will not have a significant economic effect on the community of original site location, and/or
    b. The city/county of original site location cannot provide similar facilities and/or conditions as offered by the city/county where the business is proposing to relocate.

10. The cost per job for CDLF should be at or below $35,000. Please consult with DCS.

11. Only those jobs proposed to be created within the first two years will receive consideration during the review process. The two-year period begins with the date of the financial award.

12. At least 51 percent of the jobs to be created or retained must be held or made available to low and moderate income persons or the employee resides in a census tract where no less than 70 percent of the residents are low and moderate income persons. LMI status is based on family gross income at the time of hiring. It is not based on the salary to be paid.

    Each applicant is required to provide evidence that the business has contacted Job Service of North Dakota if 51% of the jobs created are not filled by low and moderate income individuals.

    Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally under-taken, provided that the cost (in CDLF funds) for the facility/improvement is less than

$10,000 per permanent full-time equivalent job to be created or retained by those businesses.

In any case where the cost per job to be created or retained is $10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/ improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the facility/improvement between the date the recipient identifies the activity in its final statement and the date one year after the physical completion of the facility/improvement.

13. Only permanent jobs may be considered in determining proposed jobs to be created or retained. All jobs must be on a "full time equivalent (FTE)" basis. Full time is based on 32 hours per week. In converting part time jobs to full time, the applicant must indicate the hours of employment for each part time position. Jobs created prior to a Financial Award will not be counted as new jobs.
    a. Seasonal jobs may be considered only if the business can demonstrate that the duration of the season will be long enough for the job to be considered as a person's principal occupation. Jobs taken by students who are legal dependents or by persons such as farmers and school teachers employed during their off season, cannot be considered as a principal occupation. The applicant must also demonstrate that the job itself is a permanent position. Eligible seasonal jobs must also be converted to full time equivalents. FTE must be based on hours worked and length of the season. For instance, four persons working full time for three months would equal one FTE.

14. For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the CDLF assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDLF assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that it will be filled by or that steps will be taken to ensure that it is made available to a low or moderate income person upon turnover.

    Applicants proposing job retention must undertake a survey of those retained individuals to determine their household income and status as a full or part time employee. A copy of each survey must be submitted with the original application. A sample survey form is included on the DCS website.

15. An applicant may apply for economic development funds for a project that proposes to provide area benefit. This is an activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or

other officially recognized boundaries, but must be the entire area served by the activity. Units of general local government may, at the discretion of the state, use either HUD provided data comparing census data with appropriate low and moderate income levels or survey data that is methodologically sound. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

The project must provide goods or services to residents of an area, such that the number of low and moderate income person residing in the areas served by the assisted businesses amounts to at least one low and moderate income person per $350 of CDLF funds used.

Where CDLF assistance for an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, the grantee may elect to count the activity under either the jobs standard or the area resident's standard, but not both.

16. Refinancing of existing debt and interest buydown will not be accepted.

17. Each applicant must identify the sources and uses of matching funds. Matching funds may come from a variety of sources, such as new investments by a firm to be assisted, bank loans, loans to be repaid to a state or federal loan program, or grants. Applicants must include documentation committing matching dollars that at least indicates funds are available contingent upon the receipt of CDLF. Applicants must meet a minimum leverage requirement of 1:1. To ensure compliance with the federal environmental regulations, consultation with the DCS should commence prior to any commitment of funds. For economic development infrastructure projects, a waiver of the 1:1 match will be considered on a case-by-case basis and must receive DCS approval. The following will not be considered as match:
    a. In-kind services;
    b. Refinancing of existing debt; and
    c. An operating line of credit - unless it can be proved that it will be spent within the budget period.

18. An equity investment which equals a minimum of 10 percent of the total project cost must be made by the principal(s). Unless in the case of nonprofit corporations where equity requirements may be less, however, they will be determined on their own merits. This equity requirement may be met through a direct cash injection or through tangible balance sheet equity, as defined by generally acceptable accounting principles. The equity must be available upon receipt of the full application.

    Equity is defined as capital that has no guaranteed or mandatory repayment or has no definite timetable for repayment of the capital investment, and cannot be withdrawn at the contributor's option without the permission of the superior debt holders. In the event a source of grant funds is proposed as equity, the funds must be firmly committed.

19. In the process of reviewing an application and developing a funding recommendation, the applicant may be required to secure a first, shared first, or second security position on the assets, or other forms of collateral for the project. A third position may be considered, on a case-by-case basis. Approval must be requested from DCS for this to occur.

20. Each applicant must provide a signed letter of commitment from the business that upon award of CDLF to the applicant, it will locate or expand its business in the applicant's jurisdiction.

B. Economic Development Funding

The focus will be to fund primary sector projects.

Primary Sector: "Primary sector business" means an individual, corporation, limited liability company, partnership, or association certified by the ND Department of Commerce Division of Economic Development and Finance, which through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth. A North Dakota business that does not qualify under this definition may be approved by the ND Department of Commerce Commissioner if the business provides a community an essential service. Reach out to DCS staff for further inquiry.

"Primary sector business" includes tourism but does not include production agriculture.

"Production agriculture" means the production of crops and livestock on or near a farm as part of the regular farm enterprise directed by a farm operator and the farm operator's partners. The term does not include an investor-owned livestock feeding or milking operation located apart from a farm headquarters which is managed by employees.

1. Funding Cycle
   Primary - Funding cycles will remain open year-round and in accordance with timely distribution of funds listed in Section IV.

2. Infrastructure Projects - All public improvement projects funded under the CDBG Economic Development category shall procure plans, drawings and specifications for the work from a licensed architect or registered professional engineer.

   A copy of the State Health Department's letter of design approval must be submitted for all water and sewer projects prior to the first draw down of project funds.

C. Business Plan

NOTE: All business plan information and financial exhibits will be considered confidential, for evaluation purposes only, and will not, except as required by law, be provided to any third person, firm, corporation or public entity without the express written consent of the business.

Each applicant must submit a business plan for each business or entity to receive direct assistance, whether for-profit or nonprofit. Each business plan must contain sufficient information in order to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial posture, and details of the proposed venture. The business plan components contained in this section are required for CDLF economic development applications involving, grants, or public improvements directly assisting for-profit or nonprofit entities.

Applications involving more than one business will require a longer review period. Each business included in an application will be evaluated separately.

The business plan must include the following elements and must provide sufficient detail for adequate analysis:

1. Sample Business Plan Format
   A well thought out business plan is important when requesting financial assistance from the DCS. This outline represents a general approach: business plans should be tailored to the specific business project.

Executive Summary – should concisely describe the key elements of the business plan.

- Business location and plan description.
- Discussion of the product, market and competition.
- Expertise of the management team (attach resumes).
- Summary of historical and financial projections.
- Amount of financial assistance requested.
- Form of and purpose for the financial assistance.
- Complete uses and sources of funds.
- Business goals and objectives.

2. The Company
   A general description of the business, including the product or service.
   - Tax identification number.
   - Historic development of the business, including such items as:
     - Name, date and place (state) of formation, and legal structure (e.g., proprietorship, partnership, corporation).

    - Significant changes (include dates) in ownership, structure, new products or lines, acquisitions.
    - Subsidiaries and percentage of ownership, including minority interests.
    - Principals and the roles they played in the formation of the company.

3. The Product/Service/Jobs-describe the present product or service lines, including:
    - Relative impact of each product or service to the sales projections.
    - Product evaluation (use, quality, performance).
    - Compare to competitors' product lines, and competitive advantages over other producers.
    - Demand for the product(s).
    - General description of the project, the purpose for which it is undertaken, projected job creation, and salary/wage rates for all employees.

4. Management
    - Organizational chart.
    - Key individuals (include supervisory personnel having special value to the organization – Responsibilities.
    - Personnel resumes (describing skills and experience as they relate to activities of the business).
    - Present salaries (include other compensation such as stock options and bonuses).
    - Other employees:
        - Number of employees at year end, total payroll expenses for each of previous three years (breakdown by wages, benefits).
        - Method of compensation
        - Departmental/divisional breakdown of work force.
        - Planned staff additions.

5. Ownership
    - Names, addresses and business affiliations of principal holders of subject's common stock and other types of equity securities (include details on holdings).
    - Degree to which principal holders are involved in management.
    - Principal non-management holders.
    - Names of board directors, areas of expertise, and the role of the board when business is operational.
    - Amount of stock currently authorized and issued.

6. Marketing Plan
    - Describe the industry and the industry outlook. Identify the principal markets (commercial/industrial, consumer, government, international). Include the current industry size as well as its anticipated size in the next two years. Explain the sources of the projections.

- Describe major characteristics of the industry.
- Describe the effects of major social, economic, technological or regulatory trends on the industry.
- Describe major customers, including: names, products or services sold to each; percentage of annual sales volume for each customer over previous three years; duration and condition of contracts in place.
- Describe the market and its major segments. Describe principal market participants and their performance. Identify the firm's target market. For each customer, include the requirements of each and the current ways of filling these requirements. Also include information on the buying habits of the customers and the impact on the customer using the product or service.
- Describe the companies with which the business competes and how the business compares with these competitive companies. This is a more detailed narrative than that contained in the description of the product or service, above.
- Describe prospective customers and their reaction to the firm and any of the firm's products or services they have seen or tested.
- Marketing strategies. Describe the firm's marketing strategy, including overall strategy; pricing policy; method of selling, distributing and servicing the product; geographic penetration; field/product support; advertising; public relations and promotion and prioritization.
- Selling activities. Describe how the firm will identify prospective customers and how and in what order the firm will contact the relevant decision-makers. Also describe the sales effort the firm will have (e.g., sales channels and terms, number of salespersons, number of sales contacts, anticipated time, initial order size) and estimated sales and market share.

7. Technology
    - Describe the technical status of the product (idea stage, development stage, prototype stage) and the relevant activities, milestones, and other steps necessary to bring the product into production.
    - Describe the present patent or copyright position. Include how much is patented and how much can be patented (e.g., how comprehensive and effective the patents or copyrights will be). Include a list of patents, copyrights, licenses or statements of proprietary interest in the product or product line.
    - Describe new technologies that may become practical in the next two years which may affect the product.
    - Describe new products (derived from first generation products) the firm plans to develop to meet changing market needs.
    - Describe regulatory or approval requirements and status, and discuss any other technical and legal considerations that may be relevant to the technological development of the product.
    - Describe current and future plans for research and development efforts.

8. Production/Operating Plan
   Explain how the firm will perform production or delivery of service. Describe capacity and status in terms of:
   - Physical facilities. Owned or leased, size and location, existing facilities (sales volume and unit capacity), expansion capabilities and capital equipment (types and quantities). Include a facilities plan and description of planned capital improvements and a timetable for those improvements.
   - Suppliers. Name/location of principal suppliers, length of lead time required, usual terms of purchase, contracts (amounts, duration and conditions) and subcontractors.
   - Labor supply (current and planned). Number of employees, unionization, stability (seasonal or cyclical), and fringe benefits (insurance, profit sharing, pension).
   - Key patents (provide profile).
   - Technologies/skills required to develop and manufacture the products (provide listing/description).
   - Cost breakdown for material, labor and manufacturing overhead for each product, plus cost versus volume curves for each product.
   - Manufacturing processes – block and work flow diagram, if helpful.
   - Describe production or operating advantages. Discuss whether they are expected to continue.
   - Specify standard product costs at different volume levels.
   - Present a schedule of work for the next one to two years.

9. Financial
   - Accountant – name, address
   - Legal counsel – name, address
   - Banker – name, location, telephone number, and contact officer.
   - A funding request detailing the desired financing, including uses and sources of funds. If phased financing, describe phases, projected timing and detailed uses and sources of funds.
   - Amount to be raised from debt and amount from equity.
   - Plans to "go public". (Relate this to future value and liquidity of investments.)
   - Company historical financial statements and tax returns for the previous three years.
   - Three years projected financial statements (years one and two should be monthly; year three quarterly). Projections should include profit and loss, balance sheet and cashflow statements. Include key assumptions made in the proformas and how these assumptions reflect industry performance. Three years projected capital expenditures including leases and acquisitions.
   - An aging of accounts receivable and an aging of accounts payable.
   - Personal financial statements and three years of tax returns of principal(s).

SECTION XII – GOVERNOR'S FUNDS

This section describes specific requirements applicable to the Governor's Funds. Projects awarded through the Governor's Funds will come from the revolving loan fund. The revolving loan fund has approximately $10 million and will decrease year after year as projects are awarded.

A. General Policies and Procedures

1. Funds can be applied for any time during the fiscal year. The last day to submit an application must be received by DCS with all pre-application requirements and original signatures no later than June 14, 2024. If the pre-application is incomplete and the deadline date has passed, it will not be accepted for the current fiscal year.

2. The applicant cannot be currently receiving CDBG funding for the project being requested. On a case-by-case basis, a waiver may be considered and must receive DCS approval.

B. Eligible Activities

1. The following activities must meet a CDBG National Objective. Urgent need has been excluded. These activities will follow all policies and procedures stated through the program distribution statement unless otherwise noted.
    a. Economic Development
    b. Housing
    c. Public Facilities
    d. Public Services

C. Ineligible Activities

1. Reference Section II, Part B. Ineligible Activities

D. Pre-Application Process
1. All pre-applications must be sent to DCS first.

2. Refer to Section VI – Pre-Application for what is required of the pre-application pertaining to the specific activity that is being applied for.

3. Governor's Fund form (SFN 53734).

4. Preliminary engineering/architectural report

E. Scoring Criteria

1. The Governor's funds will follow the same scoring criteria as listed in Section VI, except for having a committee score the application. DCS will be responsible for reviewing, scoring, and sending grant award recommendations to the Governor's Office. The Governor's Office will then review and use the same weighted criteria for scoring. DCS' score plus the Governor's Office score will be combined for the overall total. The combined average score may be eligible for the following based on a total of 400 pts.:
    a. 320-400 – may be eligible for 80%-100% of requested CDBG funds
    b. 200-319 – may be eligible for 50%-79% of requested CDBG funds
    c. 0-199 – may be eligible for 30%-49% of requested CDBG funds

2023 HOME Allocation Plan Draft

HOME Investment Partnerships Program

2023 Allocation Plan

DRAFT Pending HUD Approval

Planning and Housing Development Division
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NORTH DAKOTA
HOME INVESTMENT PARTNERSHIP PROGRAM
2023 ALLOCATION PLAN

I. INTRODUCTION

The U.S. 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 Investment Partnerships Program (HOME) funds. The state agency responsible for administration of HOME is the North Dakota Housing Finance Agency (NDHFA).

NDHFA will distribute the State's FY2022 HOME funds and administer the program according to the goals identified in North Dakota's Consolidated Plan (CP). Accordingly, the State will use its HOME funds to help address the following 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

II. GENERAL PROVISIONS

The 2013 HOME Final Rule revised several commitment and completion deadlines and imposed new occupancy deadlines:

A. HOME projects must be completed within 4 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 as described in 24 CFR § 92.205(e)(2).

B. 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 6 months following completion, the PJ must identify and develop an enhanced marketing plan and report this information to HUD per 24 CFR § 92.252.

C. A homebuyer unit must have a ratified sales contract within 9 months of construction completion. The PJ and Subrecipients must either convert the unit to a HOME rental property or repay the full HOME investment as described in 24 CFR § 92.254(a)(3).

D. 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 Dec. 31, 2022.

E. CHDO Fund Set-Aside

   - PJs shall reserve not less than 15% of the grant for projects to be developed, sponsored or owned by CHDOs.
   - 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.

F. The PJ can no longer "reserve" CHDO funds for future projects identified "at a later date" per 24 CFR § 92.2 Commitment and § 92.300(a)(1).

G. Since FY2015 appropriations, HOME funds have a period of 9 fiscal years until expiration. This period is based on 4 fiscal years during which HUD may obligate funds to the PJ (i.e., period of availability in the appropriation act) plus the 5 year expenditure deadline beginning after the last day of the month in which HUD notifies the PJ of HUD's execution of the HOME Agreement for a specific fiscal year allocation. Any funds that are not expended before this deadline will be deobligated by HUD. This 9-year period is determined annually by Congress, which generally begins when Congress appropriates funds to HUD per 24 CFR § 92.500(d)(1)(A) and (C) and § 92.500(d)(2).

H. Property Standards

All activities funded with HOME funds must meet minimum property standards as outlined in the Minimum Rehabilitation and Property Standards. NDHFA is aware that HUD intends the Uniform Physical Inspection Condition Standards (UPCS) to be replaced by NSIRE during the 2023 program year. Minimum Rehabilitation and Property Standards manual will be updated when NSPIRE is finalized. More information on NSPIRE standards is available on the HUD Exchange.

III. DISTRIBUTION PLAN

The State will administer its program through Subrecipients, non- and for-profits, and CHDOs. HOME 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, NDHFA may open a second round of CHDO applications, at its discretion, accepted from CHDOs only.

Applicants new to HOME 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 1 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 as described in 24 CFR § 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 NDHFA 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 on Dec. 2, 2016 and 24 CFR § 92.503.

HOME Projects and Eligible Activities

The HOME Program focuses on three major housing needs:

- Single Family Homeowner Rehabilitation
- Rental Production and Rehabilitation
- 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 NDHFA, to their Recipients and Subrecipients. Each Subrecipient delivers HOME 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:

- Create a Suitable Living Environment
- Provide Decent Affordable Housing
- 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. NDHFA will then enter this information on HUD's Integrated Disbursement and Information System (IDIS).

2023 Summary of Funding ESTIMATE*

*Funding levels are subject to receipt of a HUD Allocation Notice and any Program Income Received prior to July 1, 2023.

Any additional funds received will be allocated to the Rental Production and Rehabilitation Project Funding. 2022 Uncommitted funds will be reallocated for the Rental Production and Rehabilitation 2023 Activity.

Annual HUD Allocation	$3,000,000.00		
Program Income	*$98,202.64		
Recaptured Funds			
Prior Years Project Funds Unobligated	$1,200,000		
Total Allocation	$4,298,202.64		
Total Available for Project Set-Aside	$3,998,202.64		
Total Available for Administration Set-Aside (maximum of 10% of HUD allocation)	$300,000		
Project/ Eligible Activity & Anticipated Applicants	**Projects**	**Administration**	**Operating**
Single Family Homeowner Rehabilitation			
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 North Dakota 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	
Rental Production and Rehabilitation			
CHDO Reserve	$450,000	$0.00	$0.00
General Pool Funds	$2,208,202.64		
Homebuyer Down Payment Assistance			
Grand Forks Community Land Trust	$500,000	$0.00	
State PJ Administration		$240,000	

TOTAL	**$4,298,202.64**	**$300,000**	**0**

IV. ELIGIBLE USES

All Recipients are expected to locally meet the HOME match requirement of 25% unless specifically waived by NDHFA. All estimated matches must be reported at project application and finalized before final draw.

Only HOME assistance forms listed in 24 CFR § 92.205(b) will be allowed. Applicants should use Community Development Block Grant, Federal Home Loan Bank, Low Income Housing Tax Credit, National Housing Trust Fund, North Dakota Housing Incentive Fund, U.S. Department of Energy, USDA Rural Development, other grant/loan programs or private funds 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 NDHFA no later than July 15 of each year.**

A. Administration

NDHFA is allowed to receive HOME funds for administrative expenses. These costs may not exceed 10% of the State’s annual HOME allocation.

Subrecipient Definition
A Subrecipient is defined as a public agency or non-profit organization selected by NDHFA to administer all or a portion of the HOME program. 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. NDHFA'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.

B. Single Family Homeowner Rehabilitation

HOME funds will be set aside for Community Action Agencies (CAA) 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 NDHFA.
- Applications may be submitted beginning Aug. 1, 2023, 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 24 CFR § 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 prior to work beginning.

Please note that no choice-limiting action may be taken and no construction activity may begin until the environmental review has been completed, the homeowner agreement has been signed, and an authorization to proceed has been issued.

The period of affordability is as follows:

HOME Assistance Per Unit	Minimum Period of Affordability
Single Family Homeowner Rehabilitation	5 years

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

1. The criteria used to determine applicant eligibility based on income as defined by either Part 5/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% of area median income) along with how the income information will be verified.
2. Provide the CAA Affirmative Marketing requirements and procedures (24 CFR § 92.351).
3. The types of property or properties eligible for assistance (e.g., a single family dwelling, condominium, cooperative unit or manufactured housing. Manufactured housing must be located on permanent foundation and private lot.).
4. Provide a description of any type of homeowner contribution required (e.g., cash, labor or materials).
5. A description of how you will inspect for HOME property standards as defined in 24 § 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.
6. Define how you will meet lead-based paint regulations of section 24 CFR § 92.355 and § 35.
7. 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.
8. Describe how you will assure that no more than the necessary amounts of HOME Program funds are invested in any one project (i.e., Layering).
9. Specify the form of financial assistance in which HOME funds are provided (e.g., grant or deferred-payment loan).
10. Address special requirements for reconstruction or rehabilitation of manufactured housing units as set forth in 24 CFR § 92.251(e).
11. Describe the process for written construction documents and cost estimates as required by 24 CFR § 92.251(b)(2), contractor selection to ensure cost reasonableness, and inspections and approvals of work as required by 24 CFR § 92.251(b)(3).
12. Define the staff, owner, and contractor roles and responsibilities. Include a grievance procedure for applicants and disputes between an owner and a contractor.

13. Provide a statement that outlines your conflict-of-interest policy in Section II, HOME Statement of Assurances.
14. Describe the homeowner counseling services that are available to each client.

Uncommitted Funds
If by January 1, 2024, there remains uncommitted set-aside funds under the single family rehabilitation project, CAAs who have expended and drawn down 75% 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, 2024, will be reallocated to Rental Production and Rehabilitation's General Pool Funds.

Recaptured Funds
The recaptured funds must be returned to NDHFA to be used to carry out HOME-Eligible Activities.

C. 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 within 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.

1. Assistance may only be provided to homebuyers whose income (i.e., Section 8 definition) does not exceed 80% of the median for the area.
2. Assisted housing may be either a single family dwelling, condominium, cooperative unit or manufactured housing.
3. The Subrecipient must demonstrate compliance with NDHFA homebuyer guidelines and performs sound underwriting of the homebuyer's ability to afford and sustain homeownership.
4. 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).
5. NDHFA 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 NDHFA 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 NDHFA has released funds to the project.
6. If only acquisition assistance (i.e., 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 24 CFR § 92.251(c)(3). *It is anticipated that UPCS will be replaced by NSPIRE standards during the 2023 program year. Policies and procedures will be updated and subrecipients will be provided training when more information is available. For more

information review [HUD NSPIRE Training]

7. If the project includes acquisition assistance and rehabilitation, the property must be free from health or safety hazards before occupancy and within 6 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 (i.e., UPCS) issued pursuant to 24 CFR § 5.705.
8. The housing must comply with HUD's Lead Safe Housing Regulations. All lead-based paint hazards must be identified and subsequently addressed (i.e., reduced) per the regulations of 24 CFR § 92.355 and § 35.
9. 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.
10. 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.
11. The minimum HOME assistance is $1,000 per unit.
12. Period of Affordability (POA). This period is based on the amount of direct HOME subsidy to the buyer, as follows:

HOME Down Payment Assistance to Homebuyer	Minimum Period of Affordability
Less than $15,000	5 years
$15,000 - $40,000	10 years
More than $40,000	15 years

13. 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.
14. During grant monitoring of the Subrecipient, NDHFA 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 24 CFR § 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 a property voluntarily or involuntarily during the affordability period that:

- 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).

- The property is sold at a price that is “affordable to a reasonable range of low-income buyers.”

Under resale, 24 CFR § 92.254(a)(5(i) of the HOME rule states that the POA 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 years
$15,000 - $40,000	10 years
More than $40,000	15 years

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.
      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 includes:
      i. The Value of Homeowner’s Capital Improvements, if any.
      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 determine by Formula Resale Price, calculated by adding:

i. The Homeowner's Base Price.

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).

   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 the following:

- 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 (LI) 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 it's 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 24 CFR § 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 down payment, 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 24 CFR § 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.
- 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 (i.e., replacement) written agreement and declaration of lien interest for the total assistance.

D. Rental Production and Rehabilitation

Definitions

Affordability Period: see Period of Affordability.

Agency: North Dakota Housing Finance Agency or NDHFA.

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. NDHFA 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 20,000 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 5,000 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 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.

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.

Minimum HOME-Assisted Units: The minimum number and configuration of units required to be income and rent restricted by the HOME Program as determined by the applicant's selected HOME Cost Allocation Method within the Application Exhibit A.

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.

Proposed HOME-Assisted Units: The number and configuration of units the applicant proposes to be income and rent restricted by the HOME Program. This number may never be less than the number and configuration of units as determined by the Minimum Home-Assisted Units.

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 NDHFA.

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.

V. ELIGIBLE APPLICANTS

A. 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 24 CFR § 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 24 CFR § 92.252. If the housing organization acquires housing that meets the property standards in 24 CFR § 92.251, the organization must own the rental housing for a period at least equal to the period of affordability in 24 CFR § 92.252.

B. 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 24 CFR § 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 24 CFR § 92.252.

C. Sponsor (CHDO only)

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

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

D. 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)) organizations with the mission statement that identifies decent, affordable housing to low- and moderate-income persons.

NDHFA will certify non-profit organizations that meet defined criteria as CHDOs in the HOME Final Rule Subpart A, 24 CFR § 92.2. CHDOs must be certified annually by completing and submitting a certification application by April 1 of each year. To apply for funding, a CHDO must have an updated certification.

In addition, CHDOs must meet and satisfactorily demonstrate the prescribed requirements. NDHFA will be using the HUD guidance on CHDO qualifications. CHDOs are also eligible to participate in non-CHDO housing activities. CHDOs must demonstrate to NDHFA that their certification status is maintained during each year of the POA of a rental development project.

Up to 10% of the CHDO set-aside may be used for pre-development loans to assist specific projects at the discretion of NDHFA. 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 NDHFA. The repaid funds will be added to the next FY allocation.

CHDO Definition - A non-profit organization that:

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

c. The CHDO must be free to contract for goods and services from vendors of its own choosing.

d. The officers and employees of the for-profit entity may not be officers or employees of the CHDO.

4. Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1 or 1.501(c)(4)-1)), is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986, or if the private non-profit organization is a wholly owned entity that is disregarded as an entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly owned by an organization that qualifies as tax-exempt), the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and meets the definition of "CHDO."

5. Is not a governmental entity (including the PJ, other jurisdiction, Indian tribe, public housing authority, Indian housing authority, housing finance agency, or redevelopment authority) and is not controlled by a governmental entity. An organization that is created by a governmental entity may qualify as a CHDO; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of governmental entity. Board members appointed by a governmental entity may not appoint the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a CHDO.

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

7. Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions, or by-laws.

8. Maintains accountability to low-income community residents by:

   i. Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county, or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire state).

   ii. Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing.

9. Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience, who will work on projects assisted with HOME funds. For its first year of funding as a CHDO, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization. An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of 24 CFR § 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.

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.

E. Non- and For-Profit Developers

Note*:* Non- and for-profits are not required to be designated CHDOs to apply for HOME 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 multifamily housing. The on- and for-profits must not be disqualified from any program administered by NDHFA or under debarment, proposed debarment or suspension by a federal agency.

The non- and for-profits 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-profits has successfully administered, following all the cross-cutting requirements (e.g., Davis Bacon, Section 3, and Contact Compliance) at least 1 HOME, CDBG or NSP funded development of similar nature and scope.

- Has a proven track record in affordable housing development and project management for a minimum period of 5 years prior to the application submission date.

- Documented capacity to carry out the long-term rental compliance responsibilities associated with the development through the period of affordability.

VI. 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.

NDHFA's Multifamily Housing Programs Application can be found online: https://www.ndhfa.org/

A. 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:

HOME Funds per HOME-Assisted Unit	Affordability Period
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 NDHFA 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.

B. 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. 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 NDHFA, 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.

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

VII. 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 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 NDHFA, 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 NDHFA evaluates a project's financial feasibility.

   NDHFA 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 NDHFA, 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 NDHFA, 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:

   1. Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, and gas and electric utilities and lines; and

2. Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage; and
3. 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
4. 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.

VIII. PROJECT RATINGS

A. Cross-Cutting Exclusion

There are several broad federal rules which must be adhered to while administering the program. While NDHFA 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 NDHFA including these federal cross-cutting requirements within the last 4 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.

B. Scoring Deductions

Applications not meeting a minimum HOME Matching Contribution (see 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 5 point scoring deduction will be assessed for EACH missing requirement.

C. 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.

1. HOME Assisted Units — Up to 30 points

Points awarded based on the number of Minimum and Proposed HOME-Assisted Units.

- Minimum HOME-Assisted Units is equal-to or less-than eleven (11) .... 20 points
- Proposed HOME-Assisted Units equals the Minimum HOME-Assisted Units Calculation.. 10 points

2. Serves Developing Communities — Up to 25 points

Points awarded when the proposed project is located an incorporated city with a population meeting the definition of a Developing Community or Developing Rural Community.

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

3. 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 HOME matching contribution, see 24 CFR 92.220. Projects located within another HOME Participating Jurisdiction's (PJ) service area must provide written verification from the other PJ(s) of the Agency's sole right to claim the HOME match source. If not provided, the match source is not eligible for consideration within this scoring criteria.

- Combined value less than 25% of HOME Funds Requested........20-point reduction
- Combined value of at least 25% of HOME Funds Requested..................... 25 points

4. 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.

5. 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.

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

6. 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.

- >= $75,000 < $110,000 HOME Funds per HOME-Assisted Unit .... 5 points
- >= $110,000 < $145,000 HOME Funds per HOME-Assisted Unit .... 10 points
- >= $145,000 < $175,000 HOME Funds per HOME-Assisted Unit .... 20 points
- >= $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.**

7. Preserve Existing Affordability 5 – 10 points

State or federally assisted non-LIHTC projects which are at-risk of being lost from the state's affordable housing inventory, including HUD Repositioning 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
b) Regulatory Agreement
c) Filing documents of intent to opt out
d) Loan documents that describe the ability to pre-pay the financing including required approvals and/or penalties
e) Copy of most recent REAC, MOR, or RD inspection report or other evidence of
f) physical deterioration that would threaten the HAP contract
g) At least three market comparables for each bedroom size to indicate what market rents
h) might be achievable at the project without the federal assistance restrictions; and
i) Narrative describing the dissolution of current ownership/management entity capacity.
j) Proof of 8(bb) transfer to the proposed project.

8. 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.

a) 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.

b) 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.
- 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.
- 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.

IX. STATEMENT OF ASSURANCES APPLICABLE TO ALL HOME ACTIVITIES

Other Federal requirements and nondiscrimination

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.

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).

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/.

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 24 CFR § 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

NDHFA 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.

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 NDHFA.

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.

NDHFA 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. NDHFA 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 NDHFA 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 NDHFA.

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 NDHFA 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 NDHFA. 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 NDHFA 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 NDHFA 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 manner 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).

NDHFA and Recipients of HOME funds are required to follow the requirements of the Agency's 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 24 CFR § 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:

   a) Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations; and
   b) Conduct on-site inspections and employee interviews; and
   c) Collect and review certified weekly payroll reports; and
   d) Correct all labor standards violations promptly; and
   e) Maintain documentation of administrative and enforcement activities; and
   f) 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 24 CFR § 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:
      a) 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
      b) 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
      c) Whether the tenant protection requirements of 24 CFR § 92.253 are being observed; and
      d) Whether the affirmative marketing requirements of 24 CFR § 92.351 are being observed and followed; and
      e) Any other factor relevant to the PJ's determination, including the timing of the requested exception.

Executive Order 12372

1. 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.
2. 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:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.

7. 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:

1. 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.
2. 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.

X. RESOURCES

- HUD Exchange - HOME Investment Partnership Program
- Electronic Code of Federal Regulations – Title 24, Subtitle A, Part 92
- Suspension of the HOME Commitment and CHDO Reservation Deadline
- Notice of CPD-18-10: Suspension of the 24-month HOME Commitment Requirement
- Notice of CPD-20-01: Four-Year Completion Requirement for HOME-Assisted Projects
- Federal Registrar/Vol. 81, No. 232/December 2, 2016 – Changes to HOME Program Commitment Requirement Interim Final Rule
- FY2013 HOME Final Rule – Amendment of HOME Program Regulations
- Title II of the Cranston-Gonzalez National Affordable Housing Act

XI. DISCLAIMER OF NDHFA LIABILITY

NDHFA seeks to allocate sufficient HOME assistance to a project to make the project economically feasible. Such decision shall be made solely at the discretion of NDHFA but in no way represents or warrants to any applicant, investor, lender, or others that the property is feasible, viable, or of investment quality.

No member, officer, agent, or employee of NDHFA shall be personally liable concerning any matters arising out of, or in relation to, the allocation of HOME assistance.

XII. MODIFICATION TO THE ALLOCATION PLAN

The Executive Director may make minor modifications deemed necessary to facilitate the administration of HOME or to address unforeseen circumstances. Further, the Executive Director is authorized to waive any conditions not mandated by federal statute or regulation on a case-by-case basis for good cause shown. As a matter of practice, NDHFA will document any waivers from the established priorities and selection criteria of this Allocation Plan and will make this documentation available to the public, upon request

2023 HOME Program Recapture / Resale Provisions – Homeowner Assistance Programs

Single Family Homeowner Rehabilitation Program

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%

Recaptured Funds

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

Homebuyer Down Payment Assistance Program

a. Period of Affordability (POA)

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

HOME Down Payment Assistance to Homebuyer	Minimum Period of Affordability
Less than $15,000	5 yrs.
$15,000 - $40,000	10 yrs.
More than $40,000	15 yrs.

b. 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.

c. 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 <u>plus</u>
      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) <u>plus</u>
      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 determine by Formula Resale Price, which is calculated as:
      i. The Homeowner’s Base Price <u>plus</u>
      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.

<u>Capital Improvements</u>. 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

Calculation Step	Declining Value - Sample Calculation
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 it’s 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.

<u>Subsequent Sale of Home to an Income Eligible Homebuyer</u>. 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.

National Housing Trust Fund
2023
Annual Allocation Plan

DRAFT Plan has not been approved by HUD

NORTH DAKOTA housing FINANCE AGENCY

Planning and Housing Development Division
2624 Vermont Avenue
PO Box 1535
Bismarck, ND 58502-1535

800-292-8621 or 701-328-8085
800-435-8590 (Spanish)
711 (Voice or TTY)
www.ndhfa.org · hfainfo@nd.gov

The Housing Trust Fund program contained herein is contingent upon HUD's allocation of formula grant amounts to the State of North Dakota as well as HUD's acceptance and approval of this Allocation Plan. Any approvals to and from the program are subject to such acceptance, approval, and allocation by HUD.

EQUAL HOUSING OPPORTUNITY

I. INTRODUCTION

North Dakota Housing Finance Agency (NDHFA) is dedicated to maximizing housing opportunities for all North Dakotans and proactively addressing the housing needs of low- and moderate-income households.

The National Housing Trust Fund (HTF) is a permanent federal program, established as part of the Housing and Economic Recovery Act of 2008. The primary purpose of the HTF is to provide grants to state governments to increase and preserve the supply of affordable rental housing for extremely low-income (ELI) households, defined as those earning less than 30 percent of the area median income (AMI), including homeless families. The HTF is funded by an assessment on all business booked by Fannie Mae and Freddie Mac. Parties interested in pursuing HTF funding should refer to the Code of Federal Regulations, Title 24, Part 93 (24 CFR Part 93) for further guidance.

NDHFA is responsible for the administration of the HTF for the State of North Dakota, including the development of an Annual Allocation Plan (the Plan) which defines the process by which HTF funds are distributed to qualifying properties throughout the state. The Plan promotes the selection of those properties which serve to address the most crucial needs of the state within the priorities outlined in the North Dakota Consolidated Plan,[1] as well as the relevant strategies identified in North Dakota's 10-Year Plan to End Long Term Homelessness:[2]

North Dakota Consolidated Plan Housing Strategies

- Preserve and improve the quality and condition of the existing rental and owner-occupied housing stock through the rehabilitation of lower-income, disabled, and elderly households.
- Fund homeownership opportunities for lower-income residents.
- Provide funding to increase the supply of multifamily housing.

North Dakota Consolidated Plan Homeless Strategies

- Support emergency shelters and transitional housing for the homeless.
- Create additional transitional and permanent supportive housing facilities.
- Provide financial support to assist those at imminent risk of homelessness, including rapid rehousing.
- Fund homeless prevention activities, including data collection and prevention services.

North Dakota's 10-Year Plan to End Long Term Homelessness: Relevant Strategies

- Develop permanent supportive housing.
- Improve the ability to pay rent.
- Expand supportive services to wrap around housing.

This Plan was developed with input from our partners and stakeholders, solicited during a public comment period, and finalized through a public hearing process.

[1] North Dakota Department of Commerce, Division of Community Services, "2020-2024 North Dakota Consolidated Plan" (2020), available at https://www.communityservices.nd.gov/communitydevelopment/ConsolidatedPlan/

[2] North Dakota Interagency Council on Homelessness, "Housing the Homeless: North Dakota's 10-Year Plan to End Long Term Homelessness" (2018), available at https://www.ndhfa.org/wp-content/uploads/2020/07/HomelessPlan2018.pdf.

II. DEFINITIONS

For purposes of the HTF program, the following definitions shall apply.

Extremely Low-Income (ELI): The primary affordability target of the HTF, defined by the United States Department of Housing and Urban Development (HUD) as household income of not more than the greater of 30 percent of area median income (AMI) or the federal poverty line.

Grantee: The state entity that prepares the HTF Allocation Plan, receives the HTF dollars from HUD, and administers the HTF in the state. NDHFA is the HTF grantee for the State of North Dakota.

Grayfield: Previously developed property.

HTF-Assisted Unit: A housing unit which meets the HTF eligibility requirements and benefits from financial assistance from the HTF.

Multifamily: Any building or group of buildings totaling four or more permanent residential rental units operated as a single housing project. Initial leases must be for a term of at least six months.

Period of Affordability: Also, “affordability period.” Units in projects receiving HTF assistance will be required to maintain affordability to extremely low-income households for a period of at least 30 years.

Recipient: An entity which is awarded assistance from the HTF for the development, rehabilitation, or operation of multifamily rental property for the benefit of ELI households.

Rent Restricted: Rent that does not exceed the published Maximum HTF Rent Limit, which is based on an assumed 1.5 persons per bedroom (single person in an efficiency). Rental Assistance is allowed, so long as the tenant pays no more than 30 percent of their adjusted income and such tenant-paid portion does not exceed the published HTF rent limit.

Stabilized Occupancy: For purposes of the HTF, occupancy of at least 90 percent of the units in the property for a period of at least 90 days.

Total Development Cost: The all-in cost of developing the project including acquisition, pre-development costs, hard and soft construction or rehab costs, financing costs, developer fees, and reserve account capitalization.

III. GENERAL PROVISIONS

Available HTF Funding

North Dakota is expected to receive the small-state allocation from the 2023 National Housing Trust Fund. HUD authorizes NDHFA to expend from the HTF up to a maximum of 10 percent of the state allocation for reasonable costs to administer the HTF program. The maximum amount of administrative costs NDHFA may expend from the HTF will be evaluated as to reasonableness each year during allocation plan development.

Eligible Recipient

The organization or agency that applies to NDHFA for funds to carry out the HTF project must be an eligible recipient. Eligible recipients include units of local, state, and tribal government; local and tribal housing authorities; community action agencies; regional planning councils; nonprofit organizations, and for-profit developers. Individuals are not eligible to receive direct assistance from the HTF.

Eligible recipients must demonstrate their familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs.

Eligible Uses

All applications for assistance through the HTF must contain a detailed description of the eligible activities to be conducted with HTF funds. Federal statute authorizes HTF funds to be used for the production, preservation, and rehabilitation of the ELI portion of a multifamily rental housing project.

The HTF can pay those development costs, identified in 24 CFR Part 93.201, associated with the new construction, rehabilitation, acquisition, or adaptive reuse of a multifamily housing project. Such development costs include acquisition, site improvements and development hard costs, related soft costs, demolition, financing costs, relocation assistance, and rent-up reserve capital (not to exceed 18 months).

Projects involving rehabilitation must perform a minimum of $15,000 in rehabilitation per unit on average. Please refer to the ND Housing Trust Fund Rehabilitation Standards document on our website at www.ndhfa.org for additional requirements of rehabilitation projects. HTF funds may not be used to refinance existing debt.

Ineligible Projects

Projects under construction are not eligible for consideration. HTF funds cannot be used for development hard costs or acquisition undertaken before the HTF funds are committed to the project in the form of an executed Written Agreement between the borrower and NDHFA.

Ineligible Uses of HTF Funds

HTF funds may not be used for:

- Laundry and community facilities which are not located in the same building as the housing.
- Providing assistance during the affordability period of a project previously assisted with HTF funds. Additional HTF funds may be committed to a project up to one year after project completion, but the total assistance is subject to the maximum per-unit HTF subsidy limit identified in the Recognizable Costs paragraph of this section.
- Payment of delinquent taxes, fees, or charges on properties to be assisted with HTF funds.
- Payment for political activities, advocacy, lobbying, counseling services, travel expenses (other than those eligible under 24 CFR Part 93.202(b)), or preparing or providing advice on tax returns.
- Payment for any cost not eligible under 24 CFR Parts 93.201 and 93.202.

Maximum HTF Award

Generally, net allocations from the HTF for a single eligible project, comprised of one or more buildings, will be limited to the lesser of a) the equity required to secure necessary project financing and make the project feasible; or b) up to 100 percent of the HTF-assisted units' share of actual development cost, subject to the following Recognizable Cost limits. Exceptions to these maximums may be made on a case-by-case basis, at the sole discretion of NDHFA, to accomplish overall program goals, such as meeting the priorities outlined in the North Dakota Consolidated Plan.

Recognizable Costs

NDHFA has elected subsidy limits which are aligned with the state's HOME Investment Partnerships Program (HOME) limits. Furthermore, NDHFA has elected to utilize a single statewide set of development subsidy limits based on a lack of evidence indicating a significant variation in development costs across the state at the present time. Should sufficient evidence supporting a significant variation in development costs across the state exist in the future, NDHFA will revisit the matter and make appropriate changes to the Plan.

Recognizable Costs for determining maximum HTF assistance will be calculated for each project by multiplying the number of corresponding units by the respective per-unit cost limit and arriving at a total.

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.

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

Costs exceeding these limits are not prohibited, however they will not be included in the calculation of maximum HTF assistance. The HTF is prohibited from investing in housing which is considered luxury. Therefore, NDHFA reserves the right to reject an application if it determines that project costs are excessive.

Contractor Profit and Developer Fee

Combined builder profit, builder overhead, and general requirements may not exceed 14 percent of the hard construction costs. Developer fee may not exceed 15 percent of total development cost net of the developer fee, acquisition, and any permanent financing costs. On acquisition/rehabilitation or adaptive reuse projects, the developer fee for the acquisition portion may be a maximum of five percent. The fees of all parties with an Identity of Interest with the Developer in the property will be taken into consideration when calculating the Developer's maximum fees.

When the Developer and the Contractor are the same entity, in addition to the fee limits stated above, the combined sum of Developer Fee, Contractor Profit, Contractor Overhead, and General Requirements may not exceed 20 percent of the total development cost, less the Developer Fee.

Reserves

All properties will be required to maintain a replacement reserve account for the term of the HTF loan. The replacement reserve requirement for new construction properties and substantial rehabilitation properties (i.e. rehab exceeding $30,000 per unit) designed for seniors will be no less than $350 per unit per year, inflated at three percent annually. The requirement for all properties designed for families as well as rehabilitation developments with rehabilitation costs of $30,000 per unit or less will be no less than $400 per unit per year, inflated at three percent annually. This account shall not be used for routine maintenance and upkeep expenses or for operating expenses. Project owners shall be required to provide NDHFA with a record of all activity in the replacement reserve account during the prior fiscal year in conjunction with submission of the project's annual compliance monitoring materials. Furthermore, the Limited Partnership Agreement or Operating Agreement must require that the replacement reserves may only to be used for the intended purpose of funding capital expenditures or replacement of building and site components and may not be distributed to owners or partners prior to the end of the Period of Affordability.

All properties will also be required to establish and maintain, until the property has achieved a minimum of five years of stabilized operations, an operating reserve equal to a minimum of six (6) months of projected operating expenses plus must-pay debt service payments and annual replacement reserve payments. This requirement can be met with an up-front cash reserve; a personal guarantee from the developer/general partner with a surety bond to stand behind the personal guarantee; or partnership documents specifying satisfactory establishment of an operating reserve.

Each reserve account identified in this section must be accounted for separately from all other project asset accounts and held at a federally insured financial institution or the Bank of North Dakota.

Maximum Tenant Income

All HTF funding must be used for the benefit of extremely low-income households, as verified through the "Part 5" definition of annual income. The Part 5 definition, found at Subpart F of 24 CFR Part 5, is used by a variety of programs, including LIHTC, HOME Investment Partnership, CDBG, and Section 8, as well as the North Dakota Housing Incentive Fund.

Income determination is performed at initial occupancy. Tenant self-certifications are allowed thereafter, however, income source documents must be verified at least once every six years. PBRA recertification rules prevail and will also be employed for all HTF-assisted units when applicable. The next-available-unit rule applies. HTF-assisted units must be floating, and not fixed to specific project units, to facilitate the next-available-unit rule. Tenants cannot be evicted for being over-income upon recertification.

IV. FEDERAL CROSS-CUTTING REQUIREMENTS

Environmental Review

The environmental effects of each project carried out with HTF funds must be assessed in accordance with the property standards at 24 CFR Part 93.301(f) for historic preservation, archaeological resources, farmland, airport zones, Coastal Barrier Resource System, coastal zone management, floodplains, wetlands, explosives and hazards (including a tanks search as part of the Phase I Environmental Site Assessment), contamination (including radon), noise (utilizing HUD's online Day/Night Noise Level Calculator), endangered species, wild and scenic rivers, safe drinking water, and sole source aquifers. HTF does not follow NEPA. Applicants must read 24 CFR Part 93.301(f), and HUD Notice CPD-16-14, found on the Housing Trust Fund webpage on www.ndhfa.org, for important information regarding HTF Environmental Review requirements.

Section 3

Section 3 of the Housing and Urban Development Act of 1968 requires, in 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. Applicants must read 24 CFR Part 75, as well as NDHFA's Section 3 Guide, for important information regarding Section 3 requirements.

ADA and Section 504

Housing assisted with HTF funds must meet the accessibility requirements of 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973, and Titles II and III of the Americans with Disabilities Act, implemented at 28 CFR Parts 35 and 36, as applicable. "Covered multifamily dwellings," as defined at 24 CFR Part 100.201, must also meet the design and construction requirements at 24 CFR Part 100.205, which implements the Fair Housing Act.

Energy Efficiency

For new construction, HTF-assisted projects over three stories must comply with energy efficiency standards of the current edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1.

Uniform Relocation Act
The development of housing with HTF assistance is required to follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The Act applies to persons both temporarily and permanently relocated as a result of the HTF-assisted project. Applicants should see 24 CFR Part 93.352 for additional detail regarding the Uniform Relocation Act and NDHFA URA Policy Guide for requirements.

Lead Based Paint
Housing assisted with HTF funds is subject to the regulations at 24 CFR Part 35, subparts A, B, J, K, and R.

Affirmative Marketing
Each HTF recipient must adopt and follow Affirmative Fair Housing Marketing (AFHM) procedures and requirements for rental projects containing five or more HTF-assisted housing units. AFHM 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 NDHFA'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 24 CFR Part 93.303(d)(3), the recipient must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project. NDHFA has published, on its website, an Affirmative Fair Housing Marketing Plan Guidance document which provides detailed and step-by-step direction on how to satisfy AFHM under the HTF program. Applicants should also see 24 CFR Part 93.350 for additional detail regarding the AFHM requirements of the HTF program.

Minimum Rehabilitation and Property Standards
HTF projects must follow property standards outlined in the Minimum Rehabilitation and Property Standards manual which includes all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures, known as the Uniform Physical Condition Standards (UPCS) prescribed by HUD pursuant to 24 CFR Part 5, subpart G. Rehabilitation projects, including adaptive reuse, must address any and all deficiencies identified in Section XV of the Minimum Rehabilitation and Property Standards manual as part of the project's scope of work so that, upon completion, all such deficiencies are cured. For projects which include rehabilitation of occupied housing, any life-threatening health and safety deficiencies, as defined in the Property Standards, must be addressed and corrected immediately. HUD is in the process of replacing UPCS with NSPIRE standards. NDHFA will update policies, procedures and plans accordingly and provide guidance to recipients upon release of further guidance. For more information review HUD NSPIRE Training

Likewise, all deficiencies identified during annual compliance monitoring site visits of HTF-assisted properties must be cured. NDHFA will monitor property condition standards using the same process and procedures as for the federal Low-Income Housing Tax Credit Program which does not employ a scoring protocol or grade levels of deficiencies; all identified deficiencies must be corrected. Please refer to the HTF Minimum Rehabilitation and Property Standards document for further details regarding inspectable areas, inspectable items, and observable deficiencies requiring correction.

Eminent Domain
No HTF funds may be used in conjunction with property taken by eminent domain, unless eminent domain is employed only for a public use, except that, public use shall not be construed to include economic development that primarily benefits any private entity.

Davis-Bacon
The Davis-Bacon and Related Acts do not apply to the HTF program.

VAWA
All housing receiving HTF funds must comply with the provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Additional information about VAWA 2013 can be found in a document in the HTF section of NDHFA's website entitled, "The Violence Against Women Act of 2013," published by the National Housing Law Project. All rental applicants and tenants should be provided with the following documents, templates for which can be found on NDHFA's website: "Notice of Tenant Rights Under VAWA"; "Housing Provider's Emergency Transfer Plan Under VAWA"; "Certification of Domestic Violence"; and "Emergency Transfer Request."

FFATA
All recipients of HTF funds are required to comply with the Federal Funding Accountability and Transparency Act of 2006, as amended (FFATA). All applicants for HTF funding, as well as all contractors involved in the project construction, must have a Data Universal Number System (DUNS) number and be registered on the System for Award Management (SAM). Refer to https://fedgov.dnb.com/webform and www.sam.gov to obtain these DUNS and SAM registrations. Furthermore, recipients of HTF awards must report to NDHFA the names and compensation of the five most highly compensated officers in their organization, unless exempt under 2 CFR 170.110(b).

V. APPLICATION PROCESS

Applicants must apply using NDHFA forms to receive a conditional commitment of financial assistance from the HTF program. The complete application must be received by 5:00 p.m., Central Time, on the closing date to be eligible for consideration in the funding round. The application rounds will be as follows until all HTF funds have been obligated:

Maximum Amount of HTF Assistance Available Per Application Closing Date

Round 1:	September 30, 2023	Up to $3,000,000*
Round 2:	September 30, 2024	Balance of available HTF assistance, if any

*2023 HUD Grant Allocations have not been announced, current estimate is based on prior allocations. Program income receipted in the prior fiscal year will be made available during the application round 1. A percentage of funds will be reserved for NDHFA administration.

Threshold Requirements
When an application is received, it shall first be reviewed for eligibility to be scored and ranked. To be eligible for scoring and ranking, the application must be complete and include the following information, unless waived by NDHFA for good cause. Application packages missing any of the following threshold items after the application deadline will be deemed incomplete and will be given reasonable time to submit the missing information. However, a 5-point deduction will be assessed during the scoring process for each missing item.

A. **Development Team Ability:** NDHFA must be satisfied that those who will develop, own, and operate the property are familiar with, and prepared to comply with, the requirements of the HTF program. The application package must include a signed certification that the housing units assisted with the HTF will comply with all regulatory HTF requirements contained in 24 CFR Part 93. In addition, the applicant must demonstrate that all members of the development team have the experience, ability, and financial capacity, in their respective roles, to undertake, maintain and manage the property, as well as comply with all federal cross-cutting requirements identified in Section IV of this Allocation Plan. Applicants with limited experience in the development, ownership, and management of multifamily rental property are encouraged to partner with an experienced developer or sponsor. Applicants without sufficient experience in, or working knowledge of, all federal cross-cutting requirements identified in Section IV of this Plan including, but not limited to, Section 3 hiring practices, environmental review, Section 504 and ADA accessibility requirements, Lead-Based Paint mitigation, and Uniform Physical Conditions Standards, should enter into a contractual consultant or partnership relationship with an experienced and knowledgeable entity. Misrepresentation of any information about the experience or financial capacity of any property team member will be grounds for denial and debarment from NDHFA programs.

NDHFA may require the applicant to provide financial statements as deemed necessary.

Applicants who have been convicted of, entered an agreement for immunity from prosecution for, or have pleaded guilty, including a plea of nolo contendere, to a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records are ineligible. Applicants who have been debarred from any North Dakota or federal program are ineligible. Applicants having an Identity of Interest with any debarred entity may not be eligible at the sole discretion of NDHFA.

B. **Market Conditions:** Completion of a comprehensive market study of the housing needs of ELI and VLI individuals in the area to be served by the property, at the Developer's expense, by a disinterested party who is acceptable to NDHFA, is required. The Market Study must demonstrate that there is sufficient 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 months of application for HTF assistance and must contain the National Council of Housing Market Analysts' (NCHMA) core standards (see http://www.housingonline.com/wp-content/uploads/2014/09/Final-Model-Content-V3.0.pdf) unless authorization to deviate from these standards is granted by NDHFA. The applicant is advised to reference the market study requirements of other funding sources, such as USDA Rural Development, as may be applicable and ensure that the market study meets NDHFA requirements as well as those of other funding providers. If NDHFA has cause to question the conclusions reached in the study, we reserve the right to order a new market study at the expense of the applicant.

C. **Demonstrated Site Control:** Evidence must be provided proving the applicant has, and will maintain from the start of the application review process until the land is acquired, direct site control. This will also include a sketch plan of the site as it would look when developed.

D. **Zoning, Codes, and Ordinances:** Evidence that the appropriate zoning will be available must be provided (i.e. a letter from a city or tribal official stating that appropriate zoning is in place or forthcoming.) Upon completion, HTF-assisted housing projects must meet all applicable State and local codes, ordinances, and requirements as applicable, or, in the absence of a State or local building code, the International Residential Code, International Building Code (as applicable to the type of structure), or the International Existing Building Code (for rehabilitation projects) of the International Code Council.

E. **Infrastructure and Utility Availability:** Evidence must be provided to demonstrate that appropriate infrastructure (i.e. roads, curb, gutter, etc.) and utilities (i.e. water, sewer, electricity, natural gas) are in place at the time of HTF application and have adequate capacity to absorb the proposed project. Examples of evidence include letters from the applicable utility companies and the city official stating appropriate utilities and infrastructure are in place.

If infrastructure is not in place to the proposed site at the time of LIHTC application, a letter from the local jurisdiction must accompany the application indicating that no adequate infill opportunities currently exist in the community.

F. Financial Projections: A 30-year pro forma financial projection for the property, in the form of Exhibit A to the application, shall accompany the application using the income, expenses, replacement reserves, and debt service as represented in the application. The rental income should reflect a minimum 7% vacancy rate.

The applicant must be able to demonstrate, as part of the application package, that the project would not be feasible without financial assistance from the HTF. This will be evaluated in terms of the gap between cost of construction and amount of debt the project can reasonably obtain and support. The applicant must provide information outlining both the short- and long-term financial feasibility of the project. Project proposals will be underwritten to achieve a target debt service coverage ratio of 1.20. Debt coverage projections below 1.10 or greater than 1.30 will require further explanation and analysis to determine suitability for HTF participation. Projects without hard debt service should achieve a target operating expense cushion within 10 percent to 15 percent. Operating expense cushion is defined as cash flow divided by operating expenses and reserve contributions.

The reasonableness of development costs and operating expenses in relation to other similar developments will be assessed in evaluating the financial feasibility of applications.

G. Capital Needs Assessment: A Capital Needs Assessment (CNA) must be submitted with all application packages involving rehabilitation (including adaptive reuse projects). The CNA must be completed by a competent, independent third party acceptable to NDHFA, such as a licensed architect or engineer, and include 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 will include a site visit and a physical inspection of the interior and exterior of all units and structures. The assessment will consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment will 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 50 percent of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful life of a component is less than the term of the HTF loan, the application package must provide for a practical way to finance the future replacement of the component. The assessment will examine and analyze the following:

- Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, and gas and electric utilities and lines.
- Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage.
- Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors.
- Mechanical systems, including plumbing and domestic hot water; HVAC, electrical, lighting fixtures, fire protection, and elevators.

Applicants are advised to also consider the requirements of other funding sources, such as USDA Rural Development, when ordering a capital needs assessment.

H. Appraisal: An application package involving acquisition costs or equity contribution of real estate which exceed 15 percent of the total development costs, must include an appraisal of the subject property, dated within six months of the HTF loan closing, completed by a state Certified General Real Property Appraiser, that supports the amount of acquisition.

I. Subsidies: The application package must include a signed certification as to the full extent of all federal, state, and local programs and subsidies (both development and rental subsidies) that are expected to apply to the property. Additionally, the application for HTF funding must specifically discuss how the incorporation of the listed subsidies will allow project rents to be affordable to extremely low-income households.

J. Tenant Recruitment and Selection: The application package must include a detailed description of the project's plan to market the HTF units to eligible households as well as the application and selection process to be used.

The project's Affirmative Fair Housing Marketing Plan, as discussed in Section IV of this Plan, must be submitted to NDHFA prior to receiving a HTF financial award.

A sample rental application and lease with all addenda must be provided to NDHFA as part of the post-closing requirements prior to the final draw of HTF funding. The rental application must request the applicant's demographic information (race, ethnicity, marital status, and disability status).

Unit leases shall have an initial term of no less than six months and shall not contain any provision allowing the owner to impose an increase to the amount of tenant-paid rent at any time prior to the end of the lease term.

K. Broadband Infrastructure: Projects receiving HTF assistance must install broadband infrastructure to all units and community rooms. Broadband infrastructure is defined as cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure – including wireless infrastructure – resulting in broadband capability meeting the Federal Communication Commission's (FCC) definition in effect at the time the pre-construction estimates are generated. Currently, the FCC defines broadband speeds as 25 Megabits per second (Mbps) download, and 3 Mbps upload.

L. Self-Scoring: The applicant must provide a self-scoring of the project proposal as part of the application package. The self-scoring assessment should indicate the number of points being sought in each scoring category as well as a brief explanation of the project proposal's eligibility for those points.

Scoring Criteria

Each application meeting the threshold requirements will be reviewed and assigned points according to the following selection criteria. Representations made by applicants for which points are given will be binding and will be monitored through the annual compliance review process. Applications must achieve a minimum score of 85 points to be considered for funding. Based on ranking, projects will be selected for a conditional commitment. Once a property is selected, NDHFA will determine the amount of HTF to be awarded, which may not equal the amount requested in the application.

In the event of a tie between two or more projects when insufficient program funds remain to fund each one, the tie breaker will go to the project which best meets the Housing Strategies outlined in the current North Dakota Consolidated Plan in effect at the time of HTF application.

A. Serves Extremely Low-Income Households **20-50 points**

Up to 50 points will be awarded to properties with units both income and rent restricted for ELI households. Elections made in this category will be incorporated into the Land Use Restrictive Agreement and will be binding, at a minimum, for the term of the HTF loan.

35% of total units income and rent restricted at or below ELI – 50 points
30% of total units income and rent restricted at or below ELI – 40 points
25% of total units income and rent restricted at or below ELI – 30 points
20% of total units income and rent restricted at or below ELI – 20 points

For purposes of applying the ELI rent restriction under this category, an exception for exceeding the ELI rent may be granted for project-based rental assistance where it can be shown that additional rents are necessary to make the project feasible and that the tenant-paid portion of the rent will not exceed 30 percent of their household income nor the published HTF rent limit.

B. Use of LIHTCs **0 or 10-20 points**

Projects which have received or are applying for federal Low-Income Housing Tax Credits in a pending application round, will receive points under this category. Projects which applied for but are not awarded LIHTCs in the current pending application round are ineligible for points under this category.

Projects with an award of 4 percent LIHTCs – 20 points
Projects with an award of 9 percent LIHTCs – 10 points

C. Committed Non-Federal Leverage **0 or 5-20 points**

An applicant who provides signed, firm commitments for contributions or incentives from state or local government, private parties and/or philanthropic, religious or charitable organizations, excluding entities with an identity of interest or those with a significant role in the property (e.g. contractors, accountants, architects, engineers, consultants, etc.), will receive points in this category. Not eligible as sources of leverage under this category are interest bearing loans to the project, LIHTCs, HRTCs, HOME, CDBG, NAHASDA, or any other federal source of funding. Also not eligible as leverage under this category is project-based rental assistance which earns points in scoring category D.

Leverage of at least 50% of total development cost – 20 points
Leverage of at least 40% of total development cost – 15 points
Leverage of at least 30% of total development cost – 10 points
Leverage of at least 20% of total development cost – 5 points

D. Project-Based Rental Assistance **0 or 5 points**

Projects which have received binding commitments for federal, state, or local project-based rental assistance for all of the extremely low-income units in the project will receive 5 points.

E. Redevelopment and Revitalization **0 or 5 points**

A project will receive 5 points if it meets one of the following conditions:

(1) The project is located on a site considered by NDHFA, in its sole discretion, to be grayfield in nature.

(2) The project is in a city revitalization area established by resolution or other legal action by the city, and the development of the project contributes to a concerted community revitalization plan. For purposes of this Plan, a concerted community revitalization plan is defined as a locally approved revitalization plan targeting specific existing areas or neighborhoods within the community for housing and economic development including the infill new construction or rehabilitation of housing. To qualify, the plan must be officially adopted by the local governing body, identify a specific time period, apply only to a defined geographic area within the community, and specifically call for infill new construction or rehabilitation of affordable housing within the boundaries of the plan. Local housing needs surveys, consolidated housing or economic development plans, short-term work plans, municipal zoning or land use plans, or plans which are so broad as to encompass the entire community or so narrow as to encompass only the project's subject property do not qualify under this definition.

(3) The project is located in an Opportunity Zone, as defined in Code Section 1400Z-1.

Adaptive reuse projects are eligible for points under this category. Rehabilitation of existing habitable and occupied housing is not.

F. 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 may receive up to 10 points.

(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 which 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, and provide their Medicaid biller number issued by the State of North Dakota. 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 for HTF assistance. 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 F will be required to submit , prior to HTF closing, a formal executed agreement with each provider identified in the letter(s) of intent.

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 initial application, if applicable; 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.

G. Universal Design 0 or 3-12 points

Properties which meet the minimum universal design features below are eligible for points in this scoring category based on a percentage of units. A maximum of 25 percent of the project units may incorporate the universal design features.

0 to 9.99 percent of the units………..0 points
10 to 14.99 percent of the units ....3 points
15 to 19.99 percent of the units…… 6 points
20 to 25 percent of the units……….9 points

Universal design units and all common areas must be wheelchair-accessible and contain design features which exceed Fair Housing Accessibility Guidelines. , For purposes of this scoring category, the required minimum universal design features include:

- Roll-in or walk-in shower in at least one bathroom in the unit and contain a supplemental floor drain for bathroom waterproofing.
- Any additional bathrooms containing a bathtub should include a transfer seat, grab bars, and a floor drain to handle water splashed onto the floor during transfer.
- Front loading washing machines and dryers with accessible controls.
- Dishwasher.
- Lever handles on all doors and fixtures.
- Security doors with automatic openers.
- Accessible garbage dumpsters.
- Covered outside entries with adequate lighting.
- Kick plates on apartment doors to prevent damage from wheelchairs.
- Apartment doors which are wieldy for persons using a wheelchair or a walker.
- Hard surface flooring with maximum threshold heights of ½" beveled or ¼" square-edged.
- Appliances with front controls.
- Controls for the garbage disposal, range hood light, and exhaust fan located on the front of the lower cabinets.
- Lower-mounted upper cabinets with handles within reach of a person in a wheelchair.
- Roll-under bathroom and kitchen sinks.
- Lower-mounted mirrors/medicine cabinets.
- Audio/visual alert doorbells.
- Braille characters included to the left on all interior common area signage.

The project architect must certify that the accessible units and common areas meet or exceed Federal Fair Housing Accessibility Guidelines and include the universal design elements listed above.

Applicants who receive points under this category will receive 1 additional point for each of the universal design units that are two-bedroom or larger, up to a maximum of 3 points. As an example, a project with 20 percent of the total units meeting the universal design elements, 3 of which are two-bedroom or larger will receive a total of 12 points.

H. Design Standards **0 or 3-10 points**

(1) Properties with an elevator in each residential building will receive 10 points.

(2) Properties with a building(s) design that has no more than 4 units per outside main entrance will receive 3 points. Points given for this building design cannot be added to points given for design standard #1.

(3) Properties with a building design(s) that includes a separate outside main entrance for each unit will receive 10 points. Points given for this building design cannot be added to points given for design standards #1 or #2.

A maximum of 10 points may be earned in this category.

I. Readiness to Proceed **0-25 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 NDHFA in comparison to other projects competing in the application round.

J. Housing for Families **0 or 10 points**

Properties in which 20 percent or more of the HTF-assisted units identified in the application are three-bedroom or larger will receive 10 points.

K. Period of Affordability **0 or 1 point**

The minimum period of affordability for projects assisted by the HTF is 30 years. Projects which commit to affordability for a period of 31 years or longer will receive one point.

L. Geographic Diversity **0 or -5 points**

Federal regulation places a priority on the use of HTF funding in a geographically diverse manner. Projects located in the same city as a project which has already been selected in the current HTF application round shall receive a scoring deduction of five points.

M. Missing Threshold Items **0 or -5 points per missing item**

In accordance with the Threshold Requirements section of this Allocation Plan, a five point deduction will be assessed during the scoring process for each threshold item missing from the application package after the application deadline.

VI. SET-ASIDE

Native American Set-Aside

Ten percent (10%) of the state's HTF funding will be set aside for projects located within North Dakota Indian Reservations or on Tribal land, either held in trust or fee-simple. If sufficient qualifying proposals on Indian Reservations or Tribal lands are not received by the close of the first application round, the unused set-aside funding will be included in the general pool of funding, eligible to be awarded to non-Native American proposals in accordance with this Plan. The Native American set-aside will only be available in the first application round, and not in subsequent application rounds, of each Plan year.

For 2022, the amount of HTF funding set aside under this section of the Plan is $300,000. Only the first $300,000 of the highest scoring qualified application is eligible for approval under this set-aside. Any requested amount of funding in excess of the first $300,000 of the highest scoring qualified application must compete for such funding in the general pool.

To be eligible for approval under this set-aside, applications must meet all requirements contained in this Plan, including all general provisions, federal cross-cutting requirements, threshold requirements, and minimum scoring.

VII. AWARD PROCESS

Proposals received by the due date will be reviewed and ranked within an approximate 45-day timeframe. Successful proposals will be issued a Conditional Commitment of financial assistance from the HTF. During this timeframe, applicants will be required to reach certain benchmarks identified in NDHFA's conditional commitment letter, including completion of an environmental review. An extension of the conditional commitment period may be granted at the sole discretion of NDHFA. Upon satisfactory review of these items, a Financial Award agreement will be issued. Federal regulation requires that all HTF funds must be committed by NDHFA within 24 months and expended within five years of HUD's agreement with NDHFA.

Required monthly progress reports from financial award to HTF loan closing.
To ensure that HTF funding is conditionally committed to projects which are proceeding according to the schedule presented in the application, each applicant receiving an HTF financial award will be required to submit monthly progress reports until closing of the HTF loan. The report must describe the applicant's actual progress to date together with an estimated timeline for future project activity.

Required quarterly progress reports from HTF loan closing to occupancy.
Commencing with closing of the HTF loan, the borrower must submit quarterly progress reports until the project has reached stabilized occupancy. The report must describe actual development progress to date together with a current development budget and estimated timeline for future activity and lease-up. Development costs which increase above the contingency listed in the HTF application must be disclosed in the progress reports along with an explanation as to how the gap is being filled. At NDHFA's discretion, information submitted with draw requests, such as site reports, may serve to satisfy the quarterly reporting requirement.

VIII. ACCESS TO HTF FUNDS

Draws against an HTF financial award can be made for eligible costs incurred upon firm commitment of all other funding sources. A mortgage with recapture provisions, deed restriction, loan agreement, and promissory note (collectively, the Loan Documents) must be executed prior to release of any HTF funds. The deed restriction must be in a senior position to any foreclosable loan(s) on the property. The Loan Documents will detail the loan terms and affordability requirements, as well as any additional requirements particular to the project, such as limiting tenant preference to homeless individuals and families.

The borrower may request one or more draws of available HTF loan proceeds for payment or reimbursement of eligible costs incurred toward the development of the project. Draws are requested by submitting to NDHFA a completed HTF Draw Request form together with an ACH authorization, documentation supporting the expenses claimed, general contractor's sworn construction statement, architect's inspection or trip report, and either (1) conditional lien waivers for any general contractor or major subcontractor payments in the current draw as well as unconditional lien waivers for any general contractor and major subcontractor payments paid by the previous draw or (2) a date-down endorsement showing lien-free title. All disbursements are made by electronic funds transfer to the borrower's account or designated escrow agent.

Disbursement of up to 95 percent (95%) of the HTF loan proceeds may be made during construction of the project. A hold-back amount of five percent (5%) of the HTF loan proceeds will be retained until Project Completion. Disbursement of the hold-back amount will be made upon satisfaction of all post-closing conditions including but not limited to final sworn total development cost certification, certificate of occupancy, completion certification, final lien waivers, and executed loan or grant commitments for all other permanent funding sources.

IX. REPAYMENT OR RECAPTURE OF HTF FUNDS

All HTF awards will be structured as loans with a term matching the Applicant's committed-to Period of Affordability. Repayment terms will be based on cash flow and determined on a project-specific basis as necessary to achieve project feasibility. Recapture of HTF funds may occur if final total development costs are such that assistance provided by the HTF exceeds established program limits or exceeded that which was necessary to make the project financially feasible.

Income targeting and rent restriction requirements will remain on the project for the term of the loan and will be enforced through a deed restriction on the land. In the event of a prepayment of the loan, the deed restriction will ensure the income and rent restrictions remain in place for the remainder of the HTF Period of Affordability.

A recapture of the HTF funds from the borrower will occur at any time during the term of the loan if the borrower fails to abide by the representations made in the application, unless waived by NDHFA. In the event of recapture of the HTF funds, the deed restriction will remain in place for the remainder of the original term of the HTF loan.

X. COMPLIANCE MONITORING

Owners of HTF-assisted properties must remain in compliance with program guidelines throughout the term of the HTF loan. NDHFA will monitor all properties for compliance with HTF program requirements including those related to income and rent limits, cash flow, reserve accounts, insurance coverage, and property condition. Annual compliance monitoring will consist of a desk review of information provided by the project owner and/or a property inspection and review of documentation at the project location. A copy of the HOME and HTF Ongoing Compliance Monitoring Manual is available on the NDHFA website at www.ndhfa.org.

On an annual basis during the Period of Affordability, owners of HTF-assisted properties must provide, at a minimum, the following items to NDHFA:

- Certificates of Liability Insurance (Acord 25) and Hazard Insurance (Acord 27 or 28) verifying coverages and NDFHA's interest as Mortgagee. Mortgagee clause MUST list the loan number and read as follows:

Loan #
North Dakota Housing Finance Agency
Its Successors and/or Assigns
2624 Vermont Avenue, PO Box 1535
Bismarck, ND 58502-1535

- An HTF Annual Owner's Certification attesting to the owner's continued compliance with all HTF regulatory requirements contained in 24 CFR Part 93.
- Fully completed Annual Rental Compliance Report together with any Agency-required supporting documentation.
- A Statement of Income and Expenses for owner's operation of the requested Project Fiscal Year
- A Year-over-Year Balance Sheet reflecting Beginning-of-Year and End-of-Year account balances of the requested Project Fiscal Year
- A calculation and certification of the Hard-Debt Service Ratio and listing of all cash flow distributions, in order of distribution, for the requested Project Fiscal Year in a form and substance acceptable to the Agency

NDHFA may charge each HTF-assisted property an annual fee to cover expenses incurred during normal and routine monitoring activities. The fee is currently set at $50 per property, plus $40 per Restricted Unit. NDHFA reserves the right to adjust the annual fee as necessary. Additional fees may be assessed to properties determined to be in substantial noncompliance to cover the expense of additional monitoring. The HTF compliance monitoring fee should be included in the operating budget of applications for HTF assistance.

Developments which are subject to annual compliance monitoring fees for other programs administered by NDHFA may be eligible for a reduction in their HTF compliance monitoring fee at the sole discretion of NDHFA.

XI. DISCLAIMER OF NDHFA LIABILITY

NDHFA seeks to allocate sufficient HTF assistance to a project to make the project economically feasible. Such decision shall be made solely at the discretion of NDHFA but in no way represents or warrants to any applicant, investor, lender, or others that the property is feasible, viable, or of investment quality.

No member, officer, agent, or employee of NDHFA shall be personally liable concerning any matters arising out of, or in relation to, the allocation of HTF assistance.

XII. MODIFICATION TO THE ALLOCATION PLAN

The Executive Director may make minor modifications deemed necessary to facilitate the administration of the HTF or to address unforeseen circumstances. Further, the Executive Director is authorized to waive any conditions not mandated by federal statute or regulation on a case-by-case basis for good cause shown. As a matter of practice, NDHFA will document any waivers from the established priorities and selection criteria of this Allocation Plan and will make this documentation available to the public, upon request.

EMERGENCY SOLUTIONS GRANT
2023 Allocation Plan

Prepared By

North Dakota Housing Finance Agency
2624 Vermont Avenue
PO Box 1535
Bismarck, ND 58502-2057
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EQUAL HOUSING OPPORTUNITY

ALTERNATIVE FORMATS FOR DISABLED PERSONS ARE AVAILABLE UPON REQUEST

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ATTACHMENTS

PROGRAM OVERVIEW

This document provides a brief overview of the ESG Program and the **process to apply for funds from the FY 2023 ESG** allocation. Applicants should review the ESG Interim Rule found at 24 CFR Parts 91and 576 for complete program information. To the extent that anything contained in this document does not meet the requirements of the final ESG Program rule, to be published at a later date, such final rule or regulation will take precedence over this document.

**Beginning July 1, 2023, North Dakota Housing Finance Agency (NDHFA) will administer the ESG Program on behalf of the State of North Dakota.

2023 FUNDING LEVELS

For FY 2023, an approximate amount of $486,494 in federal and state funding will be available, up to 60% or $291,896 for street outreach and shelter operation activities, and $194,598 for homeless prevention, rapid re-housing activities or participation in the Homeless Management Information System (HMIS). Requests for funds from the FY 2023 ESG allocation are limited to a minimum of $50,000. Successful applicants may receive less ESG funds than requested based on the Selection Criteria on page 10 and 11.

ELIGIBLE APPLICANTS

Applicants must be federally recognized non-profits or units of local government. Governmental organizations such as public housing agencies and local housing finance agencies are not eligible applicants under the ESG Program. Applicants must be in compliance with the ESG Interim Rule (Final Rule when published), the Written Standards for the CoC and ESG Programs, and applicable state and federal policies and procedures, including compliance with federal and state non-discrimination laws.

By virtue of submitting an application, applicants agree to adopt and consistently apply the Written Standards for the CoC and ESG Programs for the administration of the ESG program; and maintain standard accounting practices including internal controls and fiscal accounting procedures; track agency and program budgets by revenue sources and expenses; and have an available cash flow to effectively operate their program(s) since ESG funding is provided on a reimbursement basis.

Applicants with outstanding monitoring or audit findings issued by the Internal Revenue Service, HUD, or NDHFA are not eligible ESG applicants and will not be eligible to receive an allocation of ESG funding. Applicants are encouraged to contact NDHFA to ensure no unresolved monitoring findings exist or to work to resolve any outstanding items.

Eligible applicants must be able to demonstrate prior experience serving individuals and households at-risk of or experiencing homelessness. Also, applicants must have staff with demonstrated expertise in case management skills.

Applicants will be required to utilize the HMIS and the State-wide Continuum of Care's coordinated entry system. Domestic violence service providers must establish and operate a CoC approved comparable database that collects client level data over time and can generate unduplicated aggregate reports based on the data.

Applicants must be active members the North Dakota Continuum of Care.

STATUTORY DEFINITIONS

Emergency Solutions Grant statutory definitions can be found at 24 CFR Part 576.2

PROGRAM COMPONENTS AND ELIGIBLE ACTIVITIES

Emergency Solutions Grants will be utilized to provide services to homeless and those at risk of becoming homeless in the following eligible activities. Applicants should refer to 24 CFR Part 576.100 – 576.109 for further clarification on the following eligible activities:

- Street Outreach;
- Emergency Shelter;
- Homelessness Prevention;
- Rapid Re-housing Assistance; and
- Homeless Management Information System.

1. **Street Outreach (24 CFR Part 576.101)** – Funds may be used for costs of providing essential services to reach out to unsheltered homeless; connect them with emergency shelter, housing, or critical services; and provide urgent non-facility-based care to unsheltered homeless who are unwilling or unable to access emergency shelter, housing or an appropriate health facility. Eligible activities include the following:

    a. Engagement Activities;
    b. Case Management;
    c. Emergency Health Services;
    d. Emergency Mental Health Services;
    e. Transportation; and
    f. Services for Special Populations.

2. **Emergency Shelter Component (24 CFR Part 576.102)** – Funds may be used for costs of providing essential services to individuals and households in emergency shelters, renovating buildings to be used as emergency shelters, and operating emergency shelters. Eligible activities include the following:

    a. Essential Services – Essential services provided to individuals and households who are in emergency shelters can include case management, childcare, education services, employment assistance and job training, outpatient health services, legal services, life skills training, mental health services, substance abuse treatment services, transportation, and services for special populations.

    b. Renovation Activities – Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation or conversion of a building into an emergency shelter). The grantee must comply with all sections of the Uniform Relocation Act (URA)contained in 49 CFR Part 24. The emergency shelter must be owned by a government entity or private nonprofit organization.

c. Shelter Operations – Eligible costs are the costs of maintenance (including minor or routine repairs), insurance, utilities, rent, food, furnishing/appliances, and supplies necessary for the operation of the emergency shelter.

3. **Homelessness Prevention Component (24 CFR Part 576.103)** – Funds may be used to provide relocation and stabilization assistance and rental assistance to prevent an individual or household from becoming homeless. Applicants can assist individuals and households who meet the following qualifications under homelessness prevention:

   a. Individuals or households who have an income below 30% of Area Median Income (AMI) as determined by HUD, with adjustments for smaller and larger household size. An individual's or family's annual income must be compared to area income limits posted on the ESG webpage found at: www.ndhfa.org

   b. Individuals or households who qualify as a homeless or at-risk of becoming homeless as specified in 24 CFR Part 576.103 and 576.2. See Attachments A and B.

4. **Rapid Re-Housing Assistance Component (24 CFR Part 576.104)** – ESG funds may be used to provide relocation and stabilization assistance and rental assistance to help a homeless individual or household move as quickly as possible into permanent housing and achieve stability in that housing. Rapid Re-Housing Assistance may be provided to individuals or families lacking a fixed, regular, and adequate nighttime residence or any individual or family who is fleeing or attempting to flee domestic violence, assault, or other life threatening conditions that relate to violence.

   Housing Relocation and Stabilization Services (24 CFR Part 104) – Homelessness prevention and rapid re-housing are eligible ESG activities that focus on serving different individuals or families. Homelessness prevention and rapid re-housing provide assistance in accordance with the housing relocation and stabilization services requirements in 24 CFR Part 576.105, the short-term and medium-term rental assistance requirements in 24 CFR Part 576.106 and the written standards and procedures under 24 CFR Part 576.400, which states that ESG funds may be used for payment of the following under both homelessness prevention and rapid re-housing components:

   - Rental application fees.
   - Security deposits equal to no more than 2 month's rent.
   - Last month's rent. If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program.
   - Standard utility deposits.
   - Utility payment - ESG funds may pay up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears per service. Total utility payment assistance to a program participant cannot exceed 24 months during any 3 year period.

- Moving costs. Truck rental or hiring a moving company. Assistance may also include payment of temporary storage fees for up to 3 months. Payment of temporary storage fees in arrears is not eligible.
- Service costs. Housing search and placement, housing stability case management, mediation activities, legal services necessary to resolve housing issues, and credit repair/counseling services.

Short-Term and Medium-Term Rental Assistance (24 CFR Part 576.106) - ESG funds may provide a program participant with up to 24 months of rental assistance during any 3 year period. Applicants may establish their own caps, conditions, and time limits for rental assistance if they do not exceed the following parameters:

- Rental assistance.
  - Short-term – up to 3 months of rental assistance.
  - Medium-term – MORE than 3 months but not more than 24 months.
  - Tenant-based or project-based.
- Rental Arrear Payments. Payment of rental arrears consists of a one-time payment for up to six months of rent in arrears, including any late fees on those arrears.
- Rental assistance cannot be provided to a program participant who is receiving tenant-based or project-based rental assistance through other public sources or receiving replacement housing payments under the Uniform Relocation Act (URA).
- Rental assistance cannot be provided for a unit unless the rent for that unit **does not** exceed the Fair Market Rent established by HUD, as provided under 24 CFR Part 888; and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.
- Applicant must enter into a Rental Assistance Agreement with the landlord for each unit receiving ESG rental assistance. Such agreement must meet the requirements of 24 CFR 576.106(e).
- Each program participant receiving ESG rental assistance must have a legally binding written lease for the rental unit.

- Use with other subsidies. Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period covered by the URA payments.

Evaluation and documentation of client eligibility for assistance is required to be re-assessed at least every three months for program participants receiving homelessness prevention assistance, and not less than once annually for program

participants receiving rapid re-housing assistance to ensure that they continue to meet the eligibility criteria, review program and appropriateness standards, and to re-evaluate the need for continued ESG assistance.

5. **<u>Homelessness Management Information System (HMIS) Component (24 CFR 576.107)</u>** – ESG funds may be used to pay the costs of participating in HMIS. Costs include: hardware; software licenses or equipment; obtaining technical support; staff time for completing data entry and analysis; monitoring and reviewing data quality; HUD approved training; reporting; and coordinating and integrating the system. If applicant is a domestic violence service provider it may use ESG funds to establish and operate a CoC approved comparable database that collects client level data over time and generates unduplicated aggregate reports based on the data.

6. **<u>Ineligible Activities</u>** – mortgages; early termination fee; damages incurred by the program participant; costs that have been turned over to a collection agency; and payments that occurred outside of the grant year, except for arrears.

MATCHING FUNDS

Each Applicant must match its Emergency Solutions Grant amounts with an equal amount of funds received from sources other than this program. Matching funds may be obtained from any source, including any Federal source other than the ESG Program, as well as state, local and private sources. However, the applicant must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match ESG funds. Applicants may request a waiver of their match. Other criteria for matching funds follow:

1. The matching funds must be provided AFTER the date that NDHFA signs the financial award.
2. Matching funds used to match a previous ESG grant may not be used to match a subsequent ESG financial award.
3. Matching funds that have been or will be counted as satisfying a match requirement of another Federal grant or award may not count as satisfying the match requirement of this program.
4. To count as match, cash distributions must be expended and noncash contributions must be made within the term of the ESG financial award.

Eligible Types of Matching Contributions: The matching requirement may be met by one or both of the following:

1. Cash Contributions
2. Non-Cash Contributions. The value of any real property, equipment, goods or services, as well as the purchase value of any donated building.

PROGRAM REQUIREMENTS

1. Applicants must coordinate and integrate, to the maximum extent practicable, ESG funded activities with other programs targeted to homeless people. Services must be coordinated to provide a strategic, community-wide system to prevent and end homelessness for the area. Examples of targeted homeless services are: CoC programs; PATH programs; HUD-VASH; Programs for Runaway and Homeless Youth, Emergency Food and Shelter Programs and Healthcare for the Homeless, etc.

2. System and Program Coordination with Mainstream Resources. The applicant must coordinate and integrate, to the maximum extent practicable, ESG funded activities with mainstream housing, health, social services, employment, education, and youth programs for which individuals and households at risk of homelessness and individuals and households experiencing homelessness may be eligible.

3. Coordinated Entry System (CES). ESG applicants are required to utilize the HMIS and Coordinated Access, Referral, Entry and Stabilization System (CARES) the regional coordinated entry system serving North Dakota and West Central Minnesota. ESG-funded program(s) or project(s) within the Continuum of Care's area must use the CARES. The recipient and subrecipient must work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by paragraph (e) of this section. A victim service provider must participate in CARES and use a CoC approved alternative database.

4. Written Standards and Procedures – Applicants shall adopt and consistently apply NDHFA's written standards for providing ESG. See NDHFA Website.

5. Participation in HMIS. Applicants are required to collect and enter data into HMIS for all individuals and households served with ESG funds. Domestic violence service providers are exempt from participating in the HMIS system, but must use a CoC approved alternative database that collects client level data overtime and can generate unduplicated aggregate reports on the data.

6. Homeless participation –

   a. Unless the recipient is a State, the recipient must provide for the participation of not less than one individual previously or currently experiencing homelessness on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receives funding under ESG.

   b. If the recipient is unable to meet requirement under paragraph (a), it must instead develop and implement a plan to consult with not less than one individual previously or currently experiencing homelessness in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under ESG. The plan must be included in the annual action plan required under 24 CFR 91.220.

c. To the maximum extent practicable, the recipient or subrecipient must involve individuals and families experiencing homelessness in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG. This involvement may include employment or volunteer services.

7. Faith-based activities

a. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds. Neither the Federal Government nor a State or local government receiving funds under ESG shall discriminate against an organization on the basis of the organization's religious character or affiliation.

b. Organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under ESG. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under ESG, and participation must be voluntary for program participants.

c. Any religious organization that receives ESG funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide ESG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an ESG-funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

d. An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

e. ESG funds may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. ESG funds may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the ESG program. Where a structure is used for both eligible and inherently religious activities, ESG funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ESG funds. Sanctuaries, chapels, or other rooms that an ESG-funded religious congregation uses as its principal place of worship, however, are ineligible for funded improvements under the program. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

f. If the recipient or a subrecipient that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or subrecipient has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

8. Evaluation of Program Participants. Applicants must conduct an initial evaluation to determine eligibility of each individual or household's eligibility for ESG assistance and the type of assistance necessary to regain stability in permanent housing. These evaluations must be conducted in accordance with the coordinated entry system and NDHFA's written standards.

9. Case Management. Each program participant receiving **homelessness prevention or rapid re-housing assistance** must be required to meet regularly, not less than once per month, with a case manager (except where prohibited by Victims Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA) and develop an individualized plan to assist the program participant to retain permanent housing after the ESG assistance ends, taking into account all relevant considerations, such as the program participant's current or expected income and expenses; other public or private assistance for which the program participant will be eligible and likely to receive; and the relative affordability of available housing in the area. Consistent with 24 CFR Part 576.401(e), housing stability case management can last no more than 30 days while the program participant seeks permanent housing and no more than 24 months once in permanent housing.

10. Rent Reasonableness. Applicants must ensure that ESG funds used for rental assistance do not exceed the actual rental cost, which must be in compliance with HUD's standard of "rent reasonableness" and not to exceed the Fair Market Rent. Rent reasonableness means that the total rent charge, including utilities, for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the owner during the same time period for comparable non-luxury unassisted units.

11. Program Accessibility. Applicants must operate each existing program or activity receiving federal financial assistance so that the program or activity, when viewing in its entirety is readily accessible for persons with disabilities.

12. Housing Standards for Emergency Shelters. Any building for which ESG funds are used for conversion, rehabilitation or renovation, must meet state or local government safety and sanitation standards as applicable. Shelters must be also accessible in accordance with Section 504 of the Rehabilitation Act and implementing regulations at 24 CFR Part 8; Fair Housing Act and implementing regulations at 24 CFR Part 100 and Title II of the Americans with Disabilities Act and 28 CFR Part 35; where applicable.

13. Housing Standards for Permanent Housing. Applicants cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards. Applicants must certify that the unit has passed habitability standards BEFORE any ESG funds may be released. (Habitability Standards Inspection Form).
    In addition, both emergency shelters and permanent housing must meet additional housing standards per 24 CFR Part 576.403, which includes the following:

    - Building must be structurally sound.
    - Except where a shelter is intended for day use only, the program participant must be provided with an acceptable place to sleep and adequate space and security for themselves and their belongings.
    - Each room or space must have a natural or mechanical means of ventilation.
    - Water supply must be free of contamination.
    - Individuals and households must have access to sanitary facilities that are in proper operating condition.
    - Must have necessary heating/cooling facilities in proper operating condition.
    - Must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety and sufficient electrical sources to permit the safe use of electrical appliances.
    - Food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary mannerand be inspected by the local public health department.
    - Housing must be maintained in a sanitary condition.
    - Working smoke detectors must be located near sleeping areas, located on each occupied level of the unit, and there must be a second means of exiting the building in the event of fire or other emergency. Shelters must have a fire alarm system designed for hearing impaired residents.

14. Lead-Based Paint Requirements. Lead-Based Paint Poisoning Prevention Act applies to all shelters assisted under ESG program and all housing occupied by program participants. All applicants are required to conduct a Lead-Based Paint inspection on all units receiving assistance under the rapid re-housing AND homelessness prevention components if the unit is built before 1978 and a child under the age of six or a pregnant woman resides in the unit.

15. Confidentiality. All applicants must develop and implement procedures to ensure the confidentiality of records pertaining to any individual or household provided with ESG assistance.

16. Termination of Housing Assistance (576.402). Applicants may terminate assistance to a program participant who violates program requirements. Applicants may also resume

assistance to a program participant whose assistance was previously terminated. In terminating assistance to a program participant, applicants must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process, at a minimum, must:

a. Recognize individual rights;

b. Allow termination in only the most severe case;

c. Provide a written notice to the program participant, with clear statement of reasons for termination;

d. Provide a review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

e. Provide a prompt written notice of the final decision to the program participant.

17. Recordkeeping. All applicants must keep any records and make any reports (including those pertaining to race, ethnicity, gender, and disability status data) that HUD may require within the timeframe specified.

18. Sanctions. If NDHFA determines that an applicant is not complying with the requirements of the ESG Plan or other applicable federal or state laws, NDHFA will take appropriate actions, which may include:

a. Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;

b. Direct the applicant to cease incurring costs with grant funds;

Require that some or all of the grant amounts be repaid to NDHFA;

c. Reduce (de-obligate) the level of funds the applicant would otherwise be entitled to receive; or

e. Elect to make the applicant ineligible for future NDHFA funding.

Any ESG funds that become available to NDHFA as a result of a sanction or voluntary return by the applicant, will be made available (as soon as practicable) to other eligible applicants for use within the ESG Program.

19. Conflicts of Interest. The availability of any type or amount of ESG assistance may not be conditioned on an individual's or household's acceptance or occupancy of emergency shelter or housing owned by the applicant, or a parent or subsidiary of the applicant. No applicant may, with respect to individuals or households occupying housing owned by the applicant, or any parent or subsidiary of the applicant, carry out the initial evaluation

required under 24 CFR Part 576.401 or administer homelessness prevention assistance under 24 CFR Part 576.103.

For procurement of goods and services, the applicant must comply with the codes of conduct and conflict of interest requirements under 24 CFR Part 95.36 (for governments) and 24 CFR Part 84.42 (for private nonprofit organizations).

20. Monitoring. NDHFA is responsible for monitoring all ESG activities to ensure program requirements established by HUD and NDHFA are met. Monitoring will consist of site visits to applicant's place of business, review of all reimbursement requests, and review of HMIS information. NDHFA will conduct site visits at least once every two years. NDHFA will also provide support and technical assistance, as needed.

    Additional monitoring of applicants may be conducted by HUD's office of Community Planning and Development; HUD's Office of Special Needs Assistance Program, or any other applicable federal agency. These agencies will be monitoring the ESG program nationwide to determine compliance with federal program requirements.

SELECTION CRITERIA

Applications which show a concerted effort to coordinate services with other agencies and other funding sources to best serve the individuals and households will be given priority. Total points allotted equal up to 100 points.

Eligible applicants must be able to demonstrate prior experience serving individuals and households at-risk of or experiencing homelessness. Also, applicants must have staff with demonstrated expertise in case management skills.

Due to the demand for the funds ESG will be awarded based upon the following:

1. Demonstrated the need for the funding. (30)

2. Plan for distribution of the funds in an effective, efficient and timely manner. (15)

3. Collaboration efforts with other targeted homeless services and mainstream resources. (20)

4. Active participation in and providing services consistent with the needs identified by the North Dakota Continuum of Care, HMIS and Coordinated Entry System. (20)

5. The applicant's plan to involve, to the maximum extent practicable, individuals and families experiencing homelessness in constructing, renovating, maintaining, and operating facilities assisted under the grant, and in providing services for occupants of these facilities. (5)

6. The applicant included how the Housing First model is used within the agency. (10)

When making final selections, the NDHFA review committee may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application, based on the demand for grant amounts, the extent to which the respective activities address the needs of the individuals and households, and the reasonableness of the costs proposed. The NDHFA review committee reserves the right to award ESG funds to any applicant or deny ESG funds to any applicant if it determines, in its sole discretion, the project is unacceptable based on, but not limited to the following:

1. Information regarding the fact that a particular market is saturated with emergency units and/or services,

2. The applicant has not demonstrated capacity to administer the ESG Program, or

3. The applicant's (including any related party's) insufficient prior administration of NDHFA programs, including ESG, which may have resulted in monitoring findings.

GRANT ADMINISTRATION

Upon project selection, an award letter and financial agreement will be forwarded to each applicant detailing a description of the activities funded, and award conditions. Execution of the financial agreement is to be completed by a representative of the applicant and the NDHFA.

Grant funds will be considered obligated once the grant agreement has been signed by the applicant. A grant agreement will be sent under separate cover detailing the applicant's requirements and responsibilities, including those required for the environmental review. The applicant will be required to sign and return the grant agreement to NDHFA.

The grant agreement will indicate the activities and the corresponding approved funding amounts by category. An approved Request for Amendment is needed from NDHFA to vary from the funding amounts and categories as specified in the executed grant agreement.

Grant agreements will be for a term not to exceed 12 months. Applicants must expend NDHFA funds for eligible activities within the grant period.

METHOD OF PAYMENT

Payment of ESG funds will be completed as a reimbursement, in a chronological order of request for funds number. Requests for payment must be received by NDHFA at least quarterly, following the ESG Drawdown Schedule below or more frequently as needed. Requests must be submitted in a format approved by NDHFA and must include a detailed breakdown of expenses incurred and ESG funds requested. Copies of all expenses and documentation of payment must be submitted for verification purposes. It is preferred that requests for funds are over $1,000. Lack of documentation or explanation may result in a delay in payment.

If your agency has not met the spending deadlines, NDHFA has the authority to deobligate unused funds. On a case-by-case basis, a request for a waiver must be made to the Director of NDHFA to prevent deobligation of funds.

ESG Drawdown Schedule		
Quarter	**Dates**	**Percentage Drawn**
1	July 1 - September 30	Awards Announced
2	October 1 - December 31	50%
3	January 1 - March 31	75%
4	April 1 - June 30	100%

ATTACHMENT A

At Risk of Homelessness

CRITERIA FOR DEFINING AT RISK OF HOMELESSNESS	**Category 1**	Individuals and Families	An individual or family who: (i) Has an annual income below <u>30%</u> of median family income for the area; <u>AND</u> (ii) Does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in Category 1 of the "homeless" definition; <u>AND</u> (iii) Meets one of the following conditions: (A) Has moved because of economic reasons 2 or more times during the 60 days immediately preceding the application for assistance; <u>OR</u> (B)Is living in the home of another because of economic hardship; <u>OR</u> (C) Has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; <u>OR</u> (D) Lives in a hotel or motel and the cost is not paid for by charitable organizations or by Federal, State, or local government programs for low-income individuals; <u>OR</u> (E) Lives in an SRO or efficiency apartment unit in which there reside more than 2 persons or lives in a larger housing unit in which there reside more than one and a half persons per room; <u>OR</u> (F) Is exiting a publicly funded institution or system of care; <u>OR</u> (G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved Con Plan
	Category 2	Unaccompanied Children and Youth	A child or youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under another Federal statute
	Category 3	Families with Children and Youth	An unaccompanied youth who does not qualify as homeless under the homeless definition, but qualifies as homeless under section 725(2) of the McKinney-Vento Homeless Assistance Act, and the parent(s) or guardian(s) or that child or youth if living with him or her.

ATTACHMENT B

Homeless Definition

CRITERIA FOR DEFINING HOMELESS	**Category 1**	Literally Homeless	(1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning: (i) Has a primary nighttime residence that is a public or private place not meant for human habitation; (ii) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state and local government programs); <u>or</u> (iii) Is exiting an institution where (s)he has resided for 90 days or less <u>and</u> who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution
	Category 2	Imminent Risk of Homelessness	(2) Individual or family who will imminently lose their primary nighttime residence, provided that: (i) Residence will be lost within 14 days of the date of application for homeless assistance; (ii) No subsequent residence has been identified; <u>and</u> (iii) The individual or family lacks the resources or support networks needed to obtain other permanent housing
	Category 3	Homeless under other Federal statutes	(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who: (i) Are defined as homeless under the other listed federal statutes; (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application; (iii) Have experienced persistent instability as measured by two moves or more during in the preceding 60 days; <u>and</u> (iv) Can be expected to continue in such status for an extended period of time due to special needs or barriers
	Category 4	Fleeing/ Attempting to Flee DV	(4) Any individual or family who: (i) Is fleeing, or is attempting to flee, domestic violence; (ii) Has no other residence; <u>and</u> (iii) Lacks the resources or support networks to obtain other permanent housing

North Dakota-500
Statewide Continuum of Care

Written Standards for Emergency Solutions Grant and Continuum of Care Programs

CoC Board Approval: April 2023 (pending)
CoC Membership Approval: May 2023 (pending)
Dept. Of Commerce Approval: April 2023 (pending)

Next Review: April 2024

I. Introduction

A. The North Dakota Housing Finance Agency (NDHFA) is the Collaborative Applicant (CA) for the North Dakota Continuum of Care (ND CoC). A CoC works to coordinate a community-based process of identifying needs relating to the experience of homelessness and of building a system of housing and services to address those needs. The ND CoC works to establish local priorities for system planning and to evaluate system-wide performance with the goal of making homelessness rare, brief, and non-recurring.

B. The North Dakota Department of Commerce Division of Community Services (DCS) is currently the statewide recipient of Emergency Solutions Grant (ESG) funds for the state of North Dakota. The 2023 ND Legislative Assembly is reviewing the transfer of these funds to NDHFA. If the transfer is approved by the legislature and governor, ESG funds will transfer to NDHFA on July 1, 2023.

II. Purpose

A. The Department of Housing and Urban Development (HUD) requires that a CoC establish and follow written standards for recipients and subrecipients aiding with CoC and ESG Program funds.

B. This document establishes the minimum standards for all programs that provide housing and services funded by the CoC and ESG programs in North Dakota. They serve to ensure that programs within the state are coordinated and integrated, as well as follow best practices in a manner consistent with the requirements outlined by the programs' funding sources and populations served.

C. All CoC and ESG funded programs must develop internal policies and procedures that comply with both these standards and all applicable eligibility and other requirements established by federal and state laws.

D. All projects funded under the ND CoC and ESG programs shall apply the following standards consistently for the benefit of all program participants. The ND CoC strongly encourages organizations and projects that do not receive the abovementioned funds to accept and utilize these standards.

III. Overview

A. The ESG Interim Rule broadened existing emergency shelter and homelessness prevention activities, placing greater emphasis on helping people quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness by expanding prevention as an eligible use and adding a rapid rehousing component. ESG funds are authorized and intended for rapid rehousing, homelessness prevention, and emergency shelter. The interim rule updated the annual action plan requirements to include written standards for the provision of ESG assistance and performance standards for evaluating ESG activities.

ESG funds can be used for a variety of services, including, but not limited to: emergency shelter, rental assistance, housing search and placement, utility arrears, and housing stability case management. The homelessness prevention component includes various housing relocation and stabilization services and short- and medium-term rental assistance.

B. The Continuum of Care (CoC) Program is designed to promote a community-wide commitment to the goal of ending homelessness; to provide funding for efforts by nonprofit providers, states, Indian Tribes or tribally designated housing entities (as defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103) (TDHEs)), and local governments to quickly rehouse homeless individuals, families, persons fleeing domestic violence, dating violence, sexual assault, and stalking, and youth while minimizing the trauma and dislocation caused by homelessness; to promote access to and effective utilization of mainstream programs by homeless individuals and families; and to optimize self-sufficiency among those experiencing homelessness.

CoC eligible costs include acquisition, rehabilitation, new construction, leasing, rental assistance, supportive services, operating costs, Homeless Management Information System (HMIS), and project administration. It is important to note that a project funded by the CoC program can be funded for only one program component (e.g., a transitional housing project cannot also be a permanent supportive housing project), however, each project may receive funds in more than one eligible cost category such as funding for administration, rental assistance, and supportive services.

IV. Key Terms

A. **Chronically Homeless:**

1. A homeless individual with a disability as defined in section 401(9) of the McKinney-Vento Assistances Act who:
    a. Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter, and
    b. Has been homeless and living as described for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described.
2. An individual who has been residing in an institutional care facility for less, including jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria of this definition before entering that facility; or
3. A family with an adult head of household (or, if there is no adult in the family, a minor head of household) who meets all of the criteria of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

B. **Collaborative Applicant (CA)**: The CA is the eligible applicant (state, unit of local government, private, nonprofit organization, or public housing agency) designated by the CoC to collect and submit the CoC Registration, CoC Consolidated Application, and apply for CoC planning funds on behalf of the CoC during the CoC Program Competition. May also apply to HUD to be designated as a Unified Funding Agency (UFA).

C. **Continuum of Care**: The group organized to carry out the responsibilities required under 24 CFR part 578 and is composed of representatives of organizations, including nonprofit homeless service providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formally homeless individuals to the extent these groups are represented within the geographic area and are available to participate.

D. **Coordinated Entry**: A centralized or coordinated process designed to coordinated program participant intake, assessment, and provision of referrals. The system covers the geographic area, is easily accessible and should ensure that all people experiencing a housing crisis have fair and equal access and are quickly identified, assessed for, referred, and connected to housing and assistance based on their strengths and needs. The Coordinated Access, Referral, Entry, and Stabilization (CARES) System is the coordinated entry and homeless response system for the ND and West Central Minnesota CoCs.

E. **Emergency Shelter (ES)**: Any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for persons experiencing homelessness in general or for specific subpopulations of persons experiencing homelessness.

F. **Homeless Management Information System (HMIS)**: A local information technology system used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness.

G. **Homelessness Prevention (HP)**: Activities designed to prevent an individual or family from moving into an emergency shelter or living in a public or private place not meant for human habitation. Provides Short-term or medium-term rental assistance and housing relocation and stabilization services. For the CoC, HP funds are only available to High Performing Communities that are designated by HUD. The ND CoC is not a High Performing Community.

H. **HUD At Risk of Homelessness Categories**: There are three federally defined categories under which persons are defined as At Risk of Homelessness:

   1. An individual or family who:

      a. Has an annual income below 30 percent of median family income for the area; AND

      b. Does not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in Category 1 of the "homeless" definition; AND

      c. Meets one of the following conditions:

         - Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for assistance; OR
         - Is living in the home of another because of economic hardship; OR
         - Has been notified that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; OR
         - Lives in a hotel or motel and the cost is not paid for by charitable organizations or by federal, state, or local government programs for low-income individuals; OR
         - Lives in a Single Room Occupancy or efficiency apartment unit in which there resides more than two persons or lives in a larger housing unit in which there resides more than one and a half persons per room; OR
         - Is exiting a publicly funded institution or system of care; OR

- Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved Consolidated Plan.

2. Unaccompanied Children and Youth: A child or youth who does not qualify as homeless under the homeless definition but qualifies as homeless under another federal statute.
3. Families with Children and Youth: An unaccompanied youth who does not qualify as homeless under the homeless definition but qualifies as homeless under section 725(2) of the McKinney-Vento Homeless Assistance Act, and the parent(s) or guardian(s) of that child or youth is living with him or her.

I. **HUD Homeless Categories**: There are four federally defined categories under which persons are defined as homeless:

1. Literally Homeless: Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
   a. Has a primary nighttime residence that is a public or private place not meant for human habitation;
   b. Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs); or
   c. Is exiting an institution where they resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
2. Imminent Risk of Homelessness: Individual or family who will imminently lose their primary nighttime residence, provided that:
   a. Residence will be lost within 14 days of the date of application for homeless assistance;
   b. No subsequent residence has been identified; and
   c. The individual or family lacks the resources or support networks needed to obtain other permanent housing.
3. Homeless Under other Federal statutes: Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
   a. Are defined as homeless under the other listed federal statutes;
   b. Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;
   c. Have experienced persistent instability as measured by two moves or more during the preceding 60 days; and
   d. Can be expected to continue in such status for an extended period of time due to special needs or barriers.
4. Fleeing/Attempting to flee domestic violence: Any individual or family who:
   a. Is fleeing, or is attempting to flee, domestic violence;

b. Has no other residence; and

c. Lacks the resources or support networks to obtain other permanent housing.

J. **Permanent Housing (PH)**: A community-based housing model, the purpose of which is to provide housing without a designated length of stay. Program participants must be the tenant on a lease (or sublease) that must have an initial term of at least one year, be renewable for a minimum term of one month, and be terminable only for cause.

K. **Permanent Supportive Housing (PSH)**: Permanent housing in which housing assistance (e.g., long-term leasing or rental assistance) and supportive services are provided to assist households with at least one member (adult or child) with a disability in achieving housing stability.

L. **Rapid Rehousing (RRH)**: A permanent housing solution emphasizing housing search and relocation services and short- (up to 3 months) and medium-term (4-24 months) tenant-based rental assistance and supportive services to move homeless persons and families (with or without a disability) as rapidly as possible into housing.

M. **Street Outreach (SO)**: Essential services related to reaching out to unsheltered individuals and families experiencing homelessness within the CoC's geographic area, including those least likely to request assistance. Services are provided on the street, or in parks, abandoned buildings, bus stations, campgrounds, and other unsheltered settings. Services can include engagement, case management, emergency health services, emergency mental health services, transportation, and services for special populations.

N. **Supportive Services Only (SSO)**: Projects allow recipients to provide supportive services, such as conducting outreach to sheltered and unsheltered homeless personal and families and providing referrals to other housing or other necessary services, to families and individuals experiencing homelessness. The recipient may only assist program participants for whom the recipient or subrecipient of the funds is not providing housing or housing assistance.

O. **Transitional Housing (TH)**: Provides temporary housing with supportive services to individuals and families experiencing homelessness with the goal of interim stability and support to successfully move to and maintain permanent housing. TH projects can cover housing costs and accompanying supportive services for participants for up to 24 months.

V. General Standards for All Projects

A. **Access to Mainstream Services**. The ND CoC and ESG expects that every organization that is funded through the ND CoC or ESG programs will coordinate with and access mainstream and other targeted homeless resources. Organizations should assess and assist participants with obtaining any mainstream resource(s) for which they may be eligible for including Temporary Assistance for Needy Families (TANF), Veterans Health Care, Supplemental Nutrition Assistance Program (SNAP), Medicaid, Federally Qualified Health Plan (Affordable Care Act), Children's Health Insurance Program (CHIP), Supplemental Security Income/Social Security Disability Insurance (SSI/SSDI), Workforce Investment funds, and Welfare-to-Work. Where possible, organizations should streamline processes for applying for mainstream benefits such as the use of a singular form to apply for benefits or collecting necessary information in one step.

B. **Applications.** CoC projects should submit an annual application for project funding to the CoC in compliance with the CoC's timeline for submission to HUD. ESG projects should submit applications for project funding according to NDHFA's annual application process.

C. **Collaboration with Educational Entities**. For projects that serve households with children, program policies must be in place to ensure children are enrolled in school and connected to appropriate services in the community, including early childhood projects such as Head Start, Part C of the Individuals with Disabilities Education Act, and McKinney Vento education services. The ND CoC encourages projects to utilize the CoC Educational Agreement as a standard for engagement and collaboration (contact the ND CoC coordinator for the agreement).

D. **Conflict of Interest.** CoC-funded projects must follow 24 CFR 578.95[3]. ESG projects are expected to follow the conflict-of-interest standards outlined in 24 CFR 576.404[4] related to the provision of ESG assistance and procurement of goods and services.

E. **Coordinated Entry Participation.** North Dakota's coordinated entry system is called Coordinated Access, Referral, Entry, and Stabilization (CARES) System. All CoC-funded TH, RRH, and PSH projects and ESG RRH projects are required to only accept referrals and fill vacancies and/or turnover units using the CARES referral process. All ESG and CoC funded projects are required to participate in CARES and abide by CARES policies and procedures. CARES policies and the Written Standards are therefore intended to be in alignment. All CARES documents can be found on the CARES website.

F. **CoC Participation.** All recipients (CoC and ESG) are expected to be members of the ND CoC and participate in CoC quarterly meetings and required trainings. CoC- and YHDP-funded agencies are also required to participate in, at a minimum, one CoC committee or workgroup. The ND CoC is a member organization driven by the collaborative efforts of its members.

G. **Documentation**. All programs must verify and retain in each household's file proof of program eligibility. This may include one or more of the following depending on funding source:

1. At-Risk of Homelessness Certification: ESG programs must complete the form and provide appropriate document(s) as indicated on the form.

2. Homeless Definition Certification: Must be completed for each household receiving ESG or CoC housing program.

3. Disability Verification: CoC PSH will need to document disability status according to HUD requirements. A sample form is available on the HUD Exchange website.

4. Income Verification: All sources of household income must be verified and documented at intake and updated every three months (ESG and CoC TH and RRH) or yearly (CoC PSH).

   ESG: To be eligible for assistance, gross household income must be below 30 percent area median income (AMI) for the county in which the household is residing for homelessness prevention. There is no income requirement at program entry for rapid rehousing, however, the household must be below 30 percent AMI at the annual recertification.

5. Prevention Screen: All ESG funded prevention programs will complete the CARES Housing Crisis Triage to determine level of assistance.

6. CARES Housing Prioritization Tool: All ESG and CoC funded housing programs will complete the CARES Housing Prioritization Tool (formerly known as the VI-SPDAT + Supplement) prior to entry into TH, RRH, or PSH.
7. Self-Certification: Must be completed if required verifications/other documentation cannot be secured and self-certification is the only way to verify information to determine program eligibility.
8. Lease Agreement: Tenants of CoC scattered site housing programs hold their own lease agreement. A signed copy of the lease agreement must be placed in the client's file.

   ESG: A lease is required for households receiving financial assistance such as rental assistance, security deposits, rental arrearages, and utility payments/deposits.
9. VAWA Forms: All ESG and CoC housing programs must provide recipients with VAWA forms HUD-5380 Notice of Occupancy Rights and HUD-91067 Lease Addendum.
10. Housing Plan: A Housing Plan must be completed for all individuals that receive a housing assessment and are determined eligible for services.
11. Rent Reasonableness: This standard is designed to ensure that program rents being paid are reasonable in relation to rents being charged for comparable unassisted units in the same market. ESG and CoC programs must complete and file a Rent Reasonableness form to ensure compliance prior to executing the lease for an assisted unit and anytime unit rent is increased thereafter.
    a. CoC: If rent reasonableness is higher than FMR, rental assistance funds can be used up to the amount of rent reasonableness.
    b. For ESG-funded projects, unit rent cannot exceed FMR or rent reasonableness. This means that a recipient or subrecipient is allowed to pay rents up to the rent reasonable amount even if this is higher than the FMR. If rent reasonableness rates are lower than FMR, the maximum allowable contract rent amount is still capped at rent reasonableness.
12. Habitability/Housing Standards: All units must meet Habitability Standards for ESG and Housing Quality Standards for CoC before financial assistance can be provided for rent, security deposits, rental arrears, and utility payments.
13. Lead-Based Paint Inspection: Lead-Based Paint Inspection is required for housing for properties if built before 1978 and if a child aged 6 or younger or a pregnant woman will be residing in the unit.
14. Annual Reports: Consolidated Annual Performance and Evaluation Report or HUD Annual Performance Reports are due for all funded programs on or before the annual deadline.
15. Universal Data Elements: All projects are required to collect and report upon the required Universal Data Elements for their program in HMIS or an approved CoC comparable database. Data is to be current and accurate when reporting.
16. Identification Documentation: There must be identification documentation for all household members whether receiving case management and/or financial assistance. Documentation must be a copy of one of the following: driver's license, social security card, Medicaid card, birth certificate, or passport.

H. **Eligibility for Assistance**:

I. **Emergency Transfers**: Projects must follow the ND CoC Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking.

J. **Environmental Review.** All CoC-funded projects (unless exempt) are required to complete an environmental review per 24 CFR 578.315. However, per 24 CFR 576.407(d)6, ESG activities will require some level of environmental review and clearance. No funds may be expended until an environmental review that meets the standards outlined in 24 CFR 587 has been submitted to the ND CoC or NDHFA.

K. **Fair Housing and Equal Opportunity**. All recipients and subrecipients of ND CoC and ESG program funding must comply with the non-discrimination and equal opportunity provisions of federal civil rights laws as specified at 24 CFR 5.105(a), including, but not limited to the following:

1. Fair Housing Act
2. Section 504 of the Rehabilitation Act
3. Title VI of the Civil Rights Act
4. Title II of the Americans with Disabilities Act
5. HUD's Equal Access Rule
6. Affirmatively Furthering Fair Housing. Providers must have non-discrimination policies in place and conduct assertive outreach to people least likely to engage in the homeless system. Organizations receiving ND CoC and ESG program funding shall market housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or disability; and shall provide program applicants and participants with information, in writing, on their rights and remedies under applicable federal, state, and local fair housing and civil rights laws.
7. Integration and Accessibility (Fair Housing and Equal Opportunity). Housing and supportive services must be offered in an integrated manner, such that persons with disabilities may enjoy a meaningful life within the community. Organizations shall offer housing and supportive services to enable individuals with disabilities to interact with nondisabled persons to the fullest extent possible.
8. Reasonable Accommodations and Modifications for Persons with Disabilities. Organizations are required to provide reasonable accommodations and modifications for persons with disabilities. For federally funded housing, the recipient is responsible for paying for the modification. Organizations must inform applicants during the intake process of their right to request a reasonable accommodation or modification. A reasonable modification is a structural change (e.g., installing a grab bar in the bathroom for a person with a disability). A reasonable accommodation is a change to rules, policies, or services so that a person with a disability has equal opportunity to use and enjoy a dwelling unit or common space (e.g., permitting a person with a disability to have a service animal).
9. Discrimination Based on Actual or Perceived Gender. HUD's Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity. Final Rule (Equal Access Rule) requires that HUD's housing projects be made available to individuals and families without regard to actual or perceived sexual orientation, gender identity, or marital status. The rule defines "gender identity" to mean "actual or perceived gender-related characteristics." The final rule also prohibits owners and administrators of HUD-assisted or HUD-insured housing,

approved lenders in a Federal Housing Administration (FHA) mortgage insurance program, and any other recipients or subrecipients of HUD funds from inquiring about sexual orientation or gender identity to determine eligibility for HUD-assisted or HUD-insured housing.

   a. There is a limited exception to this rule. Temporary, emergency shelters, and other buildings and facilities that are not covered by the Fair Housing Act because they provide short-term, temporary accommodations may provide sex-segregated accommodations, which they sometimes do to protect the privacy and security of individuals when the buildings and facilities have physical limitations or configurations that require shared sleeping quarters or shared bathing facilities. For purposes of this rule, shared sleeping quarters or shared bathing facilities are those that are designed for simultaneous accommodation of multiple individuals in the same space. For example, a single-user bathing facility with a lock on the door is not designated for simultaneous occupancy by multiple individuals, so it is not a ‘‘shared bathing facility’’ for purposes of the Equal Access Rule or this rule.
   b. Organizations should ensure that its services do not isolate or segregate victims of domestic violence based upon actual or perceived gender identity.

10. Discrimination Based on Household Composition. Organizations cannot discriminate against a group of persons presenting as a family based on the composition of the family, the age of any member of the family, the disability status of any member of the family, marital status, actual or perceived sexual orientation, or gender identity. The people who present together for assistance, regardless of age or relationship, are considered a household and are eligible for assistance as a household. Projects that serve families with children must serve all types of families with children; if a project targets a specific population, (e.g., homeless veterans), these projects must serve all families with children that are otherwise eligible for assistance, including families with children that are headed by a single adult or consist of multiple adults who reside together.
11. Preventing Family Separation. In an effort to maintain family unity, for housing projects serving households with children, the age and gender of a child under age 18 shall not be used as a basis for denying any family’s admission, nor may a recipient deny admission to any member of the family (e.g., 15-year-old son). Projects will make every attempt possible to avoid family separation, unless absolutely necessary for the safety and well-being of the family.
12. Guidance for Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities. Organizations operating ESG-single-sex emergency shelters (or other ESG- and/or CoC facilities) may not make a determination about services for one participant based on the complaints of another participant when those complaints are based on a participant’s gender identity or non-conformity with gender stereotypes. For the purpose of assigning a participant to sex-segregated or sex-specific services, it is a requirement that intake staff and emergency housing providers ask a transgender participant which group or service the participant wishes to join. The organization must take reasonable steps to address safety and privacy concerns; the organization should provide for privacy in bathrooms and dressing areas. For instance, organizations may install privacy curtains or partitions. When deciding how to house a victim of domestic violence, an organization that provides sex-segregated housing may consider on a case-by-case basis whether a particular housing assignment would ensure the victim’s health and safety. A victim’s own

views with respect to personal safety deserves serious consideration. The organization should ensure that its services do not isolate or segregate victims of domestic violence based upon actual or perceived gender identity.

13. Prioritized Subpopulations and Fair Housing Implications. Organizations shall comply with applicable civil rights laws, including the Fair Housing Act. Within this framework, these standards establish subpopulations to be prioritized for housing and services that align with the identified needs of the local community and the goals of the Federal Strategic Plan to End Homelessness. Subpopulations may be prioritized as long as doing so does not discriminate against any protected class under federal nondiscrimination laws (e.g., the housing may be limited to homeless veterans, victims of domestic violence and their children, or chronically homeless households); subpopulations may also be prioritized according to who needs the specialized supportive services that are offered by the project (e.g., substance use disorder treatment, domestic violence services, or a high intensity package of services designed to meet the needs of hard-to-reach people experiencing homelessness).

    a. Dedicated versus prioritized projects and/or beds that are dedicated to serving a specific subpopulation must continue serving only this subpopulation (e.g., a permanent supportive housing project that is dedicated to serving households experiencing chronic homelessness must continue serving those households). This means that if two otherwise eligible households are seeking admission into the program, one who falls within the designated prioritized subpopulation and one who does not, the household who is in the designated prioritized subpopulation must be given priority for admission. If there are no persons on a waiting list or applying for entrance to the program who fall within the dedicated or first priority subpopulation, organizations should not hold the unit vacant, but instead should serve the next prioritized subpopulation who may benefit from the services being provided.

    b. Fair Housing Implications. CoC coordinated entry may establish priorities for subpopulations by project type (i.e., permanent supportive housing or transitional housing), but organizations may not set more restrictive priorities. For instance, while a permanent supportive housing project may prioritize households experiencing chronic homelessness with a qualifying disability per coordinated entry policies, beds may not be reserved to persons with a specific disability (i.e., physical disability). If an individual, who is otherwise qualified, but who does not have a physical disability, seeks admission and would benefit from the services offered, this person may not be excluded from the project. Organizations may reserve beds for persons with HIV/AIDS if the housing also receives funding from the Housing Opportunities for People with AIDS program (HOPWA).

L. **Housing First Orientation**. The ND CoC practices a Housing First model of care that with the following core principals of practice.

1. Low Barrier Access: Immediate access to permanent housing with no housing readiness requirements.

2. Client Choice: Client centered approach that emphasizes client choice of housing options and level and time of supports currently available to them.

3. Recovery Orientation: Assures clients have access to a wide range of supports that help stabilize and thrive in housing. Ensures that care be provided with a

harm reduction orientation aimed at reducing the risks and harmful effects associated with addictive and other harmful behaviors versus expecting zero tolerance for these behaviors unless they threaten the rights or safety of others.

4. Individualized Client-Driven Supports: Supports are offered based on each client's unique needs and desires and are presented in a creative, ongoing, and culturally appropriate manner.
5. Social and community integration: Providers assist clients to integrate into their community and connect with natural supports that are healthy, to avoid isolation, and support long-term stability.
6. Persistent Engagement (youth): Staff should utilize an assertive style of case management, and continuously attempt to engage youth, even if youth are resistant to services.

M. **HMIS Participation**. All projects, apart from domestic violence (DV) projects, must enter data into ND HMIS accurately and in a timely manner, as defined in ND HMIS Policies and Procedures and ND HMIS Data Quality Management Plan. HMIS policies can be found on the ND ICA website. DV projects must enter data into a CoC approved comparable database accurately and in a timely manner and make their aggregate data available to the ND CoC for planning, monitoring, and ranking. Projects should use this data to measure project outcomes and identify areas for improvement. Non-CoC and non-ESG funded projects are also encouraged to track project data using HMIS or a CoC approved comparable database.

N. **Limited English Proficiency**. All CoC- and ESG-funded projects should take reasonable steps to ensure meaningful access to their projects and activities by individuals with Limited English Proficiency, regardless of the language spoken. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Grantees must follow the requirements outlined in 24 CFR 576.407(b)[34]. HUD published Final Guidance to Federal Financial Assistance Requirements Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons in the Federal Register on January 22, 2007 (72 F.R. 2732)[35].

O. **Persons with Lived Experience Inclusion**. Each recipient and subrecipient of assistance under this part must, to the maximum extent practicable, involve homeless individuals and families through employment; volunteer services; or otherwise in constructing, rehabilitating, maintaining, and operating the project, and in providing supportive services for the project.

1. CoC-funded projects must follow 24 CFR 578.7523 General operations (g) Participation of homeless individuals. Each recipient and subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the recipient or subrecipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a recipient or subrecipient is unable to meet such requirement and obtains HUD approval for a plan to otherwise consult with homeless or formerly homeless persons when considering and making policies and decisions.
2. ESG-funded projects must follow 24 CFR 576.40524. The provisions requiring homeless participation on boards or in an advisory capacity can be fulfilled by ESG Grantees bringing any policy decisions regarding their facility and services

to the CoC governing board where homeless participation is already existing. Also, to the maximum extent practicable, grantees should involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities, in providing services assisted under the ESG Project, and in providing services for occupants of facilities assisted with ESG.

P. **Point-in-Time and Housing Inventory Counts Participation**. All ND CoC- and ESG-funded projects must participate in the annual point-in-time and housing inventory counts, including participation in the unsheltered count if needed.

Q. **Recordkeeping Requirements**. See Appendix B.

R. **Transition and Move-On Strategy Principles**.

1. Transition should be a voluntary process that participants choose.
2. Collaboration of mainstream housing and services must be fostered.
3. Connections to community-based supports are necessary for housing stability.

S. **Termination and Grievance Procedures**. Organizations must have a written grievance procedure, including a formal process for participants to provide feedback.

1. Organizations must have a written termination policy outlining project rules and termination processes, including a formal due process.
2. Terminations may only occur in the most severe circumstances, which includes, but are not limited to, consistent failure to make rental payments or adhere to a repayment schedule, consistent violation of the lease, or destruction of property.
3. Termination from a project should not prohibit the household from being readmitted into the program at a future date.
4. The termination process, at a minimum, must consist of:
    a. Providing the participant with a written copy of the rules and the termination process before the participant begins to receive assistance;
    b. Written notice to the program participant containing a clear statement of the reasons for termination (e.g., lease obligations, tenant payments, damage to the property).
    c. A review of the decision, in which the program participant is given the opportunity to present written or oral objections/appeal before a person other than the person (or a subordinate of that person) who made or approved the termination decision;
    d. Prompt written notice of the final decision to the program participant; and
    e. Providing Notice of VAWA Occupancy Rights.

T. **Violence Against Women Act (VAWA)**. VAWA requires that CoC and ESG programs:

1. Provide participants with the HUD Notice of VAWA Occupancy Rights (form HUD-5380) and Self-Certification (form HUD-5383);
2. Add a lease addendum that includes VAWA protections; and
3. Allow participants to make emergency transfers (form HUD-5381) when safety is a concern.

Standards by Project Type

Street Outreach (SO)

SO includes provision of essential services necessary to reach out to people experiencing unsheltered homelessness; connect them with emergency shelter, housing, or critical services; and provide urgent, non-facility-based care to those who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility. Coordinated SO efforts that identifies and engages people living in unsheltered locations, such as in cars, parks, abandoned buildings, encampments, and on the streets, plays a critical role within the system for ending homelessness. Effective SO reached people who might not otherwise seek assistance or come to the attention of the homelessness service system and ensures that people's basic needs are met while supporting them along pathways toward housing stability. Core services of SO include: engagement, case management, emergency health services, emergency mental health services, transportation, and services to special populations.

Funding source: ESG

Access.
Outreach workers are able to enroll households across the community, outside office walls, engaging with participants early and often.

Eligibility
The following HUD categories of individuals or families are eligible for SO services:

1. Category 1, Literally Homeless
2. Category 4, Fleeing/Attempting to Flee Domestic Violence (where the individual or family also meets the criteria for Category 1; AND
3. Individuals and families must be living on the streets (or other places not meant for human habitation) and be unwilling or unable to access services in emergency shelter, housing, or an appropriate health facility.

Documentation
Relevant documentation standards include the information presented in section V.G of this document. Additionally, staff should be working with participants to obtain their necessary documentation (i.e., social security card, photo identification, birth certificates, etc.) These efforts should be documented in the case files along with any additional case notes.

Prioritization
Anyone who is unsheltered is prioritized for SO, although everyone who meets eligibility should be able to be enrolled.

Duration and Amounts

1. There should be repeated attempts to assist, respecting client choice.
2. ESG-funded SO projects should conduct SO at a minimum of weekly, depending on budget and staffing.
3. No one is terminated from this project type unless they are placed in housing of their choice; they indicate they no longer need services and request their case be closed; or they pose a serious threat of harm to the outreach staff or other participants.

Performance Measures
The ND CoC has established the following performance goals for SO:

1. Returns to Homelessness: 25 percent or less will return to homelessness

Homeless Prevention (HP)

Housing stability is the primary goal of HP. ESG funds may be used to provide housing relocation and/or stabilization and services and rental assistance to prevent an individual or family from moving into an emergency shelter, safe haven, or other place not meant for human habitation. ESG HP is not an eviction prevention project. It is intended to prevent households from losing all housing and ending up in emergency shelter or on the street. Non-ESG-funded prevention projects are encouraged to also follow these standards. Core services of HP include:

1. Housing relocation and stabilization services (annual income below 30 percent median family income)
    a. Financial assistance costs (i.e., rental application fees, security deposits, last month's rent, utility deposits utility payments, and moving costs)
    b. Service costs (i.e., housing search and placement, housing stability case management, mediation, legal services, and credit repair), and rental assistance (may be tenant- or project-based).

Funding source: ESG

Access

Households will be screened for prevention resources through CARES using the Housing Crisis Triage. If a household is identified at risk of homelessness, the access site will refer to prevention providers in their region (if available). These households will not be added to the prioritization list.

Eligibility

The following HUD categories of individuals or families are eligible for SO services:

1. Category 2, Imminent Risk of Homelessness
2. Category 4, Fleeing/Attempting to Flee Domestic Violence
3. At Risk of Homelessness, AND
4. Gross household income must be below 30 percent area median income (AMI) for the county in which the household is residing.

Some households who apply for ESG HP assistance may be losing their housing, but they have another safe and appropriate housing option, including temporary options, where they can stay while they work to obtain their own housing. An applicant may also have another resource they can use to maintain current housing or obtain new housing. Such applicants would not be considered at imminent risk of literal homelessness.

An individual or family that qualifies as homeless under Category 4 but does not live in an emergency shelter or other place described in paragraph (1) of the 'homeless' definition (see Appendix A) would not be eligible for ESG rapid re-housing assistance but may be eligible for ESG HP assistance. Additionally, if the household meets the criteria under either Category 2 or 3 of the homeless definition or the criteria under the at-risk definition, the household may be eligible for HP assistance.

Documentation

Relevant documentation standards include the information presented in section V.G of this document.

Prioritization

Individuals and families should be assessed with the CARES Housing Crisis Triage offered at an Access site. After screening for eligibility based on funder criteria and agency capacity (availability of funding to assess new households), households will be referred to the appropriate resources based on their vulnerability outcome (i.e., shelter, prevention/diversion, or mainstream resources). When appropriate, based on the individual's needs and wishes, the provision of or referral to homeless prevention or rapid rehousing services, or other available housing programs offered through the ND CoC that can quickly assist individuals to maintain or obtain safe, permanent housing, shall be prioritized over the provision of emergency shelter services.

Duration and Amounts

1. Short-term rental assistance up to three months of rent or medium-term rental assistance for more than 3 months of rent but not more than 24 months.
    a. Minimum standards for determining how long a particular program participant shall be provided with rental assistance and whether and how the amount of that assistance shall be adjusted over time are:
        - Participants received approval for the minimum amount of financial assistance necessary to prevent homelessness. Documentation of financial need shall be kept in the participant's file for each month of financial assistance received. Participants shall not be approved for more rental assistance than can be justified given their income and expenses at a given time.
2. Agencies cannot set organizational maximums or minimums but must rely on the CoC and ESG Interim Rules and Regulations to determine household eligibility.
3. Payment of rental arrears for up to six months of rent in arrears, including any late fees
4. Security deposits. ESG funds may pay for a security deposit that is equal to no more than 2 months' rent
5. Last month's rent. Must not exceed 1 month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any 3-year period.
6. Housing stability case management cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing.
7. Participant contribution: Minimum standards for determining what percentage or amount of rent and utilities costs each program participant shall pay while receiving homelessness prevention:
    a. Participant's income shall be verified prior to approval for initial and additional financial assistance. Documentation of the participant's income and expenses, including how the participant is contributing to housing costs, if at all, shall be maintained in participant's file. This file shall also contain a plan to sustain housing following the assistance, including either a plan to increase income or decrease expenses or both.

Minimum Standards

1. Re-evaluations for homelessness prevention. The subrecipient must re-evaluate the program participant's eligibility and the types and amounts of assistance the program participant needs not less than once every three months. At a minimum, each re-evaluation of eligibility must establish that:
    a. The program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and
    b. The program participant lacks sufficient resources and support networks necessary to retain housing without assistance.

2. The subrecipient may require each program participant receiving homelessness prevention assistance to notify the recipient or subrecipient regarding changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance under ESG. When notified of a relevant change, the subrecipient must re-evaluate the program participant's eligibility and the amount and types of assistance the program participant needs.

Performance Measures
Although CoC-wide performance measures do not exist for this project type, projects are required to submit project-level measures/benchmarks with ESG applications and should refer to what they state in their applications.

Emergency Shelter (ES)

An ES is any facility, the primary purpose of which is to provide a temporary shelter for households experiencing homelessness and which does not require occupants to sign a lease or occupancy agreement. The goal for all ESs is to exit households to permanent housing as quickly as possible. Upon admission to ES, all households should be entered into CARES to expedite exit to permanent housing resources. It is the CoC's goal that all ES, regardless of funding source, will follow the CoC's written standards. Non-ESG-funded prevention projects are encouraged to also follow these standards. Core services include:

1. Essential services including case management, childcare, education services, employment assistance and job training, outpatient health services, legal services, life skills training, substance abuse treatment services, transportation, and services for special populations.
2. Shelter operations eligible costs include the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter. Where no appropriate emergency shelter is available for an individual or family experiencing homelessness, eligible costs may also include a hotel or motel voucher.

Funding source: ESG

Access
ES may accept participant referrals from CARES, other agencies, or from the participants themselves (i.e., self-referral/participant reaches out for services). Shelter intake staff should explore all options prior to enrolling a household is ES, including problem-solving conversations, identifying community supports (coordinating with HP projects), and offering lighter touch solutions.

Victims of domestic violence, dating violence, sexual assault, and stalking: To the extent possible, these households will be referred to the local domestic violence agency for safe shelter. When not feasible, shelter providers will work with their local domestic violence agency to develop protocols to meet their safety needs.

Eligibility
Individuals and families experiencing homelessness in emergency shelters. Providers of emergency shelter services shall admit individuals and families who meet the HUD definition of "homeless" and agency's eligibility criteria. The following HUD categories of individuals or families are eligible for ES services:

1. Category 1, Literally Homeless
2. Category 2, Imminent Risk of Homelessness

3. Category 4, Fleeing/Attempting to Flee Domestic Violence

Documentation
Relevant documentation standards include the information presented in section V.G of this document.

Prioritization
Except for crisis situations, emergency shelter resources must fill open beds by the highest vulnerability. This includes motel/hotel vouchers, domestic violence beds, and emergency shelter bed openings. After shelter eligibility based on funder policies and openings are determined, beds/rooms shall be filled in the following order:

1. Communities with limited demand and resources must regionally identify how to prioritize their resources.
2. Communities who have high emergency shelter demand and/or have had a wait list in the last 30 days must prioritize based on the following:
   a. Accessibility. Those who are in closest proximity to the shelter are served first.
   b. Vulnerability (e.g., an individual literally sleeping on the streets should be sheltered over an individual that has a safe doubled-up situation).
   c. Length of time homeless (e.g., individuals who have been unsheltered the longest should be prioritized over those who have been unsheltered for a shorter period).
3. Emergency shelter resources should not be spent on individuals or households that could fund their own hotel/motel or acquire their own housing.

NOTE: Shelter eligibility is based on funder restrictions (domestic violence, youth, etc.) or target population preference (youth, singles, families, women, men). Preference restrictions are revised based on CoC or sub-regional planning needs.

Duration and Amounts
The CoC has not established a maximum length of stay in ES. Subrecipients shall make every effort to ensure program participants are discharged from emergency shelter services only when they choose to leave or when they have successfully been obtained safe, permanent housing. Shelters should provide flexibility related to length of stay based on individual needs, recognizing factors that may necessitate a longer length of stay such as awaiting housing through the CoC's CARES process. Shelters should maintain a housing-focused approach when working with participants.

ES should not charge fees to participants.

Minimum Standards
1. Reassessment. Program participants will be reassessed as case management progresses.
2. Safety and Shelter Safeguards for Special Populations. Safety and Shelter Safeguards shall be determined by the individual special population service provider's policies and clearly communicated to program participants.

Performance Measures
The ND CoC has established the following performance goals for SO:

1. Returns to Homelessness: 25 percent or less will return to homelessness

Transitional Housing (TH)

TH facilitates the movement of individuals and families experiencing homelessness to permanent housing. The standards adopted for TH will apply to project funded under the CoC and to the TH portion of the CoC-funded joint TH/RRH projects.

Enrollment is based on client choice in conjunction with the provider's assessment of health and safety needs. TH should be as low barrier as possible while honoring eligibility and prioritization criteria as outlined below.

Core services of TH include, rental and utility assistance, case management, linkage to mainstream services, and a housing stability plan.

Funding source: CoC

Access
All households access HUD-funded TH projects via CARES and should be offered the option with as few barriers to project entry as possible.

Eligibility
The following categories of individuals or families are eligible for SO services:

1. Category 1, Literally Homeless
2. Category 3, Homeless Under Other Federal Statutes (Youth only)
3. HUD Category 4, Fleeing/Attempting to Flee Domestic Violence
4. Persons with low to moderate barriers exiting homelessness and entering transitional housing services and who will be successful with short-term help. Persons should have the capacity to increase their income (earned or other cash income) or who can't afford housing with their income until they have access to public housing assistance.
5. Individuals or families experiencing homelessness that are exiting shelters.
6. Youth with or that are working on, their GED or high school diploma, including youth exiting foster care.
7. Persons fleeing domestic violence.

Documentation
Relevant documentation standards include the information presented in section V.G of this document.

Prioritization
All CoC-funded projects are required to prioritize individuals and families using the CARES process. Households with a vulnerability outcome of Low or Medium from the Housing Prioritization Tool will be selected based on the following criteria after meeting program eligibility:

1. Category 1: unsheltered
2. Category 1: other
3. Category 4
4. Category 3: Youth programs ONLY
5. Category 2

If all else is equal, the following prioritization will be used for ties:

1. Longest period of time homeless
2. Veterans

3. Age: Persons under age 24 or over age 50
4. Length of time on the priority list

Duration and Amounts
While TH may be used to cover the costs for up to 24 months of housing with accompanying supportive services, it is intended to be used as bridge housing (i.e., temporary housing when shelter is unavailable or the participant is preparing to enroll in permanent housing), not exceeding twelve months, except in extenuating circumstances, with an average target of a six-month stay per household. The actual length of stay for a particular household will vary based on their specific needs and the availability of affordable permanent housing resources.

Rents collected from participants of TH may be reserved in whole or in part to assist the participants to move to permanent housing.

For CoC-funded projects, to determine rent/occupancy charges, if rental assistance is being applied (as opposed to leasing dollars), the rent contribution or the maximum occupancy charge is the highest of the following amounts (rounded to the nearest dollar):

1. 30 percent of the household's monthly adjusted income;
2. 10 percent of the household's monthly gross income; or
3. If the household is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs

Please keep in mind that for TH projects in which rental assistance is provided, the rent contribution is not optional and must equal the rent contribution specified above. For projects that provide TH using funds other than rental assistance funds, the occupancy charge is optional and can be lower, but not higher, than the maximum occupancy charge specified above.

Minimum Standards
1. Case management with weekly contact including in-home visits.
2. Assessment of needs conducted every three months.

Performance Measures
The ND CoC has established the following performance goals for TH:

1. Returns to Homelessness: 10 percent or less return to homelessness.
2. Housing Retention: 80 percent or more of all participants will exit to permanent housing destinations.
3. Job and Income Growth: 25 percent or more of adult participants will increase income from employment or other sources.

Joint Transitional Housing/Rapid Rehousing (TH/RRH)

A Joint TH/RRH component project is a project type that includes two existing project components, TH and RRH, in a single project to serve individuals and families experiencing homelessness. Generally, TH/RRH can be appropriate in areas with low ES housing stock and emphasis should be on rapid movements from TH to permanent housing.

Projects administering Joint TH/RRH projects should defer to the RRH and TH sections of these written standards. The areas which deviate from those standards or had additional nuances associated with them for the Joint TH/RRH project ype are addressed below.

Funding source: CoC

Access
All households access HUD-funded Joint TH/RRH projects via CARES. Projects must offer both components. Participants can choose what housing setting makes the most sense, which may include TH only, RRH only, or TH and RRH. The choice should be driven by client choice and needs.

Eligibility
The following categories of individuals or families are eligible for Joint TH/RRH services:

1. Category 1, Literally Homeless
2. Category 3, Homeless Under Other Federal Statutes (Youth only)
3. HUD Category 4, Fleeing/Attempting to Flee Domestic Violence
4. Persons with low to moderate barriers exiting homelessness and entering transitional housing services and who will be successful with short-term help. Persons should have the capacity to increase their income (earned or other cash income) or who can't afford housing with their income until they have access to public housing assistance.
5. Individuals or families experiencing homelessness that are exiting shelters.
6. Youth with or that are working on, their GED or high school diploma, including youth exiting foster care.
7. Persons fleeing domestic violence.
8. Persons residing in a TH project that is being eliminated.
9. Persons residing in TH being funded by another joint component project.

Documentation
Relevant documentation standards include the information presented in section V.G of this document.

Prioritization
All CoC-funded projects are required to prioritize individuals and families using the CARES process. Households with a vulnerability outcome of Low or Medium from the Housing Prioritization Tool will be selected based on the following criteria after meeting program eligibility:

1. Category 1: unsheltered
2. Category 1: other
3. Category 4
4. Category 3: Youth programs ONLY
5. Category 2

If all else is equal, the following prioritization will be used for ties:

1. Longest period of time homeless
2. Veterans
3. Age: Persons under age 24 or over age 50
4. Length of time on the priority list

Duration and Amounts
The maximum duration of support for both components combined is 24 months per household.

Minimum Standards

3. Case management with weekly contact including in-home visits.
4. Assessment of needs conducted every three months.

Performance Measures
The ND CoC has established the following performance goals for TH:

4. Returns to Homelessness: 10 percent or less return to homelessness.
5. Housing Retention: 80 percent or more of all participants will exit to permanent housing destinations.
6. Job and Income Growth: 25 percent or more of adult participants will increase income from employment or other sources.

<u>Rapid Rehousing (RRH)</u>

The standards adopted for RRH apply to projects funded under both ESG and CoC unless otherwise noted. RRH is an intervention deigned to help individuals and families quickly exit homelessness and return to permanent housing. RRH assistance is offered without preconditions (i.e., employment, income, absence of criminal record, or sobriety) and the resources and services provided are tailored to the unique needs of the household.

Core services for those receiving assistance through a CoC-funded agency includes rental assistance or utility subsidies, security deposits, voluntary case management, linkage to mainstream resources, and a housing stability plan.

Core services for those receiving assistance through an ESG-funded agency includes housing relocation and stabilization services including financial assistance (i.e., rental application fees, security deposits, last month’s rent, utility deposits utility payments, and moving costs) and service costs (i.e., housing search and placement, housing stability case management, mediation, legal services, and credit repair).

Funding source: CoC and ESG

Access
All referrals to RRH must come through CARES.

Eligibility
The following categories of individuals or families are eligible for RRH services:

1. Category 1, Literally Homeless
2. Category 4, Fleeing/Attempting to Flee Domestic Violence
3. There is no income requirement at program entry for rapid rehousing, however, the household must be below 30 percent AMI at the annual recertification.
4. CoC: Individuals or families who are literally homeless and have a strong chance to increase their income and stabilize their housing with short- (up to six months) to medium-term (7-12 months) support.
5. ESG: Assistance as necessary to help an individual or family experiencing homelessness move as quickly as possible into permanent housing and achieve stability in that housing.

Documentation
Relevant documentation standards include the information presented in section V.G of this document.

Documentation of financial need shall be kept in the participant's file for each month of financial assistance received.

Prioritization

All CoC- and ESG-funded projects are required to prioritize individuals and families using the CARES process. Based on the length of time rental assistance will be provided, households will be referred by their vulnerability outcome from the Housing Prioritization Tool (short-term: Low, medium-term: Medium, and long-term: Medium-High). Along with the vulnerability outcome, households will be selected based on the following criteria after meeting program eligibility:

1. Category 1: unsheltered
2. Category 1: other
3. Category 4
4. Category 2

If all else is equal, the following prioritization will be used for ties:

1. Longest period of time homeless
2. Veterans
3. Age: Persons under age 24 or over age 50
4. Length of time on the priority list

Duration and Amounts

The amount of rental assistance provided is highly individualized but should generally reduce the level of RRH subsidies over time so that each household contributes more as they are able to and as stabilization is realized.

Since rental and/or financial assistance is to match the needs of the household, the duration of assistance will vary by household, lasting for no longer than the household needs to stabilize. In no instances, will the household receive more than 24 months of RRH assistance in any three-year period, and no fees can be imposed on project participants beyond payment of rent. Minimum standards for determining what percentage or amount of rent and utilities costs each program participant shall pay while receiving rapid rehousing assistance are:

1. Participants received approval for the minimum amount of financial assistance necessary to prevent homelessness. Participants shall not be approved for more rental assistance than can be justified given their income and expenses at a given time.
2. Agencies cannot set organizational maximums or minimums but must rely on the CoC and ESG Interim Rules and Regulations to determine household eligibility:
    a. Program participant's total rental assistance cannot exceed 24 months during any 3-year period.
    b. Payment of rental arrears may be made for up to six months of rent in arrears, including any late fees.
    c. ESG funds may pay for a security deposit that is equal to no more than two months' rent.
    d. Last month's rent must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any 3-year period.
3. Participant contribution. The CoC does not require that participants share in the cost of their rental assistance. If the agency requires rent cost sharing, the agency must have

standards for client income contributions to rent. If an agency has income contribution standards, they must apply to all program participants equally.

4. Rent calculations. The rent shall equal the total monthly unit rent and, if the tenant pays separately for utilities, the monthly utility allowance set by the local public housing authority.
5. HUD regulations do not require clients to contribute any portion of income to rent when providing RRH assistance.
6. Housing stability case management (cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing).
7. Rental assistance for both programs may be tenant- or project-based.

Minimum Standards

1. Project staff should support clients in their housing search to secure housing more rapidly.
2. Re-evaluations. The subrecipient must re-evaluate the program participant's eligibility and the types and amounts of assistance the program participant needs not less than once annually for program participants receiving rapid rehousing assistance with ESG and CoC funds. At a minimum, each re-evaluation of eligibility must establish that:
   a. The program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and
   b. The program participant lacks sufficient resources and support networks necessary to retain housing without ESG assistance.
3. The subrecipient may require each program participant receiving rapid re-housing assistance to notify the recipient or subrecipient regarding changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must re-evaluate the program participant's eligibility and the amount and types of assistance the program participant needs.
4. Monthly case management meetings between the project staff and participant to assist the participant in ensuring long-term housing stability, including focusing on earned and unearned income, using creative engagement strategies, and integrating transition strategies to support a smooth exit from program assistance.
   a. The recipient or subrecipient is exempt from the requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13701 et seq.) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.) prohibits that recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services.
   b. This assistance cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing.

Performance Measures

The ND CoC has established the following performance goals for SO:

1. Returns to Homelessness: 10 percent or less will return to homelessness
2. Housing Retention: 80 percent or more of all participants will exit to permanent housing destinations

3. Job and Income Growth: 25 percent or more of adult participants will increase income from employment or other sources

Permanent Supportive Housing (PSH)

PSH is community-based housing without a designated length of stay, offering a higher level project option for those in need os such interventions. It is important to note that as needs change, a lower-level intervention may be more appropriate, at which time other options may be explored and decided upon between the project and participant. PSH provides housing assistance and supportive services to assist project participants to maintain their housing stability. Core services of PSH include rental assistance for length of eligibility, other direct support services (i.e., childcare, transportation, utilities), voluntary case management with initial weekly contact up to monthly and regular in-home visits, linkage to mainstream services, and a housing stability plan.

Funding source: CoC

Access

All referrals to PSH must come through CARES.

Eligibility

The following categories of individuals or families are eligible for SO services:

1. Category 1, Literally Homeless
2. Category 4, Fleeing/Attempting to Flee Domestic Violence
5. At least on household member must have a documented disability.
6. Chronically homeless must have an adult member with a disability and have at least one consecutive year of homelessness or 4+ episodes of homelessness in the past three years where the total time homeless equals one year.

Documentation

Relevant documentation standards include the information presented in section V.G of this document.

Prioritization

All CoC-funded projects are required to prioritize individuals and families using the CARES process. Households with a vulnerability outcome of Highest or High from the Housing Prioritization Tool will be selected based on the following criteria after meeting program eligibility:

1. Category 1: unsheltered and disabled
2. Category 1: emergency shelter and disabled
3. Exiting transitional housing where the individual or household entered as homeless with a disability
4. Highest priority homeless (based on the Housing Prioritization Tool outcome)

100 percent of CoC-funded PSH units are chronic dedicated. This means that they should first be made available to a household that meets the chronically homeless definition. If there are no chronically homeless households choosing to occupy a particular PSH unit, it may then be rented to a non-chronically homeless household.

Duration and Amounts

Each project participant should be assessed at least annually to determine whether they are able to move from PSH to other permanent housing without supports (either subsidized or market rate) in order to make PSH resources available for those with the greatest need for supported housing. If it is determined that it is feasible for a participant to exit from PSH, project staff should support them in this transition, including assistance with identifying alternative housing and connection to community supports. To support households transitioning from PSH, project staff are encouraged to assist participants in signing up for all appropriate subsidized housing waiting lists including: Housing Choice Vouchers, public housing, senior housing, and other privately-owned assisted housing.

To determine rent, if rental assistance is being applied (as opposed to leasing dollars), the rent contribution or the maximum occupancy charge is the highest of the following amounts (rounded to the nearest dollar):

1. 30 percent of the household's monthly adjusted income;
2. 10 percent of the household's monthly grow income; or
3. If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

Please keep in mind that for PSH projects in which rental assistance is provided, the rent contribution/occupancy charge is not optional and must equal the rent contribution specified above. For projects that provide PSH using funds other than rental assistance funds, the occupancy charge is optional and can be lower but not higher than the maximum occupancy charge specified above.

If an assisted unit is vacated before the expiration of the lease, the project may pay no more than 30 days from the end of the month in which the unit was vacated. Brief periods of stays in institutions (not to exceed 90 days) by project participants are not considered "vacancies", and rent can continue to be paid on the unit while the project participant is in the institution.

Minimum Standards

1. Project staff should support clients in their housing search to secure housing more rapidly (only for scattered site projects).
2. Households must have a lease for at least one year which is automatically renewable for a term of at least one month and only terminable for cause.
3. Scattered-site projects should engage in landlord engagement, including identifying available units, facilitating move-in, and ensuring participants' ongoing success in housing.
4. Projects must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a PSH participant's assistance is terminated only in the most severe cases.
5. Annual assessments should be completed with each participant to determine whether they are able to move from PSH to other permanent housing.
6. Monthly case management meetings between the project staff and participant to assist the participant in ensuring long-term housing stability, including focusing on earned and unearned income, using creative engagement strategies, and integrating transition strategies to support a smooth exit from program assistance.
    a. The recipient or subrecipient is exempt from the requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13701 et seq.) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.) prohibits that recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services.

Performance Measures

The ND CoC has established the following performance goals for SO:

1. Returns to Homelessness: 5 percent or less will return to homelessness
2. Housing Retention: 90 percent or more of all participants will exit to permanent housing destinations
3. Job and Income Growth: 25 percent or more of adult participants will increase income from employment or other sources

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NOTE: All grantees are responsible for understanding and abiding by the allowable costs for their respective programs as listed in their annual grant agreement or amended grant agreement. Grantees should also refer to the eligible program components listed in the CoC and ESG Interim Rules and Regulations.

The ND-500 CoC Written Standards for ESG and CoC Programs were approved by the ND Department of Commerce in April 2023, the ND CoC Board in April 2023 and the full CoC membership in May 2023.

CoC Coordinator, ND Continuum of Care	Date
ND Department of Commerce	Date
Chair, ND CoC Board	Date

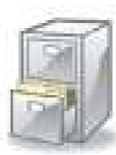
APPENDIX A
Homeless Definition – Criteria for Defining Homeless

Homeless Definition

CRITERIA FOR DEFINING HOMELESS	**Category 1**	Literally Homeless	(1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning: (i) Has a primary nighttime residence that is a public or private place not meant for human habitation; (ii) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state and local government programs); <u>or</u> (iii) Is exiting an institution where (s)he has resided for 90 days or less <u>and</u> who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution
	Category 2	Imminent Risk of Homelessness	(2) Individual or family who will imminently lose their primary nighttime residence, provided that: (i) Residence will be lost within 14 days of the date of application for homeless assistance; (ii) No subsequent residence has been identified; <u>and</u> (iii) The individual or family lacks the resources or support networks needed to obtain other permanent housing
	Category 3	Homeless under other Federal statutes	(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who: (i) Are defined as homeless under the other listed federal statutes; (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application; (iii) Have experienced persistent instability as measured by two moves or more during in the preceding 60 days; <u>and</u> (iv) Can be expected to continue in such status for an extended period of time due to special needs or barriers
	Category 4	Fleeing/ Attempting to Flee DV	(4) Any individual or family who: (i) Is fleeing, or is attempting to flee, domestic violence; (ii) Has no other residence; <u>and</u> (iii) Lacks the resources or support networks to obtain other permanent housing

APPENDIX B
Homeless Definition – Recordkeeping Requirements

Homeless Definition

RECORDKEEPING REQUIREMENTS 	**Category 1**	Literally Homeless	• Written observation by the outreach worker; <u>or</u>
			• Written referral by another housing or service provider; <u>or</u>
			• Certification by the individual or head of household seeking assistance stating that (s)he was living on the streets or in shelter;
			
			• For individuals exiting an institution—one of the forms of evidence above <u>and</u>:
			  ○ discharge paperwork <u>or</u> written/oral referral, <u>or</u>
			  ○ written record of intake worker's due diligence to obtain above evidence <u>and</u> certification by individual that they exited institution

	Category 2	Imminent Risk of Homelessness	• A court order resulting from an eviction action notifying the individual or family that they must leave; <u>or</u> • For individual and families leaving a hotel or motel—evidence that they lack the financial resources to stay; <u>or</u> • A documented and verified oral statement; <u>and</u> • Certification that no subsequent residence has been identified; <u>and</u> • Self-certification or other written documentation that the individual lack the financial resources and support necessary to obtain permanent housing
	Category 3	Homeless under other Federal statutes	• Certification by the nonprofit or state or local government that the individual or head of household seeking assistance met the criteria of homelessness under another federal statute; <u>and</u> • Certification of no PH in last 60 days; <u>and</u> • Certification by the individual or head of household, and any available supporting documentation, that (s)he has moved two or more times in the past 60 days; <u>and</u> • Documentation of special needs <u>or</u> 2 or more barriers

	Category 4	Fleeing/ Attempting to Flee DV	• *For victim service providers*:
			  ○ An oral statement by the individual or head of household seeking assistance which states: they are fleeing; they have no subsequent residence; and they lack resources. Statement must be documented by a self-certification or a certification by the intake worker.
			• *For non-victim service providers*:
			  ○ Oral statement by the individual or head of household seeking assistance that they are fleeing. This statement is documented by a self-certification or by the caseworker. Where the safety of the individual or family is not jeopardized, the oral statement must be verified; <u>and</u>
			  ○ Certification by the individual or head of household that no subsequent residence has been identified; <u>and</u>
			  ○ Self-certification, or other written documentation, that the individual or family lacks the financial resources and support networks to obtain other permanent housing.