



# 2024 ALLOCATION PLAN

## HOME Investment Partnerships Program

*DRAFT Pending HUD Approval*



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The HOME 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.

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## TABLE OF CONTENTS

|   |    |
|---|----|
| SECTION 1: INTRODUCTION .....   | 1  |
| SECTION 2: GENERAL PROVISIONS.....  | 1  |
| SECTION 3: DISTRIBUTION PLAN.....   | 2  |
| 3.01 HOME Projects and Eligible Activities .....                          | 2  |
| 3.02 HOME Performance Measures.....                                       | 3  |
| 3.03 HOME Summary of Funding Estimate.....                                | 3  |
| SECTION 4: ELIGIBLE USES.....   | 4  |
| Administration .....  | 4  |
| Subrecipient Definition .....   | 4  |
| CHDO Operating.....   | 4  |
| Single-family Homeowner Rehabilitation .....                              | 4  |
| Uncommitted Funds.....  | 6  |
| Recaptured Funds .....  | 6  |
| Homebuyer Down Payment Assistance .....                                   | 6  |
| Resale & Recapture Provisions.....  | 8  |
| SECTION 5 RENTAL PRODUCTION AND REHABILITATION.....                       | 12 |
| Definitions .....   | 12 |
| Eligible Applicants .....   | 13 |
| SECTION 6: RENTAL PRODUCTION AND REHABILITATION APPLICATION PROCESS.....  | 16 |
| 6.01 Underwriting Standards .....   | 16 |
| 6.02 Maximum Award.....   | 17 |
| 6.03 Fees .....   | 18 |
| 6.04 Threshold Requirements.....  | 18 |
| 6.05: Project Ratings .....   | 22 |
| SECTION 7: STATEMENT OF ASSURANCES APPLICABLE TO ALL HOME ACTIVITIES..... | 26 |
| 7.01 Other Federal requirements and nondiscrimination .....               | 26 |
| 7.02 Uniform Relocation Act and Section 104(d).....                       | 30 |
| 7.03 Labor .....  | 30 |
| 7.04 Lead-Based Paint.....  | 31 |
| 7.05 Conflict of Interest .....   | 31 |
| 7.06 Executive Order 12372.....   | 33 |
| 7.07 Civil Rights.....  | 33 |
| 7.08 Equal Opportunity.....   | 33 |
| 7.09 Fair Housing.....  | 34 |

|   |    |
|---|----|
| SECTION 8: RESOURCES .....                            | 35 |
| SECTION 9: DISCLAIMER OF NDHFA LIABILITY .....        | 35 |
| SECTION 10: MODIFICATION TO THE ALLOCATION PLAN ..... | 35 |

## SECTION 1: 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 FY2024 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

## SECTION 2: 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 HOME awards received by a 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 may not "reserve" CHDO funds for future projects identified "at a later date" per 24 CFR § 92.2 Commitment and § 92.300(a)(1).

- G. 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 2024 program year. The Minimum Rehabilitation and Property Standards manual will be updated when NSPIRE is finalized. More information on NSPIRE standards is available on the HUD Exchange.

### SECTION 3: DISTRIBUTION PLAN

The State will administer its program through Subrecipients, non-profit and for-profits, and CHDOs. HOME funds will be allocated to Subrecipients through a non-competitive set-aside. The non-profit and for-profit and CHDO categories will be competitive and receive 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 in 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 received 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.

#### 3.01 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-aside(s), 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.

### 3.02 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).

### 3.03 HOME Summary of Funding Estimate

| 2024 Summary of Funding ESTIMATE*   |                       |                       |
|---|-----------------------|-----------------------|
| *Funding levels are subject to receipt of a HUD Allocation Notice and any Program Income Received prior to July 1, 2024.  |                       |                       |
| Any additional funds received will be allocated to the Rental Production and Rehabilitation Project Funding. 2023 Uncommitted funds will be reallocated for the Rental Production and Rehabilitation 2024 Activity. |                       |                       |
| Annual HUD Allocation   | \$3,000,000.00        |                       |
| Prior Year's Program Income   | *\$57,504.45          |                       |
| Recaptured Funds  | \$0.00                |                       |
| Prior Years Project Funds Unobligated   | \$640,000             |                       |
| <b>Total Available</b>  | <b>\$3,697,504.45</b> |                       |
| Administration  | \$300,000.00          |                       |
| Projects  | \$3,397,504.45        |                       |
|   | <b>Projects</b>       | <b>Administration</b> |
| CHDO Set-Aside  | \$450,000.000         |                       |
| CHDO Operating  | \$50,000.00           |                       |
| Single-family Homeowner Rehabilitation  | \$840,000.00          | \$60,000.00           |
| Rental Production and Rehabilitation  | \$1,557,504.45        |                       |
| Homebuyer Down Payment Assistance   | \$500,000.00          | \$0.00                |
| State PJ Administration   |                       | \$240,000.00          |
| <b>TOTAL</b>  | <b>\$3,397,504.45</b> | <b>\$300,000.00</b>   |

## SECTION 4: 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.**

### Administration

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

### CHDO Operating

Up to \$50,000 in CHDO operating grant funds will be available for certified CHDOs that are receiving set-aside funds for an activity or activities or expected to receive set-aside funds within 24 months of the date of the CHDO Operating grant agreement. These funds may be used for operating expenses that are reasonable and necessary costs of operation of the CHDO. A CHDO requesting a CHDO operating grant will need to apply for CHDO operating expense grant. Applications will be accepted on a first come first serve basis. The grant is limited to \$50,000 per certified CHDO.

### 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, 2024, 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 and a Declaration of Lien Interest prior to work beginning.

**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 ensure 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 ensure 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.

### **Recaptured Funds**

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

### **Homebuyer Down Payment Assistance**

When funds are made available a non-profit Community Land Trust (CLT), registered with the 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 perform 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 2024 program year. Policies and procedures will be updated and subrecipients will be provided with 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 its assignee) is not completed within 120 days as stated in the executed Program Administrator Ground Lease, the homeowner may sell the home and homeowner's rights to the leased land for a price no greater than the then applicable Purchase Option Price, to any party if that party is a HOME-eligible low-income person.

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

## **Recapture Provisions**

In all projects that are not CLT properties, the Recapture method will be used. The HOME recapture provisions are established at 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.

## **SECTION 5 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 to HOME's 50% AMI limit with Low-HOME Rent for the entirety of the Period of Affordability.



**Initial Occupancy Rule:** HOME-Assisted Units restricted to 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.

**Match:** All awardees of HOME funds are expected to 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.

**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.

## 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 CHDO Operating activities. A CHDO requesting operating grant funds will need to submit an application for CHDO operating expense grant. The grant is limited to \$50,000 per certified CHDO. 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:
  - a. Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives 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).
  - b. 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.

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

**Note:** Non-profit 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-profit 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-profit 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-profit and for-profits have 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.

## **SECTION 6: 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-profit 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 the highest score. NDHFA's Multifamily Housing Programs Application can be found online: <https://www.ndhfa.org/>

### **6.01 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 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.

## 6.02 Maximum Award

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

- The Maximum Project Subsidy determined from the selected HOME Cost Allocation Method; or
- An amount required to secure project financing and make the project financially feasible; or
- 70% of the project's proposed HOME eligible 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 June 1, 2024. Upon HUD's publication of updated per-unit subsidy limits, NDHFA shall immediately implement the updated limits. Applicants will be subject to HUD's current in-effect limits.

| Unit Type         | Greater ND | Fargo     |
|-------------------|------------|-----------|
| Efficiency/Studio | \$ 173,011 | \$194,638 |
| 1 Bedroom         | \$ 198,331 | \$223,123 |
| 2 Bedroom         | \$ 241,176 | \$271,323 |
| 3 Bedroom         | \$ 312,005 | \$351,005 |
| 4 Bedroom         | \$ 342,482 | \$385,293 |

### 6.03 Fees

**Application Processing Fee:** Remittance of a nonrefundable Application Processing Fee, payable to “North Dakota Housing Finance Agency,” shall be received by the Agency prior to 5:00 p.m., CT, on any Application Closing Date for its corresponding application to be reviewed for eligibility and/or considered for funding within any competitive funding round.

- For an application in which HOME is the only NDHFA-funded program being applied for in the Application Round, the Application Processing Fee shall be \$500.
- For an application in which more than one NDHFA-funded program is being applied for in the Application Round, the Application Processing Fee shall \$500 for the primary program and an additional \$250 for any subsequent NDHFA-funded program being sought by the Applicant for the Project in the Application Round.

### 6.04 Threshold Requirements

When an application is received and its corresponding Application Processing Fee has been verified as collected by the Agency, the application shall be issued an application number and reviewed for eligibility to be scored. To be eligible for scoring, an application must be fully executed, fully completed, and satisfy each Threshold Requirement detailed within this section.

An applicant may request an exemption to the requirement of attaching a CNA 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 from NDHFA prior to and included within the project’s application. If granted such an exemption(s), the application will not be subject to a scoring deduction for the exempted requirement(s); however, the report(s) are required prior to the issuance of a Financial Award to the applicant.

- Application:** NDHFA’s currently published Multifamily Application must be fully completed and executed. All applicable Exhibit’s to the application must be fully completed and submitted.
- Demonstrated Site Control:** Evidence the Applicant, or Applicant’s affiliate, 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.
- Zoning, Codes, and Ordinances:** 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 and proposed land use complies with the zoning type being sought.

Upon completion, the Project 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.

- D. **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.

Projects must install Broadband Infrastructure to all units and common area community rooms. A letter from the project architect confirming the inclusion of Broadband Infrastructure is within the project's plans shall be included.

If all required infrastructure is not currently, or will not be available, on the proposed site(s), or on land directly adjacent to the proposed site(s), as of the Application Closig Date, a letter from the local jurisdiction must accompany the application confirming that no adequate infill opportunities exist within the community.

- E. **Development Team:** Application must demonstrate, to the satisfaction of the Agency, all members of the team have the experience, ability, and financial capacity, in their respective roles, to develop, construct, own, operate, manage the project, and are familiar, and prepared to fully comply, with this program's requirements.

9% or 4% LIHTC:

1. Applicants new to LIHTCs must partner with a developer, sponsor, and or consultant included in a development team which received a LIHTC allocation from a federally approved allocator for a specific project and has placed that project in-service within the prior five years.
2. An applicant who has not yet placed a LIHTC project in-service in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

**HOME or HTF:**

1. Application including the use of HOME and/or HTF funding shall include a copy of the Applicant's currently Active Registration on Sam.gov.
2. Application should demonstrate the proposed team's experience with, or working knowledge of, all federal cross-cutting requirements including, but not limited to, Section 3, Women-owned and Minority-owned Business Enterprise contracting practices, Davis-Bacon and related acts, environmental review, Section 504 and ADA requirements, lead-based paint mitigation, Uniform Relocation Act and property condition requirements.

Applications including any of the development 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.

An applicant who has not yet placed a project in-service in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

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 program, other state program or any federal program are ineligible. Agency may determine Applicants having an Identity of Interest with any debarred entity are ineligible.

- F. **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.

Funds are Awarded to the proposed project's Owner. A sale or transfer of a controlling ownership interest of the Owner prior to Project Completion requires an amended application, Agency approval and payment of a nonrefundable transfer fee of \$2,500, or 1% of the HOME Award currently awarded to the Owner for the proposed project, whichever is greater. Payment of this fee does not oblige the Agency to approve the transfer.

- G. **Financial Projections:** NDHFA's currently published Multifamily Application Exhibit A, must be submitted in Excel format. All applicable tabs must be fully completed.

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

The Agency reserves the right to decline any application if, during underwriting, the project is determined to have a Hard-Debt-Service Coverage Ratio, or Expense Coverage Ratio for a project which proposed no hard-debt, less than 1.10.

- H. **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.

- I. **Public Housing Waiting List:** The application package must include a copy of a written communication from the Applicant to the jurisdiction-having public housing authority (PHA) describing the proposed project. The Applicant's communication shall include a commitment to communicate project completion and work directly with the PHA during the proposed project's lease-up in an attempt to house households on PHA waitlist(s) and granting waitlisted households' priority in obtaining occupancy within the project.

- J. **Housing Need:** Applications must include a comprehensive market study of the housing needs of low-income individuals in the market area to be served by the project. The market study should be completed at the Developer's, or affiliate of the Developer, expense by an acceptable disinterested party to the Agency.

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 Application Close Date and must contain the National Council of Housing Market Analysts' (NCHMA) current model content standards unless the Agency authorizes deviation from these standards.

- K. **Capital Needs Assessment:** A Capital Needs Assessment (CNA) must be submitted with all application packages involving rehabilitation, adaptive reuse, or acquisition of an existing building which will, in-whole or in-part, remain an asset of the project.



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

The assessment must consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment must include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than fifty percent (50%) of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful life is less than the Affordability Period, the application package must provide 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, gas and electric utilities and their lines.
2. Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage.
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.
4. Mechanical systems, including plumbing and domestic hot water; HVAC, electrical, lighting fixtures, fire protection, and elevators.

Project's proposing the demolition and new construction replacement of existing housing must demonstrate the benefit of such activity over rehabilitation, including an opinion of costs of rehabilitation to assist the Agency in determining the cost savings and/or other benefits.

- L. **Appraisal:** Applicant must provide a written acknowledgement confirming the applicant's requirement to provide an appraisal of the subject property associated to the application if any of the following are proposed or, prior to closing, include:
1. Acquisition and/or equity contributions of real estate exceed 15.00% of the proposed project's Total Development Costs.
  2. Any source of Project-Based Rental Subsidy
    - a. Projects proposing the acquisition of land held in a Tribal Trust and are proposing a source of Project-Based Rental Subsidy from HUD's Office of Native American Programs (ONAP) shall be exempt from producing an appraisal prior to equity closing so long as all necessary parties concur with the omission of an appraisal for purposes of any Subsidy Layering Analysis.

If required, the appraisal shall be completed no longer than six (6) months prior to the project's closing date by a state-certified general real property appraiser and must support the total amount of acquisition cost presented within the Total Development Costs.

- M. **USDA Financing:** An application proposing the inclusion of new or existing USDA debt must include written confirmation from the regional USDA officer which verifies any progress made on an initial transfer request and/or the approval of any proposed debt additional to the existing USDA debt, and any associated lien to the debt, proposed.
- N. **Self-Scoring:** The applicant must provide a self-scoring narrative indicating the number of points being sought in each Scoring Category. The narrative should be brief but also explain the applicant's justification(s) for the points being sought.

## 6.05: 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 amount of HOME Matching Contribution (Scoring Criteria 3) will be subject to a point reduction.

Applications failing to satisfy a Threshold Requirement as of the application deadline will be a 5-point scoring deduction for EACH unsatisfied Threshold Requirement and be given a reasonable amount of time to submit any missing items required to satisfy the Threshold Requirement(s).

### 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 minimum number of HOME-Assisted Units, as determined by the applicant’s selected HOME Cost Allocation, and the applicant’s Proposed number of HOME-Assisted Units.

  - Minimum HOME-Assisted Units is equal-to or less-than eleven (11) ..... 20 points
  - Proposed HOME-Assisted Units equals Minimum HOME-Assisted Units..... 10 points
- 2. Serves Developing Communities Up to 25 points**  
 Points awarded when the proposed project is located in 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 Exhibit A, and with 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 the 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 the 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 5 or Scoring Category 6, 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 5 or Scoring Category 6, 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** **Up to 10 points**

It is highly recommended for applicants seeking scoring under this category begin a dialog with the Agency well ahead of application submission to discuss their proposed scenario to help determine what information and documentation NDHFA would expect to be submitted with the application for scoring under this category.

To be eligible for points the Applicant must provide a narrative with sufficient detail for NDHFA to fully understand all aspects of the asset and/or subsidy proposed to be preserved and/or any current affordable housing program(s) associated to the asset which qualify the proposed project for points under this scoring category. Narrative shall also detail the process and timeline for the loss of any current affordable housing program associated to the asset and/or the process and timeline required to facilitate the proposed transfer of any subsidy.

The applicant shall attach to their narrative all documentation required to support that narrative. NDHFA will need to be able to understand the terms and requirements of any exiting affordable housing program assisting the current asset and/or subsidy proposed to be preserved. Applicant should include any documentation which verifies details provided within the narrative.

- Asset Preservation..... 10 points  
A project proposing the acquisition and/or rehabilitation of a multifamily project currently assisted from a State or Federal affordable housing program in which the applicant can adequately demonstrate the project is at-risk of being lost from the state’s affordable housing inventory within the next 24-months shall be eligible for up to 10 points.
- LIHTC with waived EUP Asset Preservation..... 5 points  
A proposed project is an existing LIHTC project past its initial 15-year compliance period and waived its ability to opt out of the Extended Use Period (EUP) will be eligible for a maximum 5 points.
- Subsidy Preservation ..... 10 points  
A Project proposing the preservation of a long-term affordable housing subsidy which the applicant can adequately demonstrate is at-risk of being lost to the State, and the applicant has secured, at least conditionally, a transfer of that long-term assistance to subsidize the proposed project shall be eligible for up to 10 points.
- Subsidy Preservation between Interested Parties ..... 3 points  
A transfer of a subsidy by or between parties with an identity of interest will be eligible for a maximum of 3 points.

**8. Tenant Support Coordinator** **Up to 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 (a) 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 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 in 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.

## **SECTION 7: STATEMENT OF ASSURANCES APPLICABLE TO ALL HOME ACTIVITIES**

### **7.01 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 include nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.

The nondiscrimination requirements of section 282 of the Act are applicable.

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 for 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

- A. Affirmative marketing requirements and procedures 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.
- B. The affirmative marketing requirements and procedures adopted must include:
1. 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).
  2. 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).
  3. 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).
  4. 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.
  5. 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.
- C. 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.

## 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.

### **Minority Outreach**

- A. 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.

### **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.**

## 7.02 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.

## 7.03 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.
  - b. Conduct on-site inspections and employee interviews.
  - c. Collect and review certified weekly payroll reports.
  - d. Correct all labor standards violations promptly.
  - e. Maintain documentation of administrative and enforcement activities.
  - 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.

#### **7.04 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.

#### **7.05 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.
  - 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.
  - 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.
  - c. Whether the tenant protection requirements of 24 CFR § 92.253 are being observed.
  - d. Whether the affirmative marketing requirements of 24 CFR § 92.351 are being observed and followed.
  - e. Any other factor relevant to the PJ's determination, including the timing of the requested exception.

### **7.06 Executive Order 12372**

- A. General: Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and HUD's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.
- B. Applicability: Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

### **7.07 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.

### **7.08 Equal Opportunity**

It will comply with:

- A. Section 109 of the Housing and Community Development Act of 1974 (ACT), as amended, and the regulations issued pursuant thereto (24 CFR 570.601), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under the act.
- B. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.) The act provides that no person shall be excluded from participation, denied program benefits or subjected to

discrimination on the basis of age under any program or activity receiving federal funding assistance.

- C. Section 504 of the Rehabilitation Act of 1973 amended (29 U.S. C. 794). The act provides that no otherwise qualified individual shall, solely, by reason of his or her handicap be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.
- 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.
- 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 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.
- 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.

## 7.09 Fair Housing

It will affirmatively further fair housing and will comply with:

- A. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended. The law states that it is the policy of the United States to provide for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, familial status or disability. HOME grantees must also administer programs and activities relating to

housing and community development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII.

- B. Executive Order 11063, as amended by Executive Order 12259, requires HOME recipients to take all actions necessary and appropriate to prevent discrimination because of race, color, religion, creed, sex or national origin; in the sale, leasing, rental and other disposition of residential property and related facilities (including land to be developed for residential use); or in the use of occupancy thereof if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants or contributions from the federal government.

## **SECTION 8: 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](#)

## **SECTION 9: 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.

## **SECTION 10: 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.