14. HOMEBUYER ACTIVITIES

The chapter covers the kinds of HOME assistance that may be provided to homebuyers, eligibility criteria, and long-term affordability. A summary of the key homebuyer rules and how to document compliance with the requirements of these rules is also provided as Attachment 1.

This Manual contains information on eligible uses and requirements of HOME funds as general guidance. However, the Department further defines eligible uses and requirements for HOME funds administered by the Department via the Housing and Community Development Annual Action Plan, Application Guidelines and the HOME Program Contract. Applicants and awardees must adhere to the requirements imposed on HOME funds for the particular program year and specific award.

14.1 Eligible Homebuyer Activities

HOME funds may be used for acquisition only, acquisition/rehabilitation, or new construction of homes. Homebuyer programs can be structured in any number of ways to encourage the acquisition, acquisition and rehabilitation, or the new construction of affordable homes. Program design will be guided mainly by community needs and the local housing market.

- **Acquisition.** The awardee can help eligible homebuyers purchase affordable homes by providing downpayment, direct homebuyer subsidy or closing cost assistance, or by reducing the monthly carrying costs of a loan from a private lender.

  This approach to homeownership is best used in areas where an adequate supply of housing exists and where a grant or loan can make housing affordable to low-income households.

- **Acquisition and Rehabilitation.** HOME funds can also be used to fund rehabilitation activities. In areas where there is insufficient standard housing, the agency may want to incorporate a rehabilitation component into its homebuyer program. In this case, there are two acceptable approaches:
  - The awardee might acquire and rehabilitate, or assist a developer to acquire and rehabilitate, substandard properties to be sold after rehabilitation to low-income purchasers.
  - As an alternative, the awardee might provide assistance directly to the homebuyer to perform the rehabilitation after the purchase. In such programs, the awardee will often offer rehabilitation loans in addition to, or instead of, the downpayment and closing cost assistance discussed above under Acquisition.

  See Attachment 6 for the Departments Rehabilitation Standards.

- **New construction.** In areas where there is an insufficient supply of appropriate housing, the awardee may want to provide subsidies to stimulate construction of new housing. The awardee may develop housing itself or may work directly with developers to construct this housing.

- **Site improvements.** On-site improvements are a HOME eligible activity in connection with HOME-assisted housing. On-site improvements include sidewalks, utility connections, sewer and water lines. Infrastructure, such as sewer and water lines in a public street in front of a HOME-assisted property, cannot be paid for with HOME funds. However, the connections that run from the HOME-assisted property to the street are eligible HOME costs since they are essential to the property.

- **Lease-Purchase.** A lease-purchase option may be used in conjunction with a homebuyer program. Lease-purchase arrangements can assist households at the lower end of the income range by helping them to accumulate a down payment while they build their "ownership skills." Ownership must be conveyed to an eligible homebuyer within 36 months of signing the lease-purchase agreement, or within 42 months of project completion. If at the end of the 36-month period, the household occupying the lease-purchase unit is not eligible or able to purchase the unit, the agency has an additional six months to identify an eligible homebuyer to purchase the unit.

  If lease-purchase housing is not conveyed within 36 months of signing the lease purchase agreement, or within 42 months of project completion, the project becomes a HOME rental project subject to HOME rental rules. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed and does not have to be requalified at the time the actual transfer occurs.

- **Rental to Homeownership.** HOME-assisted rental units may be converted to homeownership units with or without the use of additional HOME funds by having the owner of the rental units sell, donate or otherwise convey the units to the existing tenants.

  If additional HOME funds are used to help the tenants become homeowners, the minimum period of affordability is the affordability period required by the amount of direct homeownership assistance provided. If no additional HOME funds are used, the homeownership units are subject to the resale provisions and to a minimum period of affordability equal to the remaining affordability period that would apply if the units continued as rental units.

14.1.1 Eligible Developers

Eligible developers for HOME Fund Homebuyer Activities include community-based non-profit 501(c)(3), 501(c)(4), or section 905 (subordinate organization of a 501(c) organization) organizations with the provision of decent housing that is affordable to low- and moderate-income persons among the purposes of the organization.

14.1.2 Eligible Homebuyers (The Applicant/Beneficiary)

To be eligible for HOME funds, the prospective purchaser must:

- Be low-income; that is, with an annual (gross) income that does not exceed 80 percent of median for the area.

- Occupy the property as a principal residence.

14.1.3 Eligible Property Types & Ownership

Eligible property types include any property that will serve as the purchaser's principal residence, including:

- A one-unit single-family property.
- A two-to-four-unit single-family property. If HOME funds are used to assist a purchaser to acquire one unit in a two-to-four-unit rental property and that unit will be the principal residence of the purchaser, the long-term affordability requirements apply to the assisted ownership unit only.
- A condominium unit.
- A manufactured home.

The Department considers a Manufactured Home to be a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, and is taxed as real property.

The Department considers a Mobile Home to be a housing unit constructed off-site that does not meet the definition of a Manufactured Home. Mobile Homes are not eligible housing units under the Department's HOME Program.

At the time of project completion, the manufactured housing must be connected to permanent utility hook-ups and must be located on land that is owned by the manufactured housing unit owner.

14.1.4 Forms of Financial Assistance

Generally, for homebuyer assistance programs, awardees will use any and all of the following forms of assistance:

- Grants.
- Deferred-payment loans.
- Below-market-rate loans.

The pros and cons of the subsidy approaches are provided in Attachment 2.

In determining the forms of assistance, the agency should consider the particular needs of the program's target participants. The following list discusses alternative designs for homebuyer programs and the appropriate forms of assistance.

- **Direct Homebuyer Subsidy and Closing-Cost Assistance**. For many potential homebuyers, the biggest barrier to homeownership is the direct homebuyer subsidy and closing costs. While they may have a steady income that would allow them to make monthly payments, they do not have the means to save for the upfront costs of purchasing a home. In these cases, HOME funds can be provided in the form of a grant or a deferred-payment loan. When deciding whether to use grants or deferred-payment loans, consider the factors listed in Attachment 2.

- **Gap Financing**. Other homebuyers may have a steady income that is insufficient to cover the total monthly payment. In this case, HOME funds can be used to reduce monthly carrying costs by providing gap financing.

  The most efficient way to reduce the size of the monthly payment is to provide the homebuyer a loan (deferred-payment or below-market interest) to reduce the principal amount that he or she must borrow. (The awardee may also consider an "interest buydown" – providing funds directly to the lender to reduce the interest rate on the borrower's loan).

- **Development Subsidy**. Another way to reduce the homebuyer's monthly housing costs is to use HOME funds to reduce the gap between the cost to develop housing and the market price. If the HOME program provides a developer a subsidy, the developer can then offer the home at a lower sales price that presents a lower burden to low-income homebuyers. The development subsidy is generally a grant to the developer.

14.1.5 Eligible Costs

- Hard Costs
  - Acquisition of land and existing structures
  - Site preparation or improvement, including demolition
  - Securing buildings
  - Construction materials and labor

- Soft Costs
  - Financing fees
  - Credit reports
  - Title binders and insurance
  - Surety fees
  - Recordation fees, transactions taxes
  - Legal and accounting fees, including cost certification
  - Appraisals
  - Architectural/engineering fees, including specifications and job progress inspections

    - Environmental investigations
    - Builders' or developers' fees
    - Affirmative marketing and marketing costs
    - Fees paid to real estate agents
    - Homebuyer counseling provided to purchasers of HOME-assisted housing

- Relocation Costs
    - Replacement housing, moving costs and out-of-pocket expenses
    - Advisory services
    - Staff and overhead related to relocation assistance and services

- Project delivery costs – §92.206(d)(6) indicates that the PJ's, State awardee's or subrecipient's staff and overhead costs related to carrying out a project cannot be charged to, or paid by, low-income families. These costs can be charged as administrative or project delivery costs. Examples of these costs are construction management fees, loan processing fees, and underwriting fees.

  Note that PJs, State awardees, and subrecipients are permitted to charge reasonable and customary fees commonly charged to a loan applicant in unassisted real estate transactions, such as the cost of credit reports and appraisals fees since these are customarily charged by a lender as part of a home purchase and paid to third parties performing services on behalf of the lender. PJs, State awardees, subrecipients, contractors, project owners/developers are permitted to charge nominal application fees to applicants for assistance, pursuant to §92.214(b).

14.2 Project Requirements

14.2.1 Sales Requirement

HOME-assisted homebuyer units must be sold to and occupied by low income homebuyers.

§92.254(a)(3) imposes a new requirement that PJs must convert homebuyer housing to rental housing if it does not have a ratified sales contract with an eligible homebuyer within **9 months of the completion of construction or rehabilitation**.

If converted, this rental housing must comply with all provisions of §92.252. If an unsold homebuyer unit is not converted to rental housing, the awardee must repay the HOME funds expended on it.

14.2.2 Ownership Requirement

The HOME program requires ownership of the property upon the delivery of assistance using one of the approved forms described below. Title insurance must be purchased for all properties assisted unless a request is made, and the Department approves another method of ownership verification.

Families or individuals own the property if one of the following is true:

- Fee simple title in a 1- to 4- unit dwelling or condominium unit or at least a 99-year leasehold interest, except:
    - o Housing located on an Indian trust or restricted Indian land, for at least 50 years
    - o Housing located on land owned by a community land trust, for at least 50 years
    - o Manufactured housing on a ground lease that is at least equal to the applicable affordability period (additional guidance on manufactured housing is found at §92.251(e).

The ownership interest may be subject only to one or more of the following:

- Mortgages, deeds of trust or other debt instruments approved by the Department.
- Any other encumbrances or restrictions that do not impair the marketability of the ownership interest, other than the HOME Program restrictions on resale.

14.2.3 Income Eligibility Requirements

The purchasing household must be determined to be low-income, or below 80% of area median income as defined by HUD. Current income limits are available at the HUD Exchange: **https://www.hudexchange.info/programs/home/home-income-limits/**.

Income Definition

The Department requires awardees to use the Annual (Gross) Income definition found at 24 CFR Part 5.609 (also referred to as the "Part 5" or "Section 8" method) to determine applicant income eligibility. Eligibility is based on anticipated gross income during the next 12 months. The Part 5 definition includes both:

- Income Inclusions—types of income to be counted.
- Income Exclusions—types of income that are not considered (income of minors, etc.).

A detailed explanation of the Annual (Gross) Income definition can be found in the "Technical Guide for Determining Income and Allowances for the HOME Program" on pages 11-34. (**https://files.hudexchange.info/resources/documents/HOMEGuideForIncomeAndAllowances.pdf**)

Income of All Persons Residing in the Housing

The income of all persons residing in the HOME-assisted housing must be included when determining the income of a family applying for homebuyer or homeowner rehabilitation assistance. This clarification is intended to address situations where not all household members are related, or where several adult members will reside in a HOME-assisted unit.

Timing of Income Determination
Income must be determined within six months of delivery of assistance, which is defined as follows:

- In the case of a contract to purchase existing housing, at the time of purchase;
- In the case of a contract to purchase housing to be constructed, at the time the contract is signed; and
- In the case of a lease-purchase agreement (for existing housing or housing to be constructed), at the time the lease-purchase agreement is signed.

If the delivery of assistance does not occur within six months of the income determination, the income determination must be updated.

Verification of Income
The HOME Program allows awardees to use two forms of verification for the Annual (Gross) Income basis of determining income eligibility. These forms are third party verification and review of source documents.

- **Third Party Verification**. Third Party Verification is the preferred method of verification in most instances, because a review of documents often does not provide needed information. For example, an employed applicant's pay stubs may not provide sufficient information about the average number of hours worked, overtime, tips, bonuses and anticipated raises.

  Under third party verification, a third party (e.g. employer, Social Security Administration, or public assistance agency) is contacted to provide information. Written requests and responses are preferred. However, to clarify or complete missing information on a written response, conversations with a third party are acceptable if documented through a memorandum to the file that documents the contact person, information conveyed and date of call.

  To conduct third party verifications, an awardee must obtain a written release from the household that authorizes the third party to release required information. Some third-party providers may, however, be unwilling, unable or charge a fee to provide the needed information in a timely manner. In such cases, the awardee should attempt to find suitable source documentation without the third-party verification – for example, bank statements.

- **Review of Documents**. Source documents provided by the applicant may be more appropriate for certain types of income such as persons that are self-employed and can be used as an alternative to the third-party verification method. Source documents, such as wage statements, interest statements, unemployment compensation statements and income tax returns, etc. are reviewed to determine annual (gross) income.

Regardless of the verification method being used, verification of income must be based on at least two months of source documents.

14.2.4 Homebuyer Underwriting Policy

The HOME Rule requires Participating Jurisdictions (PJs) to establish and implement homebuyer program policies including underwriting standards for buyers of HOME-assisted units, responsible lending standards, and subordination requirements. These standards require certain safeguards to ensure that participating buyers will be successful homeowners by providing the assistance each buyer needs to make the home affordable while serving as many households as possible with limited HOME funds. In addition, the PJ must ensure that assisted buyers are informed consumers and avoid the use of risky lending products. To balance these priorities, the PJ has developed these underwriting guidelines based on the following key principles.

- Assisted buyers should have good credit and qualify for competitive lending products on par with those offered to credit-worthy unassisted buyers in the local market.

- Assisted buyers should make reasonable and meaningful contributions to their home purchase in terms of both up-front investment and monthly payment without being left without cash reserves after closing or overburdened by their monthly payment.

This policy is applicable to all homebuyer units supported with the Department's HOME funds, whether HOME funds are being used to provide direct homebuyer assistance (e.g., down payment and closing costs) or are being provided as development funds to build or rehabilitate.

While these policies apply to all homebuyers, there may be individual cases where exceptions are justified for one or more of the local policy requirements. The Department cannot waive HUD regulatory requirements but will consider written requests for exceptions.

Maximum Homebuyer Assistance

The maximum HOME-assistance available for a buyer is $40,000.

Not all buyers will qualify for the maximum assistance. The assistance available to any given buyer is based on the PJ's assessment of the buyer's need using the underwriting and lending criteria outlined in this policy.

Maximum Income

The PJ limits eligibility to buyers with incomes within a range as defined below:

- Maximum 80% of AMI: The HOME statute and regulations limit HOME assistance to households with incomes at or below 80% Area Median Income (AMI) as defined annually by HUD and adjusted for household size.

Homebuyer income eligibility will be determined using the Part 5 definition of income. However, for underwriting purposes only (that is to determine the appropriate level of assistance), the following adjustments to income will be made:

- The income of adults who will not have an ownership interest in the property will be excluded. For example, the income of an elderly parent that is part of the household but is neither being listed on title to the property nor included on the loan documents will not be included in calculations of the income available to make the mortgage payment. This exclusion for "non-purchasing" adults is not intended to optionally exclude the income of a household member with marginal credit. In the case of married couples, the income of both spouses will always be included for underwriting purposes.

- Significant sources of income such as social security benefits, child support payments, or the like that will not continue for three (3) years will be excluded. For example, child support received for a 16 ½ year old is included in the Part 5 definition of income because it will continue over the upcoming 12 months but will not be counted in buyer underwriting as the income will cease when the child turns 18.

- Any imputed income from assets will be excluded for underwriting purposes.

Buyer Underwriting Standards

To ensure that buyers are likely to sustain homeownership, assisted buyers are expected to:

- Purchase a home for a reasonable price that does not exceed:
  - The fair market value as determined by a third-party appraisal and
  - The **HOME Program Homeownership Value Limit** as determined by HUD for the type (new or existing) and location of the home.

- Obtain a senior mortgage loan that meets the Responsible Lending policy below for which:
  - The monthly housing expenses (i.e., front-end ratio) do not exceed 29% of the buyer's monthly underwriting income;
  - The total debt burden (i.e., back-end ratio) is not in excess of 41%.

  The minimum front-end ratio is to avoid over-subsidization of homebuyers with excessive debt and similarly constitute unacceptable risk to the HOME funds.

- Contribute at least $1,000 or 1% of the purchase price, whichever is lower, toward down payment and/or closing costs. Documented costs (e.g. an appraisal) "paid outside of closing" by the buyer will be credited toward this requirement.

- In addition to cash toward purchase, buyers should have sufficient cash resources after closing to cover at least 2 times their total monthly housing payment. For purposes of this requirement, liquid assets are those readily convertible to cash, including but not limited to savings or checking accounts, certificates of deposit, stocks and bonds, etc. Liquid assets, however, exclude life insurance policies and any savings held in a tax-deferred retirement account (e.g. pension, 401(k), IRA, etc.), college savings plan (e.g. 529 account), or health savings account recognized by the Internal Revenue Service.

- Invest liquid assets in excess of $30,000 toward the purchase of the home before receiving HOME-assistance.

Responsible Lending: Senior Loan Expectations

To ensure that buyers receive high quality loans that are sustainable over time, the PJ requires that any buyer receiving HOME assistance towards closing costs, down payment, or a portion of the purchase price receive a senior loan (i.e. first mortgage) meeting the following criteria:

- The loan must be:
  - A "Qualified Mortgage" under the requirements of the Consumer Protection Financial Bureau (CFPB) outlined at 12 CFR 1026.43(e); or
  - A mortgage exempt from Qualified Mortgage standards, including:
    - The state housing financing agency
    - USDA Rural Development
    - Habitat or other direct lending nonprofits funded and approved by the PJ

- Interest rates must be competitive and must NOT be a "Higher Priced" loan defined as (on the date of commitment or loan rate lock) – {choose index}:
  - More than 3% above the FFIEC Average Prime Offer Rate (**http://www.ffiec.gov/ratespread/newcalc.aspx)**
  - More than 3% above the Freddie Mac Primary Mortgage Market Survey index
  - More than 3% above the rate to those offered by the state housing finance agency's single-family mortgage program

- The loan should be a fixed rate loan, or an adjustable rate loan approved by the Department.

- The loan should be fully amortizing over a 30-year term. Shorter-term or longer-term loans must be underwritten and approved by the PJ as an exception in writing.

Refinancing/Subordination of HOME-Funded Liens

The Department has ongoing interests in the success of its HOME-assisted homebuyers, limiting the loss of HOME funds, and avoiding the impact of foreclosures on the jurisdiction's residents and neighborhoods. Refinancing of senior (first) mortgages will be permitted and the HOME loan will be subordinated to the new senior loan only under the following conditions:

- No cash out – New loans for the sole purpose of improving the rate and/or extending the term of the existing loan that result in a low monthly payment for the homeowner and no cash out will be permitted.
  - The proposed new loan must result in a lower monthly payment for the assisted owner.
  - The new loan may allow the assisted homeowner to finance their closing costs without being considered cash out. Nominal cash back at closing of less than $500 resulting

from last-minute adjustments to payoff figures, closing costs, tax/insurance escrows and the like will not be considered "cash out."

- Cash out – The Department will subordinate to refinancing subject to the following conditions and limitations:
    - Only to complete needed repairs to the home, pay for the costs of post-secondary education by a homeowner or an owner's dependent, or pay for a medical emergency.
    - Any cash out refinancing must result in a total loan-to-value ratio (including the HOME loan) of 90% or less.
    - The proposed new loan must be affordable to the assisted owner within the lending ratios contained in the Buyer Expectations section above based on current income.
- Income eligibility is not required for any refinancing. If the owner's income has risen above 80% AMI there is no violation of HOME regulations.

14.2.5 Pre-Purchase Counseling

Every buyer of a HOME-assisted unit must receive counseling, regardless of the manner in which the unit was assisted with HOME funds. Each buyer must receive housing counseling prior to executing the written agreement for HOME assistance.

In December 2016, HUD published the Final Rule for Housing Counseling Certification which applies to homeownership counseling required by the HOME program. That rule, the final effective date of which is August 1, 2021, requires that HOME-assisted buyers receive counseling from HUD certified counselors employed by HUD-approved Housing Counseling Agencies.

To ensure that buyers are informed consumers, the PJ requires attendance within the past 12 months at a Department-approved pre-purchase homeownership counseling course by all adult household members who will hold title and be party to the senior loan.

14.2.6 Maximum Property Value

The HOME program statute requires that no housing have a purchase price or after-rehabilitation value that exceeds 95 percent of area median purchase price as published annually by HUD. This statutory requirement is imposed to ensure that HOME-assisted housing is modest and non-luxury.

Beginning in 2013, HUD changed the methods for determining 95 percent of area median purchase price and began to publish limits separately for newly constructed and existing single-family housing units. The current limits are available at the HOME Program section of the HUD Exchange: **https://www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/**.

- **Acquisition Only**. In the case of property that does not require rehabilitation, the sales price of the HOME property to be acquired by a homebuyer may not have a value that exceeds the Existing HOME maximum price limit. The new construction limit may only be used if the home is newly constructed and the homebuyer will be the original occupant.

- **Acquisition and Rehabilitation**. If the HOME will be rehabilitated prior to sale to and eligible homebuyer, the Existing Home limit applies to the sales price. If the home is to be rehabilitated after sale, the value of the property after rehabilitation may not exceed the Existing HOME price limit. The after-rehabilitation value estimate must be completed prior to commitment and investment of HOME funds.

  The process for determining the after-rehabilitation value for a HOME-assisted property is the same for properties rehabilitated by the existing homeowner as it is for properties purchased and rehabilitated by a new homebuyer. Awardees must use a reasonable method to determine property value. Acceptable methods include:
  - An estimate of value performed by the awardee.
  - An appraisal performed by a licensed fee appraiser.
  - A tax assessment of a comparable, standard property, if current and computed for 100 percent of the after-rehabilitation value.

  These methods are discussed further in Chapter 15 - Homeowner Rehabilitation, under the section on Maximum Property Value.

14.2.7 Property Standards

As with all HOME-assisted properties, homebuyer properties must meet certain written standards. The HOME property standards requirements were reorganized and updated by HUD in 2013. The Rule now specifies requirements for projects involving each of the following:

- New construction [§92.251(a)]
- Rehabilitation [§92.251(b)]
- Acquisition of standard housing [§92.251(c)]
- Manufactured housing [§92.251(e)]

For new construction and rehabilitation, the 2013 Rule requires a higher degree of oversight by the PJ. It imposes requirements for the PJ to review and approve construction-related documents prior to construction, and to monitor construction progress.

All codes and standards must be met at the time of occupancy, except when the project involves post-acquisition rehabilitation by the homebuyer. If the assisted homeowner is acquiring and rehabilitating a home with HOME funds:

- The awardee must inspect the property prior to occupancy for health and safety defects. The property must be free from any defects that pose a danger to the health and safety of occupants before occupancy and not later than six months after property transfer.
- The awardee must inspect the property again at project completion. The property must meet the Department's Rehabilitation Standards and local codes and ordinances (or a

model code if no local code) at project completion, and within two years of property transfer to the owner.

All HOME assisted housing must meet all applicable State and local codes and housing quality standards, as applicable.

- **New Construction**. Housing that is being constructed after the submittal of the project's application to the Department must meet all applicable local codes and zoning ordinances. If no local codes apply, the property must meet a national model code (Uniform Building Code, National Building Code, Standard Building Code) or the Council of American Building Officials one- or two-family code or minimum property standards at 24 CFR 200.925 or 200.926. New construction must also meet the most recent version of the International Energy Conservation Code.

- **Acquisition and Rehabilitation**. Housing that is being purchased or rehabilitated must meet the Department's Occupancy Standards and all applicable local codes and zoning ordinances. If no local codes apply, the property must meet a national model code (Uniform Building Code, National Building Code, Standard Building Code) or the Council of American Building Officials one- or two-family code or minimum property standards at 24 CFR 200.925 or 200.926. In addition, HUD is expected to issue additional guidance on the applicability of UPCS deficiencies for rehabilitated housing.

  HUD requires written rehabilitation standards. The Department's Rehabilitation Standards can be found in Attachment 5 at the end of this chapter.

- **Acquisition Only**. Existing housing acquired for homeownership must meet any applicable State and local housing quality standards. In addition, HUD is expected to issue additional guidance on the applicability of UPCS deficiencies for existing housing.

- **Manufactured Housing**. Newly constructed manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280, which preempt state and local codes covering the same aspects of performance for such housing. Awardees providing HOME assistance to install manufactured housing units must comply with applicable state and local laws or codes. In the absence of such laws or codes, the agency must comply with the manufacturer's written instructions for installation of the manufactured housing units. Installation of replacement manufactured homes must meet the foundation requirements of 24 CFR 203.43f(c)(i).

  Manufactured housing that is rehabilitated with HOME funds must meet the written rehabilitation standards of the Department, and the foundation and anchoring requirements of 24 CFR Part 3285.

In addition, other federal requirements may apply, including accessibility standards, lead-based paint standards of 24 CFR part 35 for pre 1978 properties, and broadband infrastructure for new or rehabilitated properties.

All assisted housing must meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. For single family homeownership, awardees must meet the accessibility needs of the home buying household.

14.3 Long-Term Affordability

14.3.1 Affordability Period

For homebuyers, the monthly housing costs (principal, interest, property taxes and insurance, known as "PITI") do not need to meet initial affordability (e.g., 30 percent of annual (gross) income). Moreover, the homeowner's PITI need not remain below a fixed percentage of his or her income over time.

However, the HOME program ***does*** set affordability periods that relate to the resale of the property. These periods are based on the amount of HOME funds, or the amount of direct subsidy, provided for the property (see table below). How the affordability period affects the resale of the property is described in the section titled "Recapture/ Resale."

HOME Funds Provided	Affordability Period
<$15,000	5 years
$15,000 - $40,000	10 years
>$40,000	15 years

14.3.2 Principal Residency

Purchasers must occupy the properties as their principal residence. These stipulations apply for a principal residence:

- Temporary subleases are not allowed (exceptions can be made for military families).
- Loan default and subsequent foreclosure negates the principal residence limitation.

The HOME Program documents – written agreements, and as applicable a deed restriction or covenant running with the land or the loan documents – should also incorporate this requirement.

14.3.3 Recapture/Resale

The Department requires awardees to define in their program guidelines the method that will control the resale of homebuyer property. There are two options allowed by the HOME program: resale and recapture. Awardees must specify the option to be used in their homebuyer program or explain the circumstances that will dictate the use of a particular option on a property. The option must be specified in the approved homebuyer program guidelines and communicated to the homebuyer before any assistance is provided to the homebuyer. The awardee cannot allow the homebuyer to select the option. See Attachment 7 for the Resale/Recapture Guidelines and Uses.

In order to discuss the two options, it helps to understand several terms:

- **Direct buyer subsidy**: A direct buyer subsidy consists of any financial assistance that reduces the purchase price from fair market value to an affordable price, or otherwise subsidizes the purchase (e. g., down payment or closing cost assistance, subordinate financing), whether provided directly at closing or passed through by a developer using HOME development assistance.

- **Development assistance**: HOME funds provided by the State to a developer of housing to assist with acquisition and/or construction/rehabilitation prior to sale to a buyer. Some of the development assistance might effectively reduce the cost of the housing to the buyer and be considered part of the direct subsidy for purposes of recapture.

- **Development subsidy**: The portion of the HOME development assistance that is used to cover development costs in excess of the fair market value of the property upon completion. For example, the awardee might provide $50,000 in HOME development assistance to a developer to fund construction of a home. The appraised value after construction is $45,000 because of neighborhood and market conditions. The $5,000 difference between the $45,000 sale price and the $50,000 HOME development assistance for construction is not required to be repaid to the awardee and represents a development subsidy provided to the developer. While the subsidy does not go directly to the homebuyer, it helps make development of an affordable home feasible.

- **Homebuyer investment**: The homebuyer's investment consists of the portion of initial down payment paid by the homebuyer combined with the value of any capital improvements made with the homebuyer's funds.

- **Net proceeds**: The net proceeds of a sale are the sales price minus closing costs and any non-HOME loan repayments.

<u>The Recapture Option</u>

This is a mechanism to recapture all or a portion of the direct HOME subsidy if the homebuyer assisted with HOME funds decides to sell the house within the affordability period at whatever price the market will bear.

- The homebuyer may sell the property to any willing buyer.
- The sale of the property (voluntary or involuntary) during the affordability period triggers repayment of the direct HOME subsidy that the buyer received when he/she originally purchased the home.

Example: Mrs. James agrees to buy her first home for $50,000, and her lender, Citywide Federal, requires a 10 percent ($ 5,000) down payment. Since Mrs. James is low-income and has qualified for private financing, the city's HOME Program agrees to provide a $4,000 deferred-payment loan --$3,000 for down payment assistance and $1,000 to help with closing costs. The

$4,000 loan will be subject to recapture should Mrs. James sell her property during the five-year period of affordability.

The awardee may require full or partial repayment of the direct HOME subsidy when resale occurs during the affordability period. The amount to be repaid can be reduced using the following alternatives (the repayment alternative must be specified in the awardee's program guidelines):

1. Forgiveness: The awardee may decide to forgive part or all of the direct HOME subsidy, either to compensate for uncertain market conditions (for example, to encourage families to move into a transitional neighborhood), or to provide protection to the homebuyer in the event that the sale proceeds are insufficient to repay the HOME subsidy and the homebuyer's investment.
    - The decision to forgive must be made as part of the homebuyer program design process and spelled out in the program guidelines, not on a case-by-case basis.
    - The awardee must make the conditions for forgiveness clear to the homebuyer at the time of purchase.
    - Forgiveness must be tied to the length of time the homebuyer has occupied the home in relation to the period of affordability (that is, the awardee would forgive 50 percent of the subsidy amount for an owner who sold the home half-way through the period of affordability).

    Example: Mrs. James, whose $4,000 direct HOME subsidy triggered a five-year affordability period, decides to sell at the end of year two. Two-fifths, or $1,600, of her deferred payment loan is forgiven, resulting in a loan balance of $2,400 to be repaid from the net proceeds of the sale.

2. Sharing of net proceeds: When the net proceeds are insufficient to repay the direct HOME subsidy and the homebuyer's investment, the net proceeds may be shared in either of two ways:
    - Option #1: Recapture of the HOME funds may be based on the ratio of the HOME subsidy to the sum of the homeowner's investment (down payment and any capital improvement investment made by the owner since purchase), plus the HOME subsidy.

        [HOME Subsidy/HOME Subsidy + Homeowner Investment] x Net Proceeds = HOME Recapture

        Example: Mrs. James invested $3,000 in her home, including a $2,000 down payment and $1,000 in closing costs. When she sells the house at the end of year two, the net proceeds are $5,000.

        The amount of direct HOME subsidy to be recaptured equals:
        [$4,000/$4,000 + $3,000] x $5,000 = $2,857]

        Mrs. James receives the balance of the proceeds, or $2,143 ($ 5,000 -$2,857)

- Option #2: The homebuyer's investment may be repaid in full before any HOME funds are recaptured. The awardee may choose to use the available proceeds from the resale to repay the homeowner's investment first. The HOME subsidy is then repaid to the extent that proceeds are available.

Example: From the $5,000 net proceeds, Mrs. James receives her entire investment of $3,000 back and the awardee receives $2,000, or one-half of its investment.

Excess proceeds: Since net proceeds may exceed the amount necessary to repay both the homeowner's investment and the HOME subsidy, awardees must plan in their program designs for how excess proceeds would be distributed. Excess proceeds may be paid to the homeowner, retained by the awardee, or shared by both parties.

When recapture is not an option: Development subsidies are not subject to recapture. Therefore, the recapture option may not be used for properties that receive development subsidies only (that is, no direct subsidy of $1,000 or greater to the homebuyer). Also, if the agency provides the HOME subsidy in the form of a grant the recapture option is not an option. These properties are required to meet the resale requirements discussed below.

Recaptured funds may be used by the awardee, if approved by the Department, for HOME-eligible activities as specified in the approved plan.

The Resale Option

This option ensures that the HOME-assisted unit remains affordable over the entire affordability term.

If an awardee is using the resale option, described in their program's guidelines, the sale of a HOME-assisted unit sold during the affordability period must meet the following criteria:

- The new purchaser must be low-income, meeting the HOME Program definition, and occupy the property as the family's principal residence.
- The sales price must be "affordable" to the new purchaser. Affordable is defined by the awardee in the program guidelines; some define it as a maximum percentage of the purchaser's income that can be used to pay the fixed costs of owning a home (that is, loan payments of principal and interest, taxes and insurance, the sum of which is called PITI in the lending industry). Example: The City of Clarendon has implemented the resale option for its homebuyer program. It has chosen to define affordability for a subsequent homebuyer as PITI, which does not exceed 32 percent of annual (gross) income.
- The original homebuyer, now the home seller, must receive a "fair return" on his or her investment. Fair return is also defined by the awardee. Example: The City of Clarendon has defined a fair return as the return of the homebuyer's initial investment during the affordability period. Program managers considered allowing the homebuyer to keep part of any appreciation that might accrue but decided against it in hopes of creating a strong incentive to retain ownership for the duration of the affordability period.

Awardees must use deed restrictions, land covenants or other similar legal mechanisms to enforce these resale restrictions. Attachment 3 shows the legal instruments that can be used to meet the requirements of the recapture or resale restrictions.

Selecting an Appropriate Recapture/Resale Method

Awardees may use either the recapture option or the resale option, or both, to meet the resale requirements of the HOME Program. However, the options and the criteria for use must be specified in the program guidelines approved by the Department. The option cannot be selected by the homebuyer. The homebuyer must be informed prior to assistance as to the particulars of the resale or recapture method the awardee is using.

Recapture Option: The recapture option provides awardees and homebuyers with maximum flexibility:

- The homebuyer can resell the property on the open market to any willing buyer at whatever price the market will bear.
- Lenders are generally comfortable with the recapture option since it does not restrict or affect the resale transaction until the lender's loan has been repaid.
- The awardee can tailor the level of the homebuyer's risk to market conditions.
- The recapture option is relatively easy to administer, since the agency's role is limited to ensuring that funds are disbursed appropriately at settlement.
- The recapture of HOME funds can be an important source of funds for the awardee if they have been approved by the Department to use recaptured funds.

Example: Property values for single-family homes in the City of Clarendon are barely keeping pace with inflation. To encourage participation in the City's HOME homebuyer program, the City is offering homebuyers who sell during the period of affordability guaranteed recovery -- to the extent that net proceeds are available -- of their investment in the property before any direct HOME subsidy funds are recaptured.

In contrast, the County of Kirk has seen strong growth and increasing property values in many areas. The County has structured its recapture provisions to create an incentive for homebuyers to stay in their properties by offering to forgive the HOME subsidy over the period of affordability. Since it is possible that net proceeds will exceed the amount necessary to repay the homebuyer's investment and the HOME Program, the County has specified that the HOME Program will receive 25 percent of any additional proceeds that remain after both the homeowner and the County have recaptured their initial contributions.

Recapture <u>cannot</u> be used when: (1) no direct HOME buyer subsidy of $1,000 or greater is provided to the homebuyer (i.e., development subsidy only) or (2) when the direct assistance is provided as a grant to the buyer not subject to repayment. In such cases, the resale option must be used.

Resale Option: Using the resale option enables awardees to control the affordability of HOME-assisted properties over time.

- Used in rapidly appreciating neighborhoods or communities, the resale option ensures that the price of the property remains affordable to low-income buyers for the duration of the period of affordability. If additional HOME funds are invested in the property at resale, the affordability period begins anew.
- Homebuyers may have difficulty understanding the implications of the resale option or may view the requirement for the resale price to be affordable as an unreasonable constraint on their ability to profit from the transaction.
- The resale option is more complex to administer than the recapture option and requires a greater level of effort to enforce.

Example: Mr. and Mrs. Chen's homebuyer loan has a 10-year period of affordability. During year eight, Mr. and Mrs. Chen decide to sell their home and the HOME Program provides the new buyer with a $5,000 second mortgage for down payment and closing cost assistance. The new loan carries a five-year affordability period. The affordability period has effectively been extended to 13 years.

What is Marketable: Ultimately, agencies must be concerned with which option is marketable to potential homebuyers, since a homeownership program needs applicants to be successful.

14.3.4 Other Federal Requirements

Attachment 4 identifies the other federal requirements that must be followed when HOME is used for homebuyer activities. This attachment is meant to serve as a checklist only.

14.4 Implementation Guidance

14.4.1 Program Guidelines

Homebuyer Program Guidelines must contain the following information:

1. Clearly defined Application Process that includes the following:
   a) Applicant eligibility, including income eligibility. Persons assisted with HOME funds must have incomes at or below 80% of the area median income. The Annual (Gross) Income definition found at 24 CFR 5.609 must be included in the guidelines.
   b) Formal notification of selection and non-selection.
   c) Application acceptance dates.
   d) Application review process.
2. Priority Ranking System for selection, if applicable, must not contain discriminatory criteria such as preference for minorities or large families.
3. Conflict of Interest Clause
4. Grievance Procedures
5. Process for Amending Program Guidelines, including language that amendments must be approved by the Department Program Representative.

6. Types of assistance provided, including HOME funds and other sources.
7. Amounts of assistance allowed, including HOME funds and other sources. The HOME financial assistance per unit cannot exceed the Maximum per unit HOME Subsidy. Do not include organization operating in your per unit costs for this calculation.
8. Eligible Properties, including the geographic boundaries where the properties must be located. Address how all programs will comply with HUD's lead-based paint regulation requirements. Address how all units assisted with HOME funds will meet Property Standards and Department Rehabilitation Standards. The maximum purchase price or after-rehab value will not exceed 95% of the Median Sales Price limit as established by HUD.
9. Affordability Period. The first buyer and subsequent buyers (unless recapture provisions are used) must occupy property purchased by a new homebuyer as a principal residence for the affordability period, which will be at least 5 years from the date that HOME funds are invested in the property. Please state the required affordability period for the project with the answer. Renting a unit is not permitted unless the tenant is part of a short-term lease/purchase program in which the unit will be purchased within 36 months.
10. Methods for ensuring the affordability period and principle residence requirement that include (1) program-wide recapture or resale provisions and (2) legal instruments to be used. Deed restrictions or other enforcement mechanisms must reflect this occupancy requirement.
11. Appropriate Lead Based Paint Procedures, this applies to all programs.
12. Relocation policy, if applicable
13. Rehabilitation process, if applicable. Purchase/rehabilitate/resale programs and Acquisition/Rehabilitation Programs must include rehabilitation procedures, including lead-based paint procedures, in the guidelines. Address how all units assisted with HOME funds will meet Department Rehabilitation Standards where homes will be rehabilitated.
14. Plan for Reuse of Recaptured Funds (funds recaptured during the HUD-imposed affordability period) that includes (1) HOME eligible activities (excluding organization operating), (2) reference to Program Guidelines that apply to reused Recapture Funds OR (3) a statement that all Recapture funds will be returned to the Department for reuse.
15. Newly constructed housing must meet or exceed the most recent version of the International Energy Conservation Code and the Nebraska Department of Environment and Energy must approve building specifications.
16. Provide a statement that assures all programs will be in compliance with the Fair Housing Act, including a narrative with a specific reference to all areas of the Fair Housing Act applicable to the project.
17. Marketing procedures that include marketing to local or regional residents and tenants of public housing and manufactured housing, other families assisted by public housing agencies, and households identified to be potentially eligible but least likely to apply.

14.4.2 Beneficiary Selection

In order to be eligible, an applicant must be income-qualified, credit-worthy and a homebuyer.

Fair Housing

The lenders, awardees and other participants in the homeownership program must adhere to laws which prohibit discrimination in housing. An application selection system must not discriminate against individuals or families based on race, color, religion, sex, disability, familial status, handicap or national origin. A special outreach effort should be implemented to attract minorities and other protected classes in the homebuyer pool to join the homeownership program.

Conflict of Interest

Awardees must develop guidelines regarding conflict of interest. For example, no member of the local government or nonprofit organization who exercises decision-making functions in the implementation of a homeownership program shall benefit from this program. Also, a statement of disclosure may be required by an applicant.

Applicants receiving assistance under the homeownership program should consist exclusively of low-income persons. Low-income persons are defined as multi- or single-person families having incomes equal to or less than the income limits for their resident county. The income limits as published by HUD are determined for each Nebraska County on the higher of either: 80% of the median income of the county, or 80% of the median income of the entire non-metropolitan area of the state. This income is anticipated annual income.

Applicant Selection

Applicants can be chosen on a first-come, first-serve basis or a priority system may be developed. Awardees should use their discretion in developing a priority system.

Complaint Procedures

The development of appeal or grievances procedures for those applicants that have been rejected is important in the implementation of homebuyer programs. An example of an appeal procedure is an applicant's request, in writing for reconsideration and the reason for the request. A committee (created for this purpose) could then respond to this request and obtain more information from the lender or insurance underwriter if the denial is from them.

14.4.3 Property

The property can either be a newly constructed unit or an existing "for sale" property. Existing sales property must meet the Department's Rehabilitation Standards.

Homebuyer Responsibilities

A homebuyer must understand such issues as insurance, taxes, maintenance and homeowner counseling. If a property is located within a flood hazard area, the purchase of flood insurance within the loan period is required. If the property is not located in a flood hazard area at the time of the loan closing, the homebuyer should provide satisfactory evidence thereof. Also, adequate hazard insurance covering fire and other hazards will be required for the full replacement value of the house. Awardees should develop procedures to verify that the homeowner is paying taxes and insurance annually. Homeowner counseling for first-time homebuyers is essential in homeownership programs.

Maintenance
Guidelines should specify upkeep and maintenance standards of the property expected of the homeowner. The property should be adequately maintained during the life of the loan. At a minimum, Section 8 HUD Housing Quality Standards should be used as guidelines for such maintenance.

Distribution of Funds
Generally, the awardee and the first mortgage lender conduct a loan closing with the homebuyer. This procedure consists of reviewing all documents involved in the loan (e.g. mortgages or notes). Normally, a local lender will be responsible for scheduling both the permanent and homebuyer program loan closings with the borrower, participating agency and appointed attorney or title company closing agent. The lender shall facilitate and coordinate the closing process with all participants. The attorney or title company closing agent will prepare and have the homebuyer program borrower execute the promissory note and deed of trust. The attorney or title company closing agent will then file the deed of trust and promissory note at the Registrar of Deeds Office. During the homebuyer program loan close-out, the local lender shall transmit a copy of the borrower's entire application and closing documents, including income to the nonprofit corporation. The awardee shall maintain and keep all applications, as well as all other required documents, records and other evidence in conformance with HOME regulations.

Reuse of Funds
Awardees should be aware that the reuse of funds is subject to requirements stated in Chapter 4 – Program Income, CHDO Proceeds & Recaptured Funds.

Attachment 1. Key Homebuyer Rules & Documentation

Eligible Participants

	Key HOME Requirement	Documentation
Owner Income	Gross income $\leq$ 80 percent of median income based on the upcoming 12 months. Gross income is defined by 24 CFR Part 5.	Completed application in the client file. Source documentation (wage statements, interest statements) in the client file.
Owner Occupancy	Applicant must purchase property and maintain it as his/her principal residence.	Client must sign a clause on the application form certifying that the property is the principal residence.
Ownership of Property	Applicant must obtain ownership of the property through: • Fee simple title, • 99-year leasehold interest, or • Other form approved by the Department (see page 4-11)	Title insurance documentation in client file. Title search/check/review documentation in project file to: 1. Establish proof of ownership [chain of title] 2. Determine defects to title/ownership [if any] 3. Identify outstanding mortgages and other liens 4. Disclose any recorded covenants, conditions, restrictions, easements, condemnations, etc. Copy of deed or other approved ownership document in the client file.

Eligible Property

	Key HOME Requirement	Documentation
Property Type	Eligible property types include: • One-to-four-unit property;	If two-to-four units, indicate status of non-owner-occupied units the application.

	• Condominium unit; or • Manufactured or mobile home	
Property Location	Property must be located in program area as designated in approved program guidelines.	Client application must contain address.
HOME Minimum & Maximum Subsidy	A minimum of $1,000 in HOME funds must be invested in each assisted unit. Assistance must not exceed HOME subsidy limit on a unit by unit basis.	Maintain records demonstrating that each unit assisted received at least $1,000 in HOME assistance but not more than the maximum HOME subsidy allowed.
Property Value See page 4-5	Sales price must not exceed 95% median sales price limit as determined by HUD. If rehabilitating property, after rehabilitation value must not exceed 95% median sales price limit as determined by HUD.	Document method for determining value in file. Copy of sales price or value estimate in file.
Property Standards See Attachment 5 page 4-29	If acquisition only, property must meet the Department's Rehabilitation Standards. If rehabilitation, property must be free of safety and health hazards prior to occupancy or within 6 months of property transfer, whichever is sooner. Also, if rehabilitation, property must meet Department's Rehabilitation Standards and applicable codes (local codes/standards or one of 3 nationally accepted codes) within 6 months of transfer. New construction must meet or exceed local codes/	Document local code or model code used. Maintain written rehab standards in program files. Include inspection report or certification by inspector in client file. Keep inspection checklist and work write-up in client file. Checklist indicating compliance with the most recent version of the International Energy Conservation Code requirements for new construction projects.

	standards or one of the nationally accepted codes and the most recent version of the International Energy Conservation Code. In addition, the Nebraska Department of Environment and Energy must approve all building plans.	
Eligible Activities	Acquisition w/ or w/o rehabilitation and construction	Document all expenditures.

Long Term Affordability

	Key HOME Requirement	Documentation
Affordability Period Recapture/Resale See Attachment	Property must be subject to either resale or recapture provisions for the period of affordability. • Resale: future sale of property must be to and affordable to low-income buyer. • Recapture: portion or all of assistance to buyer must be recaptured at time of sale.	Resale: mortgage and/or note and deed restriction or covenant restricting future sales. Recapture: mortgage or note showing formula by which funds will be recaptured.

Attachment 2. Subsidy Approaches Advantages & Disadvantages

SUBSIDY	PROS	CONS
Grants	• Simple to administer • Easy to explain • Often necessary, especially to reach very-low-income	• Expensive • No repayment possible • May be hard to "sell" politically • May create expectations of additional free assistance in the future • Cannot recapture
Deferred-Payment Loans	• Simple to administer • Easy to explain • Helpful, since no monthly payment required • Flexible, allows for repayment • Helps prevent windfall gain to borrower if property values increase significantly	• No payment received on a monthly basis • Might never be repaid if property has low value or future appreciation likely to be limited
Below-Market Rate Loans	• Provides immediate repayment	• Time-consuming and staff-intensive to process loan requests • Requires underwriting expertise • Loans must be serviced after origination

Attachment 3. Enforcing Recapture or Resale Restrictions

Requirement	Recapture	Resale
Principal residence	Deed restriction or land covenant, affidavit, lien	Deed restriction or land covenant, affidavit, lien
Affordability period	Lien	Deed restriction or land covenant, lien
Repayment of HOME subsidy	Lien	Deed restriction or land covenant, lien
Fair Return to owner	N/A	Deed restriction or land covenant, lien
Affordable resale price	N/A	Deed restriction or land covenant, sales contract
Subsequent buyer's income	N/A	Verification, deed restriction or land covenant

Lien is defined as a recorded deed of trust or mortgage securing repayment of the HOME subsidy.

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Attachment 4. Other Federal Requirements for Homebuyer

<u>Non-Discrimination and Equal Access Rules</u>

Fair Housing and Equal Opportunity – Yes, Must affirmatively further Fair Housing. Particular attention should be paid to signs of discrimination in sale of properties.

Regulatory Citations & References:

- 92.202 and §92.250
- Title VI of Civil Rights Act of 1964 (42 U. S. C. 2000d et. seq.)
- Fair Housing Act (42 U. S. C. 3601-3620)
- Executive Order 11063 (amended by Executive Order 12259)
- Age Discrimination Act of 1975, as amended (42 U. S. C. 6101)
- 24 CFR 5.105(a)

Affirmative Marketing – Yes, to market to eligible applicants least likely to apply. The awardee must have affirmative marketing requirements and procedures.

Regulatory Citations & References:

- 92.351

Handicapped Accessibility – Yes, new projects must be constructed in accordance with applicable standards. Rehabilitated properties may require modifications.

Regulatory Citations & References:

- Section 504 of the Rehabilitation Act of 1973 (implemented at 24 CFR Part 8)
- For multi-family buildings only, 24 CFR 100.205 (implements Fair Housing Act)
- Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225):

<u>Employment and Contracting Rules</u>

Equal Opportunity Employment –Yes, contracts and subcontracts for more than $10,000 must include language prohibiting discrimination.

Regulatory Citations & References:

- Executive Order 11246 (implemented at 41 CFR Part 60)

Section 3 Economic Opportunity – Yes, if amount of assistance exceeds $200,000 OR contract or subcontract exceeds $100,000.

Regulatory Citations & References:

- Section 3 of the Housing and Urban Development Act of 1968 (implemented at 24 CFR Part 135)

Minority/Women Employment – Yes

Regulatory Citations & References:

- Executive Orders 11625, 12432 and 12138
- 2 CFR 200.321

Davis-Bacon – **Yes,** if construction contract includes 12 or more units that are HOME-assisted.
Regulatory Citations & References:

- 92.354
- Davis-Bacon Act (40 U. S. C. 276a -276a-5)
- 24 CFR Part 70 (volunteers)
- Copeland Anti-Kickback Act (40 U. S. C. 276c)

Conflict of Interest –Yes
Regulatory Citations & References:

- 92.356
- 2 CFR 200 §§.318 and 319

Debarred Contractors – Yes, check HUD's list of debarred contractors
Regulatory Citations & References:

- 24 CFR Part 5

<u>Other Federal Requirements</u>

Environmental Reviews –Yes
Regulatory Citations & References:

- 92.352
- 24 CFR Part 58.35(b)(5)
- National Environmental Policy Act (NEPA) of 1969

Flood Insurance – Yes, must obtain flood insurance if located in a FEMA designated 100-year flood plain. Community must be participating in FEMA's flood insurance program.
Regulatory Citations & References:

- Section 202 of the Flood Disaster Protection Act of 1973 (42 U. S. C. 4106)

Site and Neighborhood Standards - No
Regulatory Citations & References:

- 24 CFR 893.6(b)

Lead-Based Paint – Yes, for pre-1978 units. Notices to purchasers and tenants. Visual assessment must be performed. Paint stabilization must be completed (if applicable). Safe work practices and clearance. Provisions included in all contracts and subcontracts.
Regulatory Citations & References:

- 92.355
- Lead Based Paint Poisoning Prevention Act of 1971 (42 U. S. C. 4821 et. seq.)
- 24 CFR Part 35
- 982.401(j) (except paragraph 982.401(j)(1)(i))

Relocation – Yes, required notifications to tenants. Required language in offers and contracts for acquisition of property.

Regulatory Citations & References:

- 92.353
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U. S. C. 4201-4655)
- 49 CFR Part 24
- 24 CFR Part 42 (subpart B)
- Section 104(d) "Barney Frank Amendments"

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Attachment 5. §92.251 Property standards

(a) *New construction projects.* (1) *State and local codes, ordinances, and zoning requirements.* Housing that is newly constructed with HOME funds must meet all applicable State and local codes, ordinances, and zoning requirements. HOME-assisted new construction projects must meet State or local residential and building codes, as applicable or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon project completion.

(2) *HUD requirements.* All new construction projects must also meet the requirements described in paragraphs (a)(2)(i) through (v) of this section:

(i) *Accessibility.* The housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

(ii) [Reserved]

(iii) *Disaster mitigation.* Where relevant, the housing must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

(iv) *Written cost estimates, construction contracts and construction documents.* The participating jurisdiction must ensure the construction contract(s) and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The participating jurisdiction must review and approve written cost estimates for construction and determining that costs are reasonable.

(v) *Construction progress inspections.* The participating jurisdiction must conduct progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.

(b) *Rehabilitation projects.* All rehabilitation that is performed using HOME funds must meet the requirements of this paragraph (b).

(1) *Rehabilitation standards.* The participating jurisdiction must establish rehabilitation standards for all HOME- assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The participating jurisdiction's description of its standards must be in sufficient detail to determine the required rehabilitation work including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. The rehabilitation standards must address each of the following:

(i) *Health and safety.* The participating jurisdiction's standards must identify life-threatening deficiencies that must be addressed immediately if the housing is occupied.

(ii) *Major systems.* Major systems are: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For rental housing, the participating jurisdiction's standards must require the participating jurisdiction to estimate (based on age and condition) the remaining useful life of these systems, upon project completion of each major systems. For multifamily housing projects of 26 units or more, the participating jurisdiction's standards must require the participating jurisdiction to determine the useful life of major systems through a capital needs assessment of the project. For rental housing, if the remaining useful life of one or more major system is less than the applicable period of affordability, the participating jurisdiction's standards must require the participating jurisdiction to ensure that a replacement reserve is established and monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. For homeownership housing, the participating jurisdiction's standards must require, upon project completion, each of the major systems to have a remaining useful life for a minimum of 5 years or for such longer period specified by the participating jurisdiction, or the major systems must be rehabilitated or replaced as part of the rehabilitation work.

(iii) *Lead-based paint.* The participating jurisdiction's standards must require the housing to meet the lead-based paint requirements at 24 CFR part 35.

(iv) *Accessibility.* The participating jurisdiction's standards must require the housing to meet the accessibility requirements in 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619). Rehabilitation may include improvements that are not required by regulation or statute that permit use by a person with disabilities.

(v) [Reserved]

(vi) *Disaster mitigation.* Where relevant, the participating jurisdiction's standards must require the housing to be improved to mitigate the impact of potential disasters (e.g., earthquake, hurricanes, flooding, and wildfires) in accordance with State and local codes, ordinances, and requirements.

(vii) *State and local codes, ordinances, and zoning requirements.* The participating jurisdiction's standards must require the housing to meet all applicable State and local codes, ordinances, and requirements or, in the absence of a State or local building code, the International Existing Building Code of the International Code Council.

(viii) *Uniform Physical Condition Standards.* The standards of the participating jurisdiction must be such that, upon completion, the HOME-assisted project and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703. HUD will establish the minimum deficiencies that must be corrected under the participating jurisdiction's rehabilitation standards based on inspectable items and inspected areas from HUD-prescribed physical inspection procedures (Uniform Physical Conditions Standards) pursuant to 24 CFR 5.705.

(ix) *Capital Needs Assessments.* For multifamily rental housing projects of 26 or more total units, the participating jurisdiction must determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the project through a capital needs assessment of the project.

(2) *Construction documents and cost estimates.* The participating jurisdiction must ensure that the work to be undertaken will meet the participating jurisdiction's rehabilitation standards. The construction documents (i.e., written scope of work to be performed) must be in sufficient detail to establish the basis for a uniform inspection of the housing to determine compliance with the participating jurisdiction's standards. The participating jurisdiction must review and approve a written cost estimate for rehabilitation after determining that costs are reasonable.

(3) *Frequency of inspections.* The participating jurisdiction must conduct an initial property inspection to identify the deficiencies that must be addressed. The participating jurisdiction must conduct progress and final inspections to determine that work was done in accordance with work write-ups.

(c) *Acquisition of standard housing.* (1) Existing housing that is acquired with HOME assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HOME funds, must meet the property standards of paragraph (a) or paragraph (b) of this section, as applicable, of this section for new construction and rehabilitation projects. The participating jurisdiction must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance.

(2) All other existing housing that is acquired with HOME assistance for rental housing must meet the rehabilitation property standards requirements of paragraph (b) of this section. The participating jurisdiction must document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the property does not meet these standards, HOME funds cannot be used to acquire the property unless it is rehabilitated to meet the standards of paragraph (b) of this section.

(3) Existing housing that is acquired for homeownership (e.g., downpayment assistance) must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the specific deficiencies proscribed by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (Uniform Physical Condition Standards) issued pursuant to 24 CFR 5.705. The participating jurisdiction 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 the standards of this paragraph (c)(3) or it cannot be acquired with HOME funds.

(d) *Occupied housing by tenants receiving HOME tenant-based rental assistance.* All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards in 24 CFR 982.401, or the successor requirements as established by HUD.

(e) *Manufactured housing.* Construction of all manufactured housing including manufactured housing that replaces an existing substandard unit under the definition of "reconstruction" must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes which are not identical to the federal standards for the new construction of manufactured housing. Participating jurisdictions providing HOME funds to assist manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of "reconstruction" must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.43f(c)(i). All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of "reconstruction" must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability. In HOME-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or state codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285. Manufactured housing that is rehabilitated using HOME funds must meet the property standards requirements in paragraph (b) of this section, as applicable. The participating jurisdiction must document this compliance in accordance with inspection procedures that the participating jurisdiction has established pursuant to §92.251, as applicable.

(f) *Ongoing property condition standards: Rental housing.* (1) Ongoing property standards. The participating jurisdiction must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period. The standards must ensure that owners maintain the housing as decent, safe, and sanitary housing in good repair. The participating jurisdiction's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HOME rental projects. The participating jurisdiction's ongoing property standards must address each of the following:

(i) *Compliance with State and local codes, ordinances, and requirements.* The participating jurisdiction's standards must require the housing to meet all applicable State and local code requirements and ordinances. In the absence of existing applicable State or local code requirements and ordinances, at a minimum, the participating jurisdiction's ongoing property standards must include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (Uniform Physical Condition Standards (UPCS)) prescribed by HUD pursuant to 24 CFR 5.705. The participating jurisdiction's property standards are not required to use any scoring, item weight, or level of criticality used in UPCS.

(ii) *Health and safety.* The participating jurisdiction's standards must require the housing to be free of all health and safety defects. The standards must identify life-threatening deficiencies that the owner must immediately correct and the time frames for addressing these deficiencies.

(iii) *Lead-based paint.* The participating jurisdiction's standards must require the housing to meet the lead-based paint requirements in 24 CFR part 35.

(2) Projects to which HOME funds were committed before January 24, 2015 must meet all applicable State or local housing quality standards or code requirements, and if there are no such standard or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(3) *Inspections.* The participating jurisdiction must undertake ongoing property inspections, in accordance with §92.504(d).

(4) *Corrective and remedial actions.* The participating jurisdiction must have procedures for ensuring that timely corrective and remedial actions are taken by the project owner to address identified deficiencies.

(5) *Inspection procedures.* The participating jurisdiction must establish written inspection procedures inspections. The procedures must include detailed inspection checklists, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors. The procedures must also describe how frequently the property will be inspected, consistent with this section, §92.209, and §92.504(d).

[78 FR 44670, July 24, 2013]

Attachment 6. Department Rehabilitation Standards

https://opportunity.nebraska.gov/program/home/#forms

Attachment 7. Resale/Recapture Guidelines

A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in §92.254, is as follows:

Below is a description of the HOME guidelines used for resale and recapture of HOME funds. This information is also available on the DED website at:
https://opportunity.nebraska.gov/grow-your-community/reports-plans/

Guidelines for Resale or Recapture of HOME-Funded Projects
DED structures these guidelines based on individual program design and market conditions.

Use of Resale Provisions for HOME-Funded Projects:
The HOME Program (92.254(a)(5)) permits either resale restrictions or recapture. DED has elected not to adopt resale as an option for HOME homebuyer activities, and requires homebuyer projects to adopt the recapture method outlined below.

Resale is required only when there is a community land trust or there is no buyer subsidy, and DED has had neither type of project, nor does it intend to fund any such projects under this Plan. If at any time DED determines that a project will require resale restrictions rather than recapture, it will amend these guidelines under the Annual Plan amendment process and request HUD approval.

Use of Recapture Provisions for HOME-Funded Projects:
DED requires all homebuyer projects to use the "reduction during affordability period" recapture method permitted by 92.254(a)(5)(ii) as outlined below. The homebuyer project developer must adopt this declining balance method as part of its application and program guidelines submitted as part of the application, and DED incorporates these provisions into the written agreement and the Contract Terms and Special Conditions.

When a homebuyer receives direct homebuyer assistance from HOME funds, recapture provisions are placed on the transaction to ensure that HOME funds are recouped if the housing unit does not continue to be the principal residence of the household for the duration of the HOME-required affordability period.

Amount subject to recapture: The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but does not include the amount, if any, of development subsidy provided (the amount between the cost of producing the unit and market value of the property).

Any recaptured funds must be used to carry out HOME-eligible activities in accordance with the requirements of 24 CFR Part §92.254.

If the HOME assistance is only used for development subsidy, and therefore not subject to recapture, the resale option must be used.

Net proceeds: the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

When the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit during the HOME-required affordability period, the amount recaptured cannot exceed the net proceeds, if any.

If a home is sold to a subsequent low-income homebuyer, and no additional HOME assistance is provided, then the subsequent homebuyer may assume the HOME assistance (subject to the HOME requirements for the remainder of the period of affordability).

When HOME recapture funds are received by the DED awardee, these funds must be utilized for additional HOME-eligible activities and must comply with the HOME rules at 24 CFR Part 92 and must also comply with the DED-approved Homebuyer Guidelines or be returned to DED.

Method of Recapture
The DED awardee must adopt the above provisions and establish additional recapture provisions in the DED awardee's Homebuyer Guidelines.

1) The DED awardee will recapture the entire amount of the HOME investment from the homeowner, but the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

> For example, a homebuyer receives $10,000 of HOME down payment assistance to purchase a home. The direct HOME subsidy to the homebuyer is $10,000, which results in a five-year period of affordability. If the homebuyer sells the home after three years, the DED awardee would recapture, assuming that there are sufficient net proceeds, the entire $10,000 direct HOME subsidy. The homebuyer would receive any net proceeds in excess of $10,000.

2) The DED awardee will reduce the HOME investment amount to be recaptured during the affordability period, but the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. The amount of investment recaptured would be based on a prorate basis for the time the homeowner has owned and occupied the home.

The pro rata amount recaptured by the DED awardee will be determined by: 1) Dividing the number of years the homebuyer occupied the home by the period of affordability, and 2) Multiply the resulting figure by the total amount of direct HOME subsidy originally provided to the homebuyer.

> For example, a homebuyer receives $10,000 of HOME down payment assistance and purchases a home developed with HOME funds for $10,000 below fair market value. The total direct HOME subsidy to the homebuyer is $20,000 and requires a 10-year period of

affordability. If the homebuyer sells the unit in year 5 of the 10-year period of affordability, the DED awardee would forgive 50 percent of the direct HOME subsidy and recapture 50 percent of the direct HOME subsidy, or $10,000 of the $20,000 HOME investment, assuming that there are sufficient net proceeds available.

Using the above-mentioned formula of:

$$\frac{\text{Number of years homebuyer occupied the home}}{\text{Period of Affordability}} \times \text{Total direct HOME subsidy} = \text{Recaptured Amount}$$

The DED awardee would receive a recaptured amount of $10,000.

$$\frac{\text{5 years (homebuyer occupied the home}}{\text{10-year affordability period}} \times \text{\$20,000 HOME funds} = \text{\$10,000 Recaptured Amount}$$