Oregon Housing and Community Services

HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) 2022 Program Manual

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HOME INVESTMENT PARTNERSHIP PROGRAM (HOME)

2022 Program Manual

Introduction

The HOME Investment Partnerships Program (HOME) was created by the National Affordable Housing Act of 1990. The HOME Program encourages partnerships among local governments, nonprofit and for-profit organizations, individuals, and the State to further the development of housing to meet the needs of low and very low-income individuals and families. Under the HOME program, Participating Jurisdictions (PJ) must address housing needs consistently with the housing priorities outlined in its' Consolidated Plan (CP). Projects applying for HOME funds through Oregon Housing and Community Services (OHCS) must be consistent with Oregon's Consolidated Plan (CP). Applications for Projects located in Medford or Ashland must include a letter from the appropriate city confirming CP consistency.

OHCS HOME funded Projects are also subject to the provisions of the OHCS General Policy and Guideline Manual (GPGM), which establishes relevant uniform policies applicable to the funding of all OHCS Projects. HOME recipients must satisfy the requirements of the GPGM in addition to HOME requirements included in this manual. The requirements of any program from which funding is requested and any other applicable requirements, such as those published in the OHCS NOFA, applicable statues, administrative rules, or state and federal regulations must be satisfied by the HOME recipient if required by OHCS.

HOME Program and Project Deadlines

HOME Program funds must be committed to eligible Projects within 24 months of HUD's annual HOME allocation to Participating Jurisdictions. OHCS will prioritize Projects that can move quickly in order to meet this deadline. Once HOME funding is committed, the Project must be under construction within 12 months. HOME funded Projects not completed within 4 years of commitment will be terminated and HOME funding must be repaid to HUD. OHCS may rescind reservations for Projects that do not meet program deadlines.

OHCS now requires HOME recipients to ensure that HOME assisted rental units are occupied by income-eligible households within 6 months of Certificate of Occupancy. If any HOME assisted unit remains unoccupied for six months following completion, the recipient must develop an enhanced marketing plan and report this information to OHCS. If HOME-assisted units remain unoccupied at 18 months after Certificate of Occupancy, the unit has not met the purpose of the HOME Program and the costs associated with the unit are ineligible. Federal regulation requires HOME funding to be repaid for any HOME assisted unit vacant at 18 months after Certificate of Occupancy.

Eligible Projects

Projects proposed for HOME funding must provide permanent rental housing or long-term transitional housing. Overnight shelters, public facilities, residential care facilities, student housing, or housing for workers on a seasonal basis are not eligible for HOME funding. Projects located within the boundaries of the State's HOME Program identified as "Balance of State" will be prioritized for funding.

An eligible HOME Project consists of one or more buildings on a single site or multiple sites, which is under common ownership, management, and financing, and is part of a single undertaking. HOME assisted Projects may be privately or publicly owned and contain any number of units, and any combination of unit sizes and styles. An eligible HOME Project must meet the definition of housing in accordance with 24 CFR Part 92.2.

Scattered Site Projects: HOME funding may be used in scattered site Projects. Not all of the Project sites must be located in the Balance of State, but only the site(s) located in Balance of State are eligible to receive HOME funds. HOME recipients will be required to separate the sites in the Project proforma in order to demonstrate that HOME funds will be dedicated only to the eligible site(s). HOME recipients will also be required to submit invoices that separate the Project sites so that HOME-eligible costs can be clearly tracked.

It's important to note that Cross-cutting Federal Regulations will apply to all sites in the Project, regardless of whether or not they will receive HOME funding. These include, but are not limited to:

- Environmental Review (National Environmental Policy Act): OHCS will complete a NEPA Environmental Assessment on each site in the scattered site Project.
- Federal Labor Standards (Davis Bacon and related labor standards): If the Project is determined to be subject to Davis Bacon, then every site in the Project must comply.
- Fair Housing and Affirmative Fair Marketing: Applies to every site in every Project.
- Financial Management and Procurement: Applies to every site in every Project.
- Section 3 and MBE/WBE: Applies to the entire Project and includes every site.
- Real Estate Acquisition and Relocation (URA): HOME recipients are required to adhere to federal regulations in regard to acquisition of property for every site in a scattered site Project. Federal regulation regarding temporary and permanent relocation applies to every site in the Project. **Every tenant must receive the required Notices.**
- Accessibility Standards: every site is subject to federal regulation regarding accessibility standards.

Special Needs Projects: In order to utilize HOME funding in Projects intended to house special needs population, Applicants must certify to the following requirements:

- Lease Agreement: A one-year lease agreement must be offered to tenants in HOME assisted units. In addition to the one-year term, the lease must stipulate that termination or refusal to renew must be based on serious or repeated violation of the terms and conditions of the lease and be served to the tenant in writing, must specify the grounds for the action, and provide a minimum of 30-day notice before termination of tenancy. For more information on required and prohibited lease provisions, see 24 CFR 92.253.
- Services: While OHCS recognizes that appropriate supportive services must be available to help tenants with special needs live as independently as possible, services cannot be required as a condition of tenancy in a HOME assisted Project providing permanent housing. Supportive services can be required in transitional housing.
- Affirmative Marketing Requirements: HOME assisted Projects of five or more units must be affirmatively marketed to all persons within the special needs group. Referrals from a single source or specific social service agency cannot be used exclusively to fill the units. A good faith effort must be made to inform and solicit applications from members of the special needs group throughout the market area. (Group Homes are considered to be "one" HOME assisted unit).

Please Note*:* Unless the project receives development or operating funding for a specific disabled population, HOME assisted Projects designated for persons with disabilities cannot be restricted to persons with specific types of diagnoses or subclasses of disabilities. Resident services may be specific to subclasses of disabilities, but the housing may not. HOME assisted housing for disabled persons must be open to qualified persons with any type of disability.

Transitional Housing Projects: Transitional housing must be designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless families and children, and homeless individuals with disabilities. The purpose of the housing is to move individuals and families to independent living within a reasonable time. HOME applicants undertaking transitional housing must submit a transitional plan with the application that describes the housing and supportive services designed to help tenants move to independent living; the plan must include the estimated time it will take to transition the tenants. All HOME assisted rental housing, including transitional, must offer tenants a one-year lease.

Single Room Occupancy Projects**:** For new construction, conversion of non-residential space, or reconstruction Projects with Single Room Occupancy (SRO) units, each SRO unit must contain either food preparation or sanitary facilities (or both). For acquisition or rehabilitation of an existing residential structure, neither food preparation nor sanitary facilities are required in each SRO unit. If individual units do not contain sanitary facilities, they must be provided in the building for tenants to share. HOME rent for SRO units is equal to 75% of the zero-bedroom rent for the County, as provided by HUD on an annual basis.

Group Homes: Group homes are typically a shared residence where tenants have a private bedroom but share kitchen, bathroom, and common living space. A group home is considered to be a one-unit Project. The HOME subsidy maximum is based on the actual number of bedrooms in the Group Home, while rent limits are based on the actual number of tenants in the Project (not including a bedroom for live-in caregiver).

Ineligible Projects

HOME funds may not be used for:

- Projects assisted under Section 9 of the 1937 Act (annual contributions for operation of public housing)
- carrying out activities authorized under part 968 (Public Housing Modernization)
- providing assistance to eligible low-income housing under 24 part 248 (Pre-Payment of Low Income Housing Mortgages)
- providing assistance to a Project previously assisted with HOME funds. Projects may only receive HOME funds once during the period of affordability. This prohibits applicants from applying for HOME funds for the first phase of a Project and reapplying for HOME funds when developing the second phase of the Project
- emergency shelters or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities or student dormitories

Applicants with Projects located withing Multnomah, Washington, Clackamas, and Marion County or the cities of Eugene/Springfield or Salem should contact those jurisdictions for information on their local HOME program. Projects located in those jurisdictions will not be prioritized for OHCS HOME funding.

Debt Reduction is Ineligible: The proposed Project must create and/or preserve affordable housing. Requests for funds to buy-down or refinance current debt are not eligible for OHCS HOME funding.

Construction Prior to Application: Projects that have started construction or rehabilitation or have executed contracts for construction work prior to submission of the NOFA application are not eligible for HOME funding.

Eligible Applicants

Eligible applicants include individuals, local governments, nonprofit and for-profit organizations including, but not limited to, cities, counties, housing authorities, nonprofit community-based organizations such as community housing development organizations (CHDOs), community development corporations (CDCs), and community action programs (CAPs).

HOME funding will be loaned directly to the owner of the Project. In the case of LIHTC funded Projects, HOME funding will be provided to the limited partnership or limited liability company. HOME funds are awarded in the form of a loan, and in an amount appropriate to the scope of a proposed Project.

The HOME Program requires recipients to have the experience to administer the complex requirements of the HOME Program. The HOME Rule (24 CFR Part 92.250(b)) requires established guidelines for examining the developer/recipient's capacity and fiscal soundness, and sufficient financial resources.

OHCS will examine the following:

- Developer organizational experience
- Current staff capacity based on Project size, scope, complexity and type of development
- Liquidity
- Net Worth

Developer/Owners receiving a reservation of HOME funding will be required to respond to an assessment of their capacity to develop the HOME Project, which includes the following:

- Description of experience and capacity to develop and own a HOME Project;
- List of all Projects developed in the last 10 years, including the sources of funding;
- Description of staff including names and experience level in housing development;
- List of Projects currently under development and explanation of how multiple Projects will be managed;
- Description of the Board or Principle Parties experience with regard to affordable housing operation.

In regard to liquidity and net worth, the Developer/Owner's financial condition must not contain unmitigated adverse conditions that might materially impair their ability to perform its financial obligations for the Project during construction and stabilization of the Project.

To determine this, OHCS will require the following information from Developer/Owners receiving a reservation of HOME funding for their Projects:

1. Accountant prepared financial statements comparing two years of performance not more than two-years old, and
2. Real Estate Holding Schedule with Project contingent liability schedule not more than (6) months old, and
3. Company Contingent Liability Schedule and Credit Report.

Liquidity Guideline**:** Based on the Developer's financial statements, the company must demonstrate sufficient liquidity (cash or cash equivalents) to meet its on-going operating expenses and sufficient surplus resources to provide Project support from time to time during construction.

Cash: The amount of Cash or Cash Equivalents on hand will vary depending on the size of the company and scope of the new Project, but should be sufficient to meet the month to month operating needs of the company plus a surplus. A company with Cash resources less than or equal to zero is not acceptable.

Discretionary Cash Flow: Discretionary cash flow is the cash resource remaining after cash operating expenses, including mandatory debt service on loans, are paid from on-going cash revenues. A company with Cash Flow that is less than or equal to zero is not acceptable.

Net Worth: The Net Worth (Net Assets) of a company is only a measure of the accounting basis of a company, not the scale of its real estate mass. A company with Net Worth that is minimal or less than zero may not be acceptable on the surface due to depreciation deductions or only 1% General Partner in Limited Partnerships. So a simultaneous review of the company's Real Estate Portfolio is necessary to provide a concrete Portfolio context in which to view the accounting values.

Portfolio Quality Guidelines: As disclosed in the Real Estate Holding Schedule, the Developer's existing real estate portfolio must be stable and self-supporting.

Problem Projects: If there are any significant problem Projects, the Developer shall provide a detailed mitigation plan(s), which must be satisfactory to OHCS in its sole discretion.

Leverage**:** Generally, the leverage of individual Projects and the portfolio should not exceed 85% loan to debt ratio. This must include all mandatory debt totals that must be repaid from on-going operations.

Debt Service Cover: Generally, the debt service cover for all Projects and the portfolio should not be less than 1.05:1. The debt service cover is the ratio of the debt payment(s) divided by net income(s). The debt Service cover should include all mandatory debt payments.

Credit Reporting: The credit report can be a useful tool in identifying problems that are outside the normal scope of information OHCS reviews. Identification of any previously undisclosed Project or company concerns, such as past due payments on non-OHCS loans, is generally not acceptable.

Determination of Financial Capacity Ratings: The overall financial capacity rating for a Sponsor should be based on the quantitative process of extracting core numbers, such as cash, cash flow, leverage and debt service cover, but the acceptability of those numbers should be tempered by the qualitative review of the Portfolio, the status of any unmitigated troubled assets and the potential impact of any issues on existing guaranties.

Community Housing Development Organizations (CHDOs)

In accordance with HOME Program regulation, OHCS must commit up to 15 percent of the annual HOME allocation for investment in housing to be "owned", "developed" or "sponsored" by state certified Community Housing Development Organizations (CHDOs).

CHDOs are specific types of nonprofit organizations defined exclusively for the HOME Program. CHDOs must demonstrate effective management control of Projects, and must be organized and structured according to strict standards specified in the HOME regulations. In order to qualify as a CHDO, the entity must be organized under the Internal Revenue Code of 1986 (IRC) at 501(c)(3) or 501(c)(4).

CHDOs must demonstrate development experience with Projects of the same size, scope and level of complexity as the proposed Project. CHDOs must employ professional staff having the knowledge, skills, and experience necessary to undertake HOME funded Projects. Volunteers, board members, or consultants are not considered to be staff and do not count toward meeting HUD's criteria for CHDOs.

CHDO as Owner: Rental housing is “owned” when the CHDO is the owner in fee simple absolute of multifamily housing (or has a long term ground lease) for rental to low-income families. If the housing is to be rehabilitated or constructed, the CHDO hires and oversees the developer that rehabilitates or constructs the housing. At minimum, the CHDO must hire or contract with an experienced Project manager to oversee all aspects of the development, including obtaining zoning, securing non-HOME financing, selecting a developer or general contractor, overseeing the progress of the work and determining the reasonableness of costs. The CHDO must own the rental housing during development and for a period at least equal to the period of affordability.

CHDO as Developer: Rental housing is “developed” by the CHDO when the CHDO is the owner of multifamily housing in fee simple absolute (or has a long term ground lease) and is also the developer of housing that will be constructed or rehabilitated for rent to low-income families. To be the “developer,” the community development 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 the progress of the work and determining the reasonableness of costs. At a minimum, the CHDO must own the housing during development and for a period at least equal to the period of affordability.

CHDO as Sponsor: Rental housing is “sponsored” by a CHDO when rental housing “owned” or “developed” by a limited partnership of which the CHDO is the sole general partner, or a limited liability company of which the CHDO is the sole managing member. If the limited partnership or limited liability company agreement permits the CHDO to be removed as general partner or sole managing member, the agreement must provide that the removal must be for cause and that the CHDO must be replaced with another CHDO.

HOME-assisted rental housing is also “sponsored” by a CHDO if the CHDO “developed” the rental housing Project and agreed to convey 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 nonprofit organization may not be created by a governmental entity.
- The HOME funds must be invested in the Project that is owned by the CHDO.
- Prior to commitment of HOME funds, the CHDO sponsor must select the nonprofit organization that will obtain ownership of the property.

In every case, the HOME funds must be provided to the entity that owns the Project.

Tenant Participation Plan: CHDOs that receive HOME funding for their Project must adhere to a fair lease and grievance procedure approved by OHCS. They must also submit a plan and follow a program of tenant participation in management decisions.

CHDO Operating Support Grants: Certified CHDOs receiving HOME funding for a Project will also be eligible to apply for a CHDO Operating Support Grant to pay for the reasonable and necessary costs for the operation of the CHDO. The OHCS CHDO Operating Support Grant application is published and administered on an annual basis, separate from the HOME NOFA.

DUNS Number

A DUNS number, received at registration in the Central Contractor Registry is a requirement of every entity receiving federal funds. Verification of the registration is required prior to disbursement of HOME funds. Maintaining updated DUNS number through course of development is a requirement**.**

Period of Affordability

OHCS funded Projects must provide a sixty (60) year affordability period. HOME recipients cannot “buy out" of the affordability requirements regarding restrictions on tenant incomes and rent. Under all circumstances, including repayment of the HOME funding, the deed restrictions will stay in effect and run with the land for the full term of affordability.

Forms of Assistance

OHCS HOME funding is awarded in the form of a loan and in an amount appropriate to the financing structure of the proposed Project. HOME loans are awarded directly to the Project’s ownership entity. In the case of LIHTC funded Projects, HOME funding will be provided to the limited partnership or limited liability company. HOME funds are awarded in an amount appropriate to the scope of a proposed Project.

HOME loans are offered with interest rates ranging from 0-1%, with annual interest only payments, and balance due at year 60. OHCS will determine the annual interest rate during subsidy layering review, based on multiple factors including financial feasibility, demonstrated economic viability such as sufficient cash flow, and the level of public benefit such as rent restrictions that are established below program requirements (Low-HOME rents for HOME-assisted units).

HOME loans will be structured as deferred debt, with annual interest payments, included as debt service on the Project’s proforma, but subordinate to other forms of financing if requested. Prepayments will be accepted with no penalty, but prepayment does not remove the affordability restrictions as required by HOME Program regulation.

OHCS reserves the right to adjust the amount of HOME funding awarded to the proposed Project, prior to execution of the loan documents. HOME loans require execution and recordation of a Loan Agreement, Regulatory Agreement, Promissory Note, and Trust Deed.

HOME Rent Restrictions

HOME-assisted units are subject to rent restrictions designed to keep rents affordable to low- and very-low income tenants. Rents must be restricted for the entire period of affordability.

HOME Program rents are as follows:

<u>Low HOME Rent:</u> For Projects containing five or more units, a minimum of 20 percent of the HOME-assisted units in a Project must have rents that are the lesser of:

- The HUD published Low HOME Rents.
- The Section 8 Fair Market Rents (FMRs) or area-wide exception rents for existing housing minus tenant paid utilities; or

<u>High HOME Rent:</u> No more than 80 percent of the HOME-assisted units in a Project shall have rents that are the lesser of:

- The HUD published High HOME Rents.
- The Section 8 Fair Market Rents (FMRs) or area-wide exception rents for existing housing minus tenant paid utilities;

Note: *If an applicant's housing authority has been granted an area-wide exception to the FMR's, then the applicant should contact OHCS for information on the HOME rents*

To determine the maximum allowable rents refer to the tables on the OHCS website, which lists the Fair Market Rents, High Home Rents, and Low HOME Rents for each county. Rents are adjusted based on the number of bedrooms in the unit and include the utility costs. The HOME rents must be reduced to include the amount of all utilities (except telephone and television cable) the tenant will pay.

In accordance with HUD regulation, OHCS will determine the number and bedroom size of designated HOME- assisted units for each HOME funded Project. This will occur at the time of the construction/equity closing based on the Project's final budget after construction bids have been accepted and final sources and uses have been balanced.

The State of Oregon Consolidated Plan has determined that housing with rents affordable to tenants with very low- incomes is a priority need in the Balance of State. OHCS typically requires HOME funded Projects to restrict rents and tenant incomes to 50% (Low-HOME) of the area median income for the designated HOME- assisted units.

Group Homes and SRO Rent: Rents for group homes and single room occupancy (SRO) units are an exception to the above rent limitations. Group home rents are restricted to the Fair Market Rent (FMR) for the appropriate number of bedrooms in the home. Do not count a bedroom for a live-in service provider when calculating the rent. For example: a four-bedroom group home where all bedrooms are used for tenants could have a maximum rent equal to the FMR for a four-bedroom unit. Or, if a four bedroom group home has a live-in service provider occupying a bedroom, then the maximum HOME rent would equal the FMR for a three-bedroom unit.

The maximum HOME rent for an SRO cannot exceed 75 percent of the FMR for a zero-bedroom unit. For an SRO unit with both food and sanitary facilities contained within the unit, the Low HOME and High HOME rents for zero bedroom units apply.
The HOME Program prohibits collecting more than the maximum HOME rents in HOME assisted units, unless:

Project-Based Rental Assistance: The HOME Program makes certain exceptions to the rent limits for units with Project-based rental assistance where tenants pay no more than 30 percent of their income for rent and tenant-paid utilities.

The following rent limit rules apply to units with a Project-based rental subsidy:

- High HOME unit with Project-based rental assistance: the *lesser of* the Project-based rent or the High HOME Rent may be charged when the tenant household is low-income, but not very low-income, *or* if the tenant pays more than 30 percent of its income towards rent.

- Low HOME unit with Project-based assistance: the Project-based program rent may be charged (even if it is higher than the Low HOME Rent) for any unit that meets all three of the following conditions:
    1. The unit has designated State or Federal Project-based rental assistance, and
    2. Is occupied by a very low-income tenant, and
    3. The tenant household pays no more than 30 percent of its adjusted monthly income toward rent.

For a unit that is both HOME and LIHTC-assisted and has Project-based rental assistance, the following rent limits apply:

- High HOME Rent Unit: The most restrictive rent of the three programs applies to the unit. That means the rent limit is established at the *lesser* of:
    1. The High HOME Rent
    2. The LIHTC rent
    3. The Project-based rental assistance program rent.

- Low HOME Rent Unit: The rent cannot exceed the Project-based rental assistance program rent limit.

Note that neither HOME nor LIHTC programs make an exception to rent limits when a unit is occupied by a tenant that has a tenant-based rental subsidy, since this subsidy is portable with the tenant.

Utility Allowance Requirements

A single utility allowance (such as that established by a local Public Housing Authority) is no longer permitted in HOME funded Projects. This requirement was established by HUD because as more projects are constructed or rehabilitated to higher energy-efficiency standards, the use of a standard utility allowance that may not represent actual utility costs and is difficult to justify.

HOME recipients are now required by HUD to determine an individual utility allowance for each HOME funded rental Project, either by:

1. Using the HUD Utility Schedule Model, or
2. Using an Energy Consumption Model which determines the allowance based upon the specific utilities used at the Project.

The HUD Utility Schedule Model can be found at: http://huduser.org/portal/resources/utilmodel.html.

HOME recipients choosing to use an Energy Consumption Model must choose a pre-approved vendor from the OHCS list that can be found at:
http://www.oregon.gov/ohcs/APMD/PCS/pdf/Approved_UA_Calculator_Contacts.pdf

Note: OHCS must approve utility allowances for HOME funded Projects. Documentation of the utility allowance calculation must be submitted with each proforma submission.

Minimum and Maximum Funding

The minimum investment of HOME funds is $1,000 per unit. The maximum amount of HOME subsidy is limited by:

- The total per unit development costs: HOME assistance cannot exceed the actual per unit development costs for the HOME assisted units in the Project;
- The financial needs of the Project: HOME Projects may not receive more subsidy than is required to produce a financially feasible Project;
- The number of HOME assisted units in the Project: The HOME assistance cannot exceed the maximum subsidy allowed per HOME unit.

The 2022 HOME NOFA maximum per unit subsidies, adjusted by bedroom size, as follows:

Zero Bedroom	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom
$159,753	$183,132	$222,693	$288,093	$316,236

HOME Assisted Unit Allocation

In most HOME funded Projects (excluding group homes) not all units must be HOME-assisted. Consequently, it is necessary to distinguish between HOME-assisted and other units. In accordance with HUD regulation (CPD Notice 16-15), **OHCS will determine the number and bedroom size of designated HOME- assisted units for each HOME funded Project.** This will occur at the time of the construction/equity closing based on the Project's final budget after construction bids have been accepted and final sources and uses have been balanced.

HOME may pay only actual costs of HOME-assisted housing. If the units in a Project are comparable in terms of size, features, number of bedrooms, and amenities then the actual costs can be determined by pro-rating total (HOME-eligible) development costs, then HOME funds can pay the pro-rated share of the HOME-assisted units. When units are not comparable, the HOME costs will be allocated on a unit-by-unit basis, charging only actual costs to the HOME Program.

Comparability of Unit Size: Comparability in size is defined by the bedroom count and square footage of individual units. Not all units with the same number of bedrooms are comparable in size. If there is a substantial difference in the square footage of two units with the same number of bedrooms, the units are not considered comparable.

Comparability of Amenities: Comparability in amenities means similar fixtures, appliances and other features. In many mixed-income Projects, to demand varying rents, the quality and types of amenities may vary among units.

HOME-assisted units should be evenly distributed throughout the Project. There should be an equal percentage of HOME units for each bedroom size in the Project. For example: A 30-unit Project contains 12 two-bedroom units and 18 three-bedroom units. Five of the units are to be HOME assisted. To assure equal distribution, then 2 of the two-bedroom units (or 16 percent and 3 of the three bedroom units (or 16 percent) should be HOME assisted.

To the extent possible, there should be HOME-assisted units in each building of the Project. For Projects where the number of HOME-assisted units proposed would be less than the number of buildings, OHCS may provide an exception.

Fixed or Floating Units

HOME recipients may, on a Project by Project basis, choose to use either a "fixed" or "floating" designation for HOME-assisted units. A "fixed" designation means the applicant identifies at the onset which specific units are HOME-assisted, and these remain the same units for the entire period of affordability. "Floating" HOME-assisted units may change over time as long as the total number of HOME-assisted units remains constant. In "floating" HOME-assisted units the HOME-units must remain comparable in terms of size, features, and number of bedrooms.

NEPA Environmental Review

Application Requirement: Complete the current OHCS Site Review Checklist and contact OHCS as instructed in the NOFA to schedule an on-site visit. The on-site review of the Project must be completed by the OHCS representative prior to submission of the HOME application.

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) and the related regulations in 24 CFR parts 50 and 58. It is OHCS' responsibility, in cooperation with Project applicants, to complete the environmental review record. The applicant may be required to publish a notice indicating the results of the review and requesting release of funds.

If the Project receives a Reservation of HOME Funding, OHCS staff will contact the applicant regarding the NEPA process. There may be specific information needed or requirements pertinent to the Project. If there are environmental impacts, then mitigation measures must be completed if HOME funds are awarded. If the impacts are severe, the Project may not qualify for HOME funds.

NEPA Environmental Assessments require complex documentation about endangered species, including a determination on the Project's effect on endangered or listed fish, wildlife and plants on or near the site. **The HOME recipient will be required to obtain a Biological Assessment in order to determine the likelihood of endangered or listed species or critical habitat on or near the Project site.** The Project design may be reviewed by U.S. Fish and Wildlife Services (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) biologists and their recommendations may become conditions of the HOME funding.

NOAA's focus is storm water management. If endangered or listed fish are within a certain distance of the site, NOAA may require that the Project include a system on-site (bio swale or dry well) to capture and process runoff water from the roof, parking lot, or any other impervious surfaces of the development. For a new construction Project, NOAA will not approve connection of storm water drains to a municipal storm drain system under any circumstances. If the Project consists of minor or moderate rehabilitation within the current footprint of the existing building(s), a new storm water system may not be required.

Completion of the Environmental Assessment and receipt of Environmental Clearance are required prior to award of HOME funding.

Department of State Lands (DSL) Wetlands Policy and Review

DSL will review all applications awarded funding for the possibility of regulated wetlands on the site. OHCS will submit documents to DSL. If DSL determines wetlands are present or likely to be present, applicants must get a qualified wetland consultant's wetland verification and boundary delineation for submission, review and approval by DSL. DSL may impose additional site or design requirements for the Project. Applicants must provide tax lot numbers for the OHCS submission to DSL. OHCS has provided a space on the Site Review Checklist for this information. Include the tax lot number for every parcel of land in the Project. A failure to provide the tax lot number(s) will delay the DSL review process.

Site Control

Applicants must demonstrate legal control of the Project site at time of application. Evidence of site control can include the following: purchase and sale agreement, option agreement, earnest money agreement fee simple title (warranty deed); documentation from the local government demonstrating its intent to transfer property and under what circumstances; an agreement or letter of intent between the landowner and application to enter into a ground lease. (NOTE: OHCS must approve a ground lease before it can be executed).

Acquisition Requirements

Acquisition of property in a HOME funded Project is subject to the Uniform Relocation Assistance and Real Property Acquisition Act (URA). Due to the fact that involuntary acquisition can cause indefinite Project delays and potentially increase Project costs, **OHCS requires HOME recipients to use voluntary property acquisition.** OHCS will not use its power of eminent domain to acquire properties under the HOME Program, and requires local governments and housing authorities sponsoring HOME Projects to acquire property using voluntary acquisition procedures.

Application Requirement: Site control documentation. Submit a copy, signed by the seller, of the Notice of Disclosure to Seller with Purchase Offer or Notice of Disclosure to Seller after executing the Purchase Offer. This applies to every site in a scattered site Project.

Requirements Subsequent to Application:

1) Signed Notice of Disclosure to Seller of Market Value, based on
2) Established As-Is Market Value of the property by an appraisal completed by a licensed appraiser and in accordance with Oregon Statutes and OHCS Policy. The HOME Program requires the purchase price be the same as, or less than, the as-is market value established by the appraisal.

Under URA, HOME recipients are required to inform the seller of the property of the following:

- The power of eminent domain will not be utilized, therefore the buyer will not acquire the property if negotiations fail to reach an amicable agreement; and
- The buyer must inform the seller in writing of the property's as-is fair market value as determined by an appraisal; and
- The seller has the opportunity to withdraw from the transaction at the time of notification of the fair market value.
- Provide the above information to the seller at the time that an option or purchase agreement is presented. If a current option or sales agreement is in existence, also provide the notice to the seller. The seller has the opportunity to withdraw from the current agreement after this notification. Submit copies of all signed seller notifications to OHCS.

HUD *Handbook 1378, Tenant Relocation and Real Property Acquisition*, will provide additional information plus sample forms. OHCS provides sample forms as part of the NOFA Application package.

Choice-Limiting Actions: Once the OHCS NOFA application for HOME funding is submitted, do not undertake any action or activity that could limit the Project to a specific site. Choice-limiting actions include, but are not limited to, acquisition, demolition, or construction. Doing so will result in the Project becoming ineligible for HOME funding, regardless of what funding source is used to pay for the activity(s). Develop the Project schedule to allow time for the NEPA review process to be completed prior to making any physical change to the site, including acquisition. The acceptable term of the sales agreement or option must be valid for at least one year from the date of application for HOME funds.

In accordance with 24 CFR Part 58 (HUD environmental review regulations), acquisition of land or land & buildings, as well as construction activities or the letting of contracts, are choice-limiting actions. HUD prohibits choice-limiting actions prior to the receipt of "environmental clearance". Environmental clearance includes completion of the NEPA Environmental Assessment, the subsequent publication of findings, the request for release of funds, and the issuance of an Authority to Use Grant Funds by HUD. The following scenarios apply to all Projects receiving reservations of HOME funds from OHCS.

Purchase of Property after Environmental Clearance: This is the preferred method of acquisition.

- At time of application for HOME funds, applicant has a written option or earnest money agreement with the seller.
- The applicant must demonstrate that the purchase of the property is a voluntary transaction by providing notices of disclosure to be signed by the seller. Provide an appraisal of fair market value to the seller. The buyer must purchase the property at the lesser of the fair market value or the agreed upon sales price. The entire Project is ineligible to receive HOME funds if these disclosure notices are not properly executed.
- No choice-limiting actions (acquisition, demolition, construction, awarding of contracts) can take place until Environmental Clearance has been received.
- The property can be purchased with HOME funds or non-HOME funds after receipt of Environmental Clearance.

Uniform Administrative Requirements

Recipients of HOME funding must comply with certain administrative requirements, generally pertaining to the financial management and audit standards that federal funding recipients must meet. These are detailed below.

OMB Circular A-87 "Cost Principles for State, Local and Indian Tribal Governments":
This circular establishes principles and standards to provide a uniform approach for determining allowable costs under federal grants and other agreements with states and local governments and Indian tribal governments.

Certain provisions in 24 CFR Part 85: These regulations set forth uniform requirements for financial management systems, procurement, reports and records, and grant close-outs for recipients of federal grant funding. .

OMB Circular A-133 (Audit Requirements): Audit thresholds and requirements are outlined in OMB Circular A-133.

OMB Circular A-122, "Cost Principles for Non-Profit Organizations": This circular establishes principles for determining allowable costs under grants, contracts and other agreements with nonprofit organizations.

Certain provisions of 24 CFR Part 84: The regulations at 24 CFR Part 84 implement OMB Circular A-110 and set forth uniform requirements for nonprofit organizations, including financial management systems, property standards, procurement standards, reporting and recordkeeping.

CHDOs: The requirements at 24 CFR 84.21, "Standards for Financial Management Systems" apply to CHDOs who are acting as an owner, developer or sponsor of HOME-assisted housing.

Conflict of Interest

No member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement. The Grantee shall incorporate, or cause to be incorporated, in all such contracts, a provision prohibiting such interest pursuant to the purposes of this section.

No person who is an employee, agent, consultant, officer, or elected or appointed officer of the HOME loan recipient, who have exercised or currently exercise any functions or responsibilities with respect to activities assisted with HOME funds may obtain financial interest or benefit from a HOME assisted Project. This includes themselves or those with whom they have family ties or business ties during their tenure and for one year thereafter.

No owner, developer, or Grantee of a Project assisted with HOME funds (or officer, employee, agent, or consultant of the owner, developer, or Grantee whether private, for profit or non-profit, including Community Development Organizations, when acting as an owner, developer, or Grantee) may occupy a HOME-assisted affordable housing unit in the Project. This provision does not apply to an employee or agent of the owner or developer of a rental housing Project who occupies a HOME-assisted unit as the Project manager or maintenance worker, if the employee or agent is otherwise qualified.

HOME Award and Legal Documents

In accordance with HUD's CPD Notice 15-09, OHCS will provide executed HOME Loan documents when the recipient meets all of the conditions provided in the NOFA Reservation Letter, some of which are as follows:

<u>Environmental Clearance</u>
One of the conditions of reservation of HOME funding is Environmental Clearance, received at completion of an environmental review conducted in accordance with the National Environmental Protection Act (NEPA). Until receipt of Environmental Clearance, the recipient must not engage in any "choice limiting" actions on the Project site. In other words, a HOME recipient cannot undertake any action or activity that could limit the Project to the specific site or perform any physical development activities on the site until a release of funds is obtained from HUD. This includes, but is not limited to, property acquisition, demolition, or construction work. It does not matter whether HOME funds or another source of funding or the recipients' own resources pays for these activities. No choice-limiting activities can occur until Environmental Clearance is received. Doing so will jeopardize the HOME award.

<u>Firm Commitment of All Funding</u>
OHCS will execute the HOME loan documents only after all other proposed funding is fully committed to the Project. Once the recipient has submitted evidence of firm and final commitments from all other funding sources and has met all reservation conditions, they should allow four weeks to execute and record the HOME documents and begin drawing down HOME funds. Subsequent to recordation of the OHCS HOME loan documents, the HOME recipient may incur costs and request reimbursement from OHCS.

<u>Construction Start Deadline</u>
HOME recipients will have 240 days from the date of the NOFA Reservation Letter to reach construction closing, which requires all conditions of award to be satisfied. OHCS may grant extensions to the 240 day

deadline on a case-by-case basis, dependent on the progress the HOME recipient has taken to meet the conditions of award.

Pre-development Costs Incurred
HOME loan funds can be used for eligible HOME costs incurred after the loan documents have been fully executed (i.e., signed by both the HOME recipient and OHCS) and filed with the appropriate County Recorder's Office. The only exception is when OHCS pre-approves the use of HOME funds for some eligible pre-development costs. These costs must have been incurred no earlier than 6 months before the application for HOME funding. Reimbursement for eligible pre-development costs will occur after execution of the HOME loan documents.

Bid Solicitation and Contracting

The HOME Program does not require formal competitive bids, but does require evidence that bids be cost reasonable. Cost analysis must be made and documented in the Project's procurement file. To assure cost reasonableness OHCS highly encourages HOME recipients to get multiple bids for each contract (i.e. at least three bids). HOME recipients must document contractor selection and bid process and provide copies of this process to OHCS upon request.

HUD Requirements for the Selection of Contractor: Once the recipient has selected the general contractor for the Project, the recipient must verify that the general contractor and all subcontractors are eligible (not debarred) to participate in Federal programs. The U.S. General Services Administration maintains a list of debarred contractors (Excluded Parties List System) at: http://www.sam.gov. Submit a copy of the search result performed on the general contractor and all sub-contractors prior to signing the actual construction contract. Do not contract with a contractor who is ineligible under the provisions of any applicable regulations of the US Department of Labor.

Minority Owned Business / Women Owned Business: Additionally HOME recipients must do outreach to encourage participation by minority and women owned business enterprises. When advertising for bids, HOME recipients must include a statement that says "minority and women owned businesses are encouraged to apply."

Find a list of all registered minority and woman owned businesses through Business Oregon's Directory of Certified Firms, available at https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?XID=6787&TN=oregon4biz. Each recipient should offer these contractors an opportunity to submit a bid. The HOME recipient is required to document and submit evidence of outreach efforts regarding MBE/WBE at completion of the Project.

Section 3: The purpose of Section 3 of the Housing and Urban Development Act of 1968 is to ensure to the greatest extent possible that employment and other economic opportunities generated by HUD financial assistance shall be directed to low and very low income persons, particularly the recipients of government housing assistance, and to business concerns that provide economic opportunities to low and very low income persons.
Contracts and subcontracts funded in whole or in part by HUD resources are subject to Section 3 requirements when the individual contract or subcontract exceeds $100,000 and the amount of HUD

assistance for the Project exceeds $200,000. Both conditions must be present. Contracts exclusively for supplies or materials are excluded unless the contract includes installation of the materials.

Section 3 requirements apply to housing rehabilitation (including reduction and abatement of lead-based affected: paint hazards, but excludes routine maintenance, repair and replacement), and to housing construction (including reconstruction, conversion), and other public construction assisted with housing or community development assistance.

Goals include a commitment to award the following to Section 3 businesses:

- 10 percent of the total dollar amount in contracts for building trades work arising in connection with housing rehab, housing construction;
- 3 percent of the total dollar amount of all other Section 3-covered contracts;
- Notify Section 3 businesses of the contracting opportunities covered by these requirements;
- Notify all potential contractors of the Section 3-covered contracting requirements, and include the required Section 3 clause in contracts;
- Assist and "actively" cooperate with HUD in obtaining contractor/subcontractor compliance with Section 3 requirements;
- Refuse to award contract to any contractor who has been found to have violated the Section 3 regulations;
- Take appropriate remedial action against contractors who fail to comply with the Section 3 requirements (e.g. termination); and
- Document actions (including results and impediments) taken to comply with Section 3 requirements.

<u>Section 3 Registry</u> HUD maintains a database of firms that have self-certified that they meet the definition of a Section 3 Business. To search the database for Section 3 businesses please visit: www.hud.gov/Sec3Biz

<u>Section 3 Reporting Requirements</u> HOME recipients are required to obtain from the General Contractor a completed HUD Form 60002. HOME funding in the amount of 10% of the total award will be held until Project completion and the Section 3 Report (HUD-60002) is submitted to OHCS.

Subsidy Layering

In accordance with HUD regulation, OHCS will evaluate HOME Projects to determine the following:

- Does the Project provide a reasonable level of profit or return on owner's or developer's investment in a Project?
- Is the HOME investment, alone or in combination with other governmental assistance, only the amount necessary to provide quality affordable housing that is financially viable for the program required period of affordability?

OHCS guidelines require the following review:

- An examination of the sources and uses of funds for the Project and a determination that the costs are reasonable; and
- An assessment, at minimum, of the current market demand in the neighborhood in which the Project will be located; and
- Analysis of the experience of the developer including the financial capacity of the developer; and
- Firm written financial commitments for the Project.

The Subsidy Layering Review can result in a reduction of HOME assistance, reduction in rents, or adjustment in operating expenses.

Non-Federal Match Requirement

HOME Program regulations require a 25 percent nonfederal match for all HOME funds used for affordable housing. Applicants must have identified proposed sources of the required non-federal match in a minimum amount of 25% of the HOME request. Commitments of match are required prior to commitment of HOME funds.

OHCS realizes there are extraordinary circumstances that may prohibit an applicant from obtaining some or all of the match contribution. It is not the desire of OHCS to deny HOME funds for a viable and needed affordable housing Project because the applicant cannot identify local resources for match. Currently OHCS has surplus match credited to the HOME Program. Therefore, OHCS will consider allocating HOME funds to Projects that cannot obtain all or some of match contribution.

Eligible HOME match includes:

- A cash contribution from public or private entities (excluding the HOME applicant or Project owner).
- The grant equivalent of a below market rate loan.
- The present value of waived taxes or fees. The present value of a granted property tax exemption can be credited towards the match obligation. However, if a HOME recipient has to apply for property tax exemption on an annual basis, then only the first year of the tax exemption is credited towards the match requirement. HOME regulations do not permit property tax exemption as an eligible form of match for properties owned by Housing Authorities.
- The value of donated land, not acquired with federal sources, as appraised by an independent, certified appraiser. The transfer of property ownership must take place after the HOME application has been submitted; otherwise, the donated value will be considered owner equity, which is not an eligible source of match.
- The cost of investment in on-site or off-site infrastructure (not made with federal resources) that is directly required for the affordable housing assisted with HOME funds. The completion of a Project's infrastructure investment must be completed within 12 months before HOME funds are committed or must be completed as part of the HOME Project.
- Proceeds from multi-family affordable housing and single-family Project bonds financing. Bond financing match is limited to 25 percent of loan amount for single-family Projects (1 to 4 units) and 50 percent of loan amount for multi-family Projects. HOME regulations further limit the amount of match funds that can come from bond proceeds.
- The direct cost of supportive services provided to families residing in HOME assisted units during the period of affordability. Services must be necessary to facilitate independent living or be required as part of a self-sufficiency program.

Ineligible HOME Match includes:

- Federal resources or funds
- Bank leveraging
- Cash or other forms of contributions from the HOME applicant, Project owner, or developer
- Owner equity or investment in the Project
- Sweat equity
- Interest rate subsidies attributable to the federal tax exemption on financing, or the value attributable to federal tax credits.

Projects where less than 50 percent of the units are HOME assisted will have the match credit prorated based upon the percentage of HOME-assisted units to total units. Projects with 50 percent or more HOME-assisted units are credited the entire match.

HOME recipients will be required to provide documentation verifying the commitment and disbursal of all match credits.

OHCS Underwriting Guidelines

Program Limits: OHCS has established the following program limits for evaluating Projects. Applicants for HOME funding must demonstrate compliance with all the Program Limits. In determining the amount of HOME funding to allocate to a Project, OHCS may reduce the budget and funding amounts to reflect the Program Limits listed below. If the Applicant varies from the following Program Limits, mitigating factors must be provided by the Applicant, which will be subject to OHCS consideration in its sole discretion.

Maximum Construction Contingencies: The maximum amount of HOME reserved or allocated to a Project will be determined after limiting the rehabilitation contingency to ten percent (10%) of the rehabilitation costs and the new construction contingency to five percent (5%) of the new construction costs. Rehabilitation costs include rehabilitation hard costs, site work costs, general conditions, and contractor profit and overhead. New construction costs include new construction hard costs, site work costs, general conditions, and contractor profit and overhead.

Maximum Developer Fees: OHCS will consider Developer Fees, as specified in the table below; calculated as the Developer Fee plus Consultant Fees divided by the Total Project cost minus Acquisition, Developer Fee, Consultant Fees and Capitalized Reserves.

Developer Fee **PLUS** Consultant Fee
Total Project Cost **MINUS** Acquisition, Developer Fee, Consultant Fee, Capitalized Reserves

Project Size	**New Construction**	**Acquisition/ Rehab**
<31 Units	18%	20% + $4,000/unit **OR** + $5,500/unit for Preservation
31-75 Units	16%	18% + $4,000/unit **OR** + $5,500/unit for Preservation
76-100 Units	14%	16% + $4,000/unit **OR** + $5,500/unit for Preservation
100+ Units	12%	14% + $4,000/unit **OR** + $5,500/unit for Preservation

For this purpose, Developer Fees shall be deemed to include all consultant fees (other than arm's length architectural, engineering, appraisal, market study and syndication costs, URA administration), and all other fees paid in connection with the Project for services that would ordinarily be performed by a developer, as determined by OHCS.

The Developer Fee will be set at the time of the construction/equity closing based on the Project's final budget after construction bids have been accepted and final sources and uses have been balanced, but will not exceed the amount in the application without approval which will be at the sole discretion of OHCS and will not be unreasonably withheld for justifiable increases in the scope of work, as long as the developer fee does not exceed OHCS's approved maximum developer fee. The fee presented at Project completion may not exceed the amount finalized at construction closing.

OHCS may approve release of up to 50% of the total developer fee when the Project has reached 50% completion of construction. This must be evidenced by an AIA statement signed by the Project architect that verifies the percent of construction completed. OHCS will approve release of the balance of the developer fee subsequent to issuance of a Certificate of Occupancy.

OHCS may elect to release a partial development fee in accordance with an executed Development Agreement. The Agreement must detail a disbursement schedule tied to the completion of specific development mileposts. Mileposts can include the completion of pre-development activities, loans, and equity commitments, construction, stabilized occupancy and permanent loan closings.

<u>Operating Expenses:</u> Operating expenses will be reviewed for reasonableness within the budgets submitted; Applicant may be required to submit documentation (including for example three years of audited financials for rehabilitation Projects) to substantiate that any or all of the Projects revenue or costs are reasonable. OHCS will review against its portfolio and take into consideration input from lenders and investors.

Financial Feasibility

<u>Sources and Uses Statement</u>: The Applicant must submit the Sources and Uses statement with its Application or as otherwise required by OHCS. The Sources and Uses statement must describe all of the funds or Sources to be used to pay for all Project costs and the intended Uses of such funds. The statement must identify each separate source and use and the estimated timing of final approval for each. The Sources and Uses must balance fully and no Source may be unknown. If any sources or uses are identified as unknown at the time of review, the Applicant's application may be deemed incomplete and removed from further processing.

Acquisition cost must be supported by an appraisal	No exception HOME regulation requires acquisition cost to be the same or less than the as-is market value established by an appraisal
Construction Inflation Factor/Cost Escalator (applies to separate line item above and beyond construction bid)	3 % of total construction cost

Contractor Profit, General Conditions and Overhead – non Identity of Interest (does not include insurance)	14% of total construction cost or less
Contractor Profit, General Conditions and Overhead – Identity of Interest (does not include insurance)	10% of total construction cost or less
Soft Costs	30% of Total Project Cost or less
Operating Reserve	Generally six (6) month of operating expenses or lender / investor conditions
Lease Up Reserve	Submit cash flow analysis utilized to determine the amount
Reserve for Replacement (Capitalized)	Submit evidence of the partner lenders and/or investors to document their requirement. Minimum guideline of $350 per unit per year, or $300 for Senior Projects

Operating Pro Forma: The Applicant must submit with its Application an operating pro forma for the Project satisfactory to OHCS demonstrating financial feasibility and viability of the Project for a typical twenty (20) year permanent loan period. In addition, the Applicant must demonstrate that the Project will continue to be financially feasible and have adequate replacement reserves for the entire period of affordability.

Absent a long-term commitment (in excess of ten (10) years), Projects with rental assistance must demonstrate financial feasibility excluding the rent subsidy.

If the Project includes commercial and/or other non-residential space, the Applicant must submit the following information and supporting documentation in addition to the residential pro forma requested above:

a. A breakdown of the total residential and commercial Project costs,
b. A list of the financing sources for the commercial areas,
c. Ownership entity and management agent of the commercial areas; and
d. A twenty (20) year operating pro forma for both the residential and commercial areas.
e. Such other information as OHCS may require.

The pro forma must contain the following data:

a. Growth assumptions that are typically estimated at two percent (2%) per year for income and three percent (3%) per year for expenses.
b. Estimates of income and expenses that are well documented by actual historical amounts, comparable income or expense studies, Applicant market assessment, a market study or an appraisal.
c. Such other information as OHCS may require.

The pro forma also must address the following industry benchmarks:

a. A vacancy rate of not less than seven percent (7%), if a different rate is used, explanation must be provided in the Financial Description section of the application.
b. An expense ratio and expenses per units properly scaled to the size and scope of the improvements, the cost of local utilities and taxes and the makeup of tenant population served.
c. Replacement reserves properly scaled to the size and scope of the improvements and the age and condition of the property. Minimum guideline of $350 per unit per year, $300 for Senior Projects; amounts in excess will be allowed if reasonably justified by Capital Needs Assessment and / or lenders conditions. The CNA is described in the Architectural Appendix.
d. Operating Reserves are generally six (6) months of operating expenses or lender / investor conditions.

While using some benchmarks and industry best practices to evaluate the information, each pro forma will be separately assessed based on its reasonable and well-documented Projection of income and expenses to determine if it effectively demonstrates the Project's financially feasibility and viability.

Minimum Debt Coverage Ratio: The minimum Debt Coverage Ratio (DCR) will be 1.15:1 for all hard amortizing debt through the initial 20-year pro forma period. Projects with debt coverage ratio that exceed 1.30:1 may be eligible for less HOME funding. Projects are underwritten on an individual basis in concert with the lenders to determine an appropriate DCR and perform subsidy layering.

Debt Underwriting: Many Projects require hard amortizing debt as one of the sources of funds. If there is hard amortizing debt, the proposed debt service coverage, and breakeven ratios must be in conformance with OHCS limits and industry norms noted previously. If there is no mortgage debt, then the pro forma must demonstrate a stable positive cash flow over 20 years.

Appraisal / Market Analysis Requirements

A complete market analysis following OHCS Market Analysis Guidelines must be submitted for approval within 90 days following the date of the Reservation Letter for HOME funding. Accommodation of this requirement may be provided if the construction or permanent lender orders a FIRREA compliant appraisal naming OHCS as an intended user and includes a market analysis prepared in accordance with OHCS Guidelines.

The market analysis must satisfy the requirements of this section, and in an LIHTC funded Project, Section 42 of the Code. An independent third party analyst, using generally accepted principles and theory, must prepare the market analysis. The analyst must be included on the OHCS list of approved providers. The analyst must have demonstrated experience in the proposed Project's market area and with the rent-restricted market. The rental analysis section included in the market analysis report must be completed by a State Certified General Appraiser.

OHCS will accept a recent FIRREA appraisal with an effective date of no more than six (6) months prior to the date of the Reservation Letter in lieu of the required market analysis, provided the market analysis and rent discussion sections include the information detailed in the OHCS Market Analysis Guidelines.

Market Analysis / Appraisal Guidelines: FIRREA standards require that appraisals must be ordered by the lender or other insured financial institution - which must define the purpose of the appraisal and provide guidance to the appraiser as to the bank or financial institution requirements - and the bank or financial institution must engage the appraiser, who cannot be related in any way to the seller or buyer.

- For Projects that currently have restricted rents, the appraisal must include an "As is" Restricted Rent Value.
- For Projects that currently receive or will receive at time of sale "Project based" subsidy, the appraisal must include an "as is" restricted rent value taking into consideration the subsidy that is generally marked to market. ***In most cases, this is the value that must be used to set the price of acquisition.***
- For Projects that do not currently have restricted rents, the appraisal must include an "as is" Market Rent Value.
- In all appraisals an "as is" Market Value for land must be included that reflects all restrictions on the land.
- OHCS must be named as an intended user and permission granted to OHCS to discuss the report with its preparer.

The market analysis must demonstrate to OHCS the Project is creating, preserving, or renovating housing that current market forces are not addressing. In addition, the market analysis must address current market conditions and determine the Project is viable and provides units at below-market rents or provides some other public benefit.

At OHCS's discretion OHCS may require further market support of the Project, or accept a market analysis in a different format. Any deviation from the market analysis Guidelines must be approved in writing by OHCS prior to submission of the report. OHCS reserves the right to contact the market analyst as needed.

<u>OHCS Approved Market Analysts:</u> The list of approved providers may be found on the OHCS website at: http://www.oregon.gov/ohcs/HD/HRS/LIHTC/ApprovedMarketAnalystsList.pdf

<u>Market Analysis Components:</u> All market analyses should include the following summarized sections as well as the more detailed Market Analysis Guidelines:

- Report Title Page
- Letter of Transmittal
- Table of Contents
- Executive Summary
- Photographs of Project
- Assumptions and Limiting Conditions
- Scope of the Assignment
- Regional Analysis
- Primary Market Area (PMA) Analysis
- Site Description & Analysis
- Improvement Description & Analysis
- Target Market Identification
- Demand Analysis
- Supply Analysis
- Reconciled Estimate of Marginal Demand
- Capture Rate Development
- Conventional Market-rate Rents
- Affordable (low income) Market Rents
- Certification
- Addendum

Non-discrimination and Accessibility Standards

Three different sets of nondiscrimination requirements apply to the HOME Program: Section 504 of the Federal Rehabilitation Act of 1973; the Fair Housing Act of 1988; and the Americans with Disabilities Act (ADA). Both new construction and substantial rehabilitation of multi-family housing assisted with HOME funds are subject to and must meet the standards of Section 504. Section 504 standards apply to all units in a Project and not just the HOME-assisted units.

Substantial Rehabilitation Project: defined as a Project with 15 or more units where the rehabilitation cost will equal at least 75 percent of the replacement cost of newly constructed multi-family units. Applicants of such rehabilitation Projects must meet the following Section 504 criteria:

- Five percent of the units in the Project (not just HOME-assisted units) must be accessible to individuals with mobility impairments, and an additional two percent must be accessible to individuals with sight and hearing impairments.
- Distribute the accessible units evenly throughout the Project buildings
- Distribute the accessible units evenly by bedroom size throughout the Project.
- When designing a larger bedroom accessible unit.as in a townhouse with inaccessible living areas on the second floor, Section 504 recommends the unit be a single floor design.
- When designing an accessible bathroom, consider a roll-in shower in lieu of a shower/tub not easily accessed by some physically disabled persons.

When smaller Projects are rehabilitated or when rehabilitation costs are less than 75 percent of the replacement cost then: every alteration to a unit must make the unit accessible to the maximum extent feasible until 5 percent of the units in the Project are fully accessible to people with mobility impairments. Alterations to common spaces must always make the Project accessible to the maximum extent feasible. Consult the Fair Housing Amendments for guidelines about rehabilitation of one to four unit rental properties.

Section 504 accessibility standards are further described in the Uniform Federal Accessibility Standards. HOME applicants should provide this information to their architects early in the process to insure the Project meets the accessibility criteria as defined in Section 504. Section 504 requires that new construction Projects have 5 percent of the units in the Project be accessible to individuals with mobility impairments and an additional 2 percent of the units be accessible to individuals with hearing or visual impairments. Section 504 also requires accessible units to be distributed throughout the Project and must be available in a sufficient range of sizes and amenities so as not to limit choices.

New construction of multi-family housing Projects is also subject to the accessibility requirements in the Fair Housing Act of 1988. The Americans with Disabilities Act (ADA) has a broader application than the Fair Housing Act or Section 504, in that it addresses employment practices, public services, transportation, and public accommodations. Although the ADA does not specifically address residential housing, since housing is covered by Section 504 and the Fair Housing Act of 1988, HOME recipients should be aware of the ADA's scope and requirements. HOME recipients will need to have the Project architect verify that the plans/specifications meet the Section 504, ADA and Fair Housing standards. Architects must verify at the completion of the Project that the constructed/rehabilitated units have met these standards.

HOME Property Standards

HOME assisted housing is required to meet OHCS design and construction standards as described in detail in the **OHCS Project Development Manual** which is available on the OHCS website under *Multifamily Housing Funding Opportunities.*

A brief overview of some of the HOME Property Standards is as follows:

New Construction Projects: In addition to OHCS design and construction standards, HOME assisted new construction Projects must meet all State and local residential 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. All newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

Rehabilitation Projects: A Capital Needs Assessment is required for all multifamily rental Projects to determine a scope of work that addresses the following: health and safety, habitability and functionality, useful life or major systems, lead-based paint, accessibility, and other improvements. In addition, OHCS has established rehabilitation standards (see **OHCS Project Development Manual**) for HOME assisted housing rehabilitation activities that must be met upon Project completion.

Acquisition Only Projects: Existing rental housing to be acquired with HOME assistance that is newly constructed or rehabilitated (less than 12 months before application for HOME funding) must meet the HOME Program Property Standards. Submit for OHCS review the approved building plans and Certificates of Occupancy. An inspection to determine eligibility for HOME funding will be conducted within 90 days of a reservation for HOME assistance.

Accessibility: HOME assisted 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).

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

Uniform Physical Condition Standard (UPCS): Upon completion, HOME assisted Projects and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703.

Housing Development and Preservation Standards

OHCS has established a set of design and construction standards to aid in the process of developing quality affordable housing in keeping with the Department's mission and vision.
Architectural design and construction standards, rehabilitation assessment criteria, green building requirements, and architectural submission requirements are discussed in detail in the **OHCS Project Development Manual.** The Project Development Manual defines OHCS requirements and expectations related to the planning, design, rehabilitation and construction of housing and housing related improvements undertaken with funding programs administered by OHCS. The Project Development Manual is available on the OHCS website under *Multifamily Housing Funding Opportunities.*

Projects must be built to be sustainable for a significant period of time without the need of rehabilitation work. This requires careful design, material selection and oversight by Project architects, contractors, developers, and owners. This type of planning and oversight must ensure the Project, including building envelopes and all structural components, has the necessary sustainability to last for a significant period of time with only industry-standard scheduled maintenance.

Construction Guidelines

OHCS supports the development of affordable housing that is safe, sanitary, habitable, well designed, contributes positively to the quality of life in Oregon, adds to the aesthetics and living environment of the community, and enhances the self-esteem and empowerment of the residents it houses and serves. Accordingly, Projects must be built using sustainable and green building practices, and they must comply with the Visitability laws of Oregon.

Confirmation of Status of Review by Local Planning and Code Jurisdictions

The sponsor must provide evidence in the architectural documents that the Project has been properly and sufficiently vetted with any and all local planning and code jurisdictions for Project feasibility. This includes all local planning and building departments as well as any other state agencies; e.g., Department of Transportation, Department of Environmental Quality.

Demolition and Hazardous Materials

Project must meet local and state requirements for handling and the removal of demolition and hazardous materials.

Identification of Easements and Encroachments and Adjacent Land Uses

The preliminary site design and development plan must identify all known, recorded or observed easements and encroachments, property boundaries, and identify all adjacent land uses.

Rehabilitation Requirements

OHCS requires a thorough Capital Needs Assessment (CNA) will help determine the appropriate rehabilitation scope of work and the estimate of probable rehabilitation cost.

Project Sign Requirements

HOME projects with construction costs in excess of $50,000 must have a project sign located prominently at the site. The sign must include the contribution of HOME funds under HUD in lettering no smaller than that used to acknowledge other contributors to the project. Use “HUD” rather than “HOME” when listing the project’s contributors. The sign is to be installed prior to construction and is to be maintained for the duration of the construction contract. Photos may be submitted as prints, color photocopies or digital images.

Construction Oversight and Inspections

OHCS has implemented a comprehensive plan for construction and rehabilitation oversight of HOME funded Projects, which is described in the **OHCS Project Development Manual.**

OHCS will review and approve all construction-related documents prior to construction and will monitor construction progress until Project completion. OHCS will review and approve work write-ups (i.e., plans and specifications) and written cost estimates. Based on this review, OHCS will determine that the work write-up and/or plans are in compliance with OHCS design and construction standards as described in the OHCS Project Development Manual.

OHCS will ensure the construction contract(s) and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The 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 OHCS design and construction standards as described in the Project Development Manual. OHCS will review and approve written cost estimates for construction and/or rehabilitation, as well as change orders, in order to determine that costs are reasonable.

OHCS will conduct an initial property inspection and regular progress inspections during construction and/or rehabilitation in order to ensure work is completed within established standards. Progress payments must be consistent with the amount of work performed. A final inspection will determine if work was done in accordance with the Project's approved work write-up or plans, and final payment will not occur until construction is satisfactorily completed in accordance with the applicable codes, the construction contract, and construction documents. OHCS may utilize qualified in-house staff or secure a qualified third party inspector to perform inspections.

Federal Labor Standards

Any contract for the rehabilitation or new construction of affordable housing with 12 or more HOME-assisted units must comply with the Davis-Bacon Act (40 U.S.C. 276a-5) and Federal Labor Standards. Davis-Bacon requirements apply to Projects with eight or more units when the Project utilizes both CDBG funds and HOME funds. These Federal laws require all laborers and mechanics employed in the development of affordable housing to receive federal prevailing wages, adjusted for the locality. Contracts are also subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).

<u>Davis-Bacon Act requirements start with required language in all construction solicitations for the project regarding the applicability of the wage requirements for the General Contractor and all subcontractors</u>.

Request a Wage Decision from HUD Labor Relations, which has the most recent Davis-Bacon Wage Rates for each Project. The request can take up to 30 days to receive, so recipients should notify the loan officer assigned to the Project as soon as the number of units and type of Project has been determined. Re-verify all wage rates 10 days prior to bid opening and notify OHCS of bid opening date in time for OHCS to re-verify the rates.

<u>Summary: Davis-Bacon Act & Related Acts:</u>

- Davis-Bacon Act: All laborers and mechanics on a HOME Project shall be paid wages at rates not less than prevailing wages at similar construction for the locality as determined by the U.S. Secretary of Labor, regardless of contractual relationship. Every employee on the job (including company owners) must be paid weekly.
- Contract Work Hours and Safety Standards Act: The wages for every mechanic and laborer on the job shall be computed on a standard workweek of 40 hours. Employees will be compensated at a rate of not less than one and one half times the basic rate of pay for all hours worked in excess of forty hours in any work week (base rate x 1.5 +fringe benefits = overtime rate).

No employee on the job site will be required to work in surroundings, or any other working conditions, which are unsanitary, hazardous or dangerous to the health and safety of an employee, as determined by the Construction Safety and Health Standards promulgated by the Secretary of the United States Department of Labor.

Liquidated damages for failure to pay overtime will be computed at the rate of $10 for each calendar day for each employee who was required or permitted to work in excess of the standard 40 hour work week without payment of the overtime wages.

- Copeland Act (Anti-Kickback Law): Whoever by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever, induces any person employed in the construction, prosecution, completion or repair of any public building, public work or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract or employment, shall be fined not more than $5,000 or imprisoned not more than five years, or both.
- Apprentices: The U.S. Department of Labor recognizes only apprentices registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The Department of Labor does not recognize a helper classification, unless it is on the wage determination, nor do they exempt from Davis-Bacon journeyman rates or, apprentices reported in excess of a program journeyman/apprentice ratio.

Summary of Lead-Based Paint Regulations for Rehabilitation Projects

HUD has issued regulations to protect young children (under the age of six) from lead-based paint hazards in housing that is financially assisted by the federal government or that is sold by the government. The regulations address the requirements for notification, evaluation and reduction of lead-based paint hazards in federally assisted properties. The new regulation appears within title 24 of the Code of Federal Regulations (24 CFR 35). Each HOME funded project built prior to 1978 must have completed the HUD Lead-paint Compliance Advisor questionnaire:
https://portalapps.hud.gov/CORVID/HUDLBPAdvisor/welcome.html

This summary addresses the lead base paint requirements for HOME program applicants:

- Testing: All units must be tested for lead-based paint in accordance with methods detailed on the HUD website including interior and exterior painted surfaces, soil, and lead-dust causing friction surfaces. All testing must be conducted by an Oregon Health Authority-certified Lead-based Paint Risk Assessor.
- All identified hazards must be remediated or abated, depending on the level of HOME funding in the project, by an Oregon Health Authority certified lead abatement contractor.
- Once lead remediation is complete, a successful clearance test must be achieved. OHCS will require an additional lead-based paint clearance test prior to occupancy or project completion to ensure the absence of lead dust once all rehab activities are complete.
- All potential occupants must receive the relevant lead-based paint notifications during construction and lead-remediation activities.
- Pre-1978 properties with HOME funds must have a lead-based paint maintenance plan approved by OHCS.

Regulations and Affected Properties: The lead-based paint regulations affect acquisition and rehabilitation of housing Projects constructed prior to 1978. All pre-1978 HOME funded Projects must comply with the regulations. All units in the Project must comply with these regulations not just the designated HOME-assisted units

Rehabilitating Properties Containing Asbestos

Most housing and buildings constructed before 1979 contain some form of asbestos. Undertaking rehabilitation actions where asbestos is present is subject to numerous and increasing regulation at all levels of government. Careless or illegal handling of asbestos-containing materials can subject rehab contractors, workers, and building occupants to health hazards, and can place the contractor, manager and owners in a position of serious civil and possibly criminal liability. If the property was built prior to 1979, submit a written plan to mitigate, abate, and dispose of asbestos that is in compliance with current DEQ asbestos regulations. https://www.oregon.gov/deq/FilterDocs/asb-SurveyFS.pdf

Affirmative Marketing

Affirmative marketing is required for HOME Projects containing five or more units. Affirmative marketing consists of actions to provide information and otherwise attract eligible persons to the available housing from all racial, ethnic, and gender groups in the housing market area. Affirmative Marketing differs from general marketing activities because it specifically targets potential tenants who are least likely to apply for the housing, in order to make them aware of available affordable housing opportunities. OHCS will annually assess a Project's affirmative marketing program to determine the success of affirmative marketing efforts and any necessary corrective actions.

HOME-assisted Projects (five or more units) serving special needs populations must meet all HOME Program requirements regarding affirmatively marketing the units. The units must be marketed to ALL persons within the special needs group. The units MAY NOT be filled exclusively through referrals from a single social service agency. A good faith effort must be made to inform and solicit applications from members of the special needs group throughout the market area.

HOME-assisted Projects designated for persons with disabilities cannot be restricted to persons with specific types of diagnoses or subclasses of disabilities (such as developmentally disabled, chronically mentally ill, or persons with only physical disabilities). Resident services may be specific to subclasses of disabilities, but the housing may not. HOME-assisted housing for disabled persons must be open to persons with any type of disability.

Affirmative marketing activities, at a minimum, shall include:

- Develop and submit HUD Form 935.2 Affirmative Fair Housing Marketing Plan.
- Insuring advertised vacant units include the Equal Housing Opportunity logo or statement.
- Posting the HUD Fair Housing poster in common area(s) of housing assisted with HOME funds.
- Soliciting 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.
- Maintaining file records containing all marketing efforts (e.g., newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc.) These records shall be made available to OHCS staff for inspection during normal working hours.
- Maintaining listings of all tenants residing in each unit at the time of application submittal through the end of the HOME compliance period.

OHCS will annually assess a Project's affirmative marketing program to determine the success of affirmative marketing activities and identify any needed corrective actions.

Fair Housing

HOME recipients are responsible for complying with Fair Housing Laws. Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination as follows:

In the Sale and Rental of Housing**:** No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

In Addition: It is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

There is additional protection for persons with disabilities. Tenants with physical or mental disabilities, including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities are protected from landlords who Refuse to let disabled tenants make reasonable modifications to their dwelling or common use areas (at tenant's expense), if necessary for the disabled person to use the housing or Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.

HOME assisted Projects are subject to HUD regulations intended to ensure equal access of LGBT persons, which includes the following:

- A general equal access provision which requires housing to be made available without regard to actual or perceived sexual orientation, gender identity, or marital status;
- Clarification that the terms “family” and “household” as used in HUD programs, include persons regardless of actual or perceived sexual orientation, gender identity or marital status;
- Prohibition on owners and operators from asking about an applicants or occupants sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available;

For additional information, search Fair Housing on the HUD.gov website.

Tenant Selection Criteria

HOME recipients must adopt tenant selection policies that:

- are consistent with the purpose of providing housing for low and very low income persons,
- are reasonably related to program eligibility and applicant's ability to perform the obligations of the lease,
- provide for selection of tenants from a written waiting list in the chronological order of their applications, and

- provide for the prompt written notification to any rejected applicant of the grounds for the rejection.

Student Rule

The 2013 Rule specifically excludes certain students from participating independently in the HOME program. The HOME program adopts the Section 8 Housing Choice Voucher (HCV) program restrictions on student participation found at 24 CFR 5.612 (but is not consistent with the LIHTC student rule).

Determining Income Eligibility of HOME Tenants

Each household offered a HOME assisted unit must be certified as income-eligible before signing a lease. The income of all household members must be included, and the determination must be based on income that is expected in the next twelve months. For the initial income-eligibility determination, examine income source documents and complete 3rd party verifications to ensure the accuracy of the income information that the tenant reports on the application.

A fully completed Applicant/Tenant Questionnaire (OHCS.3) is required and critical to accurate determination of eligibility. After the household completes the Applicant/Tenant Questionnaire, the Owner/Agent must have all income and assets verified. The application, questionnaire, income & asset verifications, and lease are to be executed prior to move-in. All occupants in a HOME-assisted unit must be certified and have a valid lease on file. All household members age 18 and over must sign the documents.

Acceptable source documents include:

- Third party verifications from employers, banks or others with first-hand information about the applicant households' finances. These verifications should be in writing
- Wage statements for approximately the preceding 3 months, if employment is steady;
- Interest statements
- Unemployment compensation statements

Unacceptable source documents include:

- An applicant's income self-certification
- The certification from another program

After all income and asset information has been obtained, verified and calculated, the Owner/Agent must prepare a Tenant Income Certification – [Form OHCS.2H for HOME only or form OHCS.2 for HOME and LIHTC mixed] for each household placed in a HOME unit. The Tenant Income Certification must be executed, along with the lease, on or just prior to the move-in date.

For more information regarding income eligibility of tenants, please see the OHCS HOME Compliance Manual.

Lease Conditions and Restrictions

The length of a lease for a HOME-assisted unit must not be less than one year, unless otherwise modified by mutual agreement between owner and tenant.

Termination of tenancy or refusal to renew a lease may only be for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the transitional housing tenancy period; or for other good cause. Landlords must give the tenant a 30 day notice of termination or refusal to renew. There is no exception to the 30-day notice for tenants residing in a HOME assisted unit, as this is a statutory requirement.

OHCS does not provide a model lease agreement. However, Owners/Agents must execute Lease Agreements with tenants that incorporate specific provisions that establish tenant responsibilities and avoid certain prohibited provisions.

In addition to the Owner/Agent required lease, OHCS requires the use of the HOME Lease Compliance Form (OHCS.22H).

Lease Provisions Must Include:

- The legal name of the parties to the agreement and all other occupants;
- A description of the unit to be rented;
- Term of the lease;
- Rent amount;
- Utility information;
- Permitted and restricted use of the premises;
- Amount of the security deposit and/or fees charged;
- Signatures of all parties;
- Any security deposit collected must be refundable;
- Non-refundable "fees" for the purpose of covering the cost of cleaning the unit at the end of tenancy are not permissible.
- Provision that upon a 24-hour written notice to the tenant, OHCS, accompanied by the Owner/Agent, shall be permitted to enter the dwelling unit during reasonable hours for the purpose of performing an inspection;
- Mechanism that will allow termination of the agreement and eviction for violation;
- Provision that to terminate tenancy or refuse to renew the lease of a HOME assisted unit, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before termination of tenancy;
- Provision that the tenant(s) must provide accurate information to determine HOME Program eligibility at move-in and required re-certifications, and failure to provide such information and cooperate with the re-certification process will be deemed a violation of the lease;
- Clause that the tenant will receive a 30-day advance written notice of any increase in the monthly rent;
- Must clearly state that the Owner/Agent reserves the right to adjust tenant rents, in accordance with the HOME rent limits and in the event a tenant's income increases above the low-income or very low-income limits for the unit type the tenant occupies;
- Provision that any material misrepresentation in the tenant's application for the leased premises, whether intentional or otherwise, may be treated by the owner, at the owner's sole discretion, as an act of default under the lease and all remedies available to the owner in the event of other defaults shall likewise be available to the owner in such case.

Prohibited Lease Provisions

- Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- Agreement by the tenant that the owner may take, hold, or sell personal property of the household members without notice to the tenant and a court decision on the rights of the parties.

This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved from the unit. The owner may dispose of this personal property in accordance with state law.

- Agreement by the tenant not to hold the owner or owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
- Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
- Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
- Agreement by the tenant to waive any right to a trial by jury.
- Agreement by the tenant to waive the right to appeal or otherwise challenge in court a court decision in connection with the lease.
- Agreement by the tenant to pay attorney fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. If the case is lost, the tenant, however, may be obligated to pay costs.

Uniform Relocation Assistance and Real Property Acquisition (URA)

The HOME Program is subject to the Uniform Relocation Assistance and Real Property Acquisition Act (URA). URA requirements and policies must be followed when acquiring property or displacing people or businesses for a Project with federal HOME funds. Under the URA, all persons (families, individuals, businesses, nonprofit organizations and farms) displaced (forced to move) as a direct result of rehabilitation, demolition or acquisition (privately undertaken or public) for a HUD-assisted Project are entitled to relocation benefits.

Providing an incentive to encourage tenants to move from the project is NOT allowed in projects receiving OHCS HOME funding.

<u>OHCS Anti-displacement and Relocation Assistance Policy:</u> OHCS encourages applicants to pursue only those Projects that will not permanently displace tenants, and reserves the right to prioritize funding to Projects with no permanent relocation and/or reasonable temporary relocation.

<u>Over- Income Tenants in a Rehabilitation Project:</u> Tenants residing in a rehabilitation project whose income exceeds Program limits are not to be displaced. In an LIHTC funded project, the unit must be removed from basis.

To the extent feasible, the HOME assisted Projects' Relocation Plan must give residential tenants an opportunity to lease and occupy the same or another suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the Project. HOME recipients are encouraged to stage rehabilitation work to allow tenants to remain in their units as long as possible by working with empty units first.

Displacement not only includes the physical displacement of persons, it also includes "economic displacement" which means that as a direct result of the Project, the existing tenant is not able to afford a new, higher rent for their current unit. If a HOME applicant intends to rehabilitate an occupied property, the issue of economic displacement needs to be of particular concern. Tenants who are economically displayed qualify for relocation benefits, so HOME recipients must modify future rent increases to ensure affordability.

<u>URA Application Requirements:</u>

1. Existing Tenant Survey: This survey identifies who currently occupies the property and potential URA problems. Survey all residential and commercial tenants. Use the Existing Tenant Survey form provided in the NOFA.

2. Develop a Relocation Plan: Provide a description of how the rehabilitation will impact existing tenants:
   - Will any existing tenants be ineligible to remain in the Project and be required to move permanently?
   - Will any tenants need to move temporarily during the rehab?
   - How will temporary moves be accomplished?
   - Does overcrowding exist in any of the units?
   - Is there a way to phase the rehabilitation work to avoid moving tenants?
   - Are there tenants who need specific accommodations such as accessible units?

   The Relocation Plan (including an itemized budget for relocation) must be up-dated and submitted to OHCS for approval 30 days before construction closing.

3. General Information Notice: A General Information Notice (GIN) must be sent to all tenants (residential and commercial) prior to submission of a HOME application. The GIN must be sent certified receipt requested or hand-delivered, and a delivery receipt obtained. Copies of sample GINs are provided in the NOFA. There are several different types of GINs: 1) intended for residential tenants who will be permitted to reside in the Project after completion; 2) intended for residential tenants who will be required to move or who may be displaced because of the Project; and 3) sent to commercial tenants. OHCS HOME Program staff can provide guidance.

4. "Relocation Assistance to Persons Displaced from Their Homes": Provide a copy of this HUD brochure to all residential tenants along with the General Information Notice. A copy of the brochure can be found in the NOFA. Contact OHCS for the appropriate brochure if the tenant in the property is a business in order to provide the business brochure with the General Information Notice.

5. Permission to Send Notices: Advise the owner / seller of the property of the noticing requirements for all tenants. Obtain agreement from the property owner that tenants will not be required to move, except for cause.

<u>URA Requirements Subsequent to the Application for HOME Funding</u>

1. New Tenants: Each new prospective tenant must receive a notice informing about the rehabilitation Project before signing a lease or rental agreement. The tenant must sign a form acknowledging receipt of this notice. Failure to issue this notice can be very costly. A copy of the Notice to Prospective Tenants can be found in the NOFA.

2. Tenants Who Move: Each tenant who moves after the HOME application submission date must document the reason for moving in a Vacate Notice. A tenant may be evicted for cause, if properly documented, but not in order to avoid paying relocation assistance.

<u>Requirements on Date of Execution of HOME Loan Documents</u>

1. Update Relocation Plan and Tenant Survey: Update the tenant survey to reflect tenants who have moved; new tenants, and other new information.

2. Notice of Displacement/Non-Displacement: As soon as possible after the date the HOME loan document is executed, a notice must be issued to each tenant who was in occupancy on the date the HOME application was submitted. The notice must either contain a specific offer of a suitable, affordable unit in the Project, or provide a Notice of Displacement, if the tenant will be permanently displaced. The notice informs the tenant of their eligibility of any relocation benefits.

3. Temporary Moves: Arrange for temporary moves if necessary. Document temporary move notices and document all temporary moving costs. Tenants must receive reasonable advance written notice, notified of the terms and conditions of the move, and reimbursed for all reasonable out-of-pocket expenses.

4. Lead-Based Paint Disclosure forms: This disclosure form is in effect if the rental units were constructed prior to 1978.

URA – HUD's Seven Things to Know Now

1. HUD cares about this. The federal government takes the rights of tenants in rental rehabilitation properties very seriously.
2. So should we. Recipients and developers who are working on HUD-funded Projects need to understand that the Uniform Relocation Act (URA) is basic consumer legislation that addresses "fairness" issues. Tenants, whose living circumstances are changed by a Project, either by higher rents or involuntary moves, should and will be protected and compensated.
3. The relocation rules are not all one-sided. The landlord can take actions to control costs and prevent displacement. These actions include informing tenants about the Project, treating them fairly during the process, staging work if it is feasible and keeping their rents affordable. Tenants must continue to pay rent and comply with the lease during the process.
4. Mistakes can be costly. Planning for relocation and tenant concerns is critical because tenants can take actions that cause financial liability for the sponsor/developer. Displaced tenants are entitled to 42 or 60 months of rental assistance, depending on the situation. Many claims exceed $40,000 per household. Although some claims are unavoidable, there is no reason to incur these costs by failure to follow the rules.
5. Planning is critical. Thoughtfully consider relocation concerns early in the process so decisions about rents, construction timing and Project feasibility can be considered before they are a crisis.
6. Cooperation is essential. All parties involved in the Project must "do the right thing" in to make the process work.
7. There are five basic requirements for tenants in rental rehabilitation Projects:
    - Give timely information to tenants about the pending application.
    - If HOME funding is approved, advise the tenants about any changes that could impact them. Without proper notification, they could claim they were displaced even if that was not the recipient's intension.
    - If displacement occurs, offer a comparable replacement unit that is decent, safe and sanitary. Owners must pay Moving expenses.
    - Tenants cannot be required to move without a 90 days' notice.
    - Offer tenants who will stay in the property after the work is completed, a suitable unit that is decent, safe, and sanitary, and affordable to them.

One-for-One Replacement

HOME funds may not be used to reduce the number of affordable housing units available in a community. All affordable occupied or vacant-occupiable dwelling units that are demolished or converted to a use other than affordable housing (including conversion to transitional housing) must be replaced on a bedroom-by-bedroom basis.

In addition to assuring replacement housing will be provided, there are specific public disclosure and submission requirements that must be met as a condition of the funding reservation prior to demolition of the structures and prior to the award of HOME funding.

If a Project receives HOME funding, the recipient must submit the following as a condition of funding:

- A written description of the proposed Project;
- The address, number of bedrooms and map location of the housing to be demolished;
- A time schedule for the commencement and completion of the demolition;
- The address, number of bedrooms and map location of the replacement housing to be provided. Replacement housing must be located in the same geographic area or neighborhood;
- The source of funding and schedule for the proposed replacement housing;
- The basis for concluding the replacement housing will remain lower-income housing for at least 10 years from the date of initial occupancy; and
- Information demonstrating that the replacement units are sufficient in number and size to house the same number of occupants that could have been housed in the converted or demolished unit.
- After OHCS approval of the packet, OHCS will provide recipients instructions to publish a public notice in a newspaper of general circulation. This notice will identify the replacement plan for the existing structures. This newspaper notice should not be located in the legal notice section, but rather as a public notice or a display ad. Recipients must submit a tear sheet of the published notice to OHCS immediately upon publication. OHCS will reimburse publication costs.

Compliance Responsibilities during Period of Affordability

<u>OHCS Approval of Changes to Rent and Utility Allowances</u>: HUD will publish the HOME Program Rents on an annual or periodic basis. Depending upon HUD's calculations, the HOME Program Rents may increase or decrease. The HOME recipient is responsible for recalculating HOME maximum monthly rents and utility allowances on an annual basis. OHCS must review and approve all recalculations of rent and utility allowances prior to any changes being implemented. Tenants must have at least 30 days written notice of any increase. All increases are also subject to other provisions of the lease agreements.

<u>Financial Oversight during Period of Affordability:</u> HOME funded Projects with 10 or more HOME assisted units are subject to OHCS examination of the financial condition of the Project. The purpose of this requirement is to identify financially troubled Projects before the problems become severe. OHCS will take action if financial problems are identified.

Inspection Standards during Affordability Period

Uniform Physical Condition Standards (UPCS) are national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. These standards are now adopted for the HOME Program, and will be the basis for ongoing compliance monitoring of HOME funded Projects.

During the period of affordability, the HOME recipient must ensure HOME-assisted units comply with all local housing code requirements as well as the Uniform Physical Condition Standards (UPCS). OHCS will conduct on–site inspections of HOME-assisted rental housing to determine compliance with property standards and to verify compliance with other applicable HOME regulations such as tenant income certifications and rental charges. OHCS will conduct onsite inspections every three years for Projects containing one to four units; every two years from Projects containing five to twenty-five units; and every year for Projects with twenty-six or more units.

HOME Project Close-Out

Once the project is completed and receives a Certificate of Occupancy (or comparable) the HOME recipient can begin the process of "closing-out" the HOME Project. The final 10% of the HOME funding can be requested once close-out documentation is completed and submitted to OHCS.

Close-out documentation includes, but is not limited to, the following:

- updated Applicant and Project Information Form
- notarized Final Sources and Uses
- updated Operating Budget (including HOME utility allowance documentation)
- verification of compliance for any conditions resulting from the NEPA Environmental Review that are specific to this Project
- MBE/WBE Report
- Section 3 Report
- Tenant Income Certification (TIC) for HOME assisted units (including verifications)
- HOME Monitoring Report with the HOME units identified
- Lead Paint Notification Forms signed by every tenant (if rehab of project built in 1978 or before)
- Contracts (with HOME Provisions attached) from General Contractor and Architect
- Satisfaction of Payment or Release of Lien signed by General Contractor
- Photos of Completed Project (electronic version)
- Certificate of Occupancy
- Household Characteristics Form (HOME-assisted units only)
- As Built Certification signed by the project architect that project was built to comply with Section 504 Standards
- documentation needed to complete Davis Bacon Records if applicable
- documentation needed to complete URA records if applicable
- documentation needed to complete verification of HOME Match

Revocation of a Reservation

OHCS may revoke an existing HOME award, withhold unexpended HOME funds, require repayment of expended HOME funds, and bar a recipient from applying for future HOME assistance if the recipient breaches any deed restrictions.

OHCS may revoke a HOME reservation in the following instances:

- the applicant does not meet development milestones on time;
- the application misrepresented the Project or included false information;
- after application, the purpose or scope of the Project is substantially changed;
- the applicant changes funding sources or amounts without prior approval from OHCS;
- the applicant commits a Choice Limiting Action.

Terminated HOME Projects

In accordance with 24 CFR Part 92.205(e)(1), when HOME funds are expended for a Project that is terminated prior to completion, for whatever reason, the recipient must repay the HOME funds to OHCS, which will then be repaid to HUD. OHCS is required by HUD to terminate any Project that does not meet the HOME requirements for affordable housing (affordability provisions, income targeting, property standards, etc.).