State of Louisiana

LOUISIANA HOUSING CORPORATION

HOME Investment Partnerships Program Policy and Procedures Manual

EQUAL HOUSING OPPORTUNITY

Revised: May 2017

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PROGRAM FUNCTIONS AND BACKGROUND

The HOME Investment Partnerships Program ("the HOME Program") is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended. The HOME Program was created to provide funds to expand the supply of affordable housing for very low-income and low- income persons.

The State of Louisiana receives HOME Investment Partnerships Act funding from HUD as a Participating Jurisdiction (PJ). HOME Funds may also be used to provide incentives to develop and support affordable rental housing and homeownership through a variety of financing arrangements and to provide for the payment of operating expenses of community housing development organizations (CHDOs) according to the priorities of housing need identified in a consolidated plan approved by HUD.

The Louisiana Housing Corporation (the "LHC/Agency") formerly known as the Louisiana Housing Finance Agency (LHFA) is the HOME Program designated administrative entity for the State of Louisiana. The LHC was created by Act 408 of the 2011 Louisiana Legislative Session. The agency administers federal and state funds through programs designed to promote the development of energy efficient and affordable housing for low- and moderate- income families throughout the state.

USING THE LHC HOME PROGRAM POLICY AND PROCEDURE MANUAL

State Recipients, Sub- recipients and funded entities should read this manual to learn the rules and requirements associated with LHC HOME Program. Different rules apply to different activities (homeowner, rental and TBRA); therefore, readers should refer to relevant chapters as listed in Exhibit 1.1.

EXHIBIT 1.1

Chapters to Reference for each Activity

Chapter Number	Chapter Name	Homeowner-Owner Occupied Rehab	Homebuyer	Rental	Tenant Based Rental Assistance (TBRA)
2	Administrative Overview and Management	X	X	X	X
3	General Requirements of the HOME Program	X	X	X	X
4	Homeowner Occupied Rehabilitation/Reconstruction	X			
5	Homeownership Development		X		
6	Rental Housing Program			X	
7	Tenant-Based Rental Assistance				X
8	Community Housing Development Organizations		X (if applicable)	X (if applicable)	
9	Recordkeeping/Reporting	X	X	X	X
10	Procurement	X	X	X	
11	Construction Management	X	X	X	
12	Environmental Review	X	X	X	X
13	Other State/Federal Requirements	X	X	X	X
14	Match	X	X	X	X
15	Resources	X	X	X	X

DISCLAIMER: *This manual is for LHC HOME recipients and/or any related parties as a support and practical guidance related to the HOME Program. It is not intended to change, enlarge or restrict any requirement found in the written agreement, Department of Housing and Urban Development (HUD) HOME Final Rule, Louisiana Housing Corporation (the "LHC/Agency") rules and policies and/or any related federal or state rule governing this program. This manual is not meant to be a substitute for HOME Program regulations, but as a supplement to them. It is not exhaustive regarding all considerations affecting the use of HOME Program funds. While careful consideration and due care has been used in developing the manual, HOME Program participants are encouraged to consult with LHC HOME Program staff to ensure correct interpretation of policies and regulations. The LHC reserves the right to implement additional policies as needed.*

CHAPTER 1: INTRODUCTION, PURPOSE AND OVERVIEW

The Policies and Procedures Manual (P and P Manual) serve as the rule book, as well as the step-by-step guidebook, for entities who are participating in the HOME Investment Partnerships Program (HOME) inclusive of the State of Louisiana as a HOME Program Participating Jurisdiction (PJ) and HOME Program participants. The HOME Investment Partnerships Program (HOME) is authorized by Title II of the Cranston - Gonzalez National Affordable Housing Act of 1990. The final rule as amended may be viewed at https://www.hudexchange.info/programs/home/home-laws-and-regulations/. The latest revision to the HOME Final Rule was published on July 24, 2013. CPD Notice 14-08 explains how Participating Jurisdictions (PJs) must comply with the new requirements.

The term PJ is given to any state, local government or consortium that has been designated by HUD to administer a HOME Program. The local PJs and consortium in the State of Louisiana include the City of Baton Rouge and the unincorporated areas of East Baton Rouge Parish, the City of Lafayette and the unincorporated areas of Lafayette Parish, Houma-Terrebonne, the Cities of Alexandria, Lake Charles, Monroe, New Orleans, Shreveport and the Jefferson Parish Consortia. The State of Louisiana is also a HOME Program Participating Jurisdiction (PJ). The Louisiana Housing Corporation (the "LHC/Corporation") formerly known as the Louisiana Housing Finance Agency (LHFA) is the HOME Program designated administrative entity for the State of Louisiana. The LHC was created by Act 408 of the 2011 Louisiana Legislative Session. The Corporation administers federal and state funds through programs designed to promote the development of energy efficient and affordable housing for low- and moderate-income families.

The policies and procedures outlined in this manual are to be implemented during the administration of the HOME Program to ensure that funds are used according to the rules and regulations established by the Department of Housing and Urban Development (HUD) and the Louisiana Housing Corporation. The LHC releases a Notice of Funding Availability at least annually to distribute and commit HOME funds; if funds are released more frequently, a notice will be published.

Recipients of HOME funds are subject to a number of general administrative requirements and must manage their program to comply. Here we discuss these requirements and how to put in place proper systems and procedures to ensure an efficient and effective program administration.

This chapter covers administrative requirements and management considerations that HOME fund recipients should have in mind when they are successful in their application to the LHC and receive HOME funds. The first part of the chapter discusses how to get started – new HUD rules, the agreements and systems that should be put in place, good practices for administering and managing HOME funds, and also how to complete draws for HOME funds. The second part of the chapter covers specific administrative requirements including HOME rules for administrative and planning costs, Federal uniform administrative requirements, HOME written agreements, conflict-of-interest provisions, prohibition against the use of HOME funds for inherently religious activities, HOME rules for program income, assisting with the Integrated Disbursement and Information System (IDIS) requirements, and other LHC administrative requirements.

GETTING STARTED

The HOME Final Rule Has Been Revised - Effective Date (July 24, 2013)

The *Consolidated and Further Continuing Appropriations Act of 2012* (P.L. 112-55) imposed new requirements on projects that receive FY2012 HOME Investment Partnerships Program (HOME) funds. *The Consolidated and Further Continuing Appropriations Act of 2013* (P.L. 113-6) imposed the same statutory requirements on projects that receive FY 2013 HOME funds. In addition, HUD published the latest revision to the HOME Final Rule on July 24, 2013 that incorporated the new requirements. The purpose of these requirements is to improve project and developer selection by PJs and ensure that there is adequate market demand for a project before HOME funds are invested. These laws require that:

1) PJs must repay any HOME funds invested in projects that are not completed within four years of the date funds are committed, as determined by a signature of each party to the written agreement. HUD may grant a one-year extension upon determination that the failure to complete the project was beyond the control of the PJ.

2) PJs may only commit HOME funds to a project after it has underwritten the project, assessed the development capacity and fiscal soundness of the developer being funded, and examined the neighborhood market conditions to ensure that there is an adequate need for the HOME project. The PJ must certify, at the time HOME funds are committed to a project that it has taken these actions with respect to the project being funded.

3) PJs must convert any HOME-assisted homeownership unit that has not been sold to an eligible homebuyer within six months of construction completion to a HOME-assisted rental unit.

4) PJs may only provide HOME funds for development activities to Community Housing Development Organizations (CHDOs) that have demonstrated that they have staff with demonstrated development experience.

Written agreement with recipients of HOME funds must meet the following requirements:

- **Capacity.** Applicants are now required to have at least one member of the development team who has one or more years of housing development experience and has successfully completed at least one affordable housing project.

Program recipients need to take several steps, upon receipt of the award and before any project work begins. These are described below.

- **Award notification.** Upon LHC Board approval of the HOME Program application, LHC will issue an Award Letter to a recipient that specifies the award amount and any applicable conditions.

- **Agreement.** LHC HOME agreements have to be executed to codify the details the LHC HOME award upon satisfactory environmental review. The Recipient agreement will specify LHC's expectations and requirements.

  - Written Agreements will include general requirements that are applicable across all LHC/ HOME programs.

    - ✓ General requirements are specified in detail in the Chapter 3: General Requirements.

  - Program specific details that are specified in written agreements will reflect the details of the approved application and LHC HOME parameters.

    - ✓ LHC HOME parameters for specific programs are detailed in Chapter 4: Homeowner Rehabilitation Housing Program, Chapter 5: Homebuyer Housing Program, Chapter 6: Rental Housing Program, and Chapter 7: Tenant-Based Rental Assistance. Please review the appropriate chapter for your program.

- **Project set up.** LHC staff will complete IDIS Set-Up Forms for each project and/or individual activity that is carried out within the scope of the administered program.

- **Notice to Proceed.** To ensure that all HOME Program requirements have been met, no work shall begin until all documentation has been executed, a pre-construction conference held, and LHC issues a Notice to Proceed.

- **Pre-construction conference.** For all projects that involve construction (multi- and single- family development activities and homeowner rehabilitation), pre-construction conferences must be conducted prior to commencing construction.

  - For rental activities the pre-construction conference must be conducted with the development team and an LHC representative.

  - For homeowner activities the pre-construction conference must be conducted with the applicant/consultant, the homeowner, the contractor, and a member of the LHC Asset Management Division.

- **Readiness.** LHC expects that recipients will initiate programs immediately upon receipt of Notice to Proceed.

  - Applicants applying for HOME Program funds must begin their program activities and/or developments within ninety (90) days of the Notice to Proceed.

  - Recipients that do not commence program activities and/or developments within ninety (90) days risk the loss of their award, unless otherwise approved by LHC.

- ✓ LHC realizes that there may be extenuating circumstances that may delay the beginning of a program/project. Such circumstances will be reviewed on a case-by-case basis.

- HOME funds that are unused by recipients will be recaptured and reallocated to other eligible activities.

❑ **Accountability.** LHC expects that recipients will be accountable for all LHC HOME funds distributed through their programs. To that end, Recipients are expected to:

- Monitor beneficiaries and contracted/partner entities for appropriate expenditures.
  - ✓ Please refer to LHC's Compliance and Monitoring Manual for more guidance on monitoring requirements.
- Provide accurate beneficiary and expenditure activity to LHC.
  - ✓ IDIS Set Up forms must be used for each project and/or activity within a program.
  - ✓ IDIS Set Up forms must accurately reflect beneficiary information.
  - ✓ Changes must be documented and reported to LHC.
  - ✓ IDIS Close Out reports must be completed and submitted to close out each project/activity.
  - ✓ Please review the IDIS section of this chapter for further details.

❑ **Affirmative Marketing Plan:** Recipients are expected to identify and serve appropriate beneficiaries, especially under-served populations. Applicant must adopt an Affirmative Marketing Plan for all Projects with five or more HOME-assisted units, and all Programs regardless of the number of units, such as <u>down-payment</u> <u>assistance and tenant-based rental assistance programs</u>. The Plan must include:

- methods for informing the public, owners and potential tenants about fair housing laws and the policies of the local program;
- a description of what grantees and/or the program administrator will do to affirmatively market housing assisted with HOME funds;
- a description of what grantees and/or the program administrator will do to inform persons not likely to apply for housing without special outreach;
- maintenance of records to document actions taken to affirmatively market HOME-assisted units and to assess marketing effectiveness; and
- a description of how efforts will be assessed and what corrective actions will be taken when requirements are not met.

In order to achieve compliance with requirements at 24 CFR Part 92.351, Written Agreements shall be executed between LHC and all HOME Program Recipients. **During programmatic monitoring activities, LHC shall review affirmative marketing activities and, should the level of compliance with the requirements be determined unsatisfactory, shall provide recipients with the necessary guidance to achieve regulatory standards.**

❑ **Use LHC prepared closing documents and template agreements:** Written Agreements set the parameters for measuring and monitoring performance.

- Written agreement documents must be complete, and clearly describe the project, roles of the recipient and the partner involved.

- Written agreement documents must set realistic, achievable milestones for achievement and describe consequences for failure to meet them.

- ❑ **Oversee construction effectively:** Good construction management is essential to the HOME Program's success. Please see Chapter 11: Construction Management for details.
  - It begins with a pre-construction conference and follows with regular progress and a final inspection.
    - ✓ The HOME program has a number of property standards that must be understood and followed.
    - ✓ Inspection reports will cover compliance with applicable property codes and standards.

- ❑ **Cost reasonableness:** Costs to develop or preserve housing must be reasonable, and budgets and invoices must be reviewed by knowledgeable staff persons prior to approval.

- ❑ **Manage affordability period compliance:** Rental projects must be effectively managed during the affordability period. This includes managing rents, ensuring property standards, and re-certifying incomes.

- ❑ **Ensure effective financial management:** Recipients are subject to the Federal Uniform Administrative Requirements which are detailed in a later section in this chapter. In addition, Recipients must be able to evaluate budgets and proposals from contractors and/or partners to determine if they appear to be financially sound.
  - Recipients must be able to anticipate the need for HOME funds and budget accordingly. This is particularly important when running a Tenant Based Rental Assistance (TBRA) program.

- ❑ **Record Retention and Monitoring:** Recipients are required to monitor their own program and the performance of their partners.
  - Recipients must keep records sufficient to demonstrate to the LHC that HOME funds have been spent appropriately and within the intent of the program and compliant with its regulations.
  - Recipients must provide information regarding their annual performance in annually administering HOME funds to LHC so that the State can report the information and make it available to HUD and the public for review.
  - The LHC may require additional information upon request for presentations or information from members of its governing body and the public to demonstrate performance and outcomes of the LHC HOME program.

- ❑ **Evaluate program effectiveness:** The PJ must examine the internal operations of recipients of HOME funds as part of its monitoring requirements.

HOME PROGRAM DRAWS

- ❑ **Disbursement of HOME Program funds**: Disbursement of HOME Program funds will occur only when all of the following conditions have been met:

- Required environmental review process has been satisfactorily completed.

- Project closing documents are finalized. The written HOME Program Agreement will reflect the following:

  - ✓ A project completion schedule acceptable to LHC and the Recipient of the HOME Program funds;
  - ✓ Payment of the HOME Program funds (e.g., how the funds will be disbursed: at the beginning of the project or on a pro-rata basis, or as final funds are disbursed); and
  - ✓ Provisions for the timing of HOME Program fund disbursements.

- Complete IDIS set up information has been prepared by the LHC HOME staff and LHC HOME staff has completed IDIS activity set up. See section on (IDIS) below for additional details.

- LHC issues a Notice to Proceed. To ensure that all HOME Program requirements have been met, no work shall begin until all documentation has been executed and a Notice to Proceed is issued by LHC.

- A pre-construction conference is held.

  - ✓ For rental activities the pre-construction conference must be conducted with the development team and an LHC representative.
  - ✓ For homeowner activities the pre-construction conference must be conducted with the applicant/consultant, the homeowner, the contractor, and an LHC Inspector.

- Payment details including timeline for reimbursement will be outlined in the project closing documents, specifically the HOME Written Agreement.

- General LHC requirements regarding reimbursement of costs include:

  - ✓ Cost incurred prior to HOME Program fund allocation shall not be reimbursed (except in the case of an eligible soft cost or an interim construction loan approved by LHC).
  - ✓ Retainage will be released after the final inspection is approved and upon LHC's receipt of pay request and all completion documentation.

- Completion documentation required for release of retainage on rental activities include:

  - ✓ Final Inspection Report by LHC Inspector,
  - ✓ Project Completion Form (HUD Form 40097),
  - ✓ Certificate of Substantial Completion,
  - ✓ Certificate of occupancy (s) (for all buildings comprising the project),
  - ✓ Certificate and Release of Liens (issued by the parish clerk of court),
  - ✓ Contractor and Sub-Contractor Activity Report (HUD Form 2516),

- ✓ Final AIA document (must indicate 100% Completion),
- ✓ Cost Certification,
- ✓ Final Subsidy Layering Review Documents (HOME w/ LIHTC) including:
  - ➢ Estimate and Certificate of Actual Cost,
  - ➢ Financing Certification,
  - ➢ Syndication Information and Certification,
  - ➢ Cost Certification
- ✓ Final Draw Requisition (inclusive of retainage) and
- ✓ Compliance Project Data Sheet (rental projects only)
- ✓ Any additional information and/ or documentation which the LHC staff may deem necessary and appropriate to ensure compliance.

- ❑ **HOME funds remaining after project completion**: If any HOME Program funded project has an available balance after development completion and release of retainage, LHC will de-obligate those funds and reallocate such balance of HOME Program funds to other eligible activities according to LHC's HOME Program allocation process.

- ❑ **Implementation of grant based accounting**: HUD has implemented grant based accounting in IDIS for fiscal year (FY) 2015 and subsequent HOME grants. IDIS has historically operated on a first-in, first-out basis (FIFO). Under FIFO, funds were committed and disbursed from the oldest grants with funds available in two separate phases so it was possible that the funds committed to an activity were not the same funds that were disbursed for the activity. As outlined in the HUD Publication "Transition to Grant Based Accounting" at: https://www.hudexchange.info/resource/3838/cpd-memo-changes-to-first-in-first-out-accounting-in-idis, HUD must comply with Office of the Inspector General (OIG) and Office of Management and Budget (OMB) directives to end the use of FIFO and begin using grant based accounting starting with FY 2015 HOME grants. Under grant based accounting, funding commitments and disbursements are made from specific grant years selected by PJs and the funds committed to an activity are the same funds that are disbursed for the activity.

ELIGIBLE ADMINISTRATIVE AND PLANNING COSTS

- **Eligible Administrative and Planning Costs:** If a recipient administers a portion of the HOME Program in behalf of the State, the LHC may allow recipients a maximum of 10% of their allocation for reasonable administrative and planning costs. These include staff costs as well as other administrative costs.

  - Applicants who choose to use a consultant must include the consultant fee, if any, in an amount not to exceed ten percent (10%) of the requested HOME Program allocation in the proposed project budget.

    - ✓ The HOME Program allocation may not include both a consultant fee and a project delivery cost reimbursement.

  - Staff costs for administering LHC HOME Programs include expenditures for salaries, wages and related costs of recipient staff responsible for HOME Program administration. For the purpose of determining whether all or a portion of a staff person's salary and related costs may be charged to HOME, recipients must analyze the types of assignments carried out by each individual. HOME Program administrative assignments that should be considered in making this determination include:

    - ✓ Developing systems and schedules for ensuring compliance with HOME Program requirements;
    - ✓ Finalizing HOME agreements;
    - ✓ Monitoring HOME-assisted housing and housing with designated matching funds;
    - ✓ Preparing reports and other documents;
    - ✓ Coordinating the resolution of monitoring and audit findings;
    - ✓ Managing or supervising persons whose primary responsibilities include those previously listed.

  - Recipients have two alternatives for determining the amount of staff costs to charge to HOME Program administration.

    - ✓ **Option 1**: Include the ***entire*** salary, wages and related costs of each person whose ***primary*** responsibility involves program administration assignments.

    - ✓ **Option 2**: Determine the ***pro rata share*** of salary, wages and related costs of each person whose job includes ***any*** program administration assignments for each person.

      - ➢ A Recipient may choose ***only one*** of these two methods each program year.

  - Other planning and administrative costs includes the following:

    - ✓ Goods and services necessary for administration (e.g., utilities, office supplies, etc.);
    - ✓ Administrative services under third party agreements (e.g., legal services);
    - ✓ Administering a tenant-based rental assistance (TBRA) program;
    - ✓ Providing public information;
    - ✓ Fair housing activities;

      - ➢ Indirect costs under a cost allocation plan prepared in accordance with applicable Office of Management and Budget (OMB) Circular requirements and approved by the LHC;

and

- Complying with other Federal requirements.

Administrative Costs Versus Project-Related Soft Costs

Certain costs may be charged as either an administrative and planning cost ***or*** as project- related soft costs when they are incurred by Recipients. Project-related soft costs are not available to owners/developers/sponsors. Costs that are eligible as project-related soft costs are listed below.

- **Staff and overhead costs**: These are staff and overhead costs incurred by the Recipient or third party contractor that are directly related to carrying out specific HOME projects. They include:
  - Appraisals;
  - Preparation of work specifications;
  - Loan processing and underwriting;
  - Construction inspections and oversight;
  - Inspections for the presence of lead hazards or defective paint;
  - Advisory and other relocation services;
  - Project-specific environmental reviews; and
  - Homebuyer and tenant counseling (if the buyer or tenant is HOME-assisted).

- **Compliance costs**: These include the costs of complying with other Federal requirements directly related to a specific HOME-assisted project.

- **Implications of charging to a project:** Charging costs to a specific project has several implications.
  - Project costs count in the maximum per-unit subsidy limit calculation.
  - Administrative costs charged to the project should not be included in the loan to the project owner.
  - Project costs trigger 25 percent match requirement (unless there is an applicable Match Reduction for the State of Louisiana).
  - If the project does not go forward, project costs must be charged as administrative costs.

- **Implications of charging as administrative and planning costs**:
  - Costs are subject to the 10 percent cap, and
  - Accounting and reporting requirements are simplified.

- **Exceptions**:

  - The cost of providing HOME-funded TBRA is an administrative cost and may not be charged as a project-related soft cost.

  - Project-related soft costs incurred by a property owner are considered project-specific and cannot be charged as administrative costs. (For example, if the property owner hires and pays for an appraisal.)

  Note: A Recipient may not charge a fee to a project for ongoing project monitoring and compliance reviews. Recipients also may not charge fees for origination or loan servicing.

- **For more information**: For further guidance, Recipients should refer to HUD Notice CPD 06-01 "Administrative Costs, Project-related Soft Costs, and Community Housing Development Organization (CHDO) Operating Expenses under the HOME Program," which is available online at http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/.

UNIFORM ADMINISTRATIVE REQUIREMENTS

Recipients must comply with certain administrative requirements, generally pertaining to the financial management and audit standards. These differ depending whether the Recipient is a government entity, a nonprofit, or a CHDO.

- **Government entities.** Governmental entities that are Recipients must comply with administrative requirements, generally pertaining to the financial management and audit standards. All government entities administering LHC HOME programs or using LHC HOME funds should be familiar with these requirements.

  - **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)**: All Recipients are required to have audits. Audit thresholds and requirements are outlined in OMB Circular A-133.

- **Nonprofit organizations.** HOME-funded Recipients that are nonprofit organizations must also comply with certain uniform administrative requirements. These requirements are similar, but are not quite the same as those placed on Recipients that are governmental entities. All nonprofit HOME Recipients should be familiar with these requirements, as detailed below.

  - **OMB Circular A-122, "Cost Principles for Non-Profit Organizations,"** or, for institutions of higher education, OMB Circular A-21 "Cost Principles for Educational Institutions": 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 record-keeping.

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

WRITTEN AGREEMENTS BETWEEN RECIPIENTS AND OTHER ENTITIES FOR LHC HOME FUNDS

Written agreements are important legal documents that help LHC and its recipients protect their investment and enforce HOME Program rules.

- A written agreement must be entered into ***before any HOME funds are committed or disbursed*** by the Recipient to any entity.
  - LHC will enter into an agreement with all recipients of its HOME program before committing or disbursing funds.

- When properly written and executed, a written agreement can be:
  - A valuable management tool for verifying compliance and monitoring performance;
  - A training tool for all parties using HOME funds to learn about the rules and regulations of the HOME Program and other Federal regulations; and
  - A Recipient's method of enforcing program requirements and protecting its investment.

Contents of Written Agreements

- A written agreement should serve as a concise statement of the relationship between the recipient and a funded entity/beneficiary of HOME funds. It should also clearly state the conditions under which the HOME funds are provided.

- A written agreement must have certain required provisions. The specific contents of agreements will vary. The Final Rule (24 CFR Part 92) details the specific HOME provisions that must be included in written agreements between program administrating recipients and the various entities that may receive HOME funds. These provisions are listed below:
  - **Use of funds**: Description of tasks to be performed, schedule for completing tasks, a budget in sufficient detail to effectively monitor performance and the period of the agreement. (For nonprofit and for-profit housing owner, sponsor or developers, the duration of the agreement will be in a separate clause.)
  - **Reversion of assets/program income requirements**: States whether program income, unexpended funds or other assets will be returned to the Recipient.
  - **Uniform administrative requirements**: Compliance with applicable Federal administrative requirements (OMB Circular A-87 and applicable provisions of 24 CFR Part 85 for governmental entities, or OMB Circular A-122 and applicable provisions of 24 CFR Part 84 for non-profit entities).
  - **Other Federal requirements**: Requirements regarding: non-discrimination and equal opportunity; affirmative marketing and minority outreach; environmental review; displacement, relocation and acquisition; labor standards; lead-based paint; and conflict-of-interest.

- **Affirmative marketing**: Requirements for affirmative marketing in projects of five or more HOME-assisted units.

- **Requests for disbursements of funds:** Requirement that HOME funds may not be requested until funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be expended by the LHC before any new funding requests will be provided.

- **Records and reports**: Enumeration of records that must be maintained, and information and reports that must be submitted.

- **Enforcement of the agreement**: This provision is in the agreement with all parties, including owners, and is the means of enforcing the provisions of the written agreement.

- **Term of agreements:** The agreement must specify the term of the agreement. If the housing assisted under the agreement is rental housing, the agreement must be in effect through the affordability period required by HUD and the extended use period per the written agreement with the LHC. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until the completion of the project and transfer of ownership to an eligible household.

- **Amending the documents:** Written agreements may be amended by mutual agreement of the parties when regulations and requirements change, or when adjustments to funding levels or other conditions related to a specific project are needed.

Exhibit 2-1 below summarizes which of the minimum required provisions must be included in the various types of written agreements.

EXHIBIT 2-1: REQUIRED PROVISIONS IN WRITTEN AGREEMENTS							
	PJ Agreement with…..						
Required Provisions (§92.504)	**State Recipients**	**Recipients (e.g. Sub-recipients)**	**Owners, Sponsors, Developers (e.g. CHDOs)**	**Contractors**	**Homebuyers**	**Home-owners**	**Tenants (Receiving TBRA)**
Use of HOME Funds	✓	✓	✓	✓	✓	✓	
Affordability (§92.252 or §92.254)	✓		✓		✓		
Program Income	✓	✓					
Uniform Administration Requirements (§92.505)	✓	✓					
Project Requirements (as applicable in Subpart F)	✓		✓		✓ **§92.254(a) only**	✓ **§92.254(b) only**	✓ **§92.209 and §92.253 only**
Property Standards (§92.251 and §92.355)			✓				
Other Program Requirements (Subpart H except §92.352 and §92.357)	✓	✓	✓	✓ **except §92.505, §92.506, §92.352**			
Affirmative Marketing (§92.351)	✓	✓	✓				
Requests for Disbursement of Funds	✓	✓	✓				
Reversion of Assets		✓					
Records and Reports	✓	✓	✓				
Enforcement of the Agreement (§92.252 and 24 CFR Part 85 as applicable)	✓	✓	✓		✓		
Duration of the Agreement	✓		✓	✓			
CHDO Provisions (§92.300 and §92.301)			✓				
Suggested Provisions (not HOME requirements)							
Roles and Responsibilities	✓	✓	✓	✓			
Description of the Project	✓	✓	✓				
Performance Standards	✓	✓	✓	✓			
Conflict of Interest	✓	✓	✓				
Monitoring	✓	✓	✓	✓			
Close-out Requirements	✓	✓	✓				
Non-compliance	✓	✓	✓	✓	✓		

Conflict of Interest

- The HOME Program regulations require Recipients to comply with two different sets of conflict-of-interest provisions. The first set of provisions comes from 24 CFR Parts 84 and 85. The second, which applies only in cases not covered by 24 CFR Parts 84 and 85, is set forth in the HOME regulations. Additionally, the HOME regulations include conflict of interest provisions for nonprofit, for-profit owners/developers/sponsors and CHDOs.

Recipient Activities Covered by CFR Provisions:

In the procurement of property and services by Recipients, the conflict-of-interest provisions at 24 CFR 85.36 and 24 CFR 84.42 applies. These regulations require Recipients to maintain written standards governing the performance of their employees engaged in awarding and administering contracts. At a minimum, these standards must:

- Require that no employee, officer, agent of the Recipient shall participate in the selection, award or administration of a contract supported by HOME if a conflict-of- interest, either real or apparent, would be involved;
- Require that Recipient employees, officers and agents not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements; and
- Stipulate provisions for penalties, sanctions or other disciplinary actions for violations of standards.

- A conflict would arise when any of the following has a ***financial or other interest*** in a firm selected for award:
  - An employee, agent or officer of the recipient,
  - Any member of an employee's, agent's or officer's immediate family;
  - An employee's, agent's or officer's partner; or
  - An organization that employs or is about to employ an employee, agent or officer of the recipient.

Recipient Activities Covered by HOME Regulations

- In cases not covered by 24 CFR 85.36 and 24 CFR 84.42, the HOME regulations at 24 CFR 92.356 governing conflict-of-interest apply. These provisions cover employees, agents, consultants, officers and elected or appointed officials of the Recipient. The HOME regulations state that no person covered who exercises or has exercised any functions or responsibilities with respect to HOME activities or who is in a position to participate in decisions or gain inside information:

- May obtain a financial interest or benefit from a HOME activity; or
- Have an interest in any contract, subcontract or agreement for themselves or for persons with business or family ties.

- This requirement applies to covered persons during their tenure and for one year after leaving the Recipient entity.

- **Exceptions**. Upon written request by the recipient to LHC, exceptions to both sets of provisions may be granted by HUD on a case-by-case basis. After LHC has completed the following an exception may be granted:
  - Disclosed the full nature of the conflict and submitted proof that the disclosure has been made public, and
  - Provided a legal opinion from LHC stating that there would be no violation of state or local law if the exception were granted.
  - To request that LHC submit *a* written request for an exception to HUD, please contact your LHC HOME Program Manager.

- **Executing and maintaining conflict-of-interest provisions.** While not specifically required in the HOME regulations, Recipients must include the conflict-of-interest provision in written agreements and other documents with owners, developers and sponsors. In addition, monitoring of projects should include necessary actions to ensure that this provision is adhered to.

HOME Provisions for Nonprofit and For-Profit Owners, Developers, CHDOs and Sponsors

- The HOME Final Rule includes conflict-of-interest provision applicable to for-profit and nonprofit owners, developers and sponsors of HOME-assisted housing. This provision states that no owner, developer or sponsor of HOME-assisted housing, including their officers, employees, agents, consultants or elected or appointed officials, may occupy a HOME-assisted unit in a development. This provision ***does not*** apply to:
  - An individual receiving HOME funds to acquire or rehabilitate his/her principal residence, or
  - An individual living in a HOME-assisted rental housing development where he/she is a project manager or a maintenance worker in that development.
    - ✓ **Exceptions**. Exceptions to this conflict-of-interest provision (governing owners, developer and sponsors of HOME-assisted housing) may be granted by LHC after obtaining a waiver from HUD on a case-by-case basis based on the following factors as set forth in the regulations:
  - Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of assisted housing, and the exception will permit him or her to receive generally the same interests or benefits as are being made available or provided to the group as a whole;

- Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question;
- Whether the tenant protection requirements of CFR 92.253 (prohibited lease terms, termination of tenancy and tenant selection) are being observed;
- Whether the affirmative marketing requirements are being observed and followed; and
- Any other factor relevant to the PJ's determination, including the timing of the requested exception.

RELIGIOUS ORGANIZATIONS

- HOME funds ***may*** be provided to primarily religious organizations for any activity, excluding inherently religious activities.
    - As of the September 30, 2003 Final Rule for 24 CFR Part 92, HUD identified regulations for eight programs, including the HOME Program, to eliminate barriers and ensure that these programs are open to all qualified organizations regardless of their religious character.

HOME PROGRAM INCOME

- Program income is any revenue received by the Recipient directly generated from the use of HOME funds or matching contributions. Program income includes, but is not limited to:
    - Proceeds from the sale or long-term lease of real property acquired, rehabilitated or constructed with HOME funds or matching contributions;
    - Income from the use or rental of real property owned by a Recipient that was acquired, rehabilitated or constructed with HOME funds or matching contributions, minus the costs incidental to generating that income;
    - Payments of principal and interest on loans made with HOME or matching funds, and proceeds from the sale of loans or obligations secured by loans made with HOME or matching contributions;
    - Interest on program income; and
    - Any other interest or return on the investment of HOME and matching funds.
- LHC requires that all program income is returned to the PJ (i.e., LHC).
- A case study on program income is provided as Attachment 2-2 to this chapter.

RECAPTURED FUNDS

- Any amount repaid as a result of a homebuyer property being sold within the affordability period. The recaptured provisions must be stated in written agreements between Recipients and the income of any eligible homebuyers.

- Recaptured funds are a return of the original HOME investment and are technically not program income. Therefore, unlike program income, 10 percent of recaptured funds **cannot** be used for planning and administrative costs and must be returned to LHC.

INTEGRATED DISBURSEMENT AND INFORMATION SYSTEM (IDIS)

- LHC is required by HUD to use the IDIS system to accomplish two key objectives:

    - To manage and account for disbursements of HOME funds; and

    - To collect, consolidate and report information regarding HOME Program performance.

- Obligation of Funds in IDIS

    - Responsibility: Housing Finance Officer, Housing Supervisor, Housing Finance Manager, Program Administrator.

    - The Housing Finance Supervisor is responsible to completing the Project Obligation and De-obligation Form and for assembly of all necessary back-up documentation consistent with the policy. The form and all required back-up is assembled and forwarded to the Housing Finance Manager for review and approval. When the Manager concurs that all required information is properly assembled and in place he signifies so by signing in the appropriate places and forwarding to the Program Administrator who performs a secondary completion review and then signs and forwards to the Housing Program Specialist for entry into IDIS. The Housing Finance Specialist will not enter the project into IDIS unless the following information is complete and present for the type of activity:

        ✓ **<u>Housing Development Activity (Multi or Single Family)</u>**

        - Fully signed and dated Loan or Grant Agreement

        - Fully signed and dated Regulatory Agreement

        ✓ **<u>Tenant Based Rental Assistance (Administered by LHC)</u>**

        - Signed and dated Agreement between LHC and the Landlord

        - Signed and Dated Lease between tenant and the landlord

        - TBRA Lease Addendum.

        - HQS inspection

        - Certification of Income

        - Contract Rent Amount

        - Utility Allowance

        - Request for unit approval

        - Budget Calculation work

- TBRA Set-Up form

- ✓ **Tenant Based Rental Assistance (Administered by Subrecipient)**
  - Fully signed and dated Regulatory Agreement
  - All other items required for set-up under an LHC run TBRA program

- ✓ **Homeowner Rehabilitation Activities**
  - If run by a CHDO or subrecipient a signed and dated Regulatory Agreement
  - Signed and dated Regulatory Agreement
  - Income qualification for homeowners to be assisted
  - Work write-up/cost estimate agreed to by homeowner and LHC
  - Right of Access (Form granting LHC and the contractor the right to access the property to perform necessary work)

- ✓ **CHDO Operating Assistance**
  - Signed and dated Operating Assistance Grant Agreement

- The IDIS is like a "bank." LHC has an account in the bank, and the account contains a deposit of HOME monies (and other HUD funds). LHC can withdraw funds from the account by using a PC, much like computerized banking.

- Unlike a bank checking account, LHC must maintain significant information regarding the purpose for each draw (that is, activity information). LHC staff review and approve the draw request and enters the appropriate information into IDIS.
  - HOME Program staff use information submitted by program Recipients to prepares the project Set-up Reports and provide technical assistance to Recipients for the preparation of the Completion Report for all LHC HOME funded activities.
  - The Completion forms are sent to Recipients by the HOME Program staff prior to Activity close-out. For details regarding the submission of completed forms, please see the relevant activity chapters (Chapters 4-7).

OTHER LHC ADMINISTRATIVE REQUIREMENTS

In addition to the HOME administrative requirements listed in this chapter, LHC has certain administrative requirements on Recipients related to criminal background checks, suspensions, and audits.

- **Debarment and Criminal background check**. In addition to the Contract Disclosure and Certification described in the Conflict of Interest section above, LHC requires Recipients to disclose if any of the following apply:

  - ✓ Conviction by State or Federal jurisdiction;
  - ✓ Suspension or debarment by any state or Federal agency;
  - ✓ Bankruptcy or Reorganization;
  - ✓ Outstanding, uncorrected noncompliance with a state or Federal housing agency;
  - ✓ Existing contracts or indebtedness with LHC; and
  - ✓ Delinquent, defaulted or foreclosed contract, loan or indebtedness with LHC.

  - Per the Suspension Policy, LHC requires participants in the HOME Program to certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any federally funded transaction.

  - Any participant that remains on a debarred or suspended condition shall be prohibited from participation in the LHC/ HOME Program as long as they are classified in this manner.

- **Audit.** LHC requires that Recipients have an audit conducted of Federal funds received in accordance with the following:

  - Generally Accepted Accounting Principles (GAAP) and the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and

  - Non-Profit Organizations" as required in 24 CFR Part 84 and 85 respectively.

Provisions of 24 CFR Part 85 Applicable to Other Governmental Entities
Acting as Recipients or Sub-Recipients under the HOME Program

85.6 Additions and exceptions
85.12 Special grant or sub-grant conditions for “high risk” grantees
85.20 Standards for financial management systems
85.22 Allowable costs
85.26 Non-Federal audit
85.32 Equipment
85.33 Supplies
85.34 Copyrights
85.36 Procurement
85.44 Termination for convenience
85.51 Later disallowances and adjustments
85.52 Collection of amounts due

Provisions of 24 CFR Part 84 Applicable to
Nonprofit Organizations Acting as Recipients under the HOME Program

84.2 Definitions
84.5 Sub-awards
84.13 Debarment and suspension; Drug-Free Workplace
84.16 Resource Conservation and Recovery Act
84.21 Standards for financial management systems
84.22 Payment
84.26 Non-Federal audits
84.27 Allowable costs
84.28 Period of availability of funds
84.30 Purpose of property standards
84.31 Insurance coverage
84.34 Equipment
84.35 Supplies and other expendable property
84.36 Intangible property
84.37 Property trust relationship
84.40 Purpose of procurement standards
84.41 Recipient responsibilities
84.42 Codes of conduct
84.43 Competition
84.44 Procurement procedures
84.45 Cost and price analysis
84.46 Procurement records
84.47 Contract administration
84.48 Contract provisions
84.51 Monitoring and reporting program performance
84.60 Purpose of termination and enforcement
84.61 Termination
84.62 Enforcement
84.72 Subsequent adjustments and continuing responsibilities
84.73 Collection of amounts due

ATTACHMENT 2-2

PROGRAM INCOME CASE STUDY

Middle City received an allocation of $500,000 in HOME Program funds from HUD. Middle City allocated $200,000 of the funds to its homeowner rehabilitation program. This program provides direct loans with interest rates ranging from two to five percent, depending upon income to eligible owner occupants for the repair or rehabilitation of their homes. Through the repayment of principal and interest on the loans, this program generates approximately $25,000 in program income. In accordance with the HOME Program requirements, this program income is placed in the PJ's HOME Investment Trust account, and is used, prior to the drawdown of HOME funds from the U.S. Treasury, for other HOME-eligible housing activities.

Middle City also provided a total of $300,000 to two different CHDOs for eligible CHDO set- aside activities. The first project, which received $150,000 in HOME funds, was undertaken by Middle City Housing (MCH). This project involved the construction of a new multi-family rental property containing 25 apartments. Middle City -- the PJ -- provided the HOME funds to MCH in the form of a low-interest, deferred payment loan. The principal and interest on the loan would have to be repaid beginning in the third year of the project's operation. The loan repayments to the PJ would be considered program income, placed in the PJ's HOME Investment Trust account and expended for other HOME-eligible activities prior to the drawdown of additional HOME funds from the U.S. Treasury.

The HOME program has a number of basic rules that apply to all program activities. All LHC HOME Program Recipients must comply with these rules when implementing their projects.

This chapter provides an overview the HOME Program as well as general rules that apply to all program activities. Part I of this chapter provides a history of the HOME Program and explains how funds are allocated to LHC's partners. Part II of this chapter outlines the overarching program requirements of the HOME Program that apply to all funded Recipients and their projects. These requirements include rules about project subsidies, eligible costs, the property (including property standards), low-income targeting, and long-term affordability. Part III provides detail on cost allocation and subsidy layering.

For specific rules related to each program activity, see Chapters 4, 5, 6 and 7.

PART I: OVERVIEW OF THE HOME PROGRAM

The HOME Program was created by the National Affordable Housing Act of 1990 (NAHA), and has been amended several times by subsequent legislation. It is the largest Federal block grant available to communities to create affordable housing.

- **Objectives**: The intent of the HOME Program is to:
    - Increase the supply of decent affordable housing to lower-income households,
    - Expand the capacity of nonprofit housing providers,
    - Strengthen the ability of state and local governments to provide housing, and
    - Leverage private-sector participation.
- **Regulations:** The HOME Program regulations are found at 24 CFR Part 92 and the Final Rule was published on September 16, 1996. The HOME Final Rule has been revised. The effective date of the revisions is August 23, 2013. Relevant regulatory citations are provided throughout this manual.

ALLOCATION OF FUNDS

HOME funds are allocated annually by formula to State and local governments by HUD. The State of Louisiana receives funds through this formula and LHC is the agency that administers HOME funds allocated to the State. Under the HOME Program, States and local government units and consortium are designated as "Participating Jurisdictions" or "PJs". The local PJs and consortium in the State of Louisiana include the City of Baton Rouge and the unincorporated areas of East Baton Rouge Parish, the City of Lafayette and the unincorporated areas of Lafayette Parish, Houma-Terrebonne, the Cities of Alexandria, Lake Charles, Monroe, New Orleans, Shreveport and the Jefferson Parish Consortia. The State of Louisiana is designated as a HOME Program Participating Jurisdiction (PJ). The Louisiana Housing Corporation (the "LHC/Agency") formerly known as the Louisiana Housing Finance Agency (LHFA) is the HOME Program designated administrative entity for the State of Louisiana.

In turn, LHC allocates funds to various partners through their formal application process. LHC is subject to several HOME Program requirements when allocating funds to other entities and these requirements affect the way HOME program Recipients run their programs as well.

- **Timeframes. HOME Rules require LHC to commit and spend its funds within certain timeframes.**

  - PJs have ***24 months*** to enter into written agreements with developers, owners, contractors, Sub- recipients, State Recipients and Community Housing Development Organizations (CHDOs, a type of nonprofit housing organization) to commit HOME funds and ***five years*** to expend HOME funds. PJs that do not meet these timeframes risk losing their HOME funds.

  - Given these requirements, prior to committing funds to a specific project, PJs must have a reasonable expectation that construction will commence within ***12 months***.

  - PJs have **4 years** to complete a project or the project will be terminated and funds must be repaid. PJ must achieve full project completion, in accordance with the definition of "project completion" at §92.2.

- **Limits per applicant.** LHC has set the following parameters regarding the amount of HOME Program funds that can be allocated *per applicant*: **Note:** LHC will publish the maximum per applicant limitation during the NOFA process to meet HOME program requirements. The limitation is subject to availability of funds.

- **Uses of funds.** The HOME Program and LHC place the following limits on uses of fund:

  - **Planning and Administration.** LHC may expend, for payment of reasonable administrative and planning costs of the HOME program, an amount of HOME funds that is ***not more than 10 percent*** of the sum of the Fiscal Year HOME basic formula allocation plus any funds received in accordance with § 92.102(b). (See Chapter 2: Administrative Overview and Management for more information).

  - **CHDOS.** LHC must reserve ***a minimum of 15 percent*** of its annual allocation for activities undertaken by qualified Community Housing Development Organizations (CHDOs). (See Chapter 8 for more information on CHDOs.)

HOME-FUNDED ACTIVITIES

HOME funds can be used to support four general affordable housing activities.

- **Homeowner rehabilitation**: HOME funds may be used to assist existing owner-occupants with the repair, rehabilitation or reconstruction of their homes. (See Chapter 4 Homeowner Housing – Owner Occupied Housing for more information.)

Eligible Activities

Homeowner Rehabilitation Activities – see Chapter 4

Homebuyer Activities – see Chapter 5

Rental Housing Activities – see Chapter 6

TBRA – see Chapter 7

- **Homebuyer activities**: HOME funds can be used to finance the acquisition and/or rehabilitation or new construction of homes for homebuyers. (See Chapter 5 Homeowner Housing -- Homebuyer for more information.)

- **Rental housing**: Affordable rental housing may be acquired and/or rehabilitated, or constructed. (See Chapter 6 Rental Housing Program for more information.)

- **Tenant-based rental assistance (TBRA)**: Financial assistance for rent, security deposits and, under certain conditions, utility deposits may be provided to tenants. Assistance for utility deposits may only be provided in conjunction with a TBRA security deposit or monthly rental assistance program. (See Chapter 7 TBRA for more information.)

LHC HOME PROGRAM ROLES AND RELATIONSHIPS

LHC relies on numerous partners to create affordable housing under its HOME program. Partners play different roles at different times, depending upon the project or activity being undertaken.

- **LHC**: As a State PJ, LHC has broad discretion in administering HOME funds. LHC may administer activities directly, allocate funds to units of local government directly, evaluate and fund projects directly, or combine the two approaches.

- **State Recipients:** LHC may allocate funds to units of general local government, including cities, towns, townships and counties. The funds are then administered by local governments for eligible HOME uses.

- **Local PJs:** Local PJs are units of local government who received a HOME allocation directly from HUD. LHC may undertake jointly-funded projects with local PJs and may use HOME funds anywhere within the State including within the boundaries of local PJs. LHC HOME Program funds allocated within a designated local PJ will be limited to down payment and closing costs assistance loans, CHDO Set-Aside projects, and joint Low- Income Housing Tax Credit/HOME developments.

- **CHDOs**: A CHDO is a private, nonprofit organization that meets a series of qualifications prescribed in the HOME regulations. Each PJ, including LHC, must use a minimum of 15 percent of its annual allocation for housing owned, developed or sponsored by CHDOs. PJs evaluate organizations' qualifications and designate them as CHDOs. CHDOs also may be involved in the program as Sub- recipients, but the use of HOME funds in this capacity is not counted toward the 15 percent set-aside. See Chapter 8 of this manual for more information.

- **Sub- recipients**: A Subrecipient is a public agency or nonprofit organization selected by a PJ to administer all or a portion of the PJ's HOME Program. It may or may not also qualify as a CHDO. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not considered a Subrecipient.

- **Developers, owners and sponsors**: Individuals, for-profit entities and nonprofits can participate in the HOME Program as owners, developers or sponsors of housing. When CHDOs use HOME funds as owners, developers or sponsors, this use of HOME funds counts toward the 15 percent CHDO set-aside.

- **Private lenders**: One of the goals of the HOME Program is to establish strong public/private partnerships. PJs are required to make all reasonable efforts to maximize participation by private lenders and other members of the private sector. The Community Reinvestment Act (CRA) requirements provide an incentive to private lending institutions to become involved in HOME

Program activities.

- **Faith based organizations**: Faith-based or religious organizations are now able to compete on an equal footing with other organizations for HUD funding. Funding may be provided directly to any Recipient, as long as those funds are not used to support inherently religious activities. As of the September 30, 2003 Final Rule for 24 CFR Part 92, HUD identified regulations for eight programs, including the HOME Program, to eliminate barriers and ensure that these programs are open to all qualified organizations regardless of their religious character.

- **Third-party contractors**: A PJ may contract with a private for-profit contractor to administer all or part of its HOME Program. Unlike public agencies or nonprofits, contractors must be procured through a competitive process in accordance with applicable Office of Management and Budget (OMB) procurement requirements. These requirements are found in 24 CFR Part 85 (for PJs) and Part 84 (for nonprofits).

OTHER HOME REQUIREMENTS

When a PJ accepts HOME funds, it agrees to meet certain obligations. LHC passes along many of these requirements to its Recipients.

Matching Requirement *[24 CFR Part 92.218-24 CFR Part 92.222]*

- Each PJ incurs a 25 percent matching obligation for HOME funds it expends. LHC imposes a matching obligation on its HOME Program Recipients for all activities *except* TBRA and homebuyer down payment assistance. Chapter 14 provides further details on LHC match requirements.

- Matching contributions must be:

  - A permanent contribution to affordable housing;

  - From non-Federal sources; and

  - Provided by any of a broad array of public and private donors, such as local government agencies, state agencies, charitable organizations/foundations, and private sector organizations such as lending institutions and corporate donors.

Monitoring, Record-keeping and Reporting *[24 CFR Part 92.508 and 24 CFR Part 92.509]*

- As a HOME PJ, LHC is required to keep records that enable HUD to determine whether they have met program and project requirements. LHC is also responsible for enforcing these requirements with all its HOME Program Recipients. Monitoring and record-keeping requirements are outlined in Chapter 9: Recordkeeping, Reporting, and Monitoring of this manual.

- LHC must also submit an annual performance report to HUD known as the Consolidated Annual Performance and Evaluation Report (CAPER.) LHC requires that all Recipients meet certain reporting obligations to assist with this annual responsibility. (See Chapter 9: Recordkeeping, Reporting, and Monitoring for further information on reporting requirements.)

PART II: GENERAL REQUIREMENTS OF THE HOME PROGRAM

As described in Part I of this chapter, the LHC allocates funds to Recipients who in turn develop eligible HOME projects. Part II of this chapter outlines a variety of general requirements all HOME Program Recipients need to follow and comply with when administering a HOME project. The following two definitions are critical to understanding the requirements that are outlined in the following sections.

- **Project** means a site or sites together with any building (including manufactured housing unit) or buildings located on the site(s) under common ownership, management and financing, to be assisted with HOME funds as a single undertaking. The "project" includes all of the activities associated with the site and building. For ***tenant-based rental assistance (TBRA)***, "project" means assistance to one or more families.

- **HOME-Assisted Units:** The HOME Program distinguishes between the units in a project that have been assisted with HOME funds and those that have not -- hence the term ***HOME-assisted*** unit. This distinction between HOME-assisted and unassisted units allows HOME funds to be spent on mixed-income projects while still targeting HOME dollars only to income-eligible households.

THE SUBSIDY

The HOME Program outlines eligible forms of subsidy as well as subsidy limits.

Eligible Forms of Subsidy

- The HOME Program regulations allows virtually any form of financial assistance, or subsidy, to be provided for eligible projects and to eligible beneficiaries, though the participating jurisdiction (in this case LHC) decides what forms of assistance it will provide.

- LHC HOME Program allocations to Recipients for the Rental Housing Program and the Homeowner Program and awards to nonprofit entities, for-profit entities and CHDO activities will be in the form of **repayable or forgivable loans**. Awards for TBRA programs will be in the form of **grants**. These forms of subsidy, as well as the other forms that are eligible under the HOME regulation are outlined below:

    - **Interest bearing loans or advances:** These loans are amortizing loans. Repayment is expected on a regular basis, usually monthly, so that over a fixed period of time, all of the principal and interest is repaid.

        - ✓ Such loans may have interest rates at or below the prevailing market rate. Often, very low interest rates (i.e., one to three percent) can make monthly payments affordable to the borrower.

        - ✓ The property or some other assets are used as collateral.

        - ✓ The term of the loan may vary. For home purchase, a term of up to 30 years is common while rehabilitation and construction loans tend to have terms of 10 to 15 years.

- **Non-interest-bearing loans or advances:** The principal amount of such loans is paid back on a regular basis over time, but no interest is charged.
  - ✓ As with interest-bearing loans, these loans will use the property or other assets as collateral and the term of the loan will vary depending on the nature of the activity funded.
  - ✓ Such loans are made when the borrower is able to make regular payments but even a small amount of interest is not affordable.
- **Deferred loans (forgivable or repayable)**: These loans are not fully amortized.

Instead, some, or even all, principal and interest payments are deferred to some point in the future. Deferred loans can be structured in many different ways.

  - ✓ Deferred payment loans can be forgivable or repayable.
    - ➢ If forgivable, the forgiveness might be structured to occur at one point in time (such as at the end of the affordability period), or forgiven incrementally (such as forgiving one-fifth of the loan each year over five years).
    - ➢ If repayable, repayment might be required at the sale or transfer of the property or at the end of a fixed period of time.
  - ✓ Like the amortizing loans discussed above, these loans can accrue interest or be non-interest bearing.
  - ✓ Deferred payment loans require the property or some other form of collateral to be used as security for repayments.
  - ✓ Deferred payment loans are also referred to as "soft seconds." They are increasingly being used to leverage private first mortgage financing in homeownership. They may also be used to help rental projects by allowing deferral of loan payments for the first few years until the project becomes stable.
- **Grants:** Grants are provided with no requirement or expectation of repayment.
  - ✓ Grants require no liens on the property or other assets.
  - ✓ They are most commonly used for downpayment and closing cost assistance in homebuyer programs or to provide assistance to very low-income owner-occupants for rehabilitation; however, LHC currently provides down payment assistance in the form of **repayable** or **forgivable** loans.
- **Interest subsidies:** This is usually an up-front discounted payment to a private lender in exchange for a lower interest rate on a loan. An interest subsidy may also be a deposit in an interest-bearing account from which monthly subsidies are drawn and paid to a lender along with the homeowner's monthly payment.
- **Equity investments:** An equity investment is an investment made in return for a share of ownership. Under this form of subsidy, the PJ acquires a financial stake in the assisted property and is paid a monetary return on the investment if money is left after expenses and loans are paid.

- **Loan guarantees and loan guarantee accounts:** HOME funds may be pledged to guarantee loans or to capitalize a loan guarantee account. A loan guarantee or a loan guarantee account ensures payment of a loan in case of default.

  - ✓ A loan guarantee is a written promise to pay the lender some percentage of the outstanding principal balance of a loan in the event the borrower defaults. It may be held for a specified period of time or reduced by a specific amount over time as the loan principal is repaid.
  - ✓ A loan guarantee account is a loan loss reserve held by the lender in an amount equal to some percentage of the outstanding principal.

    - ➢ The lender holding the loan guarantee account may require a minimum balance, as well as a percentage of the principal amount of the loan. The percentage of the loan amount held as guarantee may vary from loan to loan, or from program to program.

    - ➢ HOME rules require that the amount of money in a loan guarantee account must be based on a reasonable estimate of the default rate on the guaranteed loans, and may not exceed 20 percent of the total outstanding principal guaranteed, except that the account may include a reasonable minimum balance.

- **Other forms of assistance require approval by HUD**: If the PJ intends to use a form of assistance not listed above, the PJ's Consolidated Plan or Action Plan should describe the proposed form of assistance. Once approved by HUD as part of the Plan, no other HUD approval is required.

<u>**Project Subsidy Limits**</u>

- ❑ **Minimum HOME investment**: The minimum amount of HOME funds is an average of $1,000, multiplied by the number of HOME-assisted units in the project.

  - The minimum ***only*** relates to the HOME funds, and ***not*** to any other funds that might be used for project costs.

  - The minimum HOME investment does not apply to TBRA.

- ❑ **Maximum HOME investment:** The maximum per-unit HOME subsidy limit varies by PJ. Due to the discontinuation of the Section 221 (d) (3) mortgage insurance program, HUD published CPD Notice 15-003: Interim Policy on Maximum Per Unit Subsidy Limits for the HOME Program.

  - PJs must use the Section 234- Condominium Housing basic mortgage limits, for elevator –type projects, as an alternative to the Section 221(d) (3) limits in order to determine the maximum amount of HOME funds that may be invested on a per unit basis in a HOME assisted project.

- ❑ **Actual HOME Investment:** The actual subsidy provided will depend on the following factors:
  - The proportion of the total project cost that is HOME-eligible -- some planned project costs may not be eligible expenses under the HOME Program.

  - The number of units in the project is HOME-assisted -- projects may have a mix of HOME- and non-HOME-assisted units.

  - The financial needs of the project -- HOME projects may not receive more subsidy than is required to make them financially feasible.

- To determine what is required and reasonable, LHC will complete a cost allocation and subsidy layering analysis. HOME project awards are based on the completed cost allocation and subsidy layering analysis.

Part III of this chapter provides an overview of the cost allocation and subsidy layering reviews.

- Cost allocation and subsidy layering are impacted by any changes in the number of HOME-assisted units, total number of units in the project, development cost and/or financing sources.

- Because of these requirements, **all HOME Recipients are obligated to contact LHC as soon as there are any changes in project size/scope, cost or financing sources**.

ELIGIBLE COSTS

Eligible costs depend on the nature of the program activity. The individual program chapters (Chapters 4 through 7) provide specific lists of eligible costs. A general list follows:

- **New construction**: HOME funds may be used for new construction of both rental and ownership housing. Any project that includes the addition of dwelling units outside the existing walls of a structure is considered new construction.

- **Rehabilitation**: This includes the alteration, improvement or modification of an existing structure. It also includes moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction.

- **Reconstruction**: This refers to rebuilding a structure on the same lot where housing is standing at the time of project commitment. HOME funds may be used to build a new foundation or repair an existing foundation. Reconstruction also includes replacing a substandard manufactured housing unit with a new manufactured housing unit. During reconstruction, the number of rooms per unit may change, but the number of units may not. NOTE: Replacing a manufactured housing unit with a stick-built unit is considered a homebuyer development activity even if the applicant/beneficiary owns the lot and existing manufactured unit.

- **Conversion**: Conversion of an existing structure from another use to affordable residential housing is usually classified as rehabilitation. If conversion involves additional units beyond the walls (envelope) of an existing structure, the entire project will be deemed new construction. Conversion of a structure to commercial use is prohibited.

- **Site improvements**: Site improvements must be in keeping with improvements to surrounding standard projects. They include new, on-site improvements (sidewalks, utility connections, sewer and water lines, etc.) where none are present. They are essential to development or repair of existing improvements. Building new, off-site utility connections to an adjacent street is also eligible. Off-site infrastructure is not eligible as a HOME expense, but may be eligible for match credit.

<u>Example</u>: Infrastructure, such as sewer and water lines in a public street in front of a HOME- assisted property, cannot be paid for with HOME funds. However, the connections that run from the HOME-assisted property to the street are eligible HOME costs since they are essential to the property.

Reconstruction & Environmental Review

Reconstruction may take place anywhere on the lot; however, reconstruction of a single family unit in a new location on the lot is classified as new construction for purposes of environmental review. Reconstruction of multi-family is viewed as new construction for the purposes of environmental review if the number of units is increased or decreased by more than 20% and/or the cost of reconstruction is more than 75% of the total estimated cost of the replacement after the work is completed. Refer to 24 CFR Part 58 for more information.

- **Acquisition of property**: Acquisition of existing standard property, or substandard property in need of rehabilitation, is eligible as part of either a homebuyer program or a rental housing project. After acquisition, rental units must meet HOME rental occupancy, affordability and lease requirements.

- **Acquisition of vacant land**: HOME funds may be used for acquisition of vacant land ***only*** if construction will begin on a HOME project within 12 months of purchase. Land banking is prohibited.

- **Demolition**: Demolition of an existing structure may be funded through HOME ***only*** if construction will begin on the HOME project within 12 months.

- **Relocation costs**: The Uniform Relocation Act and Section 104(d) (also known as the Barney Frank Amendments; see the appendix for detailed information on these requirements) apply to all HOME-assisted properties. Both permanent and temporary relocation assistance are eligible costs. Staff and overhead costs associated with relocation assistance are also eligible.

- **Refinancing**: HOME funds may be used to refinance existing debt on single-family, owner-occupied properties in connection with HOME-funded rehabilitation. The refinancing must be necessary to reduce the owner's overall housing costs and make the housing more affordable. Refinancing for the purpose of taking out equity is not permitted. HOME may also be used to refinance existing debt on multi-family projects being rehabilitated with HOME funds, if refinancing is necessary to permit or continue long-term affordability, and is consistent with PJ-established refinancing guidelines.

- **Capitalization of project reserves**: HOME funds may be used to fund an initial operating deficit reserve for new construction and rehabilitation projects for the initial rent-up period. The reserve may be used to pay for project operating expenses, scheduled payments to a replacement reserve and debt service for a period of up to 18 months.

- **Project-related soft costs**: These must be reasonable and necessary. Examples of eligible project soft costs include:

  - Finance-related costs;
  - Architectural, engineering and related professional services;
  - Tenant and homebuyer counseling, provided the household receiving the counseling ultimately becomes the tenant or owner of a HOME-assisted unit;
  - Affirmative marketing and fair housing services to prospective tenants or owners of an assisted project; and
  - Staff costs directly related to projects (not including TBRA.)

See Chapter 2 Administrative and Management Overview for more information on project related soft costs.

PROHIBITED ACTIVITIES

The HOME Program regulations explicitly prohibit certain activities which are outlined below.

- **Project reserve accounts**: HOME funds may not be used to provide project reserve accounts (except for initial operating deficit reserves) or to pay for operating subsidies.

- **Tenant-based rental assistance for certain purposes**: HOME funds may not be used as rental assistance in conjunction with the federal Rental Rehabilitation Program (Section 17) to prevent displacements. They also may not be used for certain mandated existing Section 8 Program uses, such as Section 8 rent subsidies for troubled HUD-insured projects.

- **Match for other programs**: HOME Program funds may not be used as the "nonfederal" match for other federal programs ***except*** to match McKinney Act funds (see Chapter 14 Match).

- **Development, operations or modernization of public housing**: HOME Program monies may not be used to provide assistance authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds).

- **Additional investment of HOME funds (double-dipping)**: During the first year after project completion, the PJ may commit additional funds to a project. After the first year, no additional HOME funds may be provided to a HOME-assisted project during the relevant period of affordability, ***except*** that:

  - Rental assistance to families may be renewed.

  - Rental assistance may be provided to families that will occupy housing previously assisted with HOME funds.

  - A homebuyer may be assisted with HOME funds to acquire a unit that was previously assisted with HOME funds.

- **Acquisition of PJ-owned property**: A PJ ***may not*** use HOME Program funds to reimburse itself for property in its inventory or property purchased for another purpose. However, in anticipation of a HOME project, a PJ may use HOME funds to:

  - Acquire property.

  - Reimburse itself for property acquired specifically for a HOME project with other funds.

- **Project-based rental assistance**: HOME funds may not be used for rental assistance if receipt of the funds is tied to occupancy in a particular project. Funds from another source, such as Section 8, may be used for this type of project-based assistance in a HOME- assisted unit. Further, HOME funds may be used for other eligible costs, such as rehabilitation, in units receiving project-based assistance from another source -- for example, Section 8 or state-funded project-based assistance.

- **Pay for delinquent taxes, fees or charges.** HOME funds may not be used to pay delinquent taxes, fees or charges on properties to be assisted with HOME funds.

THE PROPERTY

The HOME Program has rules about the type and value of properties eligible for assistance.

<u>**Property Types**</u>

- Depending on the nature of the program activity, HOME rules specify the types of property that are eligible for funding. See the individual program activity chapters for guidance.

- Public facilities are not eligible under HOME even if constructed to serve a HOME-assisted project. See CPD Notice 01-5 in the Appendix.

Property Value

- For owner-occupied and homebuyer properties, HOME limits the value or purchase price of the property. In short, the price or, in the case of rehabilitated properties, the value may not exceed 95 percent of the area median purchase price.

Property Standards

- HOME-funded properties must meet certain minimum property standards.

  - **State and local standards**: State and local codes and ordinances apply to any HOME- funded project regardless of whether the project involves acquisition, rehabilitation, or new construction.

  - **Model Codes**: For ***rehabilitation or new construction*** projects where there are not state or local building codes, the Recipient must enforce national model codes as listed in Exhibit 3-1.

  - **Uniform Physical Condition Standards (UPCS)**: Newly adopted property standards for acquisition and rehabilitation of existing housing and ongoing standards for rental projects without local code standards.

    - ✓ PJs are not required to apply the entire UPCS list of inspectable items and areas; HUD will specify through guidance what portions of UPCS are applicable to HOME projects. UPCS is not applicable to TBRA or new construction.

  - **Housing Quality Standards (HQS)**: For ***acquisition-only*** projects, if there are no state or local codes or standards, the Recipient must enforce Section 8 Housing Quality Standards (HQS).

  - **Rehabilitation standards**: Each PJ must develop written rehabilitation standards to apply to all HOME-funded ***rehabilitation*** work. These standards are similar to work specifications, and generally describe the methods and materials to be used when performing rehabilitation activities.

  - **International Energy Conservation Code**: ***New construction*** requires compliance with the International Energy Conservation Code.

  - **Handicapped accessibility – Section (504)**: In some cases, handicapped accessibility requirements apply. See the indiv**idual activity chapters (Chapters 4-7) fo**r more information.

  - **Site and neighborhood standards**: The site and nei**ghborhood standards of 24 CFR 983.6(b) ap**ply only to the ***new construction of rental housing***.

  - **Universal Design Requirements**: LHC encourages the inclusion of *Universal Design Standards whenever possible*.

    - ✓ Units that will meet Universal Design upon completion may be preferred in selection of potential projects. More information may obtained by accessing the following link: http://www.lhc.la.gov/

- The applicable standards vary by the type of activity. Exhibit 3-1 explains the minimum property standards that apply to each type of HOME activity.

- All ***new*** manufactured housing units must meet the construction and safety standards of 24 CFR 3280. New manufactured housing units must be installed according to state or local codes or the manufacturer's written instructions.

EXHIBIT
3-1

MINIMUM PROPERTY STANDARDS BY ACTIVITY T YPE

Activ	Minimum Property Standard to be Met
Tenant-based rental assistance	Section 8 HQS.
Acquisition of existing housing (no rehabilitation	Applicable state or local housing quality standards and code requirements. If no local standards/codes apply, Section 8 HQS.
Rehabilitation of housing	Local written rehabilitation standards. AND State and local code requirements. If no local codes apply, one of the following national model codes: • Uniform Building Code (ICBO) • National Building Code (BOCA) • Standard Building Code (SBCCI) OR • Council of American Building Officials one- or two-family code (CABO) OR • Minimum Property Standards* at 24 CFR 200.925 or 200.926 (FHA). AND Handicapped accessibility requirements, where applicable *(i.e., Section 504)*.

New construction of housing	State and local code requirements. If no state and local codes apply, one of the following national model codes: • Uniform Building Code (ICBO) • National Building Code (BOCA) • Standard Building Code (SBCCI) OR • Council of American Building Officials one- or two-family code (CABO) OR • Minimum Property Standards* (FHA) at 24 CFR 200.925 (for multi-family) or 200.926 (for one- and two-unit dwellings). AND International Energy Conservation Code. AND Handicapped accessibility requirements, where applicable *(i.e., Section 504)* New construction of rental housing must meet site and neighborhood standards at 24 CFR 893.6(b).

*Note: PJs using Minimum Property Standard may rely on inspections performed by a qualified person.

THE APPLICANT/BENEFICIARY

The HOME Program is designed to provide affordable housing to low-income and very-low- income families and individuals. Therefore, the program has rules about targeting program resources and establishing applicant eligibility.

Program Targeting

LHC must use 100 percent of its HOME funds to assist families with incomes below 80 percent of the area median income.

- **For rental housing or TBRA**: When HOME funds are used for rental housing or for TBRA, additional targeting requirements apply:
  - For each annual HOME allocation, LHC requires that 90 percent of the occupants of HOME-assisted rental units and households assisted with HOME-funded TBRA must have incomes that are 60 percent or less of the area median.
  - 20 percent of the units in ***each*** rental housing project containing ***five or more*** units must be occupied by tenant families with incomes at or below 50 percent of median income.

Applicant Income Eligibility

- **Income eligibility**: Beneficiaries of HOME funds -- homebuyers, homeowners or tenants -- must be low-income or very-low-income. Their income eligibility is determined based on their annual income.

- **Annual income**: Annual income is the gross amount of income anticipated by all adult household members during the 12 months following the effective date of the determination. NOTE: Annual income is sometimes referred to as gross income or annual (gross) income.

- **Calculating annual income**: To calculate annual (gross) income, the PJ may choose among two definitions of income listed below. LHC has selected for its programs the Section 8 (Part 5) definition of income. LHC HOME Recipients must use the Section 8/ Part 5 definition when calculating the annual income of their program beneficiaries.

  - **Section 8 (Part 5) annual (gross) income:** The State HOME program uses the Section 8/Part 5 definition of annual income.

  - **IRS adjusted gross income:** The final rule allows HOME participants to determine annual income by using the calculation for "adjusted gross income" outlined in the federal income tax IRS Form 1040. (Note: while the IRS calls this calculation "adjusted gross income," it is considered "annual income" for the purposes of the HOME program. "Adjusted income" under the HOME program -- used only when calculating rents or TBRA -- requires taking annual income and adjusting it in accordance with Section 8 rules.)

  - **Census long form annual income:** The final rule eliminated the use of the Census Long Form income as a definition of income (effective date 8/23/2013).

    - ✓ Applies to all new determinations and renewals after 8/23/2013.

  Note: The definitions listed above provide guidance on what items to include in annual income calculation (for example, wages, salaries, tips, etc.). They do not affect the method in which income is verified (discussed under "Income Verifications" below) or how income is adjusted when calculating rents or TBRA.

Income Verifications

- **Initial Verification**: To determine if program applicants are income-eligible, Recipients must verify their income using source documentation such as wage statements, interest statements, and unemployment compensation statements.

  - Income eligibility is based on <u>anticipated</u> income. When collecting income verification documentation, also consider any likely changes in income. For example, last year's tax return does not establish anticipated income; nor is it adequate source documentation.

  - Once initial income verification is completed, a Recipient is <u>not</u> required to re-examine the applicant's income <u>unless</u> six months has elapsed before assistance is provided.

- **Annual Re-examinations**: For rental and TBRA programs, annual re-certifications of income are required. While the HOME Program regulations require that income must be verified with source documentation every six years, LHC requires income be verified with source documentation **annually.**

Determining Income Qualification

The following policies and procedures apply to HOME eligible activities that require income verification, including but not limited to, Single Family and Owner-Rehab**.**

For families who are tenants in LHC-HOME-assisted housing and not receiving HOME tenant-based rental assistance, the LHC or its grantees shall initially use the procedure outlined in number one (1) below. For annual re-certifications it may choose between any of the methods listed in 1-3.

- **Method of Determining Income:**
  - LHC or its grantees will be responsible for examining at least 2 months of source documents that evidence annual income (e.g., wage statement, interest statement, unemployment compensation statement) for each member of the family or;
  - LHC or its grantees shall obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request or;
  - LHC or its grantees shall obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.
  - For all other families (i.e., homeowners receiving rehabilitation assistance, homebuyers, and recipients of HOME tenant-based rental assistance), the participating jurisdiction must determine annual income by examining at least 2 months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.
  - When determining whether a family is income eligible, the LHC or its grantees shall use one of the following two definitions of "annual income":
    - ✓ Annual income as defined at 24 CFR 5.609 (except when determining the income of a homeowner for an owner occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR 5.603); or
    - ✓ Adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual Federal annual income tax purposes.
  - Although the LHC or it grantees may use either of the definitions of "annual income" permitted in the above section to calculate adjusted income, it must apply exclusions from

income established at 24 CFR 5.611. The HOME rents for very low-income families established under §92.252(b) (2) are based on adjusted income. In addition, the LHC or its sub-grantees may base the amount of tenant-based rental assistance on the adjusted income of the family. The LHC or its grantees or sub-grantees may use only one definition for each HOME-assisted program (e.g., downpayment assistance program) that it administers and for each rental housing project.

- The LHC, its grantees or sub-grantees must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income shall include income from all persons in the household. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

- Prior to the initial provision of assistance to the client, the LHC, its grantees or sub-grantees will review the file and determine if the income certification is current. In any case when the income certification is more than six months removed from the first provision of assistance the income will be re-verified.

LONG-TERM AFFORDABILITY

To ensure that HOME investments yield affordable housing over the long term, HOME imposes rent and occupancy requirements over the length of an affordability period.

Affordability Periods

- For homebuyer and rental projects, the length of the affordability period depends on the amount of the HOME investment in the property and the nature of the activity funded. The table below provides the affordability periods.

HOME Investment per Unit	Length of the Affordability Period
Less than $15,000	5 years
$15,000 - $40,000	10 years
More than $40,000	15 years
New construction of *rental* housing	20 years
Refinancing of *rental* housing	15 years

- The HOME Final Rule eliminated the requirement that when HOME funds are used in conjunction with Federal Housing Administration (FHA) insurance, the affordability period be the term of the FHA-insured mortgage.

Occupancy

- Throughout the affordability period, the HOME-assisted housing must be occupied by income-eligible households.
  - **Rental housing**: When units become vacant during the affordability period, subsequent tenants must be income-eligible and must be charged the applicable HOME rent. (See Chapter 6 Rental Housing Program for more information.)
  - **Homebuyer assistance**: If a home purchased with HOME assistance is sold during the affordability period, resale or recapture provisions apply to ensure the continued provision of affordable homeownership. (See Chapter 5: Homeowner Housing Program – Homebuyers for more information.)

APPLICABILITY OF OTHER FEDERAL REQUIREMENTS

- HOME is subject to a number of cross-cutting Federal regulations, which are detailed in Chapter 13 and highlighted as applicable in the chapters covering homeowner rehabilitation, homebuyer and rental housing activities.

PART III: COST ALLOCATION AND SUBSIDY LAYERING

As described in Part II of this chapter under "Project Subsidy Limits", LHC performs a cost allocation and subsidy layering review of HOME projects to determine the appropriate subsidy amount to the project.

- As explained in Part II, the actual HOME Investment in a project depends on the following factors.

    - The proportion of the total project cost that is HOME-eligible -- some planned project costs may not be eligible expenses under the HOME Program.

    - How many of the units in the project are HOME-assisted -- Projects may have a mix of HOME- and non-HOME-assisted units.

    - The financial needs of the project -- HOME projects may not receive more subsidy than is required to make them financially feasible.

<u>Example</u>: Three units in a six-unit structure will be rehabilitated with HOME funds. The maximum-per-unit HOME subsidy for the area determined by HUD is $80,000. Thus, the HOME subsidy for this project ***cannot exceed*** *$240,000 (3 X $80,000). The developer has estimated rehabilitation costs of $75,000 per unit. However, the subsidy needed to make the project financially feasible based on an analysis of the cash flow and development costs is only $210,000, or $70,000 per unit.*

- To determine what is required and reasonable. LHC will complete a cost allocation and subsidy layering review.

- Cost allocation and subsidy layering are impacted by any changes in the proportion of HOME-assisted units to the number of total units in the project, development cost or financing sources.

- Because of these requirements, all HOME Recipients are obligated to contact LHC as soon as there are any changes in project size/scope, cost or financing sources at any point during the development of the project.

COST ALLOCATION

- HOME rules create a floor (minimum) for the number of HOME-assisted units a project must have. This floor is based on the proportional share of total eligible costs to be paid with HOME funds.

<u>Example</u>: Soccer City is considering a request for HOME funds from Sable Park Housing for a 20-unit building. The HOME-eligible development costs total $400,000. The developer has requested $100,000 in HOME funds. Since the HOME funds represent one-fourth of the total eligible development costs, Soccer City must require the project to have at least five HOME-assisted units, the "floor." Soccer City may choose to require more than five units to be HOME-assisted.

<u>Example</u>: When Can-do CHDO approached Soccer City for development funds for a 30- unit rehabilitation project, Soccer City decided to subsidize half of their units. All of the units were comparable in size, features, number of bedrooms and development cost. Consequently, Soccer City provided half of the $600,000 in HOME-eligible development costs (i.e., $300,000) to Can-do and 15 of the 30 units were designated HOME-assisted.

- ❑ As such, before determining the allowable HOME subsidy amount, LHC establishes the total HOME-eligible cost for the project.

- ❑ Once the total HOME-eligible costs are established for the project, LHC must allocate costs across units.

  - If both the assisted and non-assisted units are comparable in size, features and number of bedrooms, the HOME-eligible costs can be pro-rated across units. (Since floating units, by definition, must be comparable, costs should always be pro-rated.)

<u>Example</u>: *Soccer City wants to subsidize development of a 30 unit project with HOME funds. Twenty of the units have one bedroom and ten have two bedrooms. All of the units have identical amenities. The city plans to underwrite one-third of the units (seven one-bedrooms and three two-bedrooms) and the owner plans to use the floating unit approach. Since all of the one-bedroom units are comparable to one another the costs associated with the one-bedroom units (and common costs on a pro-rated basis) can be spread across all of the one-bedroom units. The same is true of the two-bedroom units, since they also are comparable to one another.*

  - If the assisted and non-assisted units are not comparable, the actual costs must be determined and allocated unit-by-unit. The specific units identified to "receive" HOME funds must be fixed -- that is, designated as HOME-assisted.

    - ✓ HUD Notice CPD 98-02 provides further guidance on allocating costs in projects with HOME and non-HOME units. A copy of the notice can be located online at http://www.hud.gov/utilities/intercept.cfm?/offices/cpd/lawsregs/notices/1998/98-2.pdf.

SUBSIDY LAYERING

- ❑ HUD establishes limits on the amount of HOME funds that may be invested in affordable housing on a per-unit basis for specific areas.

- ❑ Before committing funds to a project that combines the use of any other local, State or Federal assistance, LHC evaluates the project in accordance with guidelines that it has adopted, to ensure that LHC does not invest any more HOME funds than are necessary to provide affordable housing.

- ❑ LHC conducts the subsidy layering review in accordance with the guidelines presented in HUD Notice CPD-98-01 (see the Appendix). These guidelines include review of the following project documents:

  - *Sources/uses of funds*: Recipients are required to provide LHC the sources/uses of funds statement for the project with supportive documentation. This statement should reflect the project development budget and should list:

    - ✓ All proposed sources (both private and public) of funds and the dollar amounts for each respective source; and

    - ✓ All proposed uses of funds (including acquisition costs, rehabilitation/or construction costs, financing costs and professional fees) associated with the project.

  - *Certification of governmental assistance*: Recipients must provide a formal certification as to whether or not additional governmental assistance will be provided to the project, and if so, what kind of assistance.

- *Project development budget*: Recipients must provide LHC the project development budget so that LHC can determine whether the development costs are necessary and reasonable.

  - ✓ The budget should include all costs associated with the development of the project, regardless of the funding sources.

- "Reasonableness" of costs will be based on all of the following factors:

  - ✓ Costs of comparable projects in the same geographical area;

  - ✓ Qualifications of the cost estimators that developed the various budget line items; and

  - ✓ Comparable costs published by recognized industry cost index services.

- *Proforma*: LHC will determine the reasonableness of the rate of return on equity investment by looking at the Recipient's proforma (project income and expense statement).

  - ✓ The proforma should include achievable rent levels, market vacancies and operating expenses.

  - ✓ It should also specify the consequences of tax benefits, if any, and any other assumptions used in calculating the project cash flow.

  - ✓ The proforma should represent, at a minimum, the term of the HOME affordability requirements, or longer if other funding sources require longer affordability terms.

- As mentioned above, LHC conducts its cost allocation and subsidy review upfront to determine the appropriate HOME subsidy to the project; however, cost allocation and subsidy layering are impacted by any changes in the proportion of HOME-assisted unit to total units in the project, development cost or financing sources. **This means all HOME Recipients are obligated to contact LHC as soon as there are any changes in project size/scope, cost or financing sources at any point during the development of the project.**

HOME funds may be use to provide assistance to eligible owner-occupants to rehabilitate or reconstruct their homes. This chapter covers the specific rules that apply to this activity. For information on assistance to homebuyers, see Chapter 5.

The Louisiana Housing Corporation (LHC) funds Recipients to assist eligible homeowners to rehabilitate or reconstruct their homes. In this role, the Recipients are responsible for screening homeowners for eligibility and administering the rehabilitation of the home in compliance HOME Program requirements.

This chapter discusses HOME requirements including:

- Eligible Recipients and activities,
- Forms of financial assistance,
- Eligible costs,
- Cost and assistance limits,
- Eligible properties,
- Eligible homeowners, and
- Affordability period.

LHC HOME funded Recipients should use this chapter as their guide to successfully carry out their activities.

ELIGIBLE RECIPIENTS AND ACTIVITIES

The HOME Program and LHC rules and regulations define both eligible Recipients of the LHC homeowner assistance program as well as the eligible activities these Recipients may undertake.

- Eligible Recipients are State Recipients and Sub- recipients**.**
    - State Recipients are defined as units of local government that carry out a HOME program activity on behalf of LHC.
    - Public agencies and/or nonprofit organizations that administer all or a portion of LHC's HOME program are called Sub- recipients.
- Eligible Recipients must identify eligible households for their programs upfront and submit the information on the identified eligible households to LHC for review.
    - Note that this requirement does not relieve the Recipient of finalizing the eligibility of both the household and the unit once the Recipient has been approved to participate by the LHC Board of Directors.
    - That is, Recipients must collect information from the homeowner to document the eligibility of the household (see discussion on Eligible Beneficiaries below) and the

property (see discussion on Eligible Properties below).

- They must also be able to document compliance with all the other program requirements discussed in this chapter.

- ❑ Eligible Recipients must comply with the following performance standards and expend:

  - 25% of HOME allocation within 90 days of Notice to Proceed;
  - 75% of HOME allocation within one year of Notice to Proceed; and
  - 100% of the HOME allocation within 18 months of the Notice to Proceed.

Eligible Activities

LHC's homeowner assistance program allows for rehabilitation and reconstruction of owner- occupied properties where the homeowners can document ownership through fee simple title. Refinancing may be done in some cases as part of individual rehabilitation assistance to homeowners.

- ❑ **Eligible rehabilitation activities.** To be eligible for LHC HOME funds, the repairs to the existing structure of the home must address all health, safety and property code problems identified at inspection.

  - Rehabilitation must be performed according to LHC's written property standards which include both written rehabilitation standards (methods and techniques), as well as the state code.
  - Any unit receiving assistance under the program must also be brought up to the applicable local code. See the Property Standards section below for further information on property standards requirements.

- ❑ **Ineligible rehabilitation activities.** Because rehabilitation work funded by HOME must address **all** health, property code and safety problems, the Recipient may not undertake special purpose or limited homeowner repair programs such as:

  - Weatherization programs;
  - Emergency repair programs; or
  - Handicapped accessibility programs.

    - ✓ Weatherization, emergency repairs, and accessibility are only permitted if the property will be brought up to all the applicable property standards. In other words, weatherization, emergency repairs, and accessibility can be included in the overall scope of the rehabilitation work if it is part of a larger scope of work to bring the property to applicable property standards.

- **Eligible reconstruction activities.** Reconstruction is defined as the rebuilding, on the same lot, of housing that is standing on a site at the time of application approval by the LHC Board of Directors. The dwelling must also be owner-occupied at the time of LHC approval.
  - Reconstruction is considered homeowner rehabilitation even though this activity involves construction of a new housing unit, so long as the following requirements are met:
  - The number of housing units on the lot are not decreased or increased as part of a reconstruction project.
  - Note that the number of rooms per unit may be increased or decreased.
  - An existing substandard unit of manufactured housing is replaced with a new or standard unit of manufactured housing.
  - LHC defines reconstruction that involves replacing an existing manufactured housing unit with a newly constructed housing unit, as "homebuyer housing development" and not "owner-occupied rehabilitation/reconstruction".
  - Recipients are replacing manufactured housing units with newly constructed housing units must meet the relevant homebuyer requirements in Chapter 7: Homebuyer Housing Program - Homebuyer.
  - The project meets LHC's minimum requirements for reconstruction and utilizes LHC's approved house plans for all single-family reconstruction projects. The details of this requirement are discussed in the Property Standards section.
- **Eligible refinancing activities**. In combination with either rehabilitation or reconstruction assistance, HOME Program funds may be used to refinance an existing mortgage loan with a current balance of five thousand dollars ($5,000) or less.
  - Refinancing is eligible for existing secured debt if:
    - ✓ The housing is owner-occupied;
    - ✓ HOME funds are loaned for rehabilitation; and
    - ✓ Refinancing allows the borrower's overall housing costs to be reduced and the housing is made more affordable.
  - HOME funds **cannot** be used to refinance Federal debt (e.g. FHA loan).

FORMS OF FINANCIAL ASSISTANCE

There are two forms of financial assistance that can be provided: forgivable loans and repayable loans. LHC has established standard loan terms and requirements that must be used for each type of loan.

<u>Types of LHC Loans</u>

- Eligible homeowner may receive one of two types of loans described below:
  - **Forgivable loans.** These loans are forgiven on a prorated basis each month over the term of the loan.
    - ✓ The interest rate on forgivable loans is 0%.

- ✓ A forgivable loan requires no monthly repayment, but must be repaid if the homeowner fails to maintain compliance with all terms and conditions outlined in the loan agreement. For example, failure to maintain the unit as the homeowner's principal residence.

- ▪ **Repayable loans.** These loans will either be in the form of a deferred payment loan or require monthly repayment of principal and interest.
  - ✓ The interest rate on repayable loans is disclosed in the NOFA.
  - ✓ Loan terms will coincide with the LHC required affordability period (5, 10, 15 or 20 years) as determined by the total amount of the per unit HOME investment to the homeowner.

Loan Documentation and Payments

- ❑ In all cases where HOME Program assistance is provided, a promissory note will be executed along with a mortgage and deed restriction will be recorded as a lien against the property's title with the clerk of court in parish where the project is located.
- ❑ Although Recipients administer the homeowner rehabilitation/reconstruction program, LHC provides the direct HOME assistance to the homeowner.
  - ▪ As such, all monthly mortgage payments on repayable loans shall be paid by the homeowner to LHC at the following address:

    Louisiana Housing Corporation c/o
    Accounting Department
    2415 Quail Drive
    Baton Rouge, LA 70808.

ELIGIBLE COSTS

Eligible costs under the HOME Program may include the hard costs and soft costs of rehabilitation as well as project-related soft costs, as defined below. Recipients must ensure only these eligible costs are incurred.

Hard Costs

- ❑ Eligible hard costs are listed below in Exhibit 4-1. These are the actual costs associated with the rehabilitation (renovation, remodeling, and repair) or reconstruction of owner- occupied housing units.
- ❑ Garages are eligible homeowner rehabilitation construction costs in the following circumstances:
  - ▪ Attached garages may be rehabilitated with HOME funds, in conjunction with rehabilitation of the residential living space.
  - ▪ Detached garages may only be rehabilitated with HOME funds if the structure has documented existing health and safety code violations and is performed as part of the rehabilitation of the housing unit.
  - ▪ For reconstruction, garages may be constructed if attached to the dwelling unit.

- Detached garages are permitted only if the structure is required by local ordinance or to accommodate a person with disabilities, and has received prior written approval by LHC.

- The reconstruction of a garage without a dwelling unit as part of the project is ineligible.

- ❑ The cost of the rehabilitation must be reasonable compared to the value of the house (i.e., the level of rehabilitation is intended to allow continued owner occupancy for at least the affordability period as regulated by the LHC HOME Program).

<u>Soft Costs</u>

- ❑ Eligible soft costs are listed below in Exhibit 4-1. These are soft costs that are usual, reasonable, and necessary for the completion of a rehabilitated owner-occupied housing unit.

<u>Program and Project Administrative Costs</u>

- ❑ LHC allows Recipients to budget for program and project costs.

  - Program and project administrative costs are limited to 10% of the final allocation amount for the proposed owner-occupied rehabilitation/reconstruction program.

  - Recipients must submit an itemized budget for program and project administrative costs as a part of their initial application.

  - Administrative costs are eligible only for costs associated with the homeowner rehabilitation units.

  - Project-related soft costs are eligible only for costs directly associated with the HOME Program funded development and must be allocated on a prorated basis among HOME Program assisted units when combined with other funding sources.

  - LHC expects that the majority of the 10% allotted to administration and project- related soft costs will be incurred as project-related soft costs.

  - Finally, a certification of costs must be submitted with all requests for program administration and project-related soft costs.

- ❑ Program and project administrative costs are defined briefly below. For a complete discussion and reference resources, see Chapter 2: Administrative and Management Overview.

  - **Administrative costs** include those costs that are general across the entire administration of the program. Examples are listed below:

    - ✓ Staffing costs such as labor hours -including overhead fringe benefits -related to the following activities:

    - ✓ Ensuring compliance with HOME Program requirements;

    - ✓ Preparing reports and other documents for LHC;

    - ✓ Coordinating the resolution of program monitoring and audit findings; and

    - ✓ Providing public information on the program.

- ✓ Charging project delivery soft costs to units that do not end up being HOME-assisted.

- **Project-related soft costs** include those costs that are specific to individual project addresses, i.e.:

  - ✓ Staffing costs such as labor hours -including overhead fringe benefits -related to the following activities:

    - ➢ Processing applications;

    - ➢ Ensuring other federal requirements are met such as a project-specific Environmental Review; and

    - ➢ Preparing work specifications, performing inspections, and developing cost certifications.

    - ➢ Other costs such as development of written agreement and mortgage documentation, and underwriting specific to a project.

❑ Administrative and project-related soft costs must be supported by the following source documentation and maintained on file by the Recipient:

- **Invoices**. Copies of invoices highlighting the costs to be reimbursed. All invoices must be supported by a cancelled check, a copy of the bank statement or other proof of payment. Each invoice should, at a minimum, include vendor identification, a description of the services received, the quantity (hours, units, etc.), and the price for services received. Handwritten invoices will not be accepted.

- **Authorized signature**. All invoices must have an authorized signature of the Recipient's executive authority or their designee. The authorization must also include payment approval, verification of satisfactory services, and the relevant month for costs incurred and date.

- **Copies of subcontracts**, as applicable. A copy of any subcontracts for professional services (i.e., consultants, architects, contractors, etc.) must include a description the services being provided, a detail cost breakdown of the service rendered and the payment schedule or terms.

Note: While a change order that results in an increase to the project budget does not increase either the administrative or project delivery soft cost amount, a reduction in the project budget will result in a decrease of administrative or project delivery soft costs.

EXHIBIT 4-1 HOME-ELIGIBLE HOMEOWNER REHABILITATION COSTS

HARD COSTS	SOFT COSTS
• Meeting the rehabilitation standards • Meeting applicable codes, standards and ordinances • Essential improvements • Energy-related improvements • Lead-based paint hazard reduction • Accessibility for disabled persons • Repair or replacement of major housing systems • Site improvements and utility connections • Demolition and reconstruction	• Financing fees • Credit reports • Title reports and updates • Architectural/engineering fees, including specifications and job progress inspections • Flood insurance –Up to one year • Recordation fees, transaction taxes • Legal and accounting fees • Appraisals • Lead-based paint testing, risk assessments and clearance • Surveys

COST AND ASSISTANCE LIMITS

LHC places cost and assistance limits on LHC funded owner-occupied rehabilitation/reconstruction activities. These limits are discussed in detail below and are applicable to all HOME program Recipients and their activities.

- Costs on all LHC assisted owner-occupied rehabilitation/reconstruction units are limited to the maximum per unit subsidy limit (as established under section 234 of the National Housing Act (12 U.S.C. 17151 (d) (3) (ii) for elevator-type projects that apply to the area in which the housing is located.

- Projects with total development costs that exceed the FHA 234 limits are ineligible for assistance.

- LHC does not intend to use HOME funds to cover the entire cost of the rehabilitation/reconstruction. As such, LHC limits HOME assistance to projects by imposing the following subsidy limits:

  - $25,000 for rehabilitation

  - Reconstruction (as disclosed in the applicable NOFA)

- Units that exceed LHC subsidy limits may still be eligible for assistance, so long as

  - There are other funds available, evidenced by a commitment letter, to cover the difference between the total development budget and the HOME assistance limit, and

  - The total development budget does not exceed the FHA 221(d) 3 limits.

- Additionally, LHC wants to ensure that Recipients are cost-effective and take advantage of scale-of-efficiencies. To that end, LHC imposes the following minimum limits:

  - $1,000 minimum per HOME assisted unit

  - $100,000 minimum per project

  - Five (5) HOME units minimum per project unless otherwise specified in the NOFA or other approved offering.

  - Therefore, an application must include, at minimum, five (5) units. Unless otherwise stated in the NOFA.

  - Projects may be allowed to proceed with fewer than five (5) HOME assisted units under the following conditions:

    - ✓ Applicant must provide supporting evidence that it has exercised due diligence to evidence the market demand for the project in the area of the proposed development. The LHC reserves the right to exercise discretion to either approve or reject the evidence of the market demand in according accordance with the application review process, and

- ✓ the total HOME award per project does not increase above $100,000.

- ❑ Actual assistance to projects will depend upon the amount of the subsidy determined by cost allocation and subsidy layering analysis.

  - Cost allocation and subsidy layering reviews will be completed by LHC staff prior to award of HOME funds.

  - The components of the cost allocation and subsidy layering reviews are detailed in Chapter 3: General Requirements of the HOME Program. Additionally information can be obtained from HUD Notices CPD 98-02 on allocating cost and CPD 98-01 on subsidy layering.

  - Cost allocation and subsidy layering are impacted by any changes in the proportion of HOME-assisted unit to total units in the project, development cost or financing sources.

- ❑ **As such, all Recipients are obligated to contact LHC as soon as there are any changes in project size/scope, cost or financing sources at any point during the project.**

ELIGIBLE PROPERTIES

Eligible and ineligible properties under the program are defined below. Recipients must ensure these requirements are met prior to application as well as post application.

Eligible Property Types

- ❑ To be eligible for HOME assistance, a property must be:

  - Occupied by an income-eligible homeowner; and

  - The owner's principal residence.

- ❑ Checkboxes will be used in administrative documents to identify the property type. The following property types may be included under the program for either rehabilitation or reconstruction:

  - ✓ Traditional single-family housing that is owned fee simple (structure may contain one to four dwelling units);

  - ✓ A condominium unit; and

  - ✓ A manufactured housing unit, including a mobile home or trailer, is eligible **only for reconstruction**.

  - ✓ If the HOME-assisted unit qualifies for reconstruction, the unit must be located on land that is owned by the manufactured housing unit's homeowner and permanently affixed to a foundation.

Ineligible Properties

- ❑ The following are ineligible for either rehabilitation or reconstruction:

- Properties that are not owner-occupied (i.e. vacation homes);
- Rental properties; or
- Manufactured housing units (mobile homes or trailers) are **ineligible for rehabilitation**.

Maximum Property Value

- The value of the assisted property ***after rehabilitation/reconstruction*** must not exceed the 95% of the area median purchase price, for the type of property being assisted.
- Determining after-rehabilitation/reconstruction value: To establish project eligibility, the Recipient must establish the after-rehabilitation value prior to initiating work on a unit. The after-rehabilitation value may be established by one or more of the following methods:
  - Estimates of value: Estimates of value by the Recipient may be used. Project files must contain the estimate of value and document the basis for the value estimates (e.g., comparable sales by a knowledgeable staff person).
  - Comparable is defined as sales within the last six to twelve months in an adjacent neighborhood of similar property type that involve the same features, amenities, and square footage.
  - Appraisals: Appraisals establishing the "post rehabilitation value", whether prepared by a licensed fee appraiser or by a staff appraiser of the Recipient, may be used. Project files must document the appraised value and the appraisal approach used.
    - ✓ Appraisals must indicate post-rehabilitation value, therefore the proposed scope of work must be provided to the appraiser prior to site visit.
    - ✓ Tax assessments: Tax assessments for a comparable property located in the same neighborhood may be used to establish the after-rehabilitation value *if* the assessment is current and accurately reflects market value *after* rehabilitation.
- LHC requires the Recipient to submit prior documentation of maximum property value and method used to establish value at the time of application.

Property Standards

- As with all HOME-assisted properties, properties that are rehabilitated/reconstructed with HOME funds must meet certain standards. This section briefly discusses the standards that apply to properties rehabilitated/reconstructed with HOME assistance. (For full information on standards for all HOME-assisted properties, see Chapter 3: General Requirements and Chapter 11: Construction Management.)
- Standards applicable to both rehabilitation and reconstruction projects:
  - LHC Construction Performance Manual Sections I and II,
  - the International Code Council (ICC),
  - all applicable state and local property codes, and

- zoning ordinances,

- Standards applicable to rehabilitation projects only:

  - Rehabilitation standards, the method, materials and techniques used in the renovation, remodeling and repair of a unit, and

  - Louisiana Energy Code.

- Standards applicable to reconstruction projects only:

  - Energy Star standards,

- Louisiana State Uniform Construction Code (LSUCC).

  - LSUCC is available on the internet at: http://lsuccc.dps.louisiana.gov/

- LHC Asset Management Division approved house plans for all single-family reconstruction projects

  - LHC's plans require a minimum of:

    - ✓ 1,000 square feet heated and cooled for two bedroom houses; and

    - ✓ 1,200 square feet heated and cooled for three bedroom structures.

  - Different plans may be permitted provided the plans are comparable to the LHC approved plans(s) and are approved by the appropriate LHC staff prior to bidding and submission of application for funding.

- Additional requirements applicable to reconstruction projects only:

  - Survey of the property is required prior to the start of construction showing existing and proposed building locations; and

  - Permanent utility hook-ups and permanent foundations for replacement of a manufactured unit under reconstruction.

- Each applicant must include the following: (a) a letter or evidence from the soil conservation office showing the type of soil in the area of the proposed construction, (b) provide supporting documentation that proposed foundation method and materials used during construction will exceed the requirements for that specific soil condition and (c) identify roles and responsible of the person/parties insuring compliance of proposed recommendation.

Lead Based Paint

If the dwelling unit was built prior to 1978, the Recipient must comply with the rehabilitation requirements of the Lead Safe Housing Rule (24 CFR Part 35, Subpart J). The purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead.

- The requirements of the Lead Safe Housing Rule depend on the level of assistance provided to the unit. The summary below provides a brief overview of the regulations. For more information, see http://www.hud.gov/offices/lead/.
  - For units with a level of assistance less than $5,000, paint testing must be conducted on all painted surfaces to be disturbed or replaced during the renovation, or it must be presumed that all these painted surfaces are coated with lead-based paint. Safe work practices must be employed during the rehabilitation work, and upon completion, a clearance examination of the worksite is required. Clearance of the worksite is required prior to the unit being reoccupied.
  - For units with a level of assistance over $5,000 and up to $25,000, lead hazards must be identified by a risk assessment (or presumed to be present) and then addressed through interim controls or standard treatments. Proper safe work practices, trained staff, and unit clearance are also required.
  - For units with a level of assistance over $25,000, lead hazards must be identified through a risk assessment (or presumed to be present) and addressed through abatement by a certified abatement contractor. Clearance is required.
- The *level of assistance* is defined as the lesser of the *per unit Federal assistance* or the *per unit hard costs of rehabilitation*. When calculating the per unit hard costs of rehabilitation, do not include the lead hazard reduction costs.
- All homeowners must receive the lead-based based pamphlet, *Protect Your Family From Lead in Your Home* as well as other relevant information pertaining to the rehabilitation work. The Recipients must have documented evidence that this notice was provided.

Rehabilitation/Reconstruction Management

This section summarizes the construction management responsibilities of the Recipient. For additional information, please see Chapter 11: Construction Management.

- **Scope of work**. Recipients must determine the scope of rehabilitation/reconstruction projects upfront, prior to application for LHC funds.
  - LHC's Inspection Checklist and Work Write Up Template should be used.
    - ✓ These forms can be requested from the LHC Asset Management Department

- **Bid solicitation**. Construction bids must be solicited and obtained prior to approval of LHC funds and provided for review.
  - LHC requires documentation and submission of the following materials related to solicitation of bids:
    - ✓ Copies of advertisements for bids,
    - ✓ Proof of publication, and
    - ✓ Bid tabulation worksheets.
  - As part of the bid process, Recipients must request the following current documents:
    - ✓ Contractors Louisiana State License,
    - ✓ General Liability Insurance,
    - ✓ Builders Risk Insurance, and
    - ✓ Contractor's ability to obtain a Payment and Performance Bond or Irrevocable Letter of Credit (reconstruction only).
  - Contractors that do not have a state contractor's license or cannot obtain a builder's risk insurance policy, and payment and performance bond for the full amount of the construction contract are not eligible to bid on any rehabilitation/reconstruction projects funded under LHC's HOME Program.
  - Also, construction bids must be good for 60 days from the date the Recipient's application is received by LHC.
- **Pre-construction conference**. A preconstruction conference is required between the Recipient, the homeowner, the construction contractor, and an LHC representative.
  - LHC requires the use of the Pre-construction Conference form (available on LHC's website) to document that a Pre-construction Conference occurred.

At the time of the pre-construction conference, the following agreements must be executed prior to the pre-construction conference:

  - A written agreement between the homeowner and contractor, and
  - A separate written agreement between the Recipient and the homeowner.
    - ✓ These agreements are standardized by LHC, so Recipients must use the sample agreements provided by the LHC.
- **Progress inspections**. Inspections are required
  - Prior to approval of draw requests and at the following stages:
    - ✓ **Phase 1: Foundation and site prep**, including: excavation, rebar reinforcing, wire mesh, termite treatment, rough-in plumbing, earth work, water proofing (vapor barrier), footing and slab work.

- ✓ **Phase 2: Major systems**, including: plumbing top-out, electrical rough-in, framing, roof, interior wall systems, exterior wall systems, ventilation, and insulation

- ✓ **Phase 3: Build out**, including: flooring systems, painting, doors, cabinets, HVAC, electrical top-out, and appliances.

- ✓ **Phase 4: Final inspection,** LHC shall pay for the initial final inspection and one additional inspection (punch list or retainage). Should the general contractor request a final inspection, and if repairs agreed to by the contractor and inspector on behalf of LHC, are incomplete, the general contractor shall be responsible for each additional inspection fee(s) until the project has been successful approved. LHC staff shall reduce the final pay request and/or the retainage payment for the amount of the additional inspection fee(s) (to include inspector's mileage) incurred by the general contractor.

- Certifications for plumbing, electrical, HVAC, Certificate and Release of Liens, and final inspection are required at the completion of the construction work. The Recipient will be required to maintain this documentation and provide to the LHC upon request.

ELIGIBLE BENEFICIARIES

Homeowners must meet eligibility requirements, including household income and proof of ownership. Recipients must ensure these eligibility requirements for properties proposed to be assisted are met prior to application.

General Eligibility

- ❑ To be eligible for HOME funds, Recipients must ensure the homeowner to be:

  - Low-income; having an annual (gross) household income that does not exceed 80 percent of median for the area, adjusted for family size;

  - Owner–occupant of the property as their principal residence at the time of LHC Board approval;

  - Complete a Homeowner Loan Application (provided as a form by the LHC); and

  - Provide proof of paid real estate taxes (no delinquencies).

  - Provide proof of hazard insurance or quote no less than the value of the unit after rehabilitation

- ❑ Finally, the Recipient must complete the IDIS "Homeowner Set Up and Completion Form (form provided by the LHC). **Note**, that until project completion, only the "set up" portion of the form must be submitted to LHC.

  - Upon project completion, the "completion" portion of the form must be filled out.

  - At project completion, if there is any information that has changed from the "set up" section of the form, the Recipient must provide the correct, updated information prior to submitting the complete project completion form and request for final disbursement.

Income Eligibility Requirements

- ❑ LHC has determined that homeowner income eligibility must be in compliance with the Part 5 (Section 8) Program definition for annual income.

- ❑ Recipients are required to use income verification forms, including a verification of employment, for calculating and verifying the incomes of all adult household members.

- ❑ Source documents, such as wage statements, interest statements, unemployment compensation statements, and other appropriate source documentation, must be reviewed to determine annual (gross) income.

- ❑ Eligibility is based on anticipated income during the next 12 months.

- ❑ Income verifications must be completed before HOME assistance is provided.

  - ▪ Income need not be re-examined at the time HOME assistance is actually provided unless more than six months has elapsed since the initial verification by the Recipient staff.

Ownership Requirements

- ❑ The homeowner must provide proof of fee simple title and owner occupancy of the proposed unit for rehab for the past three (3) consecutive years.

  - ▪ A family or individual owns the property if they have fee simple title to the property, and there are no restrictions or encumbrances that would unduly restrict the good and marketable nature of the ownership interest.

  - ▪ If refinancing is involved, a mortgage history letter on the current lien is due at the time of application submission to LHC.

  - ▪ An executed and recorded warranty deed in the name of the owner is required as proof of ownership. To ensure proper ownership, a title search must be performed prior to funding the activity.

  - ▪ Existing mortgages may be acceptable, but will be reviewed for acceptability on a case- by-case basis provided documentation is submitted from the mortgagee showing current loan status.

  - ▪ The homeowner must provide proof of hazard insurance at an amount sufficient to cover replacement of the structure prior to release of retainage for all housing projects.

- ❑ Life estates, land installment contracts, or contracts for deeds are not eligible forms of ownership.

AFFORDABILITY PERIOD TERMS AND CONDITIONS

LHC requires an "affordability period" for homeowner rehabilitation projects. During this "affordability period" (loan or grant term), homeowners must maintain the unit as their principal residence and abide by certain rules in the event of a refinancing or change in ownership. Recipients must ensure these requirements are disclosed to homeowners prior to application and then met post application.

- ❑ The loan terms and conditions ("affordability period") for homeowner rehabilitation loans are summarized in the table below.

Total Loan Amount	Loan Term
$1,000 - $15,000	5
$15,000 - $40,000	10
Over $40,000 +	15
Reconstruction	20

<u>Principal Residence Requirement</u>

- During the "affordability period" the homeowner must maintain the unit as their principal residence and as a result, may not rent out their unit to another household.
- Recipients should have a method for annual principal residence verification. Some options include:
  - Certified letter sent to the homebuyer;
  - Verification of hazard insurance on the property; and/or
  - Review of annual tax records.

<u>Prepayment and Refinancing</u>

- For the outstanding HOME loan, it is acceptable for the homeowner to prepay LHC.
- With LHC's prior approval, the homeowner may refinance their first mortgage (i.e., the non-HOME debt) during the "affordability period."
- LHC permits refinancing only to allow the owner to obtain a lower interest rate.
  - Owner cannot receive cash proceeds from the transaction, and
  - Total indebtedness does not exceed the value of the property.

<u>Changes in Ownership</u>

- With LHC's prior written approval, the HOME Program loan may be assumed by a new owner if the new owner satisfies the requirements to properly obtain title and will meet the following requirements:
  - Must be low-income (i.e., income is equal to or less than eighty percent (80%) of area median income, adjusted for family size);
  - Will occupy the property as the principal residence; and
  - Must be certified by LHC as eligible to receive HOME Program assistance.
- In cases where an owner-occupant dies before the end of the "affordability period" and/or a HOME Program promissory note is paid in full, the following remedies will be exercised by LHC:

- **HOME Program loan with no heirs:** If LHC has the first position on the property, it will seek to sell the property to an income eligible borrower.

- **HOME Program loan with heirs:** If LHC has the first position on the property, and an heir qualifies to become an owner-occupant, with LHC's prior written approval, the heir may purchase or have title transferred to them.

  - ✓ If an heir does not qualify as eligible to receive HOME Program assistance, the heir will have the opportunity to sell the property to an income eligible borrower or in the case of sale of the property to a non-income eligible borrower, the heirs will be required pay off any remaining balance of HOME Program funds.

  - ✓ If an heir does not sell the property, LHC will foreclose and seek to sell the property to an income eligible borrower.

- **Loan repayment conditions with heirs.** If LHC has the first position on the property, the heirs will have the option of paying off the loan. If the heirs are unable to pay off the total loan and qualify as an eligible owner-occupant, the heir may assume the loan upon verification of eligibility and ability to repay the loan according to terms negotiated between LHC and the heir(s).

- In the event of the death of owner-occupant(s) on homeowner rehabilitation forgivable loans ($25K or less) during the LHC-imposed affordability period, LHC will prepare a Release of Lien forgiving the remaining loan balance.

  - ✓ **Note:** In the situations previously described, heirs should consult an attorney and adhere to legal processes regarding estates to properly obtain a deed to the property.

❑ In the case where the original owner(s) does not fulfill his/her/their obligation of the LHC loan agreements, the owner or mortgagor may elect the following options regarding the original LHC loan:

- Relinquish the property to LHC in lieu of foreclosure.
- Transfer of ownership to an eligible applicant

  - ✓ Mortgagor should first consider an eligible immediate *family member(s)*.
    - ➢ If immediate family does not meet the qualification the mortgagor may recommend another eligible buyer.
  - ✓ Mortgagor must :
    - ➢ Provide LHC with a written notice of intent, within 90 days of non-compliance, to vacate the property including an explanation; and
    - ➢ Maintain and/or bring mortgage payment(s) and real estate taxes current until the completion of the LHC approved transaction; and
    - ➢ Keep in force a current hazard insurance policy at the minimum loan amount that identifies LHC as a loss payee.
    - ➢ The transfer of ownership will be completed through an executed and recorded warranty deed.

- ✓ The Potential Borrower(s) must:
  - ➢ Complete a HOME application to buy and/or assume a HOME funded property. This application will verify that the proposed borrower meets the eligible requirements of the HOME Program based on household size and income; and
  - ➢ Provide a title search on the property and a credit report on the borrower and be able to meet all requirements of the title company's ability to provide LHC with a title policy on the closing or transfer of ownership.
  - ➢ All expenses of a search, title update(s) and any legal documents, outside of the LHC prepared lien documents of the promissory note, mortgage and deed restriction will be at the expense of the Mortgagor and/or proposed borrower.
- ✓ LHC will:
  - ➢ Work with the mortgagor and/or designated legal representative in facilitating the transfer providing that the legal representative has the sole right to accept or deny any and all offers;
  - ➢ Allow up to 90 days in completing the transfer. Extensions may be granted on a case by case basis at the sole discretion of LHC.
  - ➢ Prepare the promissory note, mortgage, and deed restriction of the remaining unpaid balance and affordability period at the time of the proposed transfer of ownership/closing date; and
  - ➢ Pay for the approved closing service fees, recording fees of the LHCprepared lien documents and title policy issued by the title company.

LHC's Homeowner Housing program can help eligible homebuyers in Louisiana purchase a home. This chapter covers the specific requirements that apply when assisting homebuyers. For rules related to assisting owner-occupants, see Chapter 4.

Assistance to homebuyers may involve development activities (acquisition and new construction or rehabilitation) or financing. Recipients and developers that participate in this program are responsible for screening homebuyers for eligibility and administering the homebuyer development activities in compliance HOME Program requirements. This chapter discusses HOME requirements including:

Eligible Recipients and activities;

- Forms of financial assistance;
- Eligible costs;
- Cost and assistance limits;
- Eligible properties;
- Eligible homeowners; and
- Affordability period.

LHC HOME funded Recipients should use this chapter as their guide to successfully carry out their activities.

ELIGIBLE RECIPIENTS AND ACTIVITIES

The HOME Program and LHC rules and regulations define both eligible Recipients of the LHC homebuyer program as well as the eligible activities these Recipients may undertake. Eligible Recipients fall into two categories:

- **Owner/developer/sponsors** of the affordable housing project. These may be local governments, public housing authorities, Community Housing Development Organizations (CHDOs) and other nonprofits, and for-profit entities. In particular, the eligible Recipient will be the entity responsible for project development, but may also include all affiliated entities, such as an owner that is also the property manager.
- **State Recipients/Sub- recipients** managing an affordable housing program on behalf of LHC. State Recipients are defined as units of local government that carry out a HOME program activity on behalf of LHC. Public agencies and/or nonprofit organizations that administer all or a portion of LHC's HOME program are called Sub- recipients.
  - Eligible Recipients must comply with the following performance standards and expend:
    - ✓ 25% of HOME allocation within 90 days of Notice to Proceed;
    - ✓ 75% of HOME allocation within one year of Notice to Proceed; and
    - ✓ 100% of the HOME allocation within 18 months of the Notice to Proceed.

Eligible Activities

LHC's homeowner assistance program allows for development of homebuyer units (acquisition and new construction or rehabilitation) and direct assistance to eligible homebuyers in the form of mortgage subsidies. This section focuses on development activities. For additional information on mortgage subsidies to eligible homebuyers, please see the section on Forms of Assistance.

Acquisition and Rehabilitation

- **Eligible acquisition activities.** Acquisition involves taking title to an existing structure.
  - Properties must be either owner occupied or vacant at the time of purchase. If units are occupied by tenants, approval in advance from LHC is required prior to application.
- **Eligible rehabilitation activities.** To be eligible for LHC HOME funds, the repairs to the existing home must address all health, safety and property code deficiencies identified at inspection.
  - Rehabilitation must be performed according to LHC's written property standards which include both written rehabilitation standards (methods and materials), as well as the state code.
  - Any unit receiving assistance under the program must also be brought up to the applicable local code. See the Property Standard section below for further information on property standards requirements.
- **Ineligible rehabilitation activities.** All rehabilitation work funded by HOME must address **all** health, property code and safety problems.
  - Recipient may not undertake special purpose or limited homeowner repair programs, such as:
    - ✓ Weatherization programs;
    - ✓ Emergency repair programs; or
    - ✓ Handicapped accessibility programs.

  Note: Weatherization, emergency repairs, and accessibility are only permitted if the property will be brought up to all the applicable property standards. In other words, weatherization, emergency repairs, and accessibility can be included in the overall scope of the rehabilitation work if it is part of a larger scope of work to bring the property to applicable property standards.
- **Eligible extensive re-construction activities.** LHC defines re-construction that involves replacing an existing manufactured housing unit with a newly constructed housing unit as new construction.
  - Therefore, replacement unit must meet the property standard requirements for new construction.

New Construction

- **Eligible new construction activities.** New construction involves the development of new housing units on vacated or improved land.
  - Improved land that has existing structures must be either owner occupied or vacant at the time of purchase. If units are occupied by businesses or tenants, approval in advance from LHC is required prior to application.
  - Extensive Reconstruction. If the reconstruction involves replacing an existing manufactured housing unit with a newly constructed housing unit, the program defines this activity as new construction and must meet the requirements for new construction.
  - New construction must be performed according to LHC's written property standard as well as the applicable state and local codes. See section below for further information on property standards requirements.

FORMS OF FINANCIAL ASSISTANCE

There are two forms of financial assistance available: development loans and homebuyer loans (also known as a mortgage subsidy). LHC has established standard loan terms and requirements that must be used.

<u>Types of LHC Loans</u>

- **Development loans**. These loans are provided to Recipients for carrying out homebuyer activities.
  - The interest rate on development loans is as negotiated or offered in the NOFA.
  - The loan (minus the amount provided to the homeowner as a mortgage subsidy) will be repayable upon the sale and closing of each unit.
  - The Recipient/developer and LHC will enter into a written agreement that codifies the terms of the loan.
- **Homebuyer loans.** Also known as mortgage subsidies, these loans allow the homebuyer to afford the cost of the newly developed or rehabilitated single family home.
  - The interest rate on homebuyer loans is as advertised in the offering.
  - The loan maybe structured as a forgivable loan with a term that coincides with the LHC required affordability period (5, 10, or 15 years).
  - LHC reviews and approves the type of mortgage subsidy proposed by LHC HOME Recipients at the time of application submission.
  - Examples of mortgage subsidies include:
    - ✓ Gap financing, downpayment assistance, and closing cost assistance.
    - ✓ Additionally, mortgage subsidies may be provided to homebuyers as a development activity for acquisition and rehabilitation or new construction.

- ✓ Finally, LHC offers a downpayment assistance only activity that is separate from homebuyer activities described in this chapter.

- ▪ To qualify for a repayable loan, the homeowner must meet the following criteria:

  - ✓ Total monthly housing expense may not exceed 33% of monthly gross income.
    - ➢ Housing expenses include principal, interest, taxes, insurance and utilities.

  - ✓ Total monthly debt related expenses –including car loan payments, credit card debt payments- may not exceed 43% of monthly gross income.

- ▪ Recipients must perform a credit inquiry to determine the homebuyer's ability to repay the repayable portion of the HOME Program Loan.

- ▪ Recipients and developers are responsible for executing written agreements with homebuyers for these loans.

<u>Loan Documentation and Payments</u>

- ❑ In all cases where HOME Program assistance is provided, the HOME Homebuyer Assistance Agreement, a HOME Promissory Note, Deed Restriction, and HOME Program Subordinate Mortgage will be recorded by LHC or closing title agency in the parish where the assisted unit is located as a lien against the property's title.

- ❑ Only LHC-approved lien documents will be used:

  - ▪ HOME Program assistance may not be less than a junior position to private lender financing as long as the combined loan-to-value does not exceed one hundred percent (100%). LHC, at its sole discretion, may grant an exception to this policy, which is deemed necessary and appropriate, on a case by case basis.

    - ✓ An exception to the policy may require LHC staff recommendation and Board approval.

ELIGIBLE COSTS

Eligible costs under the HOME program include the hard costs of rehabilitation or new construction as well as project-related soft costs, as defined below. Recipients must ensure that these costs are incurred post application.

<u>Hard Costs</u>

- ❑ Eligible hard costs are noted below in Exhibit 5-1. These are the actual costs associated with the acquisition and rehabilitation or new construction of homebuyer housing units.

- ❑ Garages are eligible for rehabilitation or new construction costs in the following circumstances:

  - ▪ Attached garages may be rehabilitated with HOME funds, in conjunction with rehabilitation of the residential living space.

- Detached garages may only be rehabilitated with HOME funds if the structure has documented existing health and safety code violations and is performed as part of the rehabilitation of the housing unit.

- For new construction, garages may be constructed if attached to the dwelling unit.

- Detached garages are only permitted to be constructed if the structure is required by local ordinance or to accommodate a person with disabilities, and have received prior written approval by LHC.

- The reconstruction of a garage without a dwelling unit as part of the project is ineligible.

❑ For acquisition and rehabilitation projects, the cost of the rehabilitation must be reasonable compared to the value of the house (i.e., the level of rehabilitation is intended to allow continued owner occupation for at least the affordability period as required by the HOME Program).

Soft Costs

❑ Eligible soft costs are noted below in Exhibit 5-1. These are soft costs that are usual, reasonable, and necessary for the acquisition and rehabilitation or new construction of homebuyer housing units. Examples include:

- **Developer fee**. LHC HOME funds may be used to pay a pro rata share of the developer fee based upon percent of HOME funds to development costs. The following additional constraints apply to this line item:

  ✓ LHC restricts total developer fee to 15 percent.

  ✓ Fifty percent (50%) of the pro rata developer fee may be paid at 50% completion of the project. The remaining fifty-percent (50%) of the pro rata developer fee will be paid after the submission and approval of all project-related retainage documentation.

    ➢ Additionally, while soft costs include developer fees, **developers cannot hire themselves as consultants on their HOME-Funded project** and thus earn additional profit and/or fee.

- **Marketing costs.** For new construction, a marketing plan must be conducted and submitted upfront.

  ✓ If HOME funds are requested for use in providing mortgage subsidies, the market study must include a plan for the use of those HOME-funded mortgage subsidies.

  ✓ The marketing study must be completed by an LHC approved market analyst or firm.

Program and Project Administrative Costs

❑ LHC allows Recipients to budget for program and project administrative costs.

- Program and project administrative costs are limited to 10% of the final allocation amount for the proposed owner-occupied rehabilitation/reconstruction program.

- Recipients must submit an itemized budget for program and project administrative costs as a part of the initial application.

- Administrative costs are eligible only for costs associated with the homeowner rehabilitation units.

- Project-related soft costs are eligible only for costs directly associated with the HOME Program funded development and must be allocated on a prorated basis among HOME-assisted units.

- LHC expects that the majority of the 10% allotted to administration and project- related soft costs will be incurred as project-related soft costs.

- Finally, a certification of costs (support documentation, i.e. invoices with cancelled, etc.) must be submitted with all requests for program administration and project-related soft costs.

Program and project administrative costs are defined briefly below. For a complete discussion and reference resources, see Chapter 2: Administrative and Management Overview.

- **Administrative costs** include those costs that are general across the entire administration of the program. Examples are listed below:

  - Staffing costs such as labor hours, including overhead fringe benefits, related to the following activities:

    - ✓ Ensuring compliance with HOME Program requirements;
    - ✓ Preparing reports and other documents for LHC;
    - ✓ Coordinating the resolution of program monitoring and audit findings; and
    - ✓ Providing public information on the program.
    - ✓ Charging project delivery soft costs to units that do not end up being designated as HOME-assisted.

- **Project-related soft costs** include those costs that are specific to individual project addresses. They include:

  - Staffing costs such as labor hours, including overhead fringe benefits, related to the following activities:

    - ✓ Processing applications;
    - ✓ Ensuring other Federal requirements are met such as a project-specific Environmental Review and Lead-based Paint Risk Assessment; and
    - ✓ Preparing work specifications, performing inspections, and developing cost certifications.
    - ✓ Other costs such as development of written agreement and mortgage documentation, and underwriting specific to a project.

  - Administrative and project-related soft costs must be supported by the following source documentation and maintained on file by the Recipient:

- ✓ **Detailed bill**. A copy of a detailed bill or invoice highlighting the costs to be reimbursed. The detailed bill or invoice must be substantiated by a cancelled check, a copy of the bank statement or other proof of payment. The detailed bill or invoice should, at a minimum, include vendor identification, a description of the services received, the quantity (hours, units, etc.), and the price for services received. Handwritten invoices will not be accepted.

- ✓ **Authorized signature**. All invoices must have an authorized signature of the Recipient's Executive Director, or their designee. The authorization must also include payment approval, verification of satisfactory services, and the relevant month for costs incurred and date.

- ✓ **Copies of subcontracts**, as applicable. A copy of any subcontracts for professional services (i.e., consultants, architects, contractors, etc.) must be provided in the initial application outlining the cost of the service rendered and the payment schedule or terms.

  - **Note:** While a change order that results in an increase to the project budget does not increase either the administrative or project delivery soft cost amount, a reduction in the project budget will result in a decrease of administrative or project delivery soft costs.

EXHIBIT 5-1: HOME-ELIGIBLE HOMBUYER COSTS

HARD COSTS	SOFT COSTS
• Acquisition of vacant land or land with improvements • Meeting the rehabilitation standards • Meeting applicable codes, standards and ordinances • Construction materials and labor • Essential improvements • Energy-related improvements • Lead-based paint hazard reduction • Accessibility for disabled persons • Repair or replacement of major housing systems • Site preparation, including demolition • Securing buildings • Site improvements and utility connections **RELOCATION COSTS** • Replacement housing, moving costs and out-of- pocket expenses • Advisory services • Staff and overhead related to relocation assistance and services	• Financing fees • Credit reports • Title binders and insurance • Surety fees • Recordation fees, transaction taxes • Legal and accounting fees, including cost certification • Appraisals • Architectural/engineering fees, including specifications and job progress inspections • Environmental investigations • Builders' or developers' fees • Affirmative marketing and marketing costs • Homebuyer counseling provided to purchasers of HOME-assisted housing • Management fees • Project costs incurred by the Recipient that are directly related to a specific project • <u>Private sector</u> origination fees and discount points • Project audit costs • Flood insurance -up to one year

COST AND ASSISTANCE LIMITS

Cost and assistance limitation are placed on LHC funded owner-occupied rehabilitation/reconstruction activities and homebuyer projects. These limits are discussed in detail below and are applicable to all HOME program Recipients and their activities.

- Costs on all LHC assisted homebuyer development units are limited to the maximum per unit subsidy limit (in accordance with HUD published **HOME – Maximum Per-Unit Subsidy Limits**).
    - Projects with total development costs that exceed the published HOME – Maximum Per-Unit Subsidy Limits are ineligible for assistance.
- However, LHC does not intend to use HOME funds to cover the entire cost of the homebuyer development activity.
    - Currently, LHC limits HOME assistance to projects by imposing the following subsidy limits:
        - ✓ Current maximum HUD published **HOME – Maximum Per-Unit Subsidy Limits** by parish for new construction
        - ✓ Current maximum HUD published **HOME – Maximum Per-Unit Subsidy Limits** by parish for acquisition/rehabilitation
    - Units that exceed LHC subsidy limits may still be eligible for assistance, so long as,
        - ✓ There are other funds available to cover the difference between the total development budget and the HOME assistance limit, and
        - ✓ The total development budget does not exceed LHC's total development cost limit – the Current maximum HUD published **HOME – Maximum Per-Unit Subsidy Limits** by parish.
- LHC also limits the assistance to the homebuyer:
    - Mortgage subsidies are limited to the Computation of Maximum HOME assistance based on Minimum Borrower Investment, Highest Affordable First Mortgage Loan and Maximum HOME loan.
        - ✓ Subsidy may not exceed the amount necessary to achieve affordability at the maximum of thirty percent (30%) debt to income ratio for housing expense.
- To ensure a diversity in participating Recipients, LHC also limits the amount of HOME funds that can be requested:
    - Maximum award per project is disclosed in each notice of funding availability (NOFA)
    - Minimum number of units per project is disclosed in each notice of funding availability (NOFA).
- Additionally, LHC wants to ensure that Recipients are cost-effective and take advantage of scale-of-efficiencies. To that end, LHC imposes the following minimum limits:

- $1,000 minimum per unit,
- $100,000 minimum per project, and
- Five (5) HOME – assisted units minimum per project.

- Actual assistance to projects will depend upon the amount of the subsidy determined by cost allocation and subsidy layering analysis.
  - Cost allocation and subsidy layering reviews will be completed by LHC staff or consultant prior to award of HOME funds.
    - ✓ The components of the cost allocation and subsidy layering reviews are detailed in Chapter 3: General Requirements. Additionally information can be obtained from HUD Notices CPD 98-02 on allocating cost and CPD 98-01 on subsidy layering.
    - ✓ Cost allocation and subsidy layering are impacted by any changes in the proportion of HOME-assisted unit to total units in the project, development cost or financing sources.
    - ✓ All LHC Recipients are obligated to contact LHC **as soon as there are any changes** in project size/scope, cost or financing sources at any point during the development of the project.

ELIGIBLE PROPERTIES

The HOME Program has requirements for properties regarding the type of property and the physical standards they must meet. Recipients or developers must ensure these requirements are met prior to and post application.

Eligible Property Types

- To be eligible for HOME assistance, a property must be:
  - The homebuyer's principal residence for the affordability period.
- The following property types may be included under the program:
  - Traditional single-family housing that is owned fee simple (structure may contain one to four dwelling units);
  - A condominium unit; or
  - A manufactured housing unit, including a mobile home.
    - ✓ However, if HOME-assisted, the unit must be located on land that is owned by the manufactured housing unit's homebuyer and permanently affixed to a foundation.

Maximum Property Value

- **New construction activities**. The purchase price of the assisted property must not exceed the 95% of the area median purchase price for the area for the type of property being assisted.
- **Rehabilitation activities**. The value of the assisted property *after rehabilitation* must not exceed the 95% of the area median purchase price for the area for the type of property being assisted.

- Determining after-rehabilitation/reconstruction value: To establish project eligibility, Recipients must establish the after-rehabilitation value prior to initiating work on a unit. The after-rehabilitation value may be established by one or more of the following methods:

  - ✓ Estimates of value: Estimates of value by the Recipient may be used. Project files must contain the estimate of value and document the basis for the value estimates (e.g., comparable sales by a knowledgeable staff person).

    - ➢ Comparable is defined as sales within the last six to twelve months in an adjacent neighborhood of similar property type that involve the same features, amenities, and square footage.

  - ✓ Appraisals: Appraisals establishing the "post rehabilitation value", whether prepared by a licensed fee appraiser or by a staff appraiser of the Recipient, may be used. Project files must document the appraised value and the appraisal approach used. For information on post-rehabilitation values see Chapter 4.

  - ✓ Tax assessments: Tax assessments for a comparable property located in the same neighborhood may be used to establish the after-rehabilitation value if the assessment is current and accurately reflects market value after rehabilitation.

❑ LHC requires Recipient (if applicable) to submit documentation of maximum property value and method used to establish value at the time of application.

Property Standards

As with all HOME-assisted properties, properties that are developed with HOME funds must meet certain standards. This section briefly discusses the standards that apply to properties developed with HOME assistance. (For full information on standards for all HOME-assisted properties, see Chapter 3: General Requirements and Chapter 11: Construction Management.)

❑ Standards applicable to both new construction and rehabilitation projects:

- LHC Rehabilitation Standards for HOME assisted projects;
- The International Code Council (ICC);
- All applicable state and local property codes; and
- Zoning ordinances.

❑ Standards applicable to rehabilitation projects only:

- Rehabilitation standards, the method, materials and techniques used in the renovation, remodeling and repair of a unit.

❑ Standards applicable to new construction and reconstruction projects only:

- Louisiana State Uniform Construction Code (LSUCC).

  - ✓ LSUCC is available on the internet at: http://lsuccc.dps.louisiana.gov/

- LHC's approved house plans for all single-family reconstruction projects.

  - ✓ LHC's approved plans require a minimum of:

- ➢ 1,000 square feet heated and cooled for two bedroom houses; and
- ➢ 1,200 square feet heated and cooled for three bedroom structures.

  - Different plans may be permitted provided the plans are comparable to the LHC plans(s) and are approved by LHC HOME staff prior to bidding and submission of application for funding.

- ❑ Additional requirements applicable to new construction and reconstruction projects only:

  - Survey of the property is required prior to the start of construction; and
  - Permanent utility hook-ups and permanent foundations for replacement of a manufactured unit under reconstruction.
  - Each applicant must include the following: (a) a letter or evidence from the soil conservation office showing the type of soil in the area of the proposed construction, (b) provide supporting documentation that proposed foundation method and materials used during construction will exceed the requirements for that specific soil condition and (c) identify roles and responsible of the person/parties insuring compliance of proposed recommendation.

Lead Based Paint

- ❑ If the dwelling unit was built prior to 1978 and is receiving funds for rehabilitation work, the Recipient or developer must comply with the rehabilitation requirements of the Lead Safe Housing Rule (24 CFR Part 35, Subpart J or Subpart K if rehabilitation assistance is under $5,000). The purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead. (New construction is not subject to the Lead Safe Housing Rule.)

- ❑ The requirements of the Lead Safe Housing Rule depend on the level of assistance provided to the unit. The summary below provides a brief overview of the regulations. For more information, see http://www.hud.gov/offices/lead/.

  - For units with a level of assistance less than $5,000, paint testing must be conducted on all painted surfaces to be disturbed or replaced during the renovation, or it must be presumed that all these painted surfaces are coated with lead-based paint. Safe work practices must be employed during the rehabilitation work, and upon completion, a clearance examination of the worksite is required. Clearance of the worksite is required prior to the unit being reoccupied.
  - For units with a level of assistance over $5,000 and up to $25,000, lead hazards must be identified by a risk assessment (or presumed to be present) and then addressed through interim controls or standard treatments. Proper work practices, trained staff, and clearance are also required (Subpart J for acquisition and rehabilitation of homebuyer projects.)
  - For units with a level of assistance over $25,000, lead hazards must be identified through a risk assessment (or presumed to be present) and addressed through abatement by a certified abatement contractor. Clearance is required.
  - The *level of assistance* is defined as the lesser of the *per unit Federal assistance* or the *per unit hard costs of rehabilitation*. When calculating the per unit hard costs of rehabilitation, do not include the lead hazard reduction costs.

- ❑ For acquisition only projects, where the property was built before 1978, there must be a visual assessment for deteriorated paint and any deteriorated paint must be stabilized in a lead safe manner. Clearance is required if any work is performed on the unit.

- All homebuyers of pre-1978 properties must receive a Lead Disclosure statement from the seller. This should be documented in the project file. All homebuyers should also receive the lead-based based pamphlet, ***Protect Your Family from Lead in Your Home***.

Construction Management

This section summarizes the construction management responsibilities of Recipients. For additional information, please see Chapter 11: Construction Management.

- **Scope of work**. Recipients must determine the scope of rehabilitation/reconstruction projects upfront, prior to application for LHC funds.
  - LHC's Inspection Checklist and Work Write Up Template should be used.
  - These forms can be obtained by contacting the LHC Asset Management Department.
- **Bid solicitation.** Construction bids must be solicited and obtained by the applicant and provided to LHC for review prior to funding approval.
  - LHC requires upfront documentation and submission of the following materials related to solicitation of bids:
  - Copies of advertisements for bids;
  - Proof of publication; and
  - Bid tabulation worksheets.
  - As part of the bid process, Recipients must request the following:
    - ✓ Contractors Louisiana State License;
    - ✓ General Liability Insurance;
    - ✓ Builders Risk Insurance; and
    - ✓ Payment and Performance Bond or Irrevocable Letter of Credit (reconstruction only).
  - Contractors that do not have a state contractor's license or cannot obtain a builder's risk insurance policy, and payment and performance bond for the full amount of the construction contract are not eligible to participate on LHC HOME rehabilitation/reconstruction projects.
  - Also, construction bids must be good for 60 days from the date received by LHC.
- **Pre-construction Conference**. A pre-construction conference is required between the Recipient, the construction contractor, and an LHC representative.
  - A Preconstruction Conference Record, which is available on the LHC website, is a required LHC form.
- At the time of the pre-construction conference, the following agreements must be in executed and in place:

- A written agreement (i.e., contract) between Recipient and contractor (if applicable.)

- A copy of the applicable Davis Bacon labor rates (if applicable).

- **Progress inspection.** Inspections are required

  - Prior to approval of draw requests, and

  - At the following stages:

    - ✓ **Stage 1: Foundation and site prep**, including: excavation, metals, termite treatment, rough-in plumbing, earth work, water proofing (vapor barrier), footing and slab work.

    - ✓ **Stage 2: Major systems**, including: plumbing top-out, electrical rough-in, framing, roof, interior wall systems, exterior wall systems, ventilation, and insulation

    - ✓ **Stage 3: Build out**, including: flooring systems, painting, doors, cabinets, HVAC, electrical top-out, and appliances.

    - ✓ **Stage 4: Final inspection,** LHC shall pay for the initial final inspection and one additional inspection (punch list or retainage). Should the general contractor request a final inspection, and if repairs agreed to by the contractor and inspector on behalf of LHC, are incomplete, the general contractor shall be responsible for each additional inspection fee(s) until the project has been successful approved. LHC staff shall reduce the final pay request and/or the retainage payment for the amount of the additional inspection fee(s) (to include inspector's mileage) incurred by the general contractor.

  - Certifications for plumbing, electrical, HVAC, Release of Liens, and final inspection are required at the completion of the construction work.

ELIGIBLE BENEFICIARIES

Homebuyers must meet general eligibility requirements and income eligibility requirements. LHC HOME Recipients must ensure these requirements are met.

General Eligibility

- To be eligible for HOME funds, the homebuyer must:

  - Be low-income; annual (gross) household income that does not exceed 80 percent of median for the area, adjusted for family size;

  - Occupy the property as a principal residence through the period of affordability (see section below on this topic under affordability period); and

  - Complete a Homeowner Loan Application (provided as a form on the LHC website).

  - Additionally, homebuyers served under LHC's downpayment assistance only program, must be first-time homebuyers who

  - Have not owned a home in the last three years;

  - Are displaced homemaker; or

  - Are single parents.

- ❑ These homebuyers are also required to attend an LHC approved homebuyer counseling course prior to HOME assistance.

- ❑ Finally, the Recipient should complete the IDIS "Homeowner Set Up and Completion Form"

  - ▪ LHC staff will provide prior to project completion.

    - ✓ Note, that until project completion, only the "set up" portion of the form must be submitted to LHC.

    - ✓ Upon project completion, the "completion" portion of the form must be filled out.

    - ✓ At project completion, if there is any information that has changed from the "set up" section of the form, the Recipient must provide the correct, updated information prior to submitting the complete project completion form.

Income Eligibility Requirements

- ❑ LHC requires that income eligibility be determined using the Part 5 (Section 8) Program definition for annual income.

- ❑ Recipients are required to use income verification forms, including a verification of employment, for calculating and verifying the incomes of homebuyers.

- ❑ Source documents, such as wage statements, interest statements, unemployment compensation statements, or other supporting income documentation, must be reviewed to determine annual (gross) income.

- ❑ Eligibility is based on anticipated income during the next 12 months.

- ❑ Timing of income verifications varies by type of activity:

  - ▪ For existing housing under LHC's downpayment assistance program or acquisition and rehabilitation income verifications must be completed before HOME assistance is provided.

  - ▪ For new construction, income verification must be completed before the contract to purchase is signed.

  - ▪ Note that in either instance, income need not be reexamined at the time HOME assistance is actually provided unless more than six months has elapsed since the initial verification by the Recipient.

AFFORDABILITY PERIOD

LHC requires an affordability period for homebuyer projects. During this period, homebuyers must maintain the unit as their principal residence and abide by certain rules in the event the unit is sold, no longer the homebuyer's principal residence, or refinanced. Recipients or developers must ensure these requirements are described to prospective homeowners prior to application and then met post application.

- ❑ The affordability periods for homebuyer loans are summarized in the table below:

Loan Amount	Number of Years
$1,000 - $15,000	5
$15,000 - $40,000	10
Over $40,000 +	15

Principal Residence Requirement

- ❑ During the affordability period, the homebuyer must occupy the unit as its principal residence.

- ❑ Recipients or developers should have a method for annual principal residence verification. Some options include:
  - Certified letter sent to the homebuyer;
  - Verification of hazard insurance on the property; and/or
  - Review of annual tax records.

- ❑ If the unit is no longer the principal residence of the homebuyer, the Recipient or developer has two options:
  - Ensure the homebuyer reoccupies the unit; or
  - Pay back the outstanding total amount of HOME assistance (minus any principal loan payments, if applicable). Note, this may be more than the amount of direct assistance provided to the homebuyer under the recapture mechanism found in the mortgage.

Refinancing during the Affordability Period

- ❑ With LHC's prior approval, the homeowner may refinance their first mortgage (i.e., the non-HOME debt) during the period of affordability
  - LHC permits re-financing only to allow the owner to obtain a lower interest rate.
  - Owner cannot receive cash proceeds from the transaction, and
  - Total indebtedness does not exceed the value of the property.

Selling a Unit during the Affordability Period - Recapture Requirements

The HOME Program requires that if a property is sold, either voluntarily or involuntarily (e.g., foreclosure) during the affordability period, the HOME investment must be "repaid." The HOME Program refers to this repayment requirement as "recapture."

- ❑ **What is recapture?** Recapture is defined as an affordability mechanism where the Recipient or developer executes a written agreement with the homebuyer that only includes the amount of "direct HOME assistance" that enabled the homebuyer to buy the dwelling unit. This assistance must be "recaptured," in whole or in part, if the unit is sold before the end of the affordability period.

- This "direct HOME assistance" is defined as a "mortgage subsidy" and includes the following for LHC programs:
  - ✓ Downpayment and closing cost assistance;
  - ✓ Gap financing (e.g., second mortgage); and/or
  - ✓ Reduction in purchase price from market value to an affordable sales price, if HOME funds were provided to a developer.
- The period of affordability, shown above, is based on the direct HOME assistance to the homebuyer.
- LHC provides a 0% forgivable loan that is forgiven commensurate with the period of affordability. For example, a 10 year period of affordability would be forgiven at 120th a month for each month occupied by the homebuyer. Under the LHC required recapture mechanism, the unforgivable portion of the amount of direct HOME assistance is due when the property is sold (or title is transferred) during the period of affordability, subject to net proceeds, to protect the HOME investment throughout the period of affordability.
- Net proceeds are defined by the sales price minus superior loan repayment (other than HOME funds, if applicable) and any seller's closing costs.
  - ✓ If net proceeds exceed the amount of HOME assistance, the homebuyer will receive the balance of these proceeds.
  - ✓ **If net proceeds are less than the amount of HOME assistance, the amount available will be** repaid to LHC and the loan will be considered satisfied.

HOME funds may be used for the acquisition, new construction or rehabilitation of affordable rental housing. This chapter covers the basic HOME program requirements that apply to rental housing activities.

LHC uses HOME funds to expand the supply of affordable rental housing for very low-income and low-income households. To ensure that HOME funds are used effectively and efficiently, and to meet the requirements of the HOME Program, Recipients of rental funds must meet the rules set forth in this chapter. Part I of this chapter covers HOME rental housing requirements.

- First, HOME has specific project requirements regarding eligible Recipients and activities, forms of assistance, eligible costs and property type and property standards.

- After the project construction is complete, it must be leased up in accordance with HOME occupancy requirements.

- During the affordability period, the project must be managed to maintain compliance with HOME rent, occupancy and property standard requirements. The project must be monitored to ensure the eligibility of tenants; income verification and recertification, adjusting rents as tenant income increases and the requirements for proper leases.

- Recordkeeping responsibilities include the maintenance of records at the property and program level to document compliance with all program requirements.

- Finally, this chapter summarizes the implications of other Federal requirements applicable to rental properties.

Additionally, to ensure the efficient and effective use of HOME funds, LHC encourages the leveraging of HOME funds with other resources (both public and private) that may be available for the production and preservation of affordable housing. Part II of this chapter focuses on LHC requirement to leverage other funds for rental development activities as well as the details of combining HOME funds with Low Income Housing Tax Credits (LIHTC), one of the largest public resources available for affordable rental housing projects.

PART I: PROGRAM REQUIREMENTS

ELIGIBLE RECIPIENTS AND ACTIVITIES

The HOME Program and LHC rules and regulations define both eligible Recipients of the LHC rental program as well as the eligible activities these Recipients may undertake.

- Eligible Recipients fall into two categories:
  - **Owner/developer/sponsors** of the affordable housing project. These may be local governments, public housing authorities, Community Housing Development Organizations (CHDOs) and other nonprofits, and for-profit entities. In particular, the eligible Recipient will be the entity responsible for project development, but may also include all affiliated entities, such as an owner that is also the property manager.
  - **Recipients administer** an affordable rental program on behalf of LHC**.** State Recipients are defined as units of local government that carry out a HOME program activity on behalf of LHC. Public agencies and/or nonprofit organizations that administer all or a portion of LHC's HOME program are called Sub- recipients.
    - ✓ Note that eligible Recipients may not have more than three HOME projects underway at any given time period.
      - ➢ If a Recipient has three active HOME projects/programs, the Recipient cannot submit applications for a new project/program until 100% of the HOME funds on any one of the three previously approved projects/programs have been expended.
      - ➢ Recipients that are combining HOME funds with Low Income Housing Tax Credits (LIHTC) are excluded from this requirement.
  - Entities that are interested in participating in LHC's HOME Rental Program must submit applications.
  - Applications for funding will be accepted in accordance with a published Notice of Funding Availability (NOFA).
    - ✓ Applicants may receive technical assistance by attending an LHC sponsored information/training session prior to submitting an application. These sessions will address the HOME Program requirements and LHC guidelines as well as application procedures.

<u>**Eligible Activities**</u>

- LHC uses HOME funds to support a range of rental activities including:
  - ✓ **Acquisition** of land or existing structures must include 5 or more HOME-assisted units;
  - ✓ **New construction**. LHC requires that all new construction projects include a minimum of 5 HOME assisted rental units;

- ✓ **Rehabilitation** of existing structures must include 5 or more HOME-assisted units; and

- ✓ **Reconstruction** of both multi-family and single family structures. In particular, reconstruction will be considered for any single family structure if rehabilitation is not economically feasible or the projected per unit rehabilitation costs is equal to or greater than $25,000.

FORMS OF ASSISTANCE

- LHC provides two types of HOME assistance:

  - **Construction loans:** A short-term or interim loan to cover the cost of constructing or rehabilitating a project, with one or more long-term, permanent loans taking out (paying off) the construction loan at project completion.

  - **Permanent loans:** Proceeds used to repay the construction, bridge and predevelopment loans. If the permanent financing replaces other loans, original loans must be used for HOME-eligible costs. Note that HOME assistance is gap financing and as such will not finance all of the total development costs.

- LHC has the following standard loan terms and conditions for repayment of Rental Housing Program, including:

  - All loans must be evidenced by full executed promissory notes at LHC's current HOME Program interest rate.

  - Applications must have a minimum debt coverage ratio of 1.15 including the debt service on the HOME loan.

  - Monthly payments that are due and payable will be deferred for one (1) year from the placed in service date, as evidenced by a permanent certificate of occupancy for all of the units comprising the property. LHC may defer loan payments for up to two (2) years depending upon the type of development, number of units and established need.

  - Any amounts not paid, both principal and interest shall accrue and be payable on the Maturity Date of the loan.

- For projects utilizing HOME Program funds and U.S. Department of Agriculture (USDA) Rural Development (RD) funds, the HOME loan may match the terms of the USDA RD loan.

ELIGIBLE COSTS

HOME Program funds may be used for certain administrative and development costs in accordance with 24 CFR 92.206 including hard costs, soft costs, relocation costs, bridge loans, project delivery costs, and initial operating deficit reserve. See Exhibit 6-1 for a detailed list of eligible costs.

- **Hard costs.** HOME funds can cover the actual hard cost of constructing or rehabilitating housing such as land, materials, demolition, site preparation, and other costs listed in Exhibit 6-1.

- **Soft costs.** HOME Program funds may be used to pay for project soft costs. Soft costs must be "usual customary, reasonable and necessary". Examples of soft costs include:

- **Developer fee**: LHC HOME funds may be used to pay a pro rata share of the developer fee based upon percent of HOME funds to development costs. The following additional constraints apply to this line item:

  - LHC restricts total developer fee to 15 percent.

  - For projects that do not utilize low income housing tax credits, fifty percent (50%) of the pro rata developer fee may be paid at 50% completion of the project. The remaining fifty-percent (50%) of the pro rata developer fee will be paid after the submission and approval of all project-related retainage documentation.

  - Additionally while soft costs include developer fees, **developers cannot hire themselves as consultants on their HOME-Funded project** and thus earn additional profit and/or fee.

- **Initial Operating deficit reserve**: The Final Rule clarified the use of HOME funds to cover the cost of funding an initial operating deficit reserve for new construction and rehabilitation projects.

  - This reserve is meant to meet any shortfall in project income during the project rent- up period.

  - The reserve cannot exceed 18 months.

  - The reserve can be used only for project operating expenses, scheduled payments to replacement reserves and debt service.

  - Reserves remaining at the end of 18 months may be retained for reserves at the PJ's discretion.

- **Relocation costs.** LHC discourages involving displacement or relocation.

  - Prior to application, applicants must contact LHC if they are planning any development that may involve displacement or relocation.

  - In the event relocation is unavoidable, applicants must adhere to the Uniform Relocation Act. HOME Funds may be used for the cost of permanent or temporary relocation of tenants.

- **Bridge loans.** LHC HOME assistance can be used to pay the cost of interim construction loans used to finance the HOME assisted development under the following conditions:

  - Costs incurred are HOME eligible costs

  - LHC receives prior notification and approves the use.

- **Program and project administrative costs.** These costs are eligible *only for Recipients that administer a program*. LHC allows these Recipients to include a line item for program and project administrative costs in the development budget.

  - Program and project administrative costs are limited to 10% of the final allocation amount for the proposed rental program/project.

- Recipients must submit an itemized budget for program and project administrative costs as a part of the initial application.

- Project-related soft costs are eligible only for costs directly associated with the HOME Program funded development and must be allocated on a prorated basis among HOME Program assisted units.

- Finally, a certification of costs must be submitted with all requests for program and project administrative costs.

- LHC's Cost Certification Form will be provided by LHC staff.

❑ Program and project administrative costs are defined briefly below and in Exhibit 6-1. For a complete discussion and reference resources, see Chapter 2: Administrative and Management Overview.

- **Administrative costs** include general management; oversight and coordination costs; staff and overhead costs; public information costs; cost of fair housing activities; indirect costs; and costs of complying with other Federal requirements.

- **Project-related soft costs** are costs incurred by a Recipient or third party contractor on behalf of the Recipient and include:

  ✓ Staff and overhead costs related to the development of HOME assisted housing such as preparing work specifications, loan processing, inspections, and other services related to assisting potential owners, tenants, and homebuyers.

  ✓ Other project-related soft costs include cost of processing applications for HOME assistance; appraisals required by program regulations; project underwriting; construction inspections and oversight; project document preparation; costs associated with a project-specific environmental review; costs associated with informing tenants or homeowners about relocations rights or benefits; and costs to provide information services such as affirmative marketing and fair housing information to prospective tenants.

EXHIBIT 6-1 HOME-ELIGIBLE RENTAL HOUSING COSTS

Hard Costs	Soft Costs
• Site preparations or improvement, including utility connection costs but excludes the costs to provide utilities to a site • Demolition in conjunction with a specific affordable housing project • Securing of buildings • Construction materials and labor	• Financing fees • Credit reports • Title binders, updates and insurance • Surety fees • Recordation fees, transaction taxes • Legal and accounting fees, including cost certification • Appraisals • Architectural/engineering fees, including specifications and job progress inspections • Environmental reviews • Builders' or developers' fees • Affirmative marketing, initial leasing and marketing costs • Operating deficit reserves (up to 18 months)
Relocation Costs	**Loan Guarantee Accounts**
• Payment for replacement housing, moving costs and out-of-pocket expenses • Advisory services • Staff and overhead related to relocation assistance and services	• Amount based upon 20 percent of total outstanding principal balance of guaranteed loans • A loan in default can be repaid in full
Program and Project Administrative Costs	**Bridge Loans**
• Staff and overhead costs, such as preparing work specifications, loan processing, inspections, and other services related to assisting potential owners, tenants, and homebuyer • cost of processing applications for HOME assistance • appraisals required by program regulations • project underwriting • construction inspections and oversight • project document preparation • costs associated with a project-specific environmental review • costs associated with informing tenants or homeowners about relocations rights or benefits • costs to provide information services such as affirmative marketing and fair housing information to prospective tenants	• Interim construction loan costs

COST AND ASSISTANCE LIMITS

Cost and assistance limits are imposed on LHC funded rental activities. These limits are discussed in detail below and are applicable to all HOME program Recipients and their activities.

- Costs on all LHC rental activities are limited to:
  - $125,000 per unit on acquisition/ rehabilitation (includes elderly) projects;
  - $150,000 per unit on new construction/ conversion (includes elderly, non-elevated) projects;
  - $175,000 per unit on new construction/ conversion (includes elderly, elevated) projects;
  - $250,000 per unit for properties listed on the National Historic Register of Historic Places; and
  - $185,000 per unit for scattered site projects.
- However, LHC does not intend to use HOME funds to cover the entire cost of the development; HOME is intended to provide gap financing. As such, LHC limits HOME assistance by imposing the following limit:
  - $100,000 per unit maximum.
- To ensure a diversity in participating Recipients and programs/projects, LHC also limits the amount of HOME funds that can be requested to:
  - $400,000 per application maximum or the amount identified in the NOFA.
- LHC wants to ensure that Recipients are cost-effective and take advantage of scale-of-efficiencies. To that end, LHC imposes the following minimum limits:
  - $1,000 per unit minimum; and
  - $100,000 minimum per application.
- Actual assistance to programs/projects will depend upon the amount of the subsidy determined by cost allocation and subsidy layering analysis.
  - Cost allocation and subsidy layering reviews will be completed by LHC staff prior to award of LHC HOME funds.
  - The components of the cost allocation and subsidy layering reviews are detailed in Chapter 3: General Requirements. Additionally information can be obtained from HUD Notices CPD 98-02 on allocating cost and CPD 98-01 on subsidy layering.
  - Cost allocation and subsidy layering are impacted by any changes in the proportion of HOME-assisted unit to total units in the project, development cost or financing sources.
  - As such, all LHC Recipients are obligated to contact LHC **as soon as there are any changes** in project size/scope, cost or financing sources at any point during the development of the project.

PROPERTY TYPES AND STANDARDS

LHC uses HOME funds for specific types of properties that meet certain property standards. This section details the types of properties that are eligible and the property standards to which they must be built or rehabilitated. All LHC HOME funded new construction projects must implement Universal and Minimum Design Standards to ensure energy-efficient design and construction practices are utilized. Rehabilitation projects are encouraged to incorporate Universal and Minimum Design Standards when it is feasible.

Eligible Property Types

- HOME rental projects may be one or more buildings on a single site, or multiple sites that are under common ownership, management and financing.
  - The project must be assisted with HOME funds as a single undertaking.
  - The project includes all activities associated with the site(s) or building(s).
- HOME funds may be used to assist mixed-income projects (but, only HOME-eligible tenants may occupy HOME-assisted units). Common area costs must be prorated based upon the number of HOME-assisted units and non-HOME-assisted units.
- Transitional as well as permanent housing, including group homes and SROs, is allowed.
- Assisted Living projects are eligible, however HOME rent does not include food or the cost of supportive services. The owner may not make tenancy of the unit conditional on the tenant's participation in the assistant living and/or supportive services.
- There are no preferences for project or unit size or style.

Ineligible Property Types

- Properties previously financed with HOME during the affordability period cannot receive additional HOME assistance unless assistance is provided during the first year after project completion.
- HOME funds may not be used for development, operations or modernization of public housing financed under the 1937 Act (Public Housing Capital and Operating Funds).
- Projects assisted under 24 CFR Part 248 (Prepayment of Low-Income Housing Mortgages) may not receive HOME funds, ***unless*** assistance is provided to "priority purchasers" of such housing.
  - A priority purchaser is a resident council organized to acquire a project in accordance with a resident homeownership program, or any nonprofit organization or State or local agency that agrees to maintain low-income affordability restrictions for the remaining useful life of the project. Organizations or agencies affiliated with a for-profit entity for the purposes of purchasing a property do not qualify as priority purchasers.
- Projects assisted under Title VI of NAHA (pre-payment of mortgages insured by HUD).
- Emergency shelters with limited occupancy requirements.

- Projects where developers/contractors do not have a valid Louisiana contractor's license.

- Projects that do not have a written verification in support of the proposed development from the chief elected official of the area where the project will be located.

Property Standards

- **Appropriate codes:** As with all HOME-assisted properties, rental properties must meet certain written standards. This section discusses these standards briefly. For a full discussion see Chapter 3: General Requirements.

- **Acquisition:** If no rehabilitation or construction is planned, the housing acquired must meet State and local housing quality standards and code requirements. If no such standards or codes exist, the property must meet Section 8 HQS.

- **Construction and rehabilitation:** Housing that is being constructed or rehabilitated with HOME funds must meet all applicable State and local codes, rehabilitation standards and ordinances. If no State and local codes apply, the property must meet one of the national standards as discussed in Chapter 3: General Requirements of the HOME Program. If new construction, the property must also meet the International Energy Conservation Code (See Exhibit 3-1 in Chapter 3 for a full listing of applicable codes) and Energy Star qualifications.

- Owners must maintain properties in accordance with property standards throughout the affordability period. This will require periodic property inspections, as described in the section below on monitoring and inspections.

Other Standards

- **Accessibility:** All assisted housing must meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

- **Universal Design Standards.** All new construction projects must implement LHC's Universal and Minimum Design Standards to ensure energy-efficient design and construction practices are utilized. Rehabilitation projects are encouraged to incorporate LHC's Universal Design standards when it is feasible. Units that will meet Universal Design upon completion may be preferred in selection of potential projects. Follow the link below for more information. http://www.lhc.la.gov/.

- **Minimum Design Standards.** Construction of the development must be in accordance with LHC's "Multi-Family Housing Minimum Design Standards", as well as, all applicable local State and national building codes.

  - The applicant's architect in encourage to review the "Minimum Design Standards" found on LHC's website at http:// www.lhc.la.gov. A certification from the design architect or licensed engineer must be submitted with the application confirming that the proposed development will be constructed in:

    - ✓ Compliance with LHC's "Minimum Design Standards";

    - ✓ Compliance with all Federal and State accessibility laws; and

    - ✓ Compliance with all applicable local, State and national building codes.

- **Applicability of minimum design standards to rehabilitation developments**: If structural constraints prohibit adherence to LHC's "Minimum Design Standards", applicant may seek a waiver from LHC for the standard concerned. Such waiver request must be in writing and include the following:

  - Certification by the design architect or licensed engineer that the standard concerned cannot be met due to structural constraints;

  - Certification by the design architect or licensed engineer that no alternative design can be undertaken to achieve the benefit of the required standard due to structural constraints; and

  - Statement by applicant that it will implement any alternative identified by the design architect or licensed engineer.

- **Greater choice of housing opportunities**. A Recipient's HOME program must comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504, Executive Order 11063 and HUD regulations issued pursuant thereto so as to promote greater choice of housing opportunities.

- **Site and Neighborhood Standards**. The site and neighborhood standards of 24 CFR 983.6(b) apply only to new construction of rental housing. Records that document the results of the site and neighborhood standards review must be maintained by the Recipient.

LONG-TERM AFFORDABILITY

In return for providing HOME funds to a project, LHC requires that the HOME-assisted units remain affordable to income eligible applicants for a specified period of time called the affordability period. This section discusses the following:

- Basis and length of the affordability periods;

- Units that are subject to the affordability period requirements;

- Rent and occupancy requirements;

- Lease requirements; and

- Monitoring and inspection schedules.

Affordability Period

- HOME-assisted rental units carry rent and occupancy restrictions for varying lengths of time, depending upon the average amount of HOME funds invested per unit:

ACTIVITY	AVERAGE PER-UNIT HOME $	MINIMUM AFFORDABILITY
Rehabilitation or Acquisition of Existing Housing	<$15,000/unit $15,000- $40,000/unit >$40,000	5 years 10 years 15 years
New Construction or Acquisition of New Housing	Any $ amount	20 years

- HOME affordability periods are minimum requirements. Recipients may establish longer terms of affordability for their programs.

- If a shorter affordability period is desirable, LHC may work with the applicant to minimize the HOME per-unit subsidy.

- The HOME subsidy could be reduced and replaced with other funds that do not have long-term requirements, such as CDBG or State funds; or

- The developer may choose to designate a higher number of HOME-assisted units than required by the "floor" (minimum) in order to reduce the HOME investment per unit.

- Affordability restrictions remain in force regardless of transfer of ownership. At LHC's discretion, they may be terminated only upon foreclosure or transfer in lieu of foreclosure.

  - It is important to note that the termination of the affordability restrictions do not terminate the requirement that the units remain affordable (LHC's responsibility to repay HOME funds invested in projects that are no longer affordable).

- However, affordability requirements will be revived if, before the foreclosure, the owner of record, or anyone with business or family ties to the owner, obtains an ownership interest in the property or project.

Designating HOME-Assisted Units

- Unlike other Federal programs, such as CDBG and Rental Rehabilitation, the HOME Program distinguishes between the units in a project that have been assisted with HOME funds and those that have not -- hence the term HOME-assisted unit. (This distinction between HOME-assisted and unassisted units allows HOME funds to be spent on mixed- income projects while still targeting HOME dollars only to income-eligible households.) This distinction is important for compliance during the affordability period.

  - The number of HOME-assisted units in a given project must be specified at project commitment.

  - Additionally, for properties with both assisted and non-assisted units, a PJ must determine whether the HOME assisted units will be "fixed" or "floating" units.

    - ✓ **Fixed**: When HOME-assisted units are "fixed," the specific units that are HOME-assisted (and, therefore, subject to HOME rent and occupancy requirements) are designated and never change.

    - ✓ **Floating**: When HOME-assisted units are "floating," the units that are designated as HOME-assisted may change over time as long as the total number of HOME- assisted units in the project remains constant.

  - The floating designation gives the owner some flexibility in assigning units, and can help avoid stigmatizing the HOME-assisted units.

    - ✓ If the floating designation is used, the owner must ensure that the HOME- assisted units remain comparable to the non-assisted units over the affordability period in terms of size, features and number of bedrooms.

- ✓ LHC will designate the appropriate option at the time of project commitment
- ✓ Note that the HOME affordability rent and occupancy rules discussed below apply only to HOME-assisted units.

- ❑ **Leasing mixed-income projects with both HOME-assisted and non-HOME assisted units.**
  - ▪ LHC requires owners to maintain a mix of units throughout the affordability period that ensures that the project always has the correct number of HOME-assisted units. If a project has 10 of 15 units designated as HOME-assisted units when HOME funds are awarded, LHC requires that the project have 10 HOME-assisted units with income eligible tenants throughout the affordability period.
- ❑ When leasing mixed-income projects, owners/managers must assure that:
  - ▪ A sufficient number of units are leased or held available for lease to HOME eligible tenants in order to meet the income targeting requirements of the program; and
  - ▪ Rents charged to tenants in the HOME units are within the rent limits published by HUD.

Rent and Occupancy Requirements

- ❑ During the affordability period, LHC requires that rent and occupancy agreements for HOME-assisted units be enforced through:
  - ▪ Covenants running with the property; or
  - ▪ Deed restrictions.
- ❑ Covenants and deed restrictions may be suspended upon transfer by foreclosure or deed- in-lieu of foreclosure.
- ❑ **Rent limits.** Every HOME-assisted unit is subject to rent limits designed to help make rents affordable to low-income households. These maximum rents are referred to as "HOME Rents."
  - ▪ HUD will annually publish FMRs and calculations of rents affordable to families earning 65 percent (High HOME rent limits) and 50 percent of median (Low HOME rent limits). LHC and Recipients establish new HOME rents for projects based on the HUD published High and Low HOME rent limits.
  - ▪ The published rents are inclusive of utilities. The rents must be reduced for any tenant paid utility. Recipients must use PHA utility allowances to account for tenant paid utilities. See section below on Maximum Allowable HOME Rents and Utility Allowances.
  - ▪ Based on changes in area income levels or market conditions, HOME rents, as calculated by HUD annually, may increase or decrease.
  - ▪ LHC will use the HUD published rents to establish HOME rents and will inform HOME Recipients of the change in the HOME rents.
  - ▪ Tenants must be given at least 30 days written notice before increases are implemented. Any increases are also subject to other provisions of the lease agreements. For example, rents may not increase until the tenant's lease expires.

- HOME rents may decrease. While project rent levels are not required to decrease below the HOME rent limits in effect at the time of project commitment, decreasing HOME rents may reflect a change in market conditions that may force owners to reduce rents in order to maintain tenants.

- HUD may permit adjustments to the rent structure if the financial feasibility of the project is threatened. This is important to lenders providing financing to HOME- assisted projects.

- ❑ **Maximum allowable HOME rents and utility allowances.**

- The HOME rents are the maximum rent an owner may charge a tenant (including the approved utility allowance) in a HOME assisted unit. That is, the HOME rents limits are inclusive of tenant paid utilities and the maximum allowable HOME rents must be reduced if the tenant pays for utilities.

- Annually, PHAs establish maximum allowances for utilities that Recipients must use to determine rents for HOME-assisted rental projects.

- However, project owners may submit a proposed utility allowance to LHC for review and approval.

  - ✓ Utility adjustments proposed by owners/developers for specific projects that differ from the PHA utility allowance must be supported by documentation.

- In rural areas the market rents may be well below the published HOME rents. LHC encourages owners to charge tenants in HOME assisted units a rent that is appropriate for the market.

- Note that only tenant paid utilities are included in HOME rent limits. **Assisted living projects may not add food or services to the HOME rent nor require the food services or supportive services as a condition of a tenant's occupancy**.

INCOME ELIGIBILITY AND TARGETING REQUIREMENTS

LHC seeks to provide safe decent and affordable housing to very low-income and low-income households throughout the State. To ensure that the properties serve their intended beneficiaries, program participants are required to lease HOME assisted units to income eligible households.

- ❑ LHC provides HOME funds to develop units of affordable housing for very low-income and low-income households.

  - LHC's Low HOME rent units are restricted to individuals and families with incomes at or below 50% of the Area Median Income (AMI); and

  - High HOME rent units are restricted to individuals and families with incomes at or below 60% of AMI.

- ❑ Income eligible households include certificate or voucher holders under the Section 8 and/or HOME tenant based rental assistance (TBRA) program.

- ❑ Owners **may not** refuse to lease HOME-assisted units to certificate of voucher holders under the Section 8 Program, or to a holder of a comparable document evidencing participation in a HOME tenant-based rental assistance (TBRA) program, because of the status of the prospective tenant as a holder of such certificate, voucher or comparable HOME TBRA document.

- ❑ The LHC HOME rental housing has two constraints on occupancy:

  - **Program funds rule**: The program funds rule applies to rental units.

    - ✓ LHC requires that not less than 90% of the total households assisted through the rental program have incomes at or below 60% of the area median income at initial occupancy.

  - **Project rules**: The "project" rules specify the occupancy of units in each rental project.

    - ✓ In projects of five or more HOME-assisted units, at least 20 percent of the HOME-assisted rental units must be occupied by families who have annual incomes that are 50 percent or less of median income. These very-low-income tenants must occupy units at or below the Low HOME rent level.

    - ✓ The balance of the HOME-assisted units must, to comply with the program rule, be occupied by persons or families whose adjusted income does not exceed 60% of AMI.

    - ✓ Projects with fewer than five HOME-assisted units do not have to restrict any units to the Low HOME rents or limit occupancy to tenants at 50 percent or below of the area median income.

    - ✓ All the HOME-assisted units in projects with fewer that five units must, to comply with the HOME program rule, be occupied by persons or families whose adjusted income does not exceed 60% of AMI.

- ❑ Where HOME Program funds are used in conjunction with LIHTC or USDA Rural Development funds, the more stringent income- eligibility requirements apply.

- ❑ Where HOME Program funds are used in conjunction with Federal or State project based rental assistance, 100% of the assisted units must be restricted to persons or families whose adjusted income does not exceed 50% of AMI.

- ❑ **Affirmative marketing plan.** For affordable rental housing with 5 or more HOME assisted units, LHC requires Recipients to develop an Affirmative Marketing Plan and a set of procedures for implementing the plan. These plans are to be submitted to LHC and should include:

  - Methods to inform the public and potential tenants about fair housing laws and LHC's policies;

  - A description of the activities owners will do to affirmatively market housing assisted with LHC HOME funds such as distribution of flyers; outreach to local churches etc.;

  - A description of what owners will do to inform persons least likely to apply for the HOME assisted housing without special outreach; and

  - Maintain records of the plan and the marketing activities to assess its effectiveness and a system for adjusting the plan if results are not achieved.

Determining and Verifying Income Eligibility of HOME Tenants

LHC requires owners to verify and certify that tenants occupying the HOME assisted units meet income guidelines.

Income Definitions

- LHC requires the use of the Part 5/Section 8 definition of income.
- For a detailed discussion of calculating annual income under Part 5/Section 8 rules, see the HOME Model Series "Technical Guide for Determining Income and Allowances for the HOME Program."
- For up-to-date rules and requirements, consult the regulations at 24 CFR Part 5 (subpart F).

Initial Income Verification

- Before the tenant occupies a unit, tenant income eligibility must be documented with source documents, such as wage statements, interest statements and unemployment compensation statements. Please note: If tenant does not occupy unit within the initial six months of verification, income must be re-certified.
- Normally, the project owner is responsible for collecting this information and determining eligibility.
- LHC or the Recipient is responsible for monitoring the project owner to ensure that initial income verifications are performed correctly.
- Property managers often have high staff turnover rates so it is important for the Recipient to review the income verification process and expectations with property management staff every 2 to 3 years.

Annual Recertification of Income

- Because the HOME Program imposes occupancy restrictions over the length of the affordability period, owners must establish systems to recertify tenant income on an annual basis.
- Typically, each tenant's income will be examined on the anniversary date of the original income evaluation or at lease renewal.
  - However, the owner may adopt an annual schedule and perform all verifications at the same time.
  - When LHC or the Recipient performs on-site inspections of the project, it should verify that tenant income recertification documentation is in the tenant files.

Addressing Increases in Tenant Income during the Affordability Period

- A tenant's income is likely to change over time. If these changes occur during the affordability period, the project owner must take certain steps to maintain compliance with HOME rent and occupancy requirements.

- The project must maintain the total number of HOME-assisted units, as required in the written agreement with LHC or the Recipient.

- The project must maintain the correct proportion of High and Low HOME rent units.

- Rents must be adjusted for tenants whose household incomes increase above the income limits for the designated HOME units (50 percent of AMI for Low HOME rent units and 80 percent of AMI for High HOME rent units).

The specific steps that a property owner/manager has to take depend on whether the development is a "fixed" or "floating" project. Procedures and flowcharts for both regimes are detailed below.

Fixed Unit Projects

The owner should take the following steps to maintain the correct numbers of High and Low HOME rent fixed units.

- If the income of a tenant occupying a Low HOME rent unit increases above 50% of median, but does ***not exceed 80 percent*** of area median income, that unit remains a Low HOME rental unit until a HOME-assisted unit can be substituted.

    - The owner may not increase the tenant's rent above the Low HOME rent limit for as long as the unit retains the Low HOME unit designation and is occupied by the low- income household whose income increased above 50% of median but does not exceed 80% of median.

    - When a High HOME rent unit in the property vacates, that unit must be re- designated as a Low HOME rent unit. This unit must be rented to a very low- income tenant, at no more than the Low HOME rent.

    - Once the new Low HOME rent unit has been designated, the previous Low HOME rent unit that is occupied by the tenant at between 50 and 80% of median must be re-designated as a High HOME rent unit. At this time, the owner can increase the tenant's rent up to the High HOME rent, subject to the terms of the lease.

- If a tenant's household income **increase above 80 percent** of the area median income, the unit this tenant occupies is still considered to be a HOME-assisted unit, but the tenant's rent must be adjusted as described below.

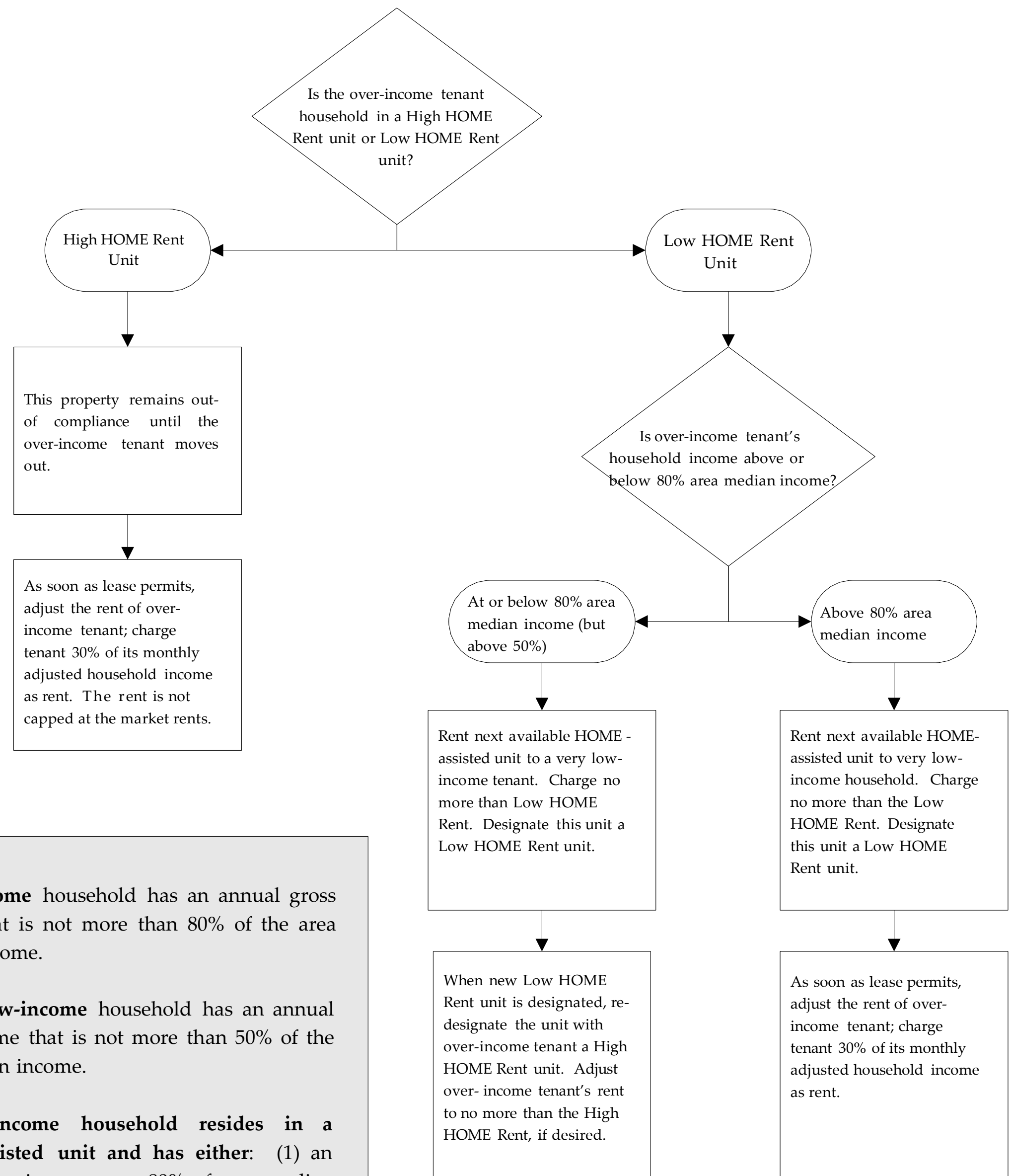
- Over-income tenants with incomes over 80 percent of the area median in HOME- assisted "fixed" units must pay 30 percent of their adjusted income for rent and utilities. There is no rent cap for "fixed" units.

    - Where State or local law imposes rent controls, the rent control applies.

    - If the person whose income went over 80% of median was in a Low HOME unit and they elect to vacate the property, the new tenant must be at or below 50% of median income and rented at a Low HOME rent.

- If the person whose income went over 80% of median was in a High HOME unit and they elect to vacate the property, the new tenant must be at or below 60% of median income and rented at a High HOME rent. **(NOTE: LHC** rules require that not less than 90% of all tenants' incomes be at or below 60% AMI at initial occupancy.)

See the fixed unit flow chart on the next page:



A **low-income** household has an annual gross income that is not more than 80% of the area median income.

A **very low-income** household has an annual gross income that is not more than 50% of the area median income.

An **over-income household resides in a HOME-assisted unit and has either**: (1) an annual gross income over 80% of area median income, **or** (2) an annual gross income over 50% of area median income that occupies a Low HOME Rent unit.

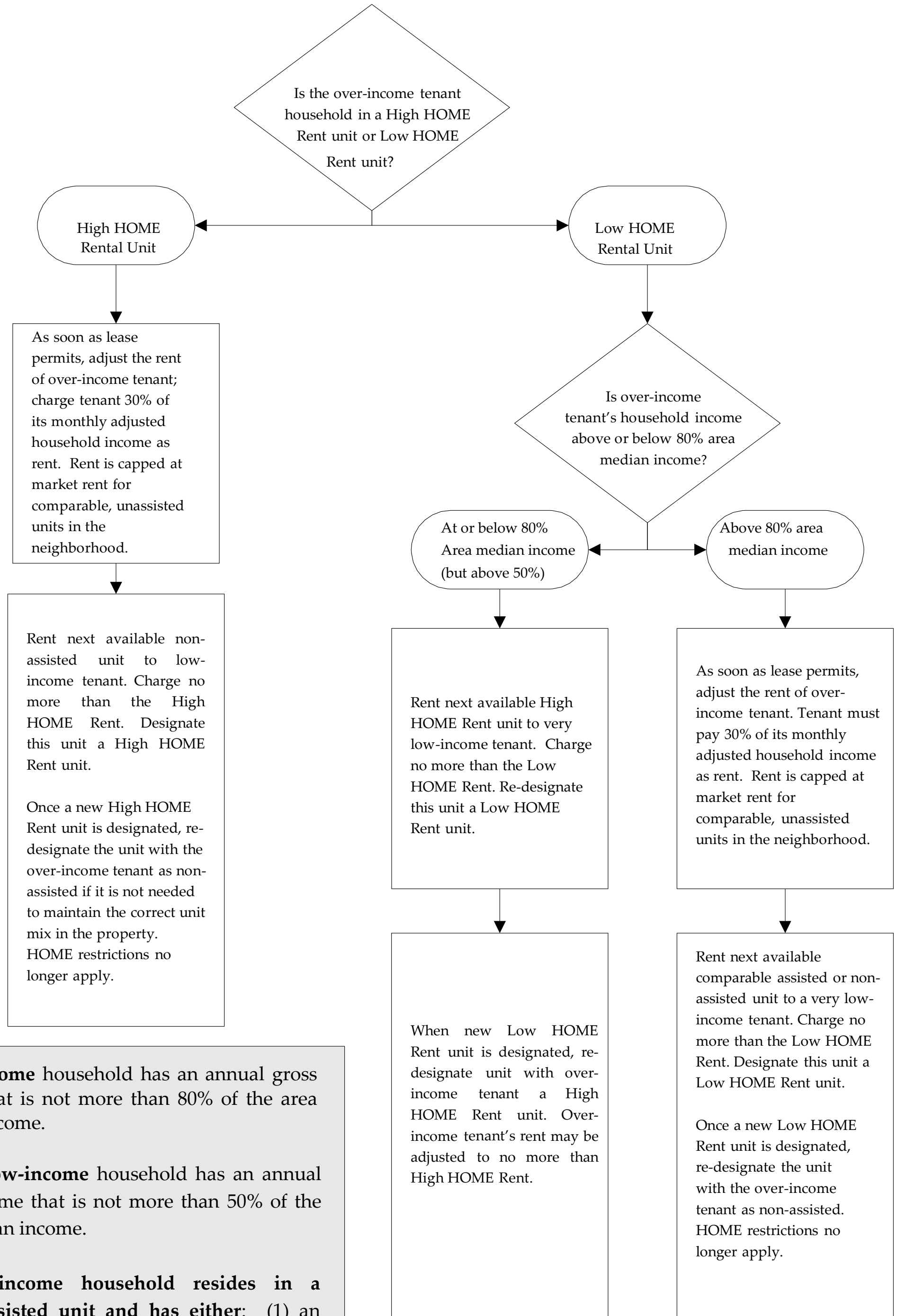
Note: If there is more than one over-income tenant in the property and both a Low HOME Rent unit and a High HOME Rent unit are needed to restore the required unit mix, the owner must restore compliance with the Low HOME Rent unit first.

Floating Unit Projects

- The owner must take the following into consideration to maintain the correct numbers of High and Low HOME rent floating units.
  - Generally, the owner can draw on all the units in the property to designate High and Low HOME rent units. This means that the owner is not restricted to those units initially designated as HOME-assisted units when looking to re-designate a comparable unit as the new Low or High HOME unit.
  - However, at no point is the owner required to designate more HOME-assisted units than was agreed upon in the written agreement with LHC or the Recipient.
- When the income of a tenant occupying a Low HOME rent unit income increases over 50% of the median, but **does not exceed 80 percent** of the area median income, the unit that is occupied by the over-income tenant is considered a Low HOME rent unit until a comparable unit can be substituted.
  - The rent of the tenant whose income has gone above 50% of median must not exceed the Low HOME rent limit while the unit has a Low HOME rent unit designation.
  - To replace the Low HOME rent unit, the owner must rent the next available High HOME-assisted unit to a very-low-income tenant. The newly designated Low HOME rent unit must be rented to a tenant whose income does not exceed the very low-income limit (50% of median), at a rent that does not exceed the Low HOME rent limit.
  - Once a new Low HOME rent unit has been designated, subject to the terms of the lease, the rent of the initial tenant whose income has increased may be increased to the High HOME rent for the unit. This process should not increase the number of assisted units.
    - ✓ Note that the owner is not required to re-designate a vacated market rate unit as a HOME assisted unit unless one of the existing HOME-assisted units is occupied by an over-income household (over 80% of median). If one of the HOME-assisted units is occupied by an over-income person, that unit can become a market rate unit when the next vacant market rate unit is designated as a HOME-assisted unit. As noted above, the point is to maintain the total number of HOME assisted units in the project.
  - If a tenant's income **increases above 80 percent** of the area median income, the unit this tenant occupies is still considered to be a HOME unit, but the tenant's rent must be adjusted as described below.
  - The next available market unit in the project of comparable size or larger must be rented to a HOME-eligible household. The unit occupied by the over-income tenant is no longer considered HOME-assisted, and the rent of that unit can be adjusted.
  - Over-income tenants in HOME-assisted "floating" units must pay 30 percent of their adjusted income for rent and utilities; however, the rent may not exceed the market rent for comparable, unassisted units in the neighborhood.

- ✓ Note: In assisted units that are financed with both HOME and Low Income Housing Tax Credits (LIHTCs), the LIHTC rules apply when **existing assisted tenant** rents exceed 80% of median. Under the LIHTC program, the tenant's rent is not adjusted, and the unit does not need to be replaced by another comparable unit until the tenant's income rises above 140 percent of the LIHTC program eligibility threshold. This rule **only applies** to over income tenants in existing assisted units. LHC, Recipients and owners may not defer to LIHTC rents in HOME units when initially developing assisted units.

See the floating unit flow chart on the next page:



A **low-income** household has an annual gross income that is not more than 80% of the area median income.

A **very low-income** household has an annual gross income that is not more than 50% of the area median income.

An **over-income household resides in a HOME-assisted unit and has either**: (1) an annual gross income over 80% of area median income, **or** (2) an annual gross income over 50% of area median income that occupies a Low HOME Rent unit.

Note: If there is more than one over-income tenant in the property and both a Low HOME Rent unit and a High HOME Rent unit are needed to restore the required unit mix, the owner must restore compliance with the Low HOME Rent unit first.

Leases

- The lease between the owner and the tenant in a HOME-assisted property must be for at least one year, unless by mutual agreement between the tenant and the owner.

- The lease between the owner and tenant in a HOME-assisted property ***cannot*** contain any of the following provisions:

  - Agreement to be sued: 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.

  - Treatment of property: Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.

  - Excusing owner from responsibility: Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.

  - Waiver of notice: Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.

  - Waiver of legal proceedings: Agreement of 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.

  - Waiver of a jury trial: Agreement by the tenant to waive any right to a trial by jury.

  - Waiver of right to appeal court decision: Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease.

  - Tenant chargeable with cost of legal actions regardless of outcome: Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

- Owners may terminate tenancy or refuse to renew a lease only upon 30 days' written notice, and only for: serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State or local law; completion of the tenancy period for transitional housing or for other good cause.

- An owner of HOME-assisted rental housing must adopt written tenant selection policies and criteria that:

  - Are consistent with the purpose of providing housing for very low-income and low-income families;

  - Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;

- Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

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

- Assisted living projects many not require a tenant to avail themselves of the food services or supportive services as a condition of the lease.

RECORD KEEPING

As for all program activities, HOME requires documentation for rental projects to show that all program regulations have been met. Because of the long-term monitoring required for rental projects, however, record-keeping responsibilities are slightly more substantial. This section briefly describes the record-keeping responsibilities associated with rental housing for LHC, Recipients and the property owner. For a more detailed discussion of the record- keeping responsibilities see Part I of Chapter 9: Record-keeping, Reporting and Monitoring.

- **Recipient records.** In addition to the general program and project documentation described in Part I of Chapter 9, Recipients have the following responsibilities:

  - Records of its regular inspections of each rental project**:** These records should demonstrate that LHC or the Recipient checked for and enforced compliance with the following HOME requirements:

    - ✓ *Property standards*: The records should show that a sufficient sample of HOME-assisted units was inspected, as well as exterior and common areas, and that any deficiencies identified were corrected.

    - ✓ *Rent and occupancy requirements*: Inspection records should also show that LHC or the Recipient reviewed a sample of unit files to verify that HOME rent and occupancy requirements were met.

    - ✓ *Lease requirements*: In its review of unit files, LHC or the Recipient should also ensure that leases meet HOME requirements.

    - ✓ *Tenant selection policies*. In its review of project files, LHC or the Recipient should ensure the owner has adopted written tenant selection policies and criteria.

    - ✓ *Other items in the written agreement*: If the written agreement between LHC or the Recipient and the property owner contained any other provisions that require monitoring, LHC or the Recipient's records should reflect that they were monitored.

  - Other project oversight responsibilities: The Recipient should also conduct additional oversight of rental projects by analyzing the projects for financial stability, management capacity and other long-term viability issues.

    - ✓ This type of oversight will help to identify financial or management issues before they affect the project's ability to remain a viable component of LHC or the Recipient's affordable housing stock.

- **Property owner records**. Owner must keep adequate records and demonstrate compliance with HOME requirements. The owner should keep both project and tenant records.
  - Project records should include documentation to back-up rent and utility allowance calculations. If the project's HOME-assisted units are "floating," the owner should also keep records to show how HOME occupancy targets were met (for example, rental logs to show that as units were vacated or tenants became over-income, HOME-assisted units were properly replaced).
  - Tenant files should include the documentation necessary to demonstrate that each HOME-assisted unit is properly occupied by an income-eligible tenant. Such documentation includes: the tenant's application, initial income verification documents, subsequent income recertification documents and the tenant's lease.
- General rental housing records must be kept for five years after project completion.
- Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the affordability period.

OTHER FEDERAL REQUIREMENTS

Exhibit 6-2 identifies the other Federal requirements that must be followed in implementing rental housing activities. This exhibit is meant to serve as a checklist only; for detailed information on each requirement, see the specifics in Chapter 13: Other Federal Requirements.

- **Lead-Based Paint**. Projects built before 1978 are subject to the requirements of the Lead Safe Housing Rule. See the summary provided in Chapter 13: Other Federal Requirements of this manual. Another resource is HUD's Office of Healthy Homes and Lead Hazard Control website, http://www.hud.gov/offices/lead.
- **Section 3 Economic Opportunities.** Section 3 of the Urban Development Act of 1968 requires applicants receiving $200,000 or more in HOME Program Funds, to the greatest extent feasible, provide opportunities for training and employment to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work (all types) to be performed in connection with HOME will be awarded to business concerns that are located in or owned by persons residing in the program service area.
  - LHC will meet with applicants to discuss the Section 3 Program requirements and require applicants to develop a Section 3 plan for employing and/or training persons residing in the Program Area.
  - The plan will include:
    - ✓ Identification of Program Area;
    - ✓ Outreach and marketing avenues:
    - ✓ Potential employment opportunities;
    - ✓ Possible training opportunities;

- ✓ An estimate of the number of persons reached; and
- ✓ A projection of the number of persons receiving training and employment opportunities

- A number of resources are available online to assist in developing the Section 3 plan. The HUD website (www.hud.gov/offices/fheo/section3/section3.cfm) has the following reference materials:
  - ✓ The Section 3 Regulations: 24 CFR 135;
  - ✓ A sample Section 3 Plan; and
  - ✓ The Section 3 Summary Report (HUD Form 60002).
- Additional guidance from HUD on compliance and recordkeeping for Section 3 is also available at http://www.hud.gov/offices/cpd/communitydevelopment/toolkit/files/MBE-WBEOutreach.pdf. Please refer to pages 2 and 3 of the Guidance.
- Recipients that are subjected to the Section 3 requirements must submit Section 3 progress reports to LHC on a quarterly basis.

EXHIBIT 6-2

SUMMARY OF OTHER FEDERAL REQUIREMENTS

Other Federal Requirements	Applies to Rental Housing Programs?	Special Issues/ Considerations	Regulatory Citations and References
Non-Discrimination and Equal Access Rules			
Fair Housing and Equal Opportunity	Yes.	LHC and Recipients must affirmatively further fair housing. Pay particular attention to signs of discrimination in leasing practices.	• 92.202 and 92.250 • Title VI of Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) • Fair Housing Act (42 U.S.C. 3601-3620) • Executive Order 11063 (amended by Executive Order 12259) • Age Discrimination Act of 1975, as amended (42 U.S.C. 6101)
Affirmative Marketing	Yes; for projects containing five or more HOME-assisted units.	LHC and Recipients must adopt specific procedures and requirements.	• 92.351
Handicapped Accessibility	Yes.		• Section 504 of the Rehabilitation Act of 1973 (implemented at 24 CFR Part 8) • For multi-family buildings only, 24 CFR 100.205 (implements the Fair Housing Act)
Employment and Contracting Rules			
Equal Opportunity Employment	Yes.	Contracts and subcontracts over $10,000 should include language prohibiting discrimination.	• Executive Order 11246 (implemented at 41 CFR Part 60)
Section 3 Economic Opportunity	Yes, if amount of assistance exceeds $200,000 OR contract or subcontract exceeds $100,000.	Include Section 3 clause in contracts and subcontracts.	• Section 3 of the Housing and Urban Development Act of 1968 (implemented at 24 CFR Part 135)
Minority/Women Employment	Yes.	LHC and Recipients must prescribe procedures and include in contracts and subcontracts.	• Executive Orders 11625, 12432 and 12138 • 24 CFR 85.36(e)

Davis-Bacon	Yes, if construction contract includes 12 or more HOME-assisted units.	Include language in all contracts and subcontracts. Requirements apply to whole project not just the HOME-assisted units.	• 92.354 • Davis-Bacon Act (40 U.S.C. 276a - 276a-5) • 24 CFR Part 70 (volunteers) • Copeland Anti-Kickback Act (40 U.S.C. 276c)
Conflict of Interest	Yes.	LHC should ensure compliance both in-house and when using Recipients.	• 92.356 • 24 CFR 85.36 • 24 CFR 84.42
Debarred Contractors	Yes.	LHC and Recipients should check HUD list of debarred contractors.	• 24 CFR Part 5 • www.epls.gov
Environmental Requirements			
Environmental Reviews	Yes.	Level of review depends upon the activity. For rehabilitation and new construction (4 or fewer units); categorically excluded **subject** to 58.5. New Construction (more than 5 units) **subject** to environmental assessment.	• 92.352 • 24 CFR Part 58 • National Environmental Policy Act (NEPA) of 1969
Flood Insurance	Yes for Recipients that are cities or counties. No for State programs.	Must obtain flood insurance if located in a FEMA designated 100-year flood plain. Community must be participating in FEMA's flood insurance program.	• Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106)
Site and Neighborhood Standards	Yes; for new construction only.		• 24 CFR 893.6(b)
Lead-Based Paint	Yes for rehabilitation of pre-1978 units. Applies to HOME and non-HOME-assisted units. Requirements differ depending on whether rehabilitation work is performed.	Rehabilitation Notices to owners. Paint testing of surfaces to be disturbed. Risk assessment, if applicable, based on level of rehabilitation assistance. Appropriate level-hazard reduction activity (based on level of rehabilitation assistance). Safe work practices and clearance. Provisions included in all contracts and subcontracts.	• 92.355 • Lead Based Paint Poisoning Prevention Act of 1971 (42 U.S.C. 4821 et. seq.) • 24 CFR Part 35 • 982.401(j) (except paragraph 982.401(j)(1)(i))

Lead-Based Paint (Continued)		Activities not involving rehabilitation Notices to purchasers and tenants. Visual assessment must be performed. Paint stabilization must be completed (if applicable). Safe work practices and clearance. Provisions included in all contracts and subcontracts.	
Relocation	Yes.	Displacement must be minimized; existing tenants must be provided a reasonable opportunity to lease a dwelling unit in the building upon completion of the project. Reimbursement for temporary relocation, including moving costs and increase in monthly rent/utilities, must be provided, as well as advisory services.	• 92.353 • Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) • 49 CFR Part 24 • 24 CFR Part 42 (subpart B) • Section 104(d) "Barney Frank Amendments"

PART II: COMBINING HOME FUNDS WITH OTHER RESOURCES

LHC requires Recipients to identify and secure additional sources for HOME rental projects. The leveraging requirement for rental projects is described below. Additionally, LHC encourages Recipients to combine HOME funds with Low Income Housing Tax Credits (LIHTC), one of the largest public resources available for affordable rental housing projects. This section discusses how to combine the two programs successfully.

LEVERAGING REQUIREMENTS FOR RENTAL PROJECTS

- LHC requires applicants to leverage, secure additional sources of funds, for HOME funded rental development activities.
  - LHC will not contribute more than eighty-five percent toward the total development costs of a project.
    - ✓ The remaining fifteen percent must be funded from other sources including owner equity, bank financing, etc.

USING THE LOW INCOME HOUSING TAX CREDIT WITH HOME FUNDS

- There are essentially three ways HOME funds can be used with low-income housing tax credits.
  - **Market rate loan:** The Housing and Economic Recovery Act (HERA) eliminated below- market Federal

loans from the definition of federally subsidized properties, allowing 9 percent Credit on all federally subsidized properties, except tax-exempt bond financed properties, effective for buildings placed in service after date of enactment. In accordance with HERA, HOME loans below market in LIHTC projects located in QCT and DDAs are also eligible for the 30% basic boost.

- **Below market rate loan with 4% credit**: Some projects qualify only for a 4% credit regardless of the way HOME funds are invested in the project. For example, a project with other Federal or tax-exempt mortgage revenue bond funds included in the basis is only eligible for a 4% credit under any circumstance, so HOME funds can be lent at any below market interest rate terms without consequence to the credit.

Projects using HOME funds with LIHIC have to consider a number of items in blending the two sets of program rules. Exhibit 6-3 provides an overview of tax credit rules and the requirements for combining the two programs.

EXHIBIT 6-3 RULES FOR COMBINING HOME FUNDS AND TAX CREDITS

	Tax Credit Program Rules	Combining Tax Credits with HOME
Occupancy Requirements	At least 20 percent of assisted units must be reserved for households with incomes at or below 50 percent of area median; **or** 40 percent of the units must be reserved for households with incomes at or below 60 percent of area median income.	Otherwise, at least 20 percent of the units must serve households with incomes at or below 50 percent of area median income (to meet HOME requirements).
Rent Requirements	Rents for qualified units must not exceed the rent limit set for the program. These limits are set by bedroom size and are based on the qualifying incomes of an imputed household size. They are published by HUD.	For units to qualify as both tax credit and HOME- assisted units, rents cannot exceed either program limit. Low HOME rent units are subject to Low HOME rents and tax credit limits and High HOME rent units are subject to High HOME rents and tax credit limits.
Establishing Tenant Eligibility	*Documentation* -- Tenants must provide acceptable documentation of income from a third party source. All sources of income are verified. *Definitions* -- The tax credit program defines income using the Section 8 definition of annual (gross) income. *Asset Income* -- Assets $5000 or less: tenants certify asset amount and income. Use actual income. Assets above $5000: verify amount and income. Use larger of actual income from assets or imputed asset income.	*Documentation* -- Initial tenant eligibility documentation for both programs is the same. *Definitions* -- Use the Section 8 definition of income. *Asset Income* -- Follow more stringent HOME rules and verify all asset income.

Re-examinations of Income	Re- examinations are performed annually following the same procedures as at initial certification; however, an owner may request a waiver from re- examination requirements if all units in the project are tax credit units. State housing credit agency determines the frequency.	Tax credit/HOME projects may request waivers from the tax credit allocating agency to perform re- examinations similar to HOME. For years ending October 1, 2008 and later, some LIHTC properties will not have a LIHTC requirement to re-certify tenant incomes. The change does not affect Section 8 recertification requirements. Follow HOME rules for tenant income re- examinations
Over-Income Tenants	Rent for over-income tenants remains restricted. An owner *may* increase an over-income tenants rent, but *only* ***after*** the unit is replaced with another low-income unit in the project, thereby keeping the portion of low-income units above the minimum amount required for the owner to be eligible for the	HOME rules defer to tax credit rules -- rent remains restricted. (In other words, in no case can the rent exceed limits set by the tax credit program).
Monitoring	Projects are monitored annually throughout the affordability period. Affordability period: 30 years (15-year compliance period, 15-year extended use period). Statement of compliance is submitted annually with documentation of occupancy. On-site inspections are required at least every three years for at least 20% of Sec. 42 units. Use UPCS (Public Housing inspection standards).	LHC and the Recipient will each monitor according to their program requirements.

- **Occupancy requirements**. Tax credit projects must set aside at least 20 percent of their units for tenants with incomes at or below 50 percent of the area median (20/40 set-aside) or 40 percent of their units for tenants with incomes at or below 60 percent of the area median income (40/60 set-aside). When combining HOME and tax credits, occupancy requirements depend on the type of credit taken and the type of HOME funding provided:

  - ✓ Projects must ensure that they meet both sets of program rules.

  - ✓ Of course, projects may choose to exceed these standards. Owners/ developers of tax credit projects will generally try to maximize their credits by creating higher set-asides for qualified occupants.

- **Rents**. When combining the two types of funding, two sets of rent rules apply.

  - ✓ Qualified tax credit units must not exceed tax credit rent limits, while HOME-assisted units must meet HOME rent requirements. If a unit is being counted under both programs, the stricter rent limit applies.

  - ✓ Low HOME rent units are subject to the lower of the Low HOME rent and the tax credit rent (usually the Low HOME rent.)

  - ✓ High HOME rent units are subject to the lower of the High HOME rent and the tax credit rent (usually the tax credit rent.)

- When tenants receive additional subsidy through rental assistance programs such as Section 8, additional requirements apply.

  - ✓ Under tax credit rules, if the rental assistance program rent limit exceeds the tax credit rent, the unit rent may be raised to the higher limit as long as tenants pay no more than 30 percent of their adjusted monthly income for housing costs.

  - ✓ HOME allows the rent to be raised to the rental assistance program limit only if the tenant pays no more than 30 percent of adjusted income, the subsidy is project- based (not tenant-based), and the tenant's income is less than 50 percent of the area median income. All units that receive project based rental assistance must be occupied by households with incomes at or below 50% of the AMI.

  - ✓ In a joint tax credit/HOME-assisted unit, the stricter HOME requirements would apply.

- **Establishing tenant eligibility**. Both the HOME and tax credit programs require project owners to certify tenants' incomes, to ensure that they are income-eligible and that the project is in compliance with initial occupancy requirements.

  - ✓ To demonstrate eligibility under both programs, property managers must have tenants certify their income, and obtain supporting documentation. This documentation must be kept in project unit files for review by the monitoring agencies.

- ✓ Under tax credit rules, only the Section 8 definition of annual (gross) income is used, whereas HOME allows a choice of three definitions. Projects using HOME funds and tax credits must use the Section 8 definition of income.

▪ Another difference between HOME and tax credit rules is that HOME requires verification of all asset income, whereas the tax credit rules require verification of asset income if the household's assets are greater than $5,000.

- ✓ For total assets of less than $5,000, the tax credit program allows tenants to provide a signed statement of asset income.

- ✓ A tenant in a unit subsidized by both sources of funds would have to comply with the stricter HOME requirements.

▪ **Re-examinations of tenant eligibility**. HOME allows for alternative methods of tenant re-certification. For projects after October 2008, LIHTC projects may not have to re-examine tenant income.

▪ **Over-income tenants**. The HOME and tax credit programs have slightly different approaches to over-income tenants.

- ✓ The definition of an over-income tenant differs under the two programs. Tax credit rules define "over-income" as having income above 140 percent of the project income limit. Under HOME, the tenants are considered over-income if their income rises above 80 percent of area median income.

- ✓ Further, unlike under HOME, the rent remains restricted under the tax credit program. An owner may increase an over-income tenants rent, but only **after** the unit is replaced with another low-income unit in the project, thereby keeping the portion of low-income units above the minimum amount required for the owner to be eligible for the credit. To resolve this conflict, HOME rules state that when funds from both programs are used on the same unit, the tax credit rules should be followed.

▪ **Monitoring**. Both programs require annual monitoring to ensure compliance with program rules over the length of a pre-established affordability period. Different agencies may monitor a project for compliance with the specific requirements of each program.

- ✓ Under the tax credit program, the affordability period is generally 30 years, unless the allocating agency establishes a longer one.

- ✓ Projects combining HOME funds and tax credits are subject to two sets of affordability periods. These periods may be set to be equal in length, or the project may be subject to one set of requirements for a shorter time period than the other.

- ✓ The tax credit program requires on-site inspections annually for no less than 20% of the tax credit units. HOME program units are subject to on-site inspections. The frequency of the HOME on-site inspections depend on the total number of units in a project, ranging from annual inspections for projects with 26 or more units to once every three years for projects with 1-4 units (refer to Page 6-20 for the discussion on Monitoring and Inspections). Consequently, the HOME units within a tax-credit project may be subject to more frequent inspections.

Managing for Ongoing Compliance

- To maintain compliance with HOME rules, property owners will need to ensure that:
  - ✓ The project is marketed to qualified applicants,
  - ✓ Tenants are screened for eligibility,
  - ✓ Rent and occupancy targets are observed, and
  - ✓ Adequate property maintenance is conducted.
- Hiring a qualified property manager will help ensure all necessary actions are taken.

LHC's HOME-funded Tenant Based Rental program was designed to address one of the most prevalent affordable housing problems experience by medium- and small-sized communities in the State of Louisiana: the need for rental assistance for low-income persons. TBRA programs provide assistance to individual households to enable them to rent market-rate units. Here we discuss TBRA program requirements.

This chapter highlights eligible TBRA households and units, eligible types and levels of subsidy, options for establishing a TBRA program, and key issues for design and administration of a TBRA program. Part I of this chapter provides an overview of HOME Program requirements related TBRA programs. Part II of this chapter discusses TBRA program design and implementation issues.

PART I: HOME PROGRAM REQUIREMENTS

WHAT IS TENANT-BASED RENTAL ASSISTANCE?

Tenant-based rental assistance (TBRA) is a rental subsidy that helps individual households with housing costs such as rent and security deposits. Sub- recipients may also assist tenants with utility deposits but only when HOME is also used for rental assistance or security deposits.

- **Types**: There are many types of TBRA programs.

The most common type provides payments to make up the difference between the amount a household can afford to pay for housing and local rent standards.

  - The Section 8 Voucher Program is an example of a typical TBRA program. It is the model used by the majority of Sub- recipients because LHC expects Sub- recipients to model their HOME-funded TBRA program after the Section 8 Voucher Program.
  - Other TBRA programs help tenants pay for costs associated with their housing, such as security and utility deposits. (However, under the HOME Program, utility deposit assistance can only be provided in conjunction with rental assistance programs or security deposit programs.)

- **How TBRA differs**: HOME TBRA programs differ from other types of HOME rental housing activities in three key ways:
  - TBRA programs help ***individual households*** (rather than subsidizing particular rental projects).
  - TBRA assistance ***moves with the tenant*** -- if the household no longer wishes to rent a particular unit, the household may take its TBRA and move to another rental property.

- The ***level of TBRA subsidy varies*** -- the level of subsidy is based upon the income of the household, the particular unit the household selects, and the Subrecipient's rent standard (rather than being tied to the Subrecipient's high and low HOME rents.)

WHY CREATE A TBRA PROGRAM?

Participating Jurisdictions (PJs) and their Sub- recipients have developed TBRA programs for a wide variety of reasons to serve a wide range of functions. Some of the most common advantages of establishing a TBRA program are noted below.

Flexibility for Households

- TBRA programs offer a household the opportunity to choose its neighborhood (including the school district) as well as its type of housing (such as a single-family home, large apartment building, duplex, garden-style unit, etc.)

- If the household needs to change location, the household may take the TBRA assistance along when it moves to another rental unit.

- The TBRA may be used outside of the Subrecipient's jurisdiction but LHC places some restrictions on this. See the Eligible TBRA Units section below for further details.

Flexibility for Sub- recipients

- TBRA programs offer jurisdictions a way to meet fluctuating demand for housing. A Subrecipient may elect to provide TBRA assistance to as many or as few households as it chooses, subject to its HOME award and written agreement with LHC and consistent with the State's Consolidated Plan.

- Also, Sub- recipients may design specialized TBRA programs tailored to the distinctive housing needs of the community. This includes programs designed specifically for persons with special needs.

Cost-Effectiveness

- In communities where large public subsidies are needed to spur the new construction or rehabilitation of units, TBRA may be less expensive than using HOME for rehabilitation or new construction.

- TBRA may be particularly effective in communities with high vacancy rates, where the Subrecipient wants to make units affordable, but does not want to finance the development of additional units.

Risk Avoidance

- Financing the construction or rehabilitation of housing is inherently risky. Owners and developers can (and sometimes do) default on their financing, sending projects into foreclosure and putting the LHC's investment at risk.

- Since TBRA programs are tenant-based, the Sub-recipient can terminate the assistance if the tenant fails to meet program requirements.
- TBRA poses no long-term financial obligation to the Sub-recipient.

ELIGIBLE ACTIVITIES

Sub-recipients may implement the following types of TBRA programs which are eligible under the HOME Program.

Rental Assistance Programs

- The HOME rules are flexible regarding the types of TBRA programs that may be developed:
  - HOME TBRA programs may be designed to serve the general objective of making housing more affordable for a wide range of low-income households within the jurisdiction.
  - Sub-recipients may want to create a TBRA program that serves the entire community in response to a high level of rent burden and/or a long Section 8 waiting list.
  - Alternately, TBRA programs may focus on a special purpose or specific housing need. Options for special purpose programs are also described below.
- **Self-sufficiency programs**: Sub- recipients may design their program to require HOME TBRA recipients to participate in self-sufficiency programs as a condition of rental assistance.
  - For example, the Sub-recipient may operate a "bootstrap program" that provides TBRA to low-income persons who are attending job training.
- **Homebuyer programs**: Sub- recipients may assist tenants under a lease-purchase program.
  - The HOME TBRA payment must be used for monthly rental and/or utility expenses.
    - ✓ TBRA assistance may not be used to create equity in the unit on behalf of the homebuyer.
    - ✓ However, all or a portion of payments made by the homebuyer may be used to build such equity.

When the homebuyer is ready to purchase the unit, HOME funds may also be used for downpayment assistance.

- **Targeted populations programs**: Sub- recipients may establish local preferences for special-needs groups within its broad, community-wide program, or it may design a specific program that exclusively serves one or more special needs groups.
  - Examples of such special needs groups may include:

- ✓ Homeless persons;
- ✓ Persons with disabilities; or
- ✓ Persons with AIDS.

- ▪ If TBRA is provided exclusively to persons with a particular type of special need, the need must be identified in the State's Consolidated Plan for the Subrecipient's jurisdiction as an unmet need and the preference must be needed to fill the gap in benefits and services available to such persons.

<u>Security Deposit Programs</u>

- ❑ The Subrecipient may establish a program that limits assistance to help tenants with security deposits.
  - ▪ The term "security deposit" is defined by the local or state tenant-landlord law covering the jurisdiction.
  - ▪ The maximum amount of HOME funds that may be provided for the security deposit is the equivalent of two months' rent for the unit.
  - ▪ Only the tenant (***not*** the landlord) may apply for security deposit assistance.
  - ▪ The security deposit may be paid to the tenant or directly to the landlord.
  - ▪ The security deposit may be made as a grant or a loan. Note that LHC prefers that PHAs set up rent and utility deposits as grants to tenants.

> **Utility Deposit Assistance**
>
> Utility deposit assistance must be provided in conjunction with a TBRA security deposit or monthly assistance program. In addition, utility deposit assistance may be used only for utilities permitted under the Section 8 utility allowance. This includes electric, gas, water and trash, but does not include telephone and cable television.

  - ▪ If the deposit is a loan, the terms of that loan, including provisions for repayment, should be set out in a written agreement between the Subrecipient and the tenant.
    - ✓ The lease between the landlord and tenant may not contain certain prohibited lease provisions (see "Lease Requirements" later in this chapter) and must be in effect for at least one year.

<u>Ineligible Program Activities</u>

- ❑ Despite the flexibility the HOME Program provides for TBRA, there are a number of program activities that are ineligible for HOME TBRA assistance.
  - ▪ TBRA may not be used to assist a resident <u>owner</u> of a cooperative. Residents of cooperatives are recognized in Louisiana as homeowners.
    - ✓ Note that, a <u>tenant</u> who rents from an owner of a cooperative may receive HOME TBRA.
  - ▪ HOME TBRA may not be used to prevent the displacement of tenants from projects assisted with Rental Rehabilitation Program funds.

- Sub- recipients may not provide HOME TBRA to homeless persons for overnight or temporary shelter.

- HOME TBRA may not duplicate existing rental assistance programs that already reduce the tenant's rent payment to 30 percent of income. For example, if the household is already receiving assistance under the Section 8 Program, the household may not also receive assistance under a HOME TBRA program.

ELIGIBLE APPLICANTS/BENEFICIARIES

As with all HOME Program activities, TBRA funds must be used to serve low-income individuals. The TBRA income requirements are more stringent than the requirements for the other HOME activities.

Income Eligibility Requirements

- **Key rule**: LHC TBRA funds are limited to tenants who are at or below 60 percent of area median income. HUD establishes and periodically publishes income limits by family size for each jurisdiction. Please review and comply with these income limits.

- **Timing**: The Subrecipient needs to assure that the applicant is income-eligible ***prior to*** signing a contract for TBRA for the household.

- **Family income**: For initial ***eligibility*** purposes, family income under HOME-funded TBRA programs should be calculated using the Part 5/Section 8 definition of annual gross income. See Chapter 3: General Requirements of the HOME Program for information on income definitions in general and the Part 5/Section 8 definition in particular. Two additional resources to reference include the Technical Guide for Determining Income and Allowances for the HOME Program (located online at http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/1780.cfm) and HUD Income & Allowances Calculator (also located online at http://www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/calculator.cfm.)

  - The Subrecipient must determine annual income by reviewing source documents evidencing annual income (for example, wage statement, interest statement, and unemployment compensation) for the family.

  - Income determinations for new TBRA recipients are valid for six months.

  - Eligibility criteria must be met regardless of the type of TBRA program operated by the Subrecipient (for example, security deposit, special needs, etc.)

TENANT SELECTION REQUIREMENTS

There are important requirements related to tenant selection which is outlined below.

Overview

- Sub- recipients administering LHC HOME-funded TBRA programs must have a written tenant selection policy that clearly specifies how families will be selected for participation in their programs.

- Sub- recipients should adopt their Section 8 tenant selection procedures for the LHC HOME-funded TBRA programs by certifying as such in LHC's HOME TBRA Program Application form under Section IX.

- In general, there are two major components of tenant selection -- income eligibility and preferences. Both are discussed below.

  - **Income eligibility**: As discussed previously in this chapter, households who receive HOME-funded TBRA must have an annual income that does not exceed 60 percent of the area median income.

  - **Preferences**: Sub- recipients can use HOME-funded TBRA programs to support a variety of local goals and initiatives. Preferences are discussed in more detail below.

__Establishing Preferences__

- **General community-wide program**: A community-wide program can address the general need for affordable housing by giving more "buying power" to eligible low-income households. Within a community-wide program, the Sub-recipient may elect to:

  - Select households from the public housing authority's (PHA) Section 8 waiting list, using the PHA preference criteria; or

  - Establish its own preferences and waiting list (see below).

- **Community-wide programs with preferences**: Through the use of local preferences, Sub-recipients can target funds to meet specific needs or serve specific purposes.

- **Residency preference**: The Sub-recipient may opt to establish a residency preference as part of its community-wide program. A residency preference requires TBRA participants to be residents of the Sub-recipient's jurisdiction.

  - Sub- recipients may establish a residency preference as long as the application of the preference does not have the effect of discriminating on the basis of race, color, religion, sex, national origin, handicap or familial status.

  - The Subrecipient's definition of "resident" must include persons who currently reside in the jurisdiction, and those who are currently working or have a verified job offer in the jurisdiction.

  - Sub- recipients may not establish a requirement for minimum length of residency.

- **Disabilities preference:** Sub- recipients may establish local preferences for all persons with disabilities within a broad, community-wide TBRA program. A Subrecipient may also target its TBRA program to persons with a particular type of disability (see below.)

- **Self-sufficiency program:** As discussed earlier in this chapter, Sub- recipients may require HOME TBRA recipients to participate in self-sufficiency programs as a condition of assistance.

  - However, tenants living in a HOME-assisted project who receive TBRA as relocation assistance may not be required to participate in self-sufficiency programs.

- **Targeted programs**: As discussed previously in this chapter, Sub- recipients are permitted to design local selection criteria that meet the housing needs of specific populations. Below are several examples of targeted TBRA programs.

- **Preferences for persons with disabilities**: Sub- recipients may establish a preference for individuals with mental or physical disabilities.

  - Generally, TBRA and related services should be made available to all persons with disabilities that can benefit from such services (see above.)

  - Sub- recipients may also provide a preference for a specific category of individuals with disabilities (for example, persons with AIDS or chronic mental illness) if the specific category is identified in the State's Consolidated Plan as having unmet needs, and if the preference is needed to narrow the gap in benefits and services received by such persons.

  - Preferences may not be administered in a manner that limits the opportunities of persons in a protected class. For example, a person given a preference under the TBRA program may not be prohibited from applying for or participating in other available programs or forms of assistance.

- **Preferences for persons with other special needs:** Sub- recipients may establish a preference for individuals with special needs.

- TBRA may be provided exclusively to persons with a particular type of special need, if the specific category of need is identified in the State's Consolidated Plan for that jurisdiction as having unmet need and the preferences is necessary to bridge the gap in benefits and services received by such persons. Examples include the elderly and battered spouses.

  - As with a general TBRA program, appropriate, non-mandatory social services may be provided in conjunction with the TBRA.

  - As stated previously, Sub- recipients may require HOME TBRA recipients to participate in self-sufficiency programs as a condition of assistance. However, tenants living in a HOME-assisted project who receive TBRA as relocation assistance may not be required to participate in self-sufficiency programs.

ELIGIBLE TBRA UNITS

The HOME TBRA program offers households great flexibility in selecting a housing unit.

- Households must be free to select the unit of their choice.

  - **Public or private**: Units under the TBRA program may be publicly- or privately-owned.

  - **Rents must be reasonable:** Sub- recipients must disapprove a lease if it determines the rent is not reasonable, based on rents that are charged for comparable un-assisted rental units.

- **HOME-funded units are eligible for HOME TBRA assistance:** Households may select units developed or rehabilitated with HOME assistance. However, the Sub-recipient may not require the household to select a HOME unit as a condition of receiving TBRA.

- In addition, Sub- recipients may not require TBRA-assisted households to remain in units developed/ rehabilitated under HOME.

- Households must be permitted to move out at the end of the lease term, taking their TBRA assistance with them.

- **Portability:** LHC places restrictions on moving with TBRA assistance. LHC does not allow TBRA assisted tenants to take assistance out of a Subrecipient's jurisdiction except in the following limited circumstances:

  - TBRA tenants are relocating to accept employment outside the Subrecipient's jurisdiction, and/or

  - TBRA tenants are relocating for training opportunities that leads to employment outside the Subrecipient's jurisdiction.

  - Sub- recipients must document the exceptions for all TBRA assistance issued outside their jurisdiction.

  - Additionally, inspection and re-certification requirements are applicable to tenants who relocate outside the Subrecipient's jurisdiction.

PROPERTY AND OCCUPANCY STANDARDS

While TBRA program participants are able to select a unit of their choice, certain property and occupancy standards do apply to all TBRA programs.

<u>Section 8 HQS</u>

- Section 8 Housing Quality Standards (HQS) ***must*** be used for HOME TBRA activities.

  - Inspections to verify compliance with HQS and occupancy standards are made both at initial move-in and annually during the term of the TBRA assistance.

<u>Occupancy Standards</u>

- Sub- recipients must develop local occupancy standards that specify the number of bedrooms needed by households of various sizes and composition.

- LHC expects that Sub- recipients will adopt their Section 8 program policies regarding occupancy standards for the LHC/ HOME-funded TBRA program they are administering.

> Further guidance on HUD occupancy standards can be found in a Federal Register Notice from December 1998 (FR-4405-N-01 dated 12-18-98).

- **Eligible unit size:** The occupancy standards are used to provide consistent criteria for determining the unit size for which the household is eligible.

  - When the household is selected for the HOME TBRA program, the Sub-recipient should counsel the household about the unit size for which the household is eligible.

- If the household will be permitted to select a unit that is larger or smaller than the eligible unit size, the Sub-recipient should explain the impact of this choice on the tenant's payment.

  ✓ The Sub-recipient may refer the household to appropriate units, but may not require the household to select the referral unit.

<u>**Lease Requirements**</u>

❑ LHC expects that Sub- recipients will adopt their Section 8 program lease templates for the LHC/ HOME-funded TBRA program they are administering.

- **Term**: The term of the lease between the tenant and the owner must be ***at least*** one year, unless both agree otherwise.

- **What the lease may *not* say**: The lease ***may not*** contain the following provisions:

  ✓ Agreement by the tenant to be sued or to admit guilt, or 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 the personal property of household members without notice to the tenant and a court decision on the rights of the parties (this does not apply to personal property left by the tenant after move-out);

  ✓ Agreement by the tenant not to hold the owner or its 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 that the owner may evict the tenant (or other household members) without a civil court proceeding where the tenant has the right to present a defense, or before a court decision on the rights of the tenant and the owner;

  ✓ Agreement by the tenant to waive a trial by jury;

  ✓ Agreement by the tenant to waive the tenant's right to appeal or otherwise challenge a court decision; or

  ✓ Agreement by the tenant to pay attorney fees or other legal costs, even if the tenant wins in court.

- **Termination**: Sub- recipients must establish standards for when a landlord may elect to terminate or refuse to renew the lease of a TBRA household. These standards must be in writing. They must also be included within the lease and/or in the contract between the Subrecipient and the tenant.

Notice of Termination

The requirement for 30 days' notice of refusal to renew or termination of tenancy that is required of HOME-funded rental projects does not apply to TBRA.

  ✓ Sub- recipients must terminate the tenant's assistance if the owner evicts the tenant for cause.

- **VAWA Lease Term/ Addendum**: PJ, recipients and sub-recipients must incorporate all requirements that apply to the owner or lease under 24 CFR Part 5, subpart L including:

  - ✓ The prohibited based for eviction;
  - ✓ Provide for tenant termination of lease without penalty if the PJ determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005 (e);
  - ✓ If lease involve TBRA, the lease term/ addendum must require the owner to notify the PJ before owner bifurcates the lease or provides notification of eviction to tenant.
    - ➢ Please note: The VAWA lease term/ addendum may be written to expire at the end of the rental assistance period.

PARAMETERS OF ASSISTANCE

HOME program rules impose some basic parameters on the level of household and Subrecipient payment, and the length of time for a single TBRA contract with a household. In addition, the Subrecipient must establish certain standards for the cost of the unit. LHC expects that Sub- recipients will adopt their Section 8 program parameters of assistance for the LHC /HOME-funded TBRA program they are administering.

Minimum and Maximum Payment

- LHC has established a maximum TBRA assistance payment and a minimum tenant payment.

  - ✓ Minimum tenant payment**:** The minimum payment is set at 30 percent of adjusted monthly income for housing cost (rent and utilities included), not to fall below $50.

  - ✓ Maximum TBRA payment**:** The maximum amount that the HOME TBRA program may pay to assist any given household is the difference between 30 percent of the household's ***adjusted*** monthly income and a jurisdiction-wide rent limit (known as the payment (rent) standard). Please refer to Chapter 3: General Requirements of the HOME Program for more information about income definitions, including adjusted monthly income. Payment (rent) standards are discussed in a section later in this chapter.

Length of TBRA Assistance

- LHC HOME-funded TBRA rental assistance contracts with individual households may not exceed one year. Contracts ***can*** be renewed for an additional year under subsequent allocations, subject to the availability of HOME funds.

- The one-year period begins on the first day of the lease and will end upon termination of the lease (if the TBRA payment is made directly to the landlord).

Program Model

LHC requires all Sub- recipients to adopt the Section 8 Voucher program model.

Section 8 Voucher Program model: Under a TBRA program modeled after the Section 8 Voucher Program, the Subrecipient calculates the difference between 30 percent of the household's monthly adjusted income and the payment (rent) standard. This gap is then the constant amount of the monthly TBRA assistance. The household is free to select an actual unit that costs more or less than the

Subrecipient's payment (rent) standard.

- ✓ Unit costing more: If the household selects a unit costing more than the payment (rent) standard, the household's monthly payment will exceed 30 percent of its monthly adjusted income.

- ✓ Unit costing less: If the household selects a unit costing less than the payment (rent) standard, the household's monthly payment will be less than 30 percent of its monthly adjusted income.

- Regardless of whether the unit costs are more or less than the payment (rent) standard, the monthly TBRA to the household remains fixed at the gap between what it can afford and the payment (rent) standard, regardless of the actual unit selected.

Payment (Rent) Standard

Payment (rent) standards are established to determine the maximum HOME assistance to the tenant.

- C**haracteristics**: The payment (rent) standard represents the rent plus utility cost of moderately priced units that meet HUD Housing Quality Standards (HQS) in the jurisdiction. The payment (rent) standard is established by bedroom size.

  - ✓ The payment (rent) standard is similar to the Fair Market Rent (FMR) that is established by HUD for the Section 8 program.

  - ✓ The FMR is established by HUD for individual jurisdictions, based upon the rent for standard units within that jurisdiction.

  - ✓ The FMR is set at the 40th percentile of these rents (that is, just below the median rent for standard units within the community).

  - ✓ In certain cases, HUD has approved a Section 8 FMR community-wide exception rent for a particular municipality, county or locality within the overall jurisdiction.

    - This approval permits rents under the Section 8 Program to go as high as 120 percent of the FMR for the jurisdiction overall.

  - ✓ HUD publishes the FMR in the Federal Register by bedroom size for each jurisdiction. The FMR is updated annually.

- **Establishing the payment (rent) standard**: LHC expects that Sub- recipients will adopt Section 8 FMRs for their HOME-funded TBRA program.

  - ✓ If the Subrecipient uses another method, LHC must be informed of this method as part of the Subrecipient's application to administer TBRA.

    - Note that HOME rules require that program (rent) standards are developed using one of two methods.

      - ➢ First method: The Subrecipient may develop a payment (rent) standard based on local market conditions.

Example: The published Section 8 FMR for a two-bedroom unit is $500, but the Subrecipient has analyzed the market and established that a reasonable price for a two- bedroom unit is $520, given the local market conditions and location. In this instance, the payment (rent) standard may be the $520.

- Second method: If the Subrecipient does not base its payment (rent) standard on local conditions, then the HOME payment (rent) standards must be based upon the Section 8 FMRs. The payment (rent) standard must not be less than 80 percent of the published FMRs, and not more than the FMR or area-wide exception rent.

Example: The published FMR for a two-bedroom unit is $500, and HUD has approved a six percent community-wide exception rent of $530. The payment (rent) standard established by the Subrecipient could be anywhere between $400 (80 percent of $500) and $530.

- **Deciding the payment (rent) standard amount**: To decide the amount of the payment (rent) standard, the Subrecipient should compare the FMR to the actual cost (including utilities) of housing in the area.

  - ✓ If the FMRs are high relative to the actual cost, the Subrecipient should consider setting the payment (rent) standard at a lower amount.
  - ✓ If the FMR seems appropriate, the Subrecipient should set the payment (rent) standard at the FMR.
  - ✓ If the FMR is low relative to the actual cost of housing, the Subrecipient may want to develop the documentation needed to establish its own payment (rent) standard based upon the market.
  - ✓ LHC requires that all Sub- recipients and/or their PHA partners develop appropriate rent comparability studies (maintain rental advertisements from newspapers on file, survey landlords in the community etc).

- **Administering the payment (rent) standard**: Once established, the payment (rent) standard remains constant for all units for the Subrecipient's entire program year.

Ongoing Responsibilities

Sub-recipients have significant on-going responsibilities for managing a TBRA program.

- **Occupancy requirements**: Primary among these responsibilities is ensuring that the property standards and occupancy requirements are still met.

Flexibility for Security Deposit Only Programs
The requirements for ongoing income determinations and HQS inspections do ***not*** apply to security deposit only programs.

- ✓ Sub- recipients must conduct an annual inspection to ensure that the unit still meets HQS requirements.
- ✓ If the unit fails HQS, the owner must be given a reasonable period of time to make the needed repairs. Generally, allowing 24 hours for HQS violations that are an imminent health or safety threat and up to 30 days for other HQS problems.
- ✓ If the owner does not make the needed repairs, LHC and/or the Subrecipient can first suspend payments until the corrections are made, and then, if the owner continues to fail to comply, cancel the TBRA contract.
- ✓ Sub- recipients must also ensure that the unit is the appropriate size for the household in order to meet the occupancy standard.

- **Rent increases**: Sub- recipients must review and approve rent increases by landlords renting to tenants participating in the TBRA program. Owners may adjust rents as leases are renewed (generally annually). The Subrecipient must disapprove a lease if the rent is not reasonable.
- **Income re-certification**: In addition, the incomes of tenants receiving rental assistance must be re-examined at least annually using source documentation. The Subrecipient must re-evaluate family income, size and composition.
  - ✓ Rent and assistance is adjusted accordingly, based on the circumstances in effect at the time of recertification.
  - ✓ If a tenant's income goes above 60 percent of area median income at re-examination, assistance must be terminated after the Subrecipient gives reasonable notice, at least 30 days, to the tenant and the owner.
- **Wait-list provisions:** Tenants on the Section 8 waiting list who are selected to receive TBRA assistance must remain in their place on the Section 8 waiting list while receiving HOME TBRA
  - ✓ LHC requires Sub- recipients to provide documentation that HOME TBRA assisted tenants have been placed and continue to keep their position on the Section 8 assistance waiting list.
- **Terms of the written agreement with LHC**: Sub- recipients should pay particular attention to and plan for the following terms in the agreement with LHC:
  - ✓ Expiring HOME assistance. Sub- recipients must plan ahead for expiring HOME assistance. LHC HOME assistance is not guaranteed from year to year. It is contingent upon availability of funds from HUD and LHC's programming priorities.
  - ✓ Sub- recipients must have tenants sign a statement certifying that they understand the temporary nature of LHC TBRA assistance. Signed statement should read: TBRA is temporary assistance, depending on availability of funds. There is a possibility that rental assistance will not be renewed after the first year.
  - ✓ Limited HOME assistance. Sub- recipients must appropriately budget TBRA assistance. LHC does not have additional funds to make available to Sub- recipients who have over-extended their budgets. *Sub- recipients should carefully manage the number of TBRA tenants so that they assist tenants within the parameters of the LHC HOME award.*

LEAD-BASED PAINT

TBRA programs are subject to HUD's Lead Safe Housing Rules which requires a visual assessment of the unit and safe repair of deteriorated paint. It also has specific requirements for poisoned children. See the summary provided in the Chapter 13: Other Federal Regulations of this manual. Another resource that Sub- recipients will find useful is HUD's Office of Healthy Homes and Lead Hazard Control website, http://www.hud.gov/offices/lead.

PART II: PROGRAM DESIGN AND IMPLEMENTATION ISSUES

There are a number of issues that Sub- recipients must consider when establishing a TBRA program. Each of these issues is discussed briefly below.

ELIGIBLE SUB- RECIPIENTS/PROGRAM ADMINISTRATORS

- **Public housing authorities**: The cost to establish and manage a TBRA program can be great. With this in mind, LHC has limited the pool of eligible Sub- recipients to experienced PHAs or organizations partnered with experienced PHAs. There are a number of advantages to this arrangement:
  - ✓ Experienced PHAs have the infrastructure to run and manage this type of program. This includes staffing, check processing equipment and systems, and paperwork processes.
  - ✓ Experienced PHAs are familiar with and use Section 8 income limits to screen eligibility and conduct re-certifications.
  - ✓ Experienced PHAs already conduct HQS inspections for occupancy and housing quality.
- PHAs are expected to run TBRA programs that complement or parallel their normal Section 8 program, because of unmet demand in the community (as evidenced by a long or closed waiting list) and administrative ease (due to staff familiarity with the requirements and procedures of its Section 8 Program.)
- Sub-recipients may wish to establish specialized program that focus on particular types of households examples are homeless persons, persons with disabilities, or persons with AIDS). These programs must be modeled after the Section 8 program and must be staffed by the experienced PHA partner.

ANNUAL SUBSIDY ASSISTANCE BUDGET

- Sub- recipients must provide an annual estimate, a budget, of one year of TBRA assistance to program participants. See Exhibit 7-1 for Sample Methodology for Extrapolating Annual Subsidy Requirement from Estimated per Family Subsidy Requirements.

EXHIBIT 7-1: Sample Methodology for Extrapolating Annual Subsidy Requirement from Estimated Per Family Subsidy Requirements

Step 1: Calculate the expected average contribution of families on the program waiting list:

$10,000	Expected income of HOME families (40 percent of median)
- $1,000	(less) Expected adjustments (2 children or elderly and medical expenses deductions)
$9,000	Adjusted Annual Income
/ 12	(divide by) 12
$750	Adjusted Monthly Income
x 0.3	(multiply by) 0.30
$225	Average Total Tenant Payment

Step 2: Calculate the expected average monthly subsidy based on expected average contribution and the PHA's payment (rent) standard

$550	PHA's Payment Standard
$225	(less) Average Total Tenant Payment (TTP)
$325	Average Monthly Subsidy

Step 3: Multiply the expected average monthly subsidy by the number of families the PHA expects to serve. For this example, the PHA is expected to serve 100 families.

$325	Average Monthly Subsidy
x 100	(multiply by) 100
$32,500	Monthly Subsidy Requirement

Step 4:	Multiply the monthly subsidy requirement by 12
$32,500	Monthly Subsidy
x 12	(multiply by) 12 months
$390,000	Annual Subsidy Requirement

- Sub- recipients should add a contingency cushion against the following possibilities:
  - ✓ Income of participating families is below the estimated average;
  - ✓ Income of participating families fluctuates during the term of the lease and the rent assistance is increased during the program year; and
  - ✓ Contributions towards security deposits, if any.
- Annual subsidy requirement estimates must be submitted by the Subrecipient at the time of application to administer an LHC/ HOME-funded TBRA Program.

PROGRAM ADMINISTRATION FUNDS

- The cost of administering HOME-funded TBRA cannot be included in the annual subsidy requirement. Administration costs have to be requested and charged separately.
- Sub- recipients can request administration funds not to exceed:
- Administration funds are based on an estimate of the number of tenants served by the Subrecipient's program (new and continuing). LHC requires Sub- recipients to report new and continuing tenants served on the TBRA Administrative Fees Request form.
- TBRA Set-Up form should accompany the TBRA Administrative Fees Request. The Set-Up form should be used to report:
  - ✓ New tenants; and
  - ✓ Tenants with changes in the details of their LHC/ TBRA assistance.
  - ✓ Sub- recipients should submit LHC's TBRA Administration Fees Request form along with the TBRA Set-up form monthly.
  - ✓ Requests for TBRA assistance subsidies should also be submitted monthly using the HOME Program Payment Certification Voucher.
- Administration funds are capped by the amount requested in the Subrecipient's application to LHC.
  - ✓ LHC does not have additional funds to make available to Sub- recipients who draw down all their administration funds before the end of the program year.
  - ✓ Sub- recipients must plan for and use their administration funds appropriately.

DETERMINING THE TYPE OF PROGRAM TO OFFER

As noted in Part I of this chapter, LHC require that Sub- recipients use the Section 8 voucher model for its TBRA program.

- **Using the Section 8 model**: LHC's rationale for requiring use of the Section 8 Voucher model is the following:
  - ✓ The Section 8 programs have a successful track record. Using the Section 8 model cuts down the amount of time it would take to thoughtfully design a new program.
  - ✓ PHA familiarity with the Section 8 Program Voucher model makes LHC's TBRA program efficient and effective.
  - ✓ The program will likely be used by the same set of landlords who participate in the Section 8 Program.

- ✓ The rental assistance payment goes directly to the landlord under the Section 8 Program. Therefore, the landlord knows that the program's share of the rent is guaranteed.

- **Modifying the Section 8 Voucher Model**: In rare cases the Subrecipient may seek to modify the Section 8 Voucher Model. Compelling reasons for modifying the Voucher Model include providing security deposit assistance to tenants or serving special needs populations. These options are not available under Section 8 Rental Voucher programs.

  - ✓ Sub- recipients may use HOME to assist families by paying for not only monthly rent and utilities, but also security deposits and utility deposits. (Remember: under HOME, utility deposit assistance may only be provided in conjunction with a TBRA security deposit or monthly assistance program). In contrast, the Section 8 Rental Voucher Program only helps with rent and utility costs, and not security deposits or security and utility deposits.

    - ✓ LHC expects that Sub- recipients will adhere to existing Section 8 policies and procedures to the greatest extent possible.

    - ✓ Note that all policies and procedures are submitted to LHC annually when Sub-recipients apply to administer LHC/ HOME-funded TBRA Programs.

    - ✓ Also note that Sub- recipients must choose to adopt either the LHC Sample Forms or their current Section 8 Forms to use for their LHC/ TBRA program. Once adopted, Sub- recipients cannot switch forms mid-program. They must use the forms adopted and approved with their application.

> **Caution on Security and Utility Deposit Payments**
>
> Security deposit only (or security and utility deposit only) programs are attractive because limited funds can be used to serve more families. However, they may not provide enough assistance. Many families who cannot afford the security deposit also cannot afford the monthly rental payments.

- ✓ LHC reviews and approves policies and procedures at that time. Sub- recipients cannot change or adopt new policies and procedures mid-program.

CALCULATING THE RENTAL SUBSIDY

One of the most important decisions Sub- recipients must make with regard to TBRA programs is how to calculate the tenant and HOME contributions to rent.

- Three important factors affect the HOME assistance (and the household's) payment:

  - ✓ The family's income -- the lower the family's income, the higher the HOME assistance payment;

  - ✓ The payment (rent) standard the Subrecipient establishes for each bedroom size; and

  - ✓ The cost of housing and utilities for the unit the family selects.

<u>Using the Section 8 Voucher Model</u>

- The Rental Voucher Program model assumes a fixed HOME assistance payment.

- ✓ The maximum HOME subsidy is calculated, and the tenant pays the difference between the subsidy and the approved rent for the unit.
- ✓ Using the Section 8 Rental Voucher method, the Subrecipient first establishes a payment (rent) standard for the program as a whole.
- ✓ The HOME assistance payment is generally the difference between the Subrecipient's payment (rent) standard and 30 percent of the tenant's adjusted monthly income.
- ✓ If and when tenants select units that are less than the payment standard, the minimum tenant payment requirement will limit the HOME assistance payment. See Exhibit 7-2.

EXHIBIT 7-2

The Cleavers have been issued a two-bedroom HOME TBRA Voucher. Their annual adjusted income is $18,300 and their monthly adjusted income is $458. The Sub- recipients' rent standard for two-bedroom units is $775.

The maximum TBRA assistance payment for the Cleaners is:

$775	Rent standard
<u>$458</u>	<u>(less) 30% of adjusted monthly income</u>
$317	Maximum TBRA assistance payment

If the Cleavers find an apartment that rents for $800 (including utilities), the Cleaver's share of the rent is:

$800	Approved rent
<u>$317</u>	<u>(less) Maximum TBRA assistance payment</u>
$483	Cleavers payment

In this example, the Cleavers will pay more than 30 percent of their adjusted income for housing because they selected a unit that rents for more than the payment (rent) standard.

If the Cleavers find a very inexpensive unit, the LHC requirement that the family must pay at least 30 percent of monthly adjusted income might apply.

$500	Approved rent
<u>$317</u>	<u>(less) Maximum TBRA assistance payment</u>
$183	Calculated tenant share

However, the Cleavers must pay at least 30 percent of monthly adjusted income per LHC's minimum tenant contribution requirement:

$18,300 / 12 months x 0.30 = $458

Given the minimum tenant contribution requirement, the program administrator's contribution is now:

$500	Approved rent
<u>$458</u>	<u>(less) Minimum tenant contribution</u>
$42	Calculated TBRA assistance payment

<u>Utility Allowances</u>

- To determine the portion of the housing cost that will be paid by the HOME assistance and the portion that will be paid by the household, the Subrecipient must establish a utility allowance schedule that estimates the average cost of utilities for typical types of housing (single-family, row house, high-rise, etc.) and for various utilities and fuel sources (gas, oil, electricity). (See Exhibit 7-3(a).)
  - ✓ Utilities included in the schedule generally include those required for water/sewer, electric, gas and trash.
  - ✓ Telephone and cable TV are not considered utilities for this purpose.

- ✓ LHC expects that Sub- recipients will adopt the utility allowance schedule that the PHA in the jurisdiction uses for its Section 8 program.

EXHIBIT 7-3(a)

USING UTILITY ALLOWANCES

(1) The Jones family selects a unit which rents for $575. They must pay electricity and gas separately.

(2) The PHA's utility allowance schedule indicates that the average cost of electricity and gas for the unit size selected is $75.

(3) 30 percent of the family's adjusted income is $300.

(4) The family makes its tenant contribution as follows:

$75	For gas and electricity
+$225	Rent to the owner
$300	

(5) The Subrecipient pays the difference between the rent the owner is charging and the amount paid by the tenant:

$575	Rent to owner
-$225	Paid by family
$350	Subsidy

- Sometimes PHAs must make a utility reimbursement to the family ***and*** a payment to the owner. (See Exhibit 7-3(b).)

EXHIBIT 7-3(b)

Assume that 30 percent of the Smith family household monthly adjusted income is only $50, and that the Smith family rents a unit similar to the Jones household.

The household $50 contribution is not enough to pay utilities (much less contribute to rent). In this case, payments are made as follows:

$50	Family contribution for gas and electricity*
+$25	PHA pays family $25 to cover remaining utility bills
$75	Entire utility allowance
$575	PHA pays entire rent to owner

* This covers the family's minimum contribution for the program.

PROCESSING APPLICATIONS

Following are the key steps in processing applications for TBRA.

Step 1: Application Intake and Waiting Lists

- As noted above, LHC expects that all Sub- recipients will adopt and use the PHA Section 8 waiting list.
  - ✓ When using the PHA's waiting list, no additional application intake is needed. The PHA will already have taken applications from families seeking rental assistance.
  - ✓ Sub- recipients must use a written application form and retain records on the disposition of all applications.
  - ✓ LHC expects that all Sub- recipients will use the forms they adopted in their application for TBRA program funds. The options available to Sub- recipients are LHC Sample Forms or Section 8 Voucher Program forms.
  - ✓ Good record-keeping is essential to demonstrate that all eligible families had the opportunity to apply and were treated fairly in the application process.

Step 2: Eligibility Determinations

- Sub- recipients must verify all factors that relate to the family's eligibility -- the household composition, preference and income information provided by the family.
- Also, the HOME rules require examination of source documents (for example, wage or interest statements) for TBRA households to determine the family's income. Please see Chapter 3: General Requirements of the HOME Program for further information on how to document income determinations.

Step 3: Coupon Issuance

- Once a household is determined eligible and selected to receive assistance, the Subrecipient issues the family a TBRA coupon. This is the family's authorization to look for housing (or to request that the Subrecipient approve the unit in which the family already lives.)
  - ✓ Sub- recipients may use the PHA's Section 8 Voucher for the purposes of issuing HOME TBRA coupons.
- The Subrecipient must establish a deadline for the household to locate housing.
  - ✓ LHC expects that Sub-recipients will adopt PHA Section 8 Voucher deadline of 60 days to find a unit. In extraordinary circumstances, Sub- recipients may extend the search period for an additional 60 days.

Step 4: Request for Unit Approval

- When the household finds an acceptable unit and a landlord willing to participate in the program, the tenant submits a request for unit approval and for using TBRA to rent the unit.

- The Subrecipient must inspect the unit to assure that it meets Section 8 HQS and Lead Safe Housing Rule.

- The Subrecipient must also determine if the rent the owner is charging for the unit is reasonable based upon the rents for comparable units in the area.

Step 5: Lease Execution and IDIS Set-Up

❑ Once the Subrecipient has inspected and accepted the unit and determined that the rent the owner is charging is reasonable, two actions must occur:

- Tenant lease: The owner and the tenant enter into a lease.

  ✓ LHC requires that Sub- recipients adopt and use the Section 8 Voucher Program lease for the HOME-funded TBRA Program.

- Owner agreement: The Subrecipient and the owner enter into an agreement in which the owner agrees to comply with the TBRA Program rules and the Subrecipient agrees to make the Subrecipient's share of the payment.

  ✓ Again, LHC requires that Sub- recipients will adopt and use the Section 8 Voucher Program agreement for the HOME-funded TBRA Program.

  ✓ Note that the term of the contract must terminate upon termination of the lease.

  ✓ For example, if the owner evicts the tenant for cause, Sub- recipients shall cease to make monthly rent payments to the owner/landlord.

  ✓ In the instance of an eviction, families who are evicted for cause lose their entitlement to participate in the HOME-funded TBRA program.

- At this point, the TBRA Program must be set up in the Integrated Disbursement and Information System (IDIS).

  ✓ LHC sets up each Subrecipient's TBRA program as a project, with up to 99 tenants listed under a single project.

  ✓ Sub- recipients must provide a copy of any project revisions to LHC, including revisions of tenancy, income, rental assistance, vacancy. In instances where a new tenant is being added, the tenant will be added to the most recent project for the Subrecipient until the list exceeds 99 tenants. Sub- recipients should use the TBRA Set Up Form to make the necessary project revisions and additions.

  ✓ In accordance with CPD Notice 96-7, once a TBRA project has been set up, the PJ may add families to the project for up to 6 months.

Step 6: Re-certification

- If the Subrecipient receives LHC HOME-funds to continue operating its TBRA program for more than one program cycle, the Subrecipient is responsible for re-certifying the incomes of tenants at least annually.

- The re-certification process is similar to the initial income eligibility determination process:

  - ✓ Family income must be determined using the Part 5/Section 8 definition of annual income; and

  - ✓ The Program Administrator must determine annual income by reviewing source documents evidencing annual income (for example, wage statement, interest statement, and unemployment compensation) for the family.

- If a participating tenant's income goes above 60 percent of the area median income, assistance must be terminated at the end of the lease period.

LHC FORMS REFERENCED IN CHAPTER

LHC has all required TBRA program forms on their website, www.lhc.la.gov These forms include:

- ✓ HOME TBRA Program Application
- ✓ TBRA Set Up Report: HOME Program
- ✓ Environmental Certification Form
- ✓ TBRA Administrative Fees Request Form
- ✓ HOME Program Payment Certification Voucher
- ✓ TBRA Voucher Request Form
- ✓ Affirmative Fair Housing Marketing Plan

At least 15 percent of HOME funds must be set aside for specific activities to be undertaken by a special type of nonprofit called a Community Housing Development Organization (CHDO). There are specific HOME and LHC rules that apply to CHDOs as well as the projects they implement.

Part I of this chapter details the CHDO set-aside requirement, the qualifications of a CHDO, CHDO set-aside roles, and the types of assistance LHC may provide CHDOs. Part II of this chapter covers the CHDO selection process.

PART I: HOME PROGRAM REQUIREMENTS

LHC is committed to support and build capacity in LHC-approved Community Housing Development Organizations (CHDOs) that have capacity and agree to develop quality affordable housing throughout the State of Louisiana. A CHDO is intended to respond to a specific community's needs. LHC continues to encourage qualified nonprofit organizations to apply for certification as a CHDO.

CHDO SET-ASIDE REQUIREMENT

LHC will reserve not less than fifteen percent (15%) of the HOME allocation for investment only in affordable housing developed, owned or sponsored by CHDOs, its subsidiary or a partnership of which the CHDO or its subsidiary is the managing general partnership. In order to be eligible for the set-aside, the CHDO must have effective project control acting in any of the specified capacities.

- **A Community Housing Development Organization (CHDO)** is a private nonprofit, community-based service organization that has obtained or intends to obtain staff with the capacity to **develop** affordable housing for the community it serves.
- LHC sets aside ***a minimum of 15 percent*** of their HOME allocations for housing development activities in which qualified CHDOs are the owners, developers and/or sponsors of the housing. LHC must have a reasonable expectation of specific projects going forward.
- LHC requires qualified CHDOs to apply for CHDO set-aside funds once every 2 years. In the event that a CHDO fails to meet this requirement, LHC will not recertify the organization as a CHDO.

<u>Reservation of Set-Aside of Funds for CHDOs</u>

- LHC has up to 24 months from after the last day of the month in which HUD signs the HOME Investment Partnership Agreement transmittal letter to identify and designate the CHDOs they plan to work with and to reserve monies for the CHDOs' use.

- LHC may set aside ***more*** than 15 percent of their funds for housing owned, developed or sponsored by CHDOs.

- CHDOs may engage in other HOME-eligible activities in which they are not the owners, developers or sponsors of the housing. However, the HOME funds committed to those activities will not count toward the set-aside and LHC may not fund such activities unless the CHDO is also developing units of affordable housing.

- The CHDO reservation of funds cannot be made by LHC ***before*** specific projects are identified.

CHDO QUALIFYING CRITERIA

To qualify for the CHDO set-aside LHC must certify a nonprofit agency as a CHDO. The CHDO Designation Application may be found on the LHC website, www.lhc.la.gov. LHC accepts applications for certification on a continuous basis and the certification is valid for one (1) year. The requirements for certification are discussed in this section of the manual.

- A CHDO is a specific type of private nonprofit entity. CHDOs must meet certain requirements pertaining to their:

  ✓ Legal status;

  ✓ Organizational structure; and

  ✓ Capacity and experience.

- HUD Notice CPD 97-11 (included in the Appendix) details these requirements.

<u>**Legal Status**</u>

- **Organized under State/local law**: CHDOs must be organized under State and local law.

- **Purpose of organization**: Provision of decent housing that is affordable to low- and moderate-income persons must be among the purposes of the organization. This commitment must be evidenced in the CHDO's:

  ✓ Charter;

  ✓ Articles of incorporation;

  ✓ By-laws; or

  ✓ A resolution of the CHDO's board of directors.

- **No individual benefit**: No part of the CHDO’s earnings (profits) may benefit any members, founders, contributors or individuals.

- **Clearly defined service area**: A CHDO should have a clearly defined ***geographic*** service area.

- CHDOs do not need to represent a single neighborhood.

  ✓ For urban areas, a CHDO may include in its service area a neighborhood or neighborhoods, city, county (parish), or metropolitan area.

- ✓ For rural areas, a CHDO may include in its service area a neighborhood or neighborhoods, town, village, county or multi-county area (but not the entire State.)

- ✓ Nonprofits serving special populations ***must also*** define the geographic boundaries of their service areas in order to qualify as CHDOs.

- **Nonprofit status**: A CHDO must have received a tax-exempt ruling from the IRS under Section 501(c)(3) of the Internal Revenue Code of 1986 in order to be designated by the PJ as a CHDO.

  - ✓ IRS standards for granting a 501(c)(3) designation for housing development organizations are narrowly applied, lengthening the time it can take to receive a 501(c)(3) designation.

  - ✓ Designation can take nine to 24 months.

  - ✓ The timeframe varies by IRS region.

- Conditional designation: The IRS will usually grant new applicants a ***conditional*** designation of 501(c) status, valid for a specified period of time (usually three years.)

  - ✓ During that period of time, the organizations may operate legally as 501(c) organizations, with ***all*** benefits pursuant to that designation, while the IRS monitors their operations.

- Final designation: Assuming they operate in compliance with applicable regulations during this period, the IRS will grant them ***final*** 501(c) designation.

- The LHC requirement for a 501(c) designation can ***only*** be fulfilled by having a ***final*** designation from the IRS.

Pending 501(c) Status

Remember, documentation that the CHDO has an application for 501(c) status ***pending*** at the IRS will ***not*** suffice to fulfill the nonprofit status requirement.

Organizational Structure

- The CHDO is intended to respond to a particular community's needs. Therefore, the structure of the board of directors of a CHDO is viewed as the main indicator of community control over the CHDO.

  - The CHDO board must be composed as follows:

    - ✓ At least one-third must be representatives of the low-income community.

    - ✓ No more than one-third may be public officials or employees of the PJ or State Recipient.

    - ✓ The balance is unrestricted, and may include people such as human and social service providers, lenders, individuals with access to philanthropic resources, or others willing to contribute their professional expertise.

  - There are also maximum limits on representation and control by a for-profit entity when the is sponsored by a for-profit entity.

- **Low-income community representation**: As noted above, a ***minimum*** of one-third of the board must consist of representatives of the low-income community.

- There are three ways to meet this requirement:

1. Residents of low-income neighborhoods in the community.

   - Low-income neighborhoods are defined as neighborhoods where 51 percent or more of the residents are low-income.

   - Residents of low-income neighborhoods on CHDO boards do ***not*** have to be low-income themselves.

and/or

2. Low-income residents of the community.

   - In urban areas, "community" is not necessarily limited to a single neighborhood, but may include several neighborhoods, the city, county or metropolitan area.

   - In rural areas, "community" may also cover a multi-county area (but not the whole state). The board need ***not*** include low-income residents from each county in the multi-county area.

   - Low-income residents of low-income neighborhoods in the community ***do not*** need to submit proof of their income.

   - If low-income residents of the community who do not live in low-income neighborhoods are necessary to meet this threshold, the CHDO must obtain a certification from the resident that the resident does qualify as low-income.

and/or

3. Elected representatives of low-income neighborhood organizations.

   - A ***low-income neighborhood organization*** is an organization composed primarily of residents of a low-income neighborhood.

   - The primary purpose of the organization must be to serve the interests of the neighborhood residents.

     - Block groups, town watch organizations, civic associations, neighborhood church groups and Neighborworks® organizations can be examples of low-income neighborhood organizations.

     - The governing body of the low-income neighborhood organization may elect the representative(s) to serve on the CHDO board.

- **Low-income input**: Input from the low-income community is not met solely by having low- income representation on the board.

- The CHDO must also provide a formal process for low-income program beneficiaries to advise the CHDO on design, location of sites, development and management of affordable housing. The process must be described ***in writing***, and must be included in the organization's by-laws or a board resolution.

- This requirement is especially important for CHDOs serving a large geographic area, where it may not be possible for a CHDO to have low-income board representation from every neighborhood in which the CHDO will develop, own or sponsor housing.

- CHDOs should establish systems for community involvement in parts of their service areas where housing will be developed, but which are not represented on their boards. Such systems might include special committees of neighbors of a proposed development site, neighborhood advisory councils or open town meetings.

❑ **Public-sector limits**: A ***maximum*** of one-third of the governing board may consist of representatives of the public sector.

- This limitation is intended to ensure that separation exists between PJs and CHDOs, and that CHDOs are indeed community-based and community-controlled organizations.

- A member of the governing board of a CHDO would be considered a representative of the public sector if he or she is a public official, including:

  ✓ <u>Elected officials of the State of Louisiana</u>- council members, aldermen, commissioners, state legislators, members of a school board, etc.

  ✓ <u>Appointed public officials</u>- members of a board or State commission or of any other regulatory and/or advisory boards or commissions that are appointed by the State.

  ✓ <u>Public employees of the State</u> - all employees of public agencies (including the schools) or departments of the State government (e.g., a clerk in the water and sewer department, a public facility janitor or a secretary in the tax assessment office); or

  ✓ <u>Appointed by a State official</u> - any individual who is not necessarily a public official, but who has been appointed by a State official (as described above) to serve on the CHDO board

- Members of the board appointed by public officials cannot select other members of the board.

- <u>What if the public official is low-income?</u> Public officials and/or appointees who themselves are either low-income community residents or residents of a low-income neighborhood count against the one-third maximum limit of ***public sector*** representatives. However, they do not count toward the one-third minimum requirement of community representatives.

<u>Example</u>: Alderman Robert "Big Bob" Jones creates a nonprofit with a nine-member board to be a CHDO for his ward. The alderman appoints himself and two good friends to the board. At that point, three members of the board are considered to be representatives of the public sector. This means that the

nonprofit has reached the one- third maximum limit for public officials and appointees. "Big Bob" realizes that he cannot appoint any other members to the board, but he still wants to have control over a

majority of the board members. "Big Bob" designates his two good friends to select at least two other board members. A public official has directly or indirectly appointed five out of the nine members of the board, so Big Bob's nonprofit would ***not*** *qualify to be a CHDO.*

<u>Example</u>: Truetown Neighbors Together (TNT), Inc., wants to qualify as a CHDO. The group fulfills every other requirement and is now at the point of reviewing its board composition for compliance with CHDO requirements. TNT has long been proud of its measure of neighborhood control, because six of the 12 members of its board reside in Truetown, a low-income neighborhood. However, included in the six are: the neighborhood's alderwoman, a member of the school board and a neighborhood resident appointed by the mayor to serve on the city's planning and zoning commission. The other six members are neither low-income nor public officials/appointees. The current TNT board does not exceed the one-third maximum limit on public-sector representatives, since only three out of 12 members are public officials/appointees. However, the three public officials/ appointees, even though they live in the low-income neighborhood, cannot count toward the minimum one-third community representative requirement. Therefore, TNT's board does not currently meet that threshold requirement.

- ❑ **PJs, public bodies or instrumentalities**: PJs, public bodies or instrumentalities of public bodies cannot be considered CHDOs. Examples of instrumentalities of public bodies include public housing authorities (PHAs), urban renewal agencies, redevelopment authorities and downtown development authorities.

  - ▪ These limits on public-sector representation on CHDO boards ***only*** serve to define CHDOs. There are other (not specific to HOME) restrictions on the participation of public officials on the boards of nonprofit organizations seeking public funds. PJs should observe their conflict-of-interest guidelines in this regard as well.

- ❑ **Sponsored CHDOs**: Nonprofits that have been sponsored by other nonprofits, charities, religious organizations, local or state government, public agencies or for-profit corporations ***may*** qualify as CHDOs, but certain additional requirements and board limitations can apply.

- ❑ <u>Nonprofit and charity sponsors</u>:

  - ✓ There are no limits on the proportion of the board that may be appointed by nonprofit or charity sponsors, as long as the minimum one-third community representation is met and the maximum one-third public representation is not exceeded.

  - ✓ A one-year minimum history of service to the community by the ***sponsoring nonprofit or charity*** may help a new nonprofit to qualify as a CHDO.

- ❑ <u>Religious organization sponsors</u>:

  - ✓ Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME Program. Government entities are not to discriminate against an organization on the basis of the organization's religious character or affiliation.

  - ✓ However, organizations directly funded under HOME may not engage in inherently religious activities. If the organization conducts such activities , they must be offered separately and participation must be voluntary for the beneficiaries of the assistance provided. Additional guidance regarding religious or faith-based organizations is provided in 24 CFR 92.2.57 of the HOME final rule.

- ❑ Local/state government and public agency sponsors:
  - A local or state government and/or a public agency cannot qualify as a CHDO, but may sponsor the creation of CHDOs.
  - Government officials and appointees of the government cannot exceed one-third of the members of the board.
  - All other CHDO rules and requirements also apply.

- ❑ For-profit corporate sponsors:
  - A CHDO cannot be controlled by, nor be under the direction of, for-profit entities or individuals seeking profit from the organization.
  - CHDOs may be sponsored or organized by a for-profit if:
    - ✓ The primary purpose of the for-profit sponsor is not the development or management of housing (that is, a builder, developer or real estate management firm may not spin off a CHDO);
  - The for-profit appoints no more than one-third of the CHDO's governing board and the board members appointed by the for-profit do not appoint the remaining members of the board; and
  - The CHDO is free to contract for goods and services from any vendors it selects.

Capacity and Experience

- ❑ **CHDO experience**: A CHDO must also demonstrate that it has at least ***one year*** of experience serving the community where it intends to develop the HOME-assisted housing.
  - Newly created organizations wishing to become CHDOs can meet this requirement if the parent (or sponsoring) organization is a nonprofit and has provided services to the community for at least one year.
  - The year of service does ***not*** have to be directly related to housing.

Example: The United Way of Hometown creates a new nonprofit corporation to develop single-family homes for homebuyers. Although the nonprofit is new, the United Way of Hometown was chartered 50 years ago and has considerable low-income community experience. By sponsoring the creation of the new nonprofit, the United Way has fulfilled this requirement.

  - Prior service to the community cannot consist of a for-profit organization's work in that community.

- **CHDO capacity**: CHDOs must demonstrate the capacity of their key staff to carry out the HOME-assisted activities they are planning. This means that CHDOs must have:

  - Experienced key staff who have successfully completed projects ***similar*** to the size, scope and complexity of those proposed by the CHDO;

    or

  - Key staff with limited or no experience, and who will use experienced consultants for the planning and development activities, as long as there is a plan in place for the consultant to ***train*** the key staff.

- **Differences in required experience and capacity**: There are significant differences in the type of experience and capacity that is required to carry out the variety of housing development activities eligible under the HOME program. Therefore, "experience in having completed similar projects" is different for development/management of rental housing and development/sale of housing for homebuyers.

Example: The Cranberry Orchard Neighborhood Development Organization (CONDO) has successfully developed more than 100 units of housing for homebuyers by acquiring, rehabbing and re-selling existing single-family homes. CONDO plans to use a similar stock of single-family homes for a scattered-site, 30-unit rental housing development, which it will own and manage. This is CONDO's first experience in rental housing development. To demonstrate key staff capacity to carry out the HOME-assisted activity they are proposing, CONDO will retain a consultant, who will develop a training plan. During development of CONDO's first rental housing project, the consultant will also assist CONDO's key staff on development issues specifically related to rental housing.

- **CHDO key staff and consultants:** The purpose of the CHDO capacity requirement is to build staff expertise; therefore, CHDOs must have their own professional staffs. This means that the key staff required to demonstrate CHDO capacity ***cannot*** be:

  - Municipal, county or state employees;

    or

  - Consultants (paid or volunteer) not planning to train the CHDO's key staff. Additional guidance is provide in may be found on the HUD website. (**Assessing CHDO Capacity**).

Alternative Staffing Plans

Alternative staffing plans to demonstrate the required CHDO staff capacity and experience may be suggested. These staffing plans may rely on the use of capable volunteers or on sharing the staffs of other nonprofits. Such sharing arrangements should be formalized through a written arrangement outlining the work to be undertaken and the service period.

__Financial and Accounting Systems__

- **Financial standards**: CHDOs must have financial accountability standards that conform to 24 CFR 84.21, "Standards for Financial Management Systems."

- If a CHDO or nonprofit is in the role of a subrecipient, it must comply with certain provisions or 24 CFR Part 84 and OMB Circular A-122 "Cost Principals for Non-Profit Organizations." Both publications are included are in the appendices.

- If a CHDO is acting as an owner, sponsor, or developer of HUD HOME assisted housing, the requirements at 24 CFR 84.21, "Standards for Financial Management Systems" apply.

This means the CHDO must relate financial data to performance data and develop unit cost information. The systems include the following:

- ✓ Accurate, current, and complete financial results;
- ✓ Records that identify the sources and uses of the funds;
- ✓ Control over and accountability of all funds and assets;
- ✓ Comparison of actual expenditures against budgets;
- ✓ Written procedures to minimize time between the transfer of funds in and the payment of funds out;
- ✓ Written procedures for determining reasonableness, allocability, and allowability of costs; and
- ✓ Accounting records including cost accounting records supported by sources documents.

- ❑ **Accounting systems:** CHDOs/Nonprofits should establish accounting systems that include at a minimum the following reporting reports:

- ❑ Chart of accounts that includes:
  - ✓ The categories of accounts;
  - ✓ The name of the account;
  - ✓ The number of the account;
  - ✓ Cash receipts journal that includes;
    - The date the funds were received listed in chronological order;
    - The amount received;
    - The source of the funds;
    - The purpose of the funds;
  - ✓ Cash disbursements journal that includes;
    - The date funds were paid out listed in chronological order;
    - The date the expense was incurred;
    - The purpose of the expense;
    - The amount paid;
    - To whom it was paid;
  - ✓ Payroll journal that includes;
    - A listing of employees;

- Amounts paid to the employees;
- Benefit expenses paid;

✓ General ledger that includes;

- A summary of all account activities listed in chronological order; and
- The financial status of all the accounts of the organization.

❑ **Source documentation:** Costs charged against the HOME program must be supported by source documentation that shows that the costs were:

✓ Incurred during the effective period of the agreement;

✓ Actually paid out;

✓ Expended on eligible items and activities; and

✓ Approved by the appropriate officials of the organization.

CHDO SET-ASIDE ROLES: OWNER, DEVELOPER AND SPONSOR

LHC provides CHDO set-aside funds to CHDOs acting as owners, developers and sponsors of projects that create new units of affordable housing in their communities. To qualify for the set-aside funds, the CHDO must have effective project control (decision making authority.)

❑ CHDO set-aside funds may be used by CHDOs for those HOME activities where the CHDO acts as the developer, sponsor and/or owner of the housing.

❑ **Owner**: The CHDO is an ***"owner"*** when it holds valid legal title to or has a long-term (99- year minimum) leasehold interest in a rental property. The CHDO may be an owner with one or more individuals, corporations, partnerships or other legal entities.

- The CHDO may be the ***owner and developer*** of its own project.
- The CHDO may own a property in partnership with either a majority or minority interest. However, the CHDO -- in partnership with a wholly owned for-profit or nonprofit subsidiary -- must be the managing general partner with effective control.

❑ **Developer**: A CHDO is a ***"developer"*** when it either owns a property and develops a project, or has a contractual obligation to a property owner to develop a project.

- If the CHDO owns the property, it must obtain financing and rehabilitate or construct the project.
- *For HOME-assisted rental housing*: At project completion, the CHDO may maintain ownership and manage the project over the long-term, or it may transfer the project to another entity for long-term ownership and management.

- *For HOME-assisted homebuyer project*: The CHDO transfers title of the property and the HOME obligations to an eligible homebuyer within a specified timeframe of project completion.

- If the CHDO does not own the property, it must be under a contractual obligation with the owner to obtain financing and rehabilitate or construct the project. Under this scenario, the CHDO assumes all of the risks and rewards associated with being the project developer. A written agreement between the CHDO and the property owner must detail the CHDO's specific obligations.

- *For HOME-assisted rental housing*: The CHDO may, at project completion, manage the project for the owner.

- *For homebuyer housing*: The owner must transfer title of the property and the HOME obligations to eligible homebuyers within a specified timeframe of project completion.

- If the CHDO develops the property for an owner pursuant to a written or other agreement ***with the PJ***, the CHDO is acting in the capacity of a ***subrecipient***.

❑ **Sponsor**: A CHDO is a ***"sponsor"*** for HOME-assisted rental or homebuyer housing according to the circumstances outlined below.

- <u>For HOME-assisted rental housing</u>: The CHDO develops a project that it solely or partially owns and agrees to convey ownership to a ***second nonprofit*** organization at a predetermined time. The conveyance may take place prior to, during or upon completion of the development phase.

  - ✓ The HOME funds are invested in the project owned by the CHDO sponsor.

  - ✓ The CHDO sponsor identifies the particular nonprofit organization that will obtain ownership of the property ***prior to commitment*** of HOME funds.

  - ✓ The other nonprofit will assume from the CHDO at a specified time all HOME obligations (including repayment of loans and tenant and rent requirements) for the project. If the property is not transferred to the nonprofit organization, the CHDO sponsor will remain liable for the HOME obligations.

  - ✓ The other nonprofit organization must be ***financially and legally separate*** from the CHDO sponsor. (The second nonprofit may have been created by the CHDO; nevertheless, it is a separate entity from the CHDO.)

  - ✓ The CHDO sponsor must provide sufficient resources to the nonprofit organization to ensure the completion of development and long-term operation of the project.

<u>Example</u>: A CHDO enters into a legally binding agreement with ElderCare, an existing nonprofit organization experienced in providing enhanced housing services for the elderly. The CHDO agrees to purchase and rehabilitate a vacant 50-unit property and convey the property to ElderCare upon completion of the construction phase. ElderCare will assume responsibility for the long-term management of the project, and for the fulfillment of all obligations and requirements associated with the use of the HOME funds.

- For a HOME-assisted homebuyer's program: The CHDO owns a property, then shifts responsibility for the project to another nonprofit at some specified time in the development process. The second nonprofit in turn transfers title, along with the HOME loan/grant obligations and resale requirements, to a HOME-qualified homebuyer within a specified timeframe.

  - The HOME funds are invested in the property owned by the CHDO.
  - The other nonprofit being sponsored by the CHDO acquires the completed units, or brings to completion the rehabilitation or construction of the property.
  - At completion of the rehabilitation or construction, the sponsored nonprofit is required to sell (transfer) to a homebuyer the property, along with the HOME loan/grant obligations.
  - This sponsorship role could include a lease-purchase approach (for a period not to exceed three years) whereby the sponsored nonprofit would lease the property to a homebuyer for a period not to exceed two years. At the expiration of the lease, the sponsored nonprofits must sell or transfer the property, along with the HOME loan/grant obligations, to the homebuyer. If the property is not transferred, the sponsored nonprofit retains ownership, and all HOME rental requirements will apply.
  - The CHDO must always ***own*** the property prior to the development phase of the project.
  - The Final Rule makes direct homeownership assistance to a homebuyer eligible for the set-aside, provided the assistance is used toward the purchase of a residence owned, developed, or sponsored by a CHDO using HOME assistance.

- **Similar roles**: The ***developer*** and ***sponsor*** roles are similar in many ways.

  - In both the developer and sponsor roles, the CHDO carries out some or all of the principal project development activities -- such as acquisition, financing, construction management and putting together a capable development team to bring a project from conception to completion.
  - However, as developer, the CHDO need not own the property.

Homeowners Cannot "Hire" a CHDO

An ***existing homeowner*** cannot "hire" a CHDO developer or sponsor to complete the rehabilitation (for example, select the contractor, construction management, etc.) of his/her residence.

- As sponsor, the CHDO must own the property and shift the responsibility from the CHDO to another specific nonprofit at some specified time in the development process. Transfer could occur, for example, at:

  - ✓ Initiation of the construction;
  - ✓ Completion of the construction; or
  - ✓ Issuance of the certificate of occupancy.

- The HOME long-term affordability requirements for the project are the responsibility of the owner or subsequent owners of the property.

<u>CHDOs vs. Sub- recipients</u>

- A community-based nonprofit organization may meet all of the regulatory requirements to be designated as a CHDO. However, in order for CHDO activities to count toward the CHDO set-aside, the CHDO must be the ***developer, sponsor and/or owner*** of the HOME-assisted housing.

- **CHDO as subrecipient**: CHDOs may play the role of a "subrecipient" undertaking all other HOME-eligible activities, even if these activities do not count toward the CHDO set-aside.

- A HOME subrecipient is an entity selected by a PJ to administer aspects of a HOME program (that is, screen projects, market activities, review and certify tenant income, counsel potential homebuyers) or an entire HOME activity (review requests for HOME funds for the rental housing production set-aside.)

- **Restrictions**: When a CHDO is acting in the capacity of a HOME subrecipient, it may ***not*** also receive HOME funds to develop, sponsor or own housing funded ***through the subrecipient activity*** the CHDO administers. Doing so would constitute a conflict-of-interest for the CHDO.

<u>Example</u>: Homeville has selected a qualified CHDO, Housing Now, to administer its $570,000 rental production set-aside program. As per the terms of their HOME subrecipient agreement, Housing Now will have responsibility for reviewing proposals submitted for rental production set-aside loans and grants, and making funding recommendations to Homeville. Housing Now may not serve as developer, sponsor or owner for any of the rental production set-aside monies it is involved in administering.

*<u>Example</u>: The Tri-County Consortium has selected a qualified CHDO, Adams County Housing Endeavors (ACHE), to administer its HOME program in areas of the Consortium **outside** of Adams County. Under the terms of their HOME subrecipient agreement, ACHE will solicit and review all proposals for HOME grants and loans for the consortium's homeownership and rental housing development activities. If adequate systems are in place to ensure that ACHE will not have influence over HOME funding decisions by the Consortium for projects in Adams County, ACHE may develop, sponsor or own HOME-assisted affordable housing **within** Adams County.*

ELIGIBLE USES OF HOME FUNDS BY CHDOs

- With LHC approval, CHDOs may use HOME funds for ***all LHC*** eligible HOME activities.

However, only certain types of activities count toward the minimum 15 percent set-aside.

- **Eligible**: Eligible set-aside activities include the following when carried out by a CHDO acting as an owner, sponsor or developer:
  - ✓ Acquisition and/or rehabilitation of rental housing;
  - ✓ New construction of rental housing;
  - ✓ Acquisition and/or rehabilitation of homebuyer properties;
  - ✓ New construction of homebuyer properties; and
  - ✓ Direct financial assistance to purchasers of HOME-assisted housing sponsored or developed by a CHDO with HOME funds.
- **Ineligible**: The following activities are ineligible LHC CHDO activities:
  - ✓ Tenant-based rental assistance (TBRA);
  - ✓ Homeowner rehabilitation; and
  - ✓ Brokering or other real estate transaction.

ELGIBLE FORMS OF ASSISTANCE

- ❑ LHC provides all HOME assistance in the form of a loan which must be repaid to LHC with the exception of mortgage subsidy assistance provided to the homebuyer.
- ❑ The agreement between LHC and the CHDO must specify the eligible activities to be performed that will benefit low- income persons or families.

SPECIAL ASSISTANCE TO CHDOs

- ❑ LHC may choose to use HOME funds to provide special assistance to CHDOs. This assistance includes:
  - Operating assistance; and
  - Capacity-building assistance.
- ❑ In contrast to the 15 percent set-aside, which is mandated, LHC has total discretion over whether to provide these special forms of assistance.
- ❑ **CHDOs in dual roles**: A CHDO that is also functioning as a subrecipient or contractor is eligible to receive funding for administrative expenses (subject to the 10 percent cap) for project delivery costs related to non-set-aside activities.

<u>Operating Assistance</u>

- ❑ Up to five percent of LHC's HOME allocation may be used to provide general operating assistance to CHDOs that are receiving set-aside funds for an activity (or activities) or are under a written agreement to receive set-aside funds within 24 months of the date of the agreement. Operating expenses are not an eligible cost for CHDO set-aside funds.

- **Limitations**: LHC's assistance for operating expenses is available in the following increments:

  - ✓ The first allocation will be awarded in an amount not to exceed the lesser of $50,000 or
    50% of the CHDO's operating budget budget;

  - ✓ The second allocation will be awarded in an amount not to exceed the lesser of $30,000 or 50% of the CHDO's operating budget; and

  - ✓ The third and final allocation will be awarded in an amount not to exceed the lesser of
    $10,000 or 50% of the CHDO's operating budget.

- ❑ LHC operating assistance is unavailable to CHDOs for projects in local entitlement areas.

- ❑ Funds awarded to the CHDO by LHC for operating expenses (under 24 CFR Part 92.208) and funds provided to the CHDO by HUD through intermediaries for organizational support and housing education (under 24 CFR Part 92.302), count toward the $50,000/50 percent cap (under 24 CFR 92.300(b)).

  - The Final Rule provides that administrative funds awarded to a CHDO ***as a subrecipient*** do ***not*** count toward the $50,000/50 percent cap.

  - **Eligible uses**: ***Operating expenses*** are reasonable and necessary costs for the operation of the CHDO, including:

    - ✓ Salaries, wages, benefits and other employee compensation;
    - ✓ Employee education, training and travel;
    - ✓ Rent and utilities;
    - ✓ Communication costs;
    - ✓ Taxes and insurance; and
    - ✓ Equipment, materials and supplies.

<u>Capacity-Building Assistance</u>

- ❑ LHC provides CHDO operating assistance, LHC requires the CHDO to attend two LHC sponsored HOME trainings to increase their capacity or equivalent training pre-approved by LHC.

PART II: PROGRAM DESIGN AND IMPLEMENTATION ISSUES

This section discusses the steps LHC takes to select qualified CHDOs as well as ways LHC may assist CHDOs in growing their capacity.

SELECTING CHDOs

LHC is actively seeking qualified nonprofit organizations interested in promoting the development of affordable housing opportunities in the State of Louisiana to become LHC certified CHDOs. LHC accepts requests for certifications on a continuous basis and may elect to seek out potential applicants.

- **Three steps**: There are three steps to finding and qualifying the right nonprofit

  organizations to become CHDOs.

  - Step 1: ***Identify*** the existing nonprofits in communities.
  - Step 2: Determine whether the nonprofits are ***eligible*** based on HUD criteria.
  - Step 3: Assess whether the nonprofits are ***capable*** of performing desired CHDO activities.

- The steps are discussed below.

Step 1: Identify Potential CHDOs

- To start the process of identifying and qualifying CHDOs, LHC may do a number of things.

  - Invite community development corporations (CDCs) and other nonprofits to an information session about the HOME program and CHDO provisions.
  - Promote the benefits of CHDO designation, including:
    - ✓ Availability of a specific HOME set-aside for affordable housing activities; and
    - ✓ Use of HOME funds for operating expenses and pre-development costs.
  - Meet individually with groups likely to be designated as CHDOs, or that LHC will work with to obtain CHDO designation.

- A list of the different types of organizations to contact regarding potential CHDOs is provided as Exhibit 8-1.

EXHIBIT 8-1

POTENTIAL CHDO CONTACTS

- Existing CDBG Sub- recipients
- Lending institution referrals
- State housing finance agency referrals
- State community development agencies
- Community foundations/philanthropies
- United Way and other community fund drives
- Corporate foundations
- National housing intermediary organizations, such as:
  - ✓ Neighborhood Reinvestment Corporation
  - ✓ Local Initiatives Support Corporation
  - ✓ Enterprise Foundation
- National nonprofit associations, such as:
  - ✓ National Congress for Community Economic Development
  - ✓ National Association of Community Action Agencies
  - ✓ Housing Assistance Council

- State-wide and local nonprofit agencies and service providers
- National and local nonprofit advocacy organizations
- Community land trusts

Step 2: Determine Eligibility

- ❑ Once the CHDO candidates are identified, the candidates must complete and submit information on the "CHDO Checklist" contained in Notice CPD 97-11. This notice is included in the forms section of the manual.

- ❑ LHC must determine whether organizations meet the CHDO qualifications outlined in the HOME regulations. (The eligibility criteria were discussed in Part 1 of this chapter.)

Step 3: Assess CHDO Capability

- ❑ Once an organization has been determined eligible as a CHDO, LHC must ascertain whether the CHDO is actually capable of carrying out the responsibilities of a CHDO.

  - **Assessing capacity**: There are a number of questions to ask when assessing an organization's capacity. Asking these questions will help LHC determine which organizations are qualified and capable of carrying out CHDO-eligible activities, and which ones need to make changes or build capacity to quality.

  - Organizational issues:

    - ✓ What is the primary business of the organization?
    - ✓ Does the firm have a mission statement?
    - ✓ What is the composition of the board?
    - ✓ What is relationship of the board to the staff?
    - ✓ How long has the organization been in operation?
    - ✓ How the services or programs changed since the organization have began?
    - ✓ Is there a current business plan?

  - **Experience and capacity:**

    - ✓ Has the nonprofit produced successful affordable housing project?
    - ✓ What is the current status of projects funded in previous years?
    - ✓ Are affordable past rental projects still occupied by lower-income tenants? If not, why?
    - ✓ Are the past projects well-maintained?
    - ✓ Are tenants pleased with the project development and management?

  - Finance and accounting standards and procedures:

    - ✓ What is the current annual operating budget? How about the last three years?

- ✓ Operating funds come from what sources?
- ✓ Are these funding sources likely to continue?

- ✓ Is the CHDO audited by a certified public accountant as evidenced by audit reports?
- ✓ Is the organization financially solvent?
- ✓ Who maintains the organization's accounting records?
- ✓ Are financial records maintained manually or is computer software used?
- ✓ Does the organization have insurance?

▪ Staffing issues:

- ✓ Who is the director? What are his/her experience and capabilities?
- ✓ How many staff members are there?
- ✓ Who are the staff members? What experience and capabilities do they have?
- ✓ What is the organizational structure?
- ✓ Is there much staff turnover?
- ✓ Does the organization have staff training and evaluation procedures in place?

BUILDING CHDO ELIGIBILITY AND CAPACITY

Based on the results of LHC's search for qualified organizations and assessment of capacity and experience, LHC may need to help particular nonprofits become eligible as CHDOs or develop greater capacity to carry out CHDO-eligible activities.

Notes of Caution

LHC must carefully avoid controlling organizations they charter.

- ✓ Remember that LHC may not assign staff to a CHDO on either a full or part-time basis in order to fulfill the CHDO's capacity requirements.
- ✓ CHDOs may not pay LHC for any technical assistance and/or training the LHC provides.

Building Eligibility

- ❑ The following table specifies critical eligibility issues that may have to be addressed in order to qualify a nonprofit organization as a CHDO:

CHDO ELIGIBILITY CONSIDERATIONS		
Does the organization have:	**If not, encourage the nonprofit to:**	**But beware:**
▪ 501 (c)(3) or (4) status?	▪ apply now to the IRS for 501(c)(3)	▪ IRS tax rulings can take a year or more.
▪ at least 1/3 low-income board representation; no more than 1/3 public officials? ▪ if a spin-off of a for-profit, no more than 1/3 from the sponsoring business?	▪ expand the board of directors, or ▪ restructure the board.	▪ Finding and training good board members takes time.
▪ at least one year's experience serving the community?	▪ work for one year on other programs in the community.	▪ PJs may have to support those efforts with other funds.
▪ Commitment to housing?	▪ change their by-laws, charter or pass resolution.	▪ The organization may look at its total activities and protect itself from liabilities.

<u>Building Capacity</u>

- Eligibility is only part of the story. CHDOs must also have capacity to undertake and complete projects within 12 months of the HOME project commitment.

- **Existing CHDOs**: Building improved capacity within ***existing*** CHDOs requires a variety of approaches. Examples may include:

  - <u>Good business planning</u>: Just like emerging for-profit enterprises, nonprofits must develop and follow a sound business plan.

  - <u>Sufficient capital</u>: Adequate capital to sustain the nonprofit's housing efforts and operating needs is essential.

  - <u>Keen marketing/customer knowledge</u>: Nonprofit organizations, just like their for-profit counterparts, must know their markets and their customers.

  - <u>Technical expertise</u>: Good business planning, customer knowledge and sufficient operating capital allow the nonprofit to get to the development stage. But the nonprofit must still "deliver the goods." This requires the appropriate skills and expertise.

  - <u>Strong leadership and staffing</u>: Ultimately, it is the people -- especially the leadership -- within the organization that make the difference.

- **New CHDOs**: There may also be a need to create new CHDOs to make use of the set-aside in future years. Creating new organizations to qualify as CHDOs makes sense where:

  - No CHDOs exist;

  - Potential groups don't want to get into bricks-and-mortar projects, which are the only types of projects eligible as CHDO activities; or

  - Qualified groups do not have sufficient capacity to make prudent use of the set-aside funds.

- **Starting a nonprofit**: Organizations may start a nonprofit that will qualify as a CHDO.

  - This is an opportunity to create an organization structured especially to carry out HOME projects. However, as previously discussed, organizing a nonprofit is neither simple nor quick.

  - Coming up with the requisite one-year experience can be problematic. However, during the time it takes to process the nonprofit's articles of incorporation and obtain an IRS ruling, the organization can begin to function in ways that count toward its service record.

BUILDING LONG-TERM RELATIONSHIPS WITH CHDOs

- **Building the capacity of the system**: LHC can do a great deal to help CHDOs build their capacity. However, there are instances that LHC will find that the need to build capacity exceeds their resources. For this reason, HUD provides technical assistance and training through consultants and national intermediaries.

  - Training: HUD provides training on the provisions of the HOME program through a three-year contract with training consultants. This training will include topics of interest to CHDOs.

  - Technical assistance: HUD also administers a technical assistance program geared toward CHDO capacity-building. Through contracts with national, regional, state and local nonprofit housing intermediary organizations, HUD provides assistance on:

    - ✓ *Organizational support*: to cover operational expenses, and expenses for training and legal, engineering and other forms of technical assistance that the CHDO staff, board or members may require;

    - ✓ *Housing education*: for CHDOs to provide or administer programs to educate, counsel, and/or organize tenants and homeowners eligible for HOME assistance;

    - ✓ *Program-wide support*: technical assistance, training and continuing support for CHDOs to manage and conserve property developed with HOME assistance;

    - ✓ *Benevolent loan funds*: technical assistance to increase local ability to attract private investment in benevolent (below-market) loan funds for affordable housing development;

    - ✓ *Facilitating women in home-building profession*: technical assistance to businesses, unions and organizations involved in rehabilitation and construction of housing in low/moderate income areas to help women residing in these areas obtain jobs involving such activities;

    - ✓ *Community development banks and credit unions*: technical assistance to help establish privately owned community financial institutions that can finance the development of affordable housing; and

    - ✓ *Developing community land trusts*: funds to community land trusts for organizational support, technical assistance, education, training and continuing support, or to community organizations to establish a community land trust.

- **Establishing a shared vision**: To sustain a long-term, successful partnership, LHC must have an understanding with each CHDO of their common goals and expectations. Some good steps to take:

  - Identify areas of common interest;

  - Establish shared goals;

  - Define roles; and

  - Clarify expectations -- both short-term and long-term.

- **Monitoring partnership performance**: The process of reviewing and evaluating the performance of the partnership should be an ongoing one. This process will help to identify strengths and weaknesses in CHDO operations and the support systems necessary for CHDOs to operate and for the HOME program to succeed.
  - This information should be reviewed on an ongoing basis for the purposes of identifying what needs to be changed, and for securing the appropriate technical assistance and training needed to do so.
  - The level, type and areas of need will vary from CHDO to CHDO, and, within CHDOs, from year to year. By evaluating the performance of CHDOs over time, technical assistance and capacity-building will be fluid processes that remain relevant to the needs of the HOME program.
- **Evaluation**: An evaluation of CHDO performance may include a review of the following factors:
  - Completion of funded projects;
  - Timeliness and ability to complete projects within established budget parameters;
  - Human resources;
  - Adequate financial resources;
  - Ability to leverage other resources;
  - Adequate financial systems;
  - Board operations;
  - Strategic plans;
  - Organizational work plans;
  - Record-keeping
  - Compliance with HOME targeting requirements; and
  - Board composition and operations.

LIST OF LHC FORMS

LHC has all required CHDO forms on their website, www.lhc.la.gov. These forms include:

- CHDO Certification Checklist/Application
- CHDO Recertification Checklist

The HOME Program has recordkeeping and reporting requirements to document that HOME funds are used appropriately and that HOME Program objectives are being met. These requirements apply to LHC and all of its HOME Program Recipients.

Under the HOME Program regulations, a PJ and its Recipients are required to meet certain record-keeping and reporting requirements. A PJ is also required to monitor their Recipients for compliance with these rules. Part I of this chapter provides an overview of the HOME Program and LHC requirements related to record-keeping. Part II of this chapter outlines the reporting and monitoring requirements of HOME Program Recipients.

PART I: RECORD-KEEPING

OVERVIEW

The general HOME Program rule is that each PJ and its Recipients must establish and maintain sufficient records to document that HOME program requirements are met. The HOME regulations define the minimum records retention requirements, and are intended to cross-cut with the basic program requirements. As a HOME PJ, LHC has established its own requirements for record-keeping and reporting by nonprofits and other HOME Recipients. These requirements enable LHC to meet HUD requirements and maintain complete information about the projects for which it provides funding.

- **Recent changes**: Under the HOME Final Rule, the requirements for record-keeping are designed to:
  - Ensure consistency with HOME program requirements;
  - Clarify the record retention periods; and
  - Include new records that must be kept by a PJ and their Recipients that exercise any of the three new options allowed in the Final Rule (i.e., multi-family refinancing, presumption of affordability for homebuyer assistance, and locally-established 95 percent of area median purchase price limits).
- **Categories**: The HOME regulations define the following record-keeping categories:
  - Program records;
  - Project records;
  - CHDO records;

- Financial records;
- Program administration records; and
- Records concerning other Federal requirements.

- **Record-keeping and monitoring:** All LHC HOME Program Recipients will regularly be monitored for HOME and LHC program compliance requirements. Because LHC monitors Recipients to ensure they are meeting requirements by conducting a thorough review of each Recipient's records and files, it is essential that each HOME program Recipient establish and regularly update their files in accordance with guidance provided below.

RECORDS THAT MUST BE MAINTAINED

This section outlines the records that must be maintained by HOME Program Recipients by category. Record-keeping requirements vary depending on the type of HOME activity being undertaken (i.e. TBRA or Rental), as well as the type of HOME Program Recipient undertaking the HOME project (i.e. CHDO or State Recipient.)

<u>Program Records</u>

The following *program records* must be maintained:

- Written agreement with LHC and documentation of compliance with the written agreement;
- A copy of the application originally submitted to LHC;
- Forms of assistance used;
- Procedures for establishing 95 percent of median value;

- **TBRA Program records, including:**
  - Consolidated Plan TBRA certification;
  - Market Conditions/Needs Assessment;
  - Selection policies and criteria;
  - If using preferences for persons with special needs, supporting documentation on categories used;
  - Rent standards and minimum tenant contribution;
  - Compliance with requirement that 90 percent of assisted families have incomes at or below 60 percent of median **(Note: LHC requires 100% of households be at or below 60% AMI for TBRA and rental projects)**;

- Subsidy layering documentation; and Documentation of compliance with LHC matching requirements.

Project Records

Each HOME Program Recipient is responsible for maintaining records that are *project-specific*. The project records that must be maintained include:

- ❑ Description of each project:
  - Location (with a map),
  - Form of assistance,
  - Number and identification of units or tenants associated with HOME.
- ❑ Source and application of funds;
- ❑ Compliance with maximum per-unit subsidy limits and subsidy layering guidelines;
- ❑ Compliance with property standards and lead-based paint requirements;
- ❑ Compliance with income-eligibility requirements;
- ❑ **For TBRA,** compliance with written tenant selection policies, lease provisions and other applicable requirements;
- ❑ **For rental projects**, compliance with income targeting, affordability and lease requirements;
- ❑ If multi-family or single-family **refinancing** is provided, compliance with established guidelines and/or requirements;
- ❑ If **multi-family new construction**, results of the site and neighborhood standards review conducted;
- ❑ For **homeownership** projects, compliance with maximum property value and affordability requirements; and
- ❑ If pre-award costs, compliance with applicable requirements.

CHDO Records

There are additional records that LHC's CHDOs must maintain when undertaking CHDO-eligible activities. These CHDO records include:

- ❑ Written agreement with LHC;
- ❑ Documentation of qualification as a CHDO, including:
  - Documentation of nonprofit status;
  - Current board list that identifies low-income representation;
  - Documentation of low-income community input (e.g. minutes from community meeting);
  - Documentation of organizational capacity (e.g. resumes of staff members);

- Documentation of uses of CHDO set-aside funds, including funds for capacity-building (if applicable); and
- Current project descriptions.

Financial Records

The following financial records must be maintained:

- Source and application of funds;
- Treasury and local HOME accounts;
- Source and application of program income, repayments and recaptured funds; and
- Budget control measures, including periodic account reconciliations.

Program Administration Records

These program administration records must be maintained:

- Compliance with written agreements;
- Compliance with applicable uniform administrative requirements; and
- Inspections, monitoring reviews and audits, and resolution of any findings or concerns.

Documentation Records

Records documenting compliance with the following additional Federal requirements must also be maintained:

- Equal opportunity and fair housing;
- Affirmative marketing and minority/women's business outreach;
- Environmental review;
- Acquisition, relocation, displacement and replacement of housing;
- Labor standards;
- Lead-based paint;
- Conflict-of-interest; and
- Debarment and suspension.

RECORD RETENTION

- ❑ With the effective date of the Final Rule, the record retention period was lengthened to ***five (5) years***. This is in keeping with Consolidated Plan requirements.

  - ▪ **Rental**: For rental housing records:

    - ✓ General records must be kept for five years after project completion; and

    - ✓ Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the affordability period ends.

- ❑ **Homeownership**: Homeownership records must be kept for:

  - ▪ Five years after project completion; and

  - ▪ For resale/recapture records, five years after the affordability period ends.

- ❑ **TBRA**: TBRA records must be kept for five years after rental assistance ends.

- ❑ **Written agreements**: Generally, all written agreements must be maintained for five years after the agreement ends.

- ❑ **Displacement and acquisition**: Displacement and acquisition records must be kept for five years after final payment to displaced households.

ACCESS TO RECORDS

- ❑ LHC and its HOME Program Recipients must provide citizens and other interested parties with reasonable access to records. Access must be consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

- ❑ The Consolidated Plan regulations require that every HOME PJ, including LHC, provide citizens, public agencies and other interested parties with reasonable and timely access to information and records relating to a PJ's Consolidated Plan and the use of assistance under the programs covered by the Consolidated Plan. These same requirements apply to HOME Program Recipients. Therefore, each Recipient should be able to produce organized records in a timely manner upon request.

- ❑ HUD and the Comptroller General of the United States, or any of their representatives, have the right to access any records of PJs and Recipients for auditing, excerpt or transcript purposes.

PART II: REPORTING AND MONITORING REQUIREMENTS

BACKGROUND AND OVERVIEW

HOME Program regulations require LHC, as the PJ, to submit an annual report, called the Consolidated Annual Performance and Evaluation Report (CAPER), to HUD within 90 days of the close of LHC's program year. This is in accordance with the Consolidated Plan regulations at 24 CFR Part 91. The CAPER incorporates not only HOME Program information, but also the reporting requirements for the Housing Trust Funds, Community Development Block Grant (CDBG), Housing Opportunities for Persons with AIDS (HOPWA), and Emergency Shelter Grants (ESG) programs.

- **HOME Program Recipients:** Each LHC HOME Program Recipient is required to meet certain reporting requirements, which are outlined below, in order to support LHC in meeting its annual HOME Program reporting requirements.

- **What performance reports must include:** The CAPER must include both a summary of programmatic accomplishments and an assessment of progress toward the priority needs and specific objectives set forth in LHC's Consolidated Plan.

  - The report should include:

    - ✓ A summary of resources and programmatic accomplishments; and

    - ✓ The status of actions taken during the year to implement the overall strategy, which includes a self-evaluation of progress during the past year in addressing priority needs and specific objectives.

REPORTS REQUIRED BY LHC

LHC requires that Recipients complete Semi-annual Status Reports as well as Project Set Up and Completion Reports for all projects.

<u>**Semi-annual Status Report**</u>

- Each HOME Program Recipient is required to complete and submit a Semi-annual Status Report to LHC for **all open projects.** This report should include, at a minimum, the following sections:

  - **Narrative.** A narrative section outlining project milestones achieved;

  - **Funding.** A funding status update including all draws; and

  - **Issues/Concerns.** The report should outline any issues or concerns that may require LHC assistance.

Project Set Up and Completion Reports

- **HUD Project Setup and Completion Reports.** Upon project completion, all HOME Program Recipients are required to submit a Project Setup and Completion Form to LHC with request for retainage payment. If the rental unit is vacant at the time of retainage request, the program Recipient must resubmit completion data within 120 days the household characteristics once the unit has been leased.

  - The forms used differ by activity (Rental, Homeowner Rehab, Homebuyer or TBRA) and are available on LHC's website.

  - LHC Program Staff will enter the data provided by all Recipients into the IDIS system and report completed projects to HUD.

  - For **rental projects,** the HUD Rental Housing Project Completion Report is also required by LHC.

- **LHC HOME Projects/Programs Place in Service/Funded.** HOME Program Recipients are also required to fill out and submit this form to LHC upon project completion.

RECIPIENT MONITORING RESPONSIBILITIES

To meet reporting requirements, Recipients must monitor their projects for HOME Program compliance and document the results. Monitoring reports should be kept in each project file. Monitoring responsibilities vary based on the activity.

- **Owner Occupied Projects (Homeowner Rehabilitation and Homebuyer):** Recipients are required to monitor owner occupied projects for principal residency throughout the affordability period. See Chapters 4 and 5 for more information.

- **Rental Projects:** Recipients (if applicable) are required to monitor rental projects for the following factors, all of which are described in more detail in Chapter 6: Rental Housing Activities.

  - Occupancy (income requirements);

  - HOME Rents; and

  - Property standards (units must meet HQS.)

- **Tenant Based Rental Assistance:** Recipients are required to monitor TBRA projects for two factors, both of which are described in depth in Chapter 7: Tenant Based Rental Assistance.

- Household income; and

- Property standards (units must meet HQS.)

LIST OF FORMS

LHC has all record keeping and reporting forms available on their website, www.lhc.la.gov. These forms include:

- TBRA Set Up Form HOME Program
- Homebuyer Set Up and Completion Form HOME Program
- Homeowner Rehab Set Up and Completion Form HOME Program
- Rental Set Up and Completion Form HOME Program
- HOME Projects/Programs Placed in Service/Funded Current Fiscal Year

> When an LHC HOME Program Recipient elects to procure items, materials, or services using Federal dollars, Federal and State procurement laws apply. It is important for LHC Recipients to understand and comply with these requirements.

This chapter provides an overview of the Federal and State procurement requirements. It covers the basics of Part 85, State of Louisiana rules, and reviews the allowable types of procurement.

OVERVIEW OF PROCUREMENT REQUIREMENTS

When an LHC HOME Program Recipient elects to hire a contractor or procure items, materials, or services, Federal and State procurement laws apply. HUD standards for procurement can be found in 24 CFR Part 85.36 and 24 CFR Part 84.40-48. The State of Louisiana has adopted its own procurement procedures (found in the Louisiana Procurement Code Summary which can be accessed online: http://www.doa.la.gov/pages/osp/index.aspx that are stricter than those outlined in Part 85, as is permissible.

Procurement Tips

- Application of the HUD procurement rules depends on the HOME Recipient's role.
  - Procurement rules apply to local government and Recipients.
  - They do **not** generally apply to private (for-profit or non-profit) owners and developers.
  - CHDOs do not have an obligation to comply with procurement standards unless they are acting in the role of Recipient.
- The "essence of good procurement" can be summarized as follows:
  - Identify and clearly specify standards for the goods or services the Recipient wants to obtain;
  - Seek competitive offers to obtain the best possible quality at the best possible price;
  - Use a written agreement that clearly states the responsibilities of each party;
  - Keep good records; and
  - Have a quality assurance system that helps ensure that the Recipient gets what it pays for.

CHAPTER 10: PROCUREMENT

TYPES OF PROCUREMENT

Five methods of procurement are defined and allowed by Federal and State rules – small purchase, sealed bid, competitive bid, competitive negotiation, and non-competitive negotiation. Each method is described below.

Small Purchase Procurement

- The small purchase procedures allow Recipients to acquire goods and services totaling no more than $25,000 are exempt from the competitive sealed bidding requirements of the Louisiana Procurement Code.

  This method of procurement is typically used to purchase commodities such as equipment or other materials.

- The small purchases method may **not** be used to acquire legal, architectural, or engineering/surveying services. The Recipient must issue an RFQ under the competitive negotiation approach (see below).
- In general, the small purchases procedures also should **not** be used to acquire construction contractors. It is recommended that these acquisitions occur under the sealed bid approach outlined below.

- ❑ Recipients must define procedures for making all small purchases. Under the small purchases method, Recipients send a request for quotes to potential vendors with a detailed description of the goods or services needed. In return, they receive competitive written quotations from an adequate number of qualified sources.
  - Each quote should include pricing information that allows the Recipient to compare costs across bidders and ensure cost reasonableness.
  - Documentation of the quotes shall be maintained in the Recipient's files.
- ❑ The award should be made to the lowest responsive and responsible source.

Competitive Bid

- ❑ When a Recipient is purchasing materials that exceed $25,000, they must use the competitive bid process as described below.
- ❑ State of Louisiana law states that "competitive bidding is a method of procurement which requires obtaining bids by (a) telephone, (b) facsimile, or other means. This method requires a minimum of three quotes be obtained.
  - Executive Order BJ 2010-16 of the State procurement law requires a minimum of 3 quotes be obtained for purchases greater than $5,000, but not exceeding $15,000; however, more quotes mean more competition.
  - Executive Order BJ 2010-16 also mandates that only qualified vendors which sell the type of commodity or service being purchased can be contacted to provide quotes.
- ❑ LHC recommends that HOME Program Recipients create and utilize a standardized template for obtaining written quotes. A template ensures consistency throughout the

process and ensures a professional and transparent transaction. The same template should be used for all vendors contacted. Additional benefits of using a template include:

- Using a template ensures that all vendors receive consistent information from the agency;
- A template ensures that the agency receives consistent information from all vendors; and
- A template helps the buyer obtain complete information and maintain complete files.

Competitive Sealed Bids

- Sealed bids (also known as Formal Advertising) should be used for all construction contracts or for goods costing more than $25,000. **Note:** LHC requires competitive sealed bids for all HOME-funded construction contracts.
- Competitive sealed bidding requires publicly solicited sealed bids and a firm-fixed-price lump sum or unit price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.
- In order for a sealed bidding process to be feasible, the following minimum conditions must be present:
  - A complete, adequate and realistic specification or purchase description is available.
  - Two or more responsible suppliers are willing and able to compete effectively for a Recipient's business.
  - The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can appropriately be made principally on the basis of price.
- When the competitive sealed bid process is used, the following requirements apply:
  - **Publication Period:** The invitation for bids must be publicly advertised and bids solicited from an adequate number of suppliers. The publication should be published at least once in a newspaper of general circulation, providing sufficient time prior to bid opening. If the publication period is not of sufficient time to attract adequate competition, the bid may be re-advertised.
    - ✓ Notice inviting bids shall be given not fewer than five (5) calendar days nor more than thirty (30) calendar days preceding the date for the opening of bids by publishing the notice at least one (1) time in at least one (1) newspaper having general circulation in the state or posting by electronic media, but in all instances, adequate notice shall be given.
    - ✓ The notice shall also state the date, time, and place of bid opening.
  - **Clear Definition:** The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for bidders to properly respond to the invitation.

- **Public Opening:** All bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The public is allowed at that time to review the bids.

- **Selection and Contracting:** A firm-fixed-price contract award must be made by written notice to the responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is lowest.

- **Rejection of all Bids**: All bids may be rejected when sound documented reasons exist. Such documentation shall be made a part of the files.

<u>**Competitive Negotiation**</u>

- Competitive proposals are used to purchase professional services. Under this procurement method, the Recipient must publish a written request for submissions and then review these submissions based on established selection criteria other than cost.

- Recipient should consider the following factors:

  - The specialized experience and technical competence of the firm;

  - The capacity of the firm to perform the work in question;

  - The past performance of the firm; and

  - The firm's proximity to and familiarity with the project area.

- The Recipient must also solicit proposals from an adequate number of qualified sources. There are two possible methods of soliciting proposals.

  - A request for proposals (RFP) asks that responsive bidders submit both qualifications and cost information.

  - A request for qualifications (RFQ) can be used for purchasing architecture and engineering services. It only asks for information on the responsive bidder's expertise/experience and not on cost, subject to a negotiation of fair and reasonable compensation. When acquiring any service that is not architecture or engineering, the full RFP process must be used.

- When acquiring architectural or engineering services, either a RFP or a RFQ may be used. Note that if an architectural or an engineering firm is being hired to provide a non architectural/engineering service that service must be procured using either the small purchases process or a RFP. For example, some engineering firms also provide construction and grants management services. In that situation, a RFQ cannot be used and a RFP must be used.

- When Competitive Proposals are utilized, the following requirements apply.

  - **Publication Period:** Proposals must be solicited from an adequate number of qualified sources and an advertisement must be published. RFPs/RFQs should be published in a sufficient timeframe before the proposals/qualifications are due.

- **Clear Definition:** The RFP/RFQ must identify the general scope of work and all significant factors of evaluation, including price where appropriate, and their relative importance.

- **Technical Evaluation:** The Recipient must provide a mechanism for technical evaluation of the proposals received, determinations of responsive bidders and the selection for contract award.

- **Award:** Award may be made to the responsive bidder whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful responder should be notified promptly. The contract can be either a fixed price or a cost reimbursement type.

Non-Competitive Negotiation

- ❑ Non-competitive procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:
  - Where the item is available only from a single source;
  - Where a public emergency or urgent situation is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods; or
  - Where after solicitation of a number of sources, competition is determined inadequate.
- ❑ When a Recipient deems non-competitive negotiation necessary, written permission to use this method must be received from LHC.

OTHER CONSIDERATIONS

Aside from selecting the method of procurement, there are several other considerations LHC Recipients should be aware of when procuring goods or services with Federal funds.

Conflict of Interest

- ❑ Recipients must have and maintain a written code of standards that helps to prevent conflicts of interest in procurement.
  - This written code of conduct must apply to all employees, officers, agents of the Recipient, members of their immediate family, and partners.
- ❑ The code shall prevent financial interest or other benefits earned for any of these persons due to a HOME Program-related procurement action. These persons also cannot solicit or accept gratuities, favors or other items of monetary value from contractors.
- ❑ See Chapter 2, Administrative and Management Overview for a more thorough discussion of conflict of interest.

Excluded Parties

- Recipients must adhere to the prohibitions in 24 CFR Part 24 on the use of debarred, suspended, or ineligible contractors. Regulation 24 CFR Part 24 provides that a person who is debarred or suspended shall be excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities.

- Federal funds may not be used to directly or indirectly employ, award contracts to, or otherwise engage the services of any contractor or Recipient during any period of debarment, suspension, or placement on ineligibility status.

  - HOME Program Recipients should regularly check all contractors, subcontractors, and lower-tier contractors against the Federal publication that lists debarred, suspended, and ineligible contractors.

  - In addition, Recipients should check this list before signing any contract with contractors or subcontractors.

- Information on parties excluded from Federal procurement and non-procurement programs is available at http://epls.arnet.gov/.

Minority/Woman Owned Business Enterprises

- The State of Louisiana is required by Federal law to ensure that minority and women-owned business have information about and the opportunity to bid on federally funded competitive contracts. Recipient is required by the State to use minority and women's businesses whenever possible and should contact the Louisiana Economic Development, Division of Minority and Women's Business Enterprise (DMWBE) as part of the procurement process.

In order to ensure HOME Program compliance and the overall success of projects, there are a wide number of critical tasks that Recipient managers must undertake to properly manage HOME-funded construction, including tasks such as formulating effective standards, managing inspections for quality, and the proper approaches to change orders, contingency funding and periodic reporting by partners.

This chapter focuses on the tasks that Recipients must undertake to properly manage construction-related projects in accordance with federal rules and the need for construction quality. Parts I and II of this chapter cover regulations related to construction activities. Specifically, Part I covers the applicable standards and codes. Part II addresses the LHC HOME requirements related to the construction process. The last section, Part III focuses on the processes that Recipients must develop to effectively manage construction activities.

PART I: STANDARDS AND CODES RELATED TO CONSTRUCTION

This part is comprised of two sections. The first section relays HOME regulations and requirements related to property standards. The second briefly covers the Other Federal and State requirements.

STANDARDS MANDATED BY HOME REGULATIONS

- Property standards are required in the HOME Program to achieve two major purposes:
  - Set a minimum standard for habitability/functionality, for purposes of inspecting and specifying necessary improvements listed in the scope of work; and
  - Establish materials, methods, and standards for any work to be performed.
- The property standards that are applicable to the LHC HOME Program are described briefly below. Also, while Exhibit 11-1 graphically illustrates the applicability of the property standards to the various LHC HOME activities, please refer to each activity chapter for the details related to property standards.

Housing Codes/Standards

- Housing codes/standards specify the basic living and structural conditions for existing properties. They are used to determine if an existing residence is habitable and identify health and safety conditions.
- Housing codes/standards are used as the basis for initial inspections of existing properties to identify needed repairs and appropriate improvements. Their purpose is to ensure that existing housing is not occupied unless it is decent, safe, and sanitary.
- LHC has Multi-Family Housing Minimum Design Standards that must be used in designing multi-family developments.

- Waivers can be requested for rehabilitation developments if structural constraints prohibit adherence to the minimum design standards. Waiver requirements are detailed as part of LHC's Minimum Design Standards.

Building Codes

- Building codes are a series of requirements that specify how new construction or rehabilitation work is to be carried out. They inform contractors about how to do the work and are used by inspectors to check completed work.

  - Louisiana building codes are mandatory statewide, but local jurisdictions may amend the codes to make them more stringent. LHC requires that Recipients, owners, sponsors, and developers comply with the building codes adopted in their jurisdiction.

- A number of related codes, such as the fire code and plumbing code, are incorporated into the Louisiana building codes.

- Most work governed by building codes requires that licensed contractors obtain permits prior to starting the work.

- A building permit alerts building officials and inspectors to the fact that certain types of construction are about to begin and completed work must be inspected to determine if it meets requirements.

Rehabilitation Codes

- Rehabilitation codes provide specific guidance about applying building codes to guide repair, remodeling, and rehabilitation of existing structures. Appendix J of the International Residential Code provides the minimum requirements for existing structures being rehabilitated.

- In addition, rehabilitation codes serve the same purpose as building codes, but are modified to be reasonable approaches to existing conditions because it would be very expensive (perhaps impossible) to renovate an existing older building to meet the same standards for new constructed buildings.

Rehabilitation Standards

- A rehabilitation standard defines the quality of materials and workmanship that must be used when a particular repair is made. Rehabilitation standards (sometimes called construction standards) speak to the quality, durability, and aesthetics of the end product.

- Written rehabilitation standards define what methods and materials are eligible for HOME payment.

- LHC has adopted written rehabilitation standards for rehabilitation of owner-occupied units, for rental rehabilitation projects, and for purchase/rehab of units for homebuyers, whether the work is done by Recipients, contractors, or nonprofits.

International Energy Conservation Code

- All new construction work must also conform to the International Energy Conservation Code (IECC) and applicable state or local energy conservation codes.

- Additionally, LHC requires that all new building construction complies with the requirement of State of Louisiana Energy Code. All plans must be reviewed and approved by the State Fire Marshall's Office for compliance with the Energy Code legislation enacted by the State of Louisiana.

Section 504 and Fair Housing

- Section 504 and Fair Housing rules impact the design of a project by setting standards for the appropriate number and characteristics of accessible units in the project. The applicability of these standards depends on the size and type of project.

- Additionally, LHC requires that all developments comply with its Universal Design Criteria.

  - Universal Design Criteria that are applicable to both Multi-Family and Single-Family developments:

Exhibit 11-1 Applying Codes and Standards to HOME Projects	
For Both Rehabilitation and New Construction Local and State code requirements AS WELL AS Universal Design Criteria AND Handicapped Accessibility requirements of Section 504, where applicable.	
For all Rehabilitation projects LHC written rehabilitation standards	***For New Construction projects*** International Energy Conservation Code Rental projects: Site and neighborhood standards at 24 CFR 893.6.(b)

OTHER FEDERAL REQUIREMENTS

- While the HOME Program has its own regulations, there are additional cross-cutting federal requirements that must be identified and complied with at the appropriate point in project management and development.

- For the details on these other Federal requirements as they relate to construction management, see Exhibit 11-2 and 11-3 on the following pages.

  - Exhibit 11-2 presents guidance on the impact of these additional requirements on the HOME project; and

  - Exhibit 11-3 describes how a Recipient can demonstrate compliance with applicable requirements.

Exhibit 11-2: Managing A Project Subject To Other Federal Requirements	
Requirement	**Impact on the Project**
Environmental review of activities	A Recipient cannot commit funds to a project until the appropriate level of environmental review is completed and a Release of Funds is received.
Section 3	Construction contracts of $200,000 or more must include language regarding best efforts to include businesses and low-income residents in the project area. This applies to the hiring of additional workers and training them, and using project-area suppliers for materials. LHC may set specific goals for Recipients based on additional requirements set by HUD that may impact how quickly the project can get under construction.
Women/Minority Business Enterprise	All competitive bidding must include Women and Minority Businesses, including sub-contracts. Recipients must ensure that these firms have a fair opportunity to participate and current lists of W/MBE firms must be maintained.
Contractor selection	Recipients must check the website at www.epls.gov to determine if a contractor has been suspended or disbarred before awarding HOME funds to any firm. Additionally, state law (Louisiana Revised Statues of 1950) all building projects in excess of $100,000 must be designed by a state-licensed architect and all infrastructure projects in excess of $25,000 must be designed by a state- licensed engineer.
Procurement	LHC's procurement policies specify bidding requirements for construction, including competitive and formal bidding. See Chapter 10: Procurement for further details.
Conflict of interest	Recipients need to be fully aware of parties involved in a contract and seek legal counsel if there is the potential for real or perceived COI.
Equal Employment Opportunity	Recipients must ensure that all construction contracts over $10,000 (including sub-contracts) have language prohibiting employment discrimination based on race, color, religion, sex, or national origin.
Lead Safe Housing Requirements (rehab of pre-1978 units)	When there is HOME assistance involving pre-1978 properties, Recipients must have qualified staff (or hire them for the project) to notify occupants of the hazards of Lead Based Paint (LBP) and take the appropriate approach for various activities; qualified staff must be involved in inspections and clearance actions and report preparation.
Cost reasonableness	Recipients must have qualified cost estimators available to assist in bid preparation and contract awards, as well as reviewing payment requests.
Americans with Disabilities Act (ADA)	Recipients must make an internal review of its programs and communications to ensure they are accessible to and usable by persons with disabilities. This may include working with advocacy groups to achieve compliance.

Fair Housing requirements	Recipients must determine if there are under-served populations who are eligible for HOME assistance, and if they are non-English speaking or have literacy challenges, the agency may work with advocacy groups to translate or otherwise reach these households.
Affirmative Marketing	Recipients must develop and adopt an Affirmative Marketing Plan and ensure that owners of properties with five or more HOME units are aware of the policy and follow it.
Section 504	Recipients must ensure that specifications for new construction of multi-family dwellings meet the design and construction standards of the Fair Housing Act to make units accessible and the requirements were included in contracts for substantial rehabilitation of buildings with 15 or more units when rehab exceeds 75% of replacement costs. In other projects, the Recipient should work with the developer/owner to make units adaptable and/or accessible as is financially feasible. Additionally, all LHC funded projects must comply with LHC's Universal Design Criteria.
Energy conservation	Recipients must become familiar with the International Energy Conservation Code and include its requirements in all contracts for residential new construction.
Labor requirements, including Davis-Bacon	Before beginning construction or rehab of projects with 12 or more HOME-assisted units, Recipients must obtain the prevailing wages for various building trades must be obtained from the Department of Labor; someone must be designated to monitor work on site and payrolls; report as required by Davis Bacon and related acts.
Uniform Relocation Act and Section 104(d)	Recipients are responsible for ensuring that tenants in properties that may be acquired or rehabilitated receive correct and timely notices and protections; owners of units to be acquired through a Homebuyer assistance program must receive the "Notice to Owner" for voluntary acquisitions, and tenant living in units purchased with HOME funds are protected by the URA. If units are demolished or converted with HOME funds, Section 104(d) may be triggered and appropriate notices and assistance must be provided. Since no one can be forced to move (displaced) without at least 30 days notice, a project may not meet a developer's schedule.

Exhibit 11-3: Documenting Compliance with Other Federal Requirements	
Requirement	**Documentation**
Environmental review of activities	Files demonstrate appropriate level of review, notification, requests for release of funds, publications, and dates for commitments and covered activities were not begun until funds were released.
Section 3	To the greatest extent feasible, efforts were made to include businesses and low-income residents in the project area in construction contracts for workers and suppliers; training programs, as appropriate were developed and used to provide opportunities for construction employment.
Women/Minority Business Enterprise	Files demonstrate that the Recipient followed its policies for reaching out and including W/MBE firms in contracts and invitations for bidding work.
Contractor selection	File supports selection of contractor(s) who were not on the list of suspended or de-barred contractors
Procurement	There is evidence of free and open competition for funds and contracts according to PJ policies and program requirements that apply.
Conflict of interest	There is no evidence of preferential treatment for developers, beneficiaries, contractors, or suppliers due to relationships to those in decision-making positions.
Equal Employment Opportunity	Language prohibiting employment discrimination based on race, color, religion, sex, or national origin is included in all construction contracts over $10,000.
Lead Safe Housing Requirements (rehab of pre-1978 units)	Appropriate notices and approaches are used for various activities; qualified staff is involved in inspections and clearance actions; reports demonstrate knowledge of rules and compliance.
Cost reasonableness	Cost estimates are prepared prior to bids by knowledgeable persons; bidding and payments are within estimates or documented if they deviated; payment requests are supported by bills, invoices or other documentation.
Americans with Disabilities Act (ADA)	Programs were accessible to and usable by persons with disabilities, including removing communications barriers.
Fair Housing requirements	Files support outreach to all classes; programs were available to all persons and efforts were made to overcome barriers to participation
Affirmative Marketing	Files demonstrate that projects with five or more HOME-assisted units were affirmatively marketed by following PJ's policies, and records document actions taken.

Section 504	Specifications for new construction of multi-family dwellings met the design and construction standards of the Fair Housing Act to make units accessible and requirements were included in contracts for substantial rehabilitation of building with 15 or more units when rehab exceeded 75% of replacement costs. When this threshold was not triggered, to the extent financially feasible, units were made adaptable or accessible.
Energy conservation	Drawings and specifications for newly-constructed units must reference the requirements of the International Energy Conservation Code. Structures rated by a certified rater for Energy Star qualifications.
Labor requirements, including Davis-Bacon	For rehabilitation or new construction of projects with 12 or more HOME-assisted units, the prevailing wage must be obtained from the Dept. of Labor and paid for each of the trades; payments must be monitored on site and reported. Wage determination applicable to each project must be included as part of the contract documents.
Uniform Relocation Act	For properties with tenants in occupancy, correct and timely notices and protections were provided and are on file.

PART II: CONSTRUCTION PROCESS REQUIREMENTS

In addition to the requirements related to property standards discussed in Part I above, the LHC HOME program has requirements that relate to the following aspects of the construction process itself:

- ❑ Inspection protocols;
- ❑ Screening contractors;
- ❑ Construction Scheduling;
- ❑ Pre-construction conferences: who is included, what is covered;
- ❑ Processing and tracking payments;
- ❑ Change order management and payment processes; and
- ❑ Monitoring reports from partner organizations

The sections in this part offer further guidance on addressing LHC's requirements. This section will also include a discussion on common construction problems and solutions.

INSPECTIONS AND SPECIFICATIONS

The inspections summarized in Exhibit 11-4 and described in detail below ensure that all work is being completed on time and within stated quality guidelines.

- ❑ **Initial inspections**: Initial inspections establish scope of work and must be allotted sufficient time for interviewing the owner or others, delving into the properties functional characteristics, and to develop thorough, articulate scopes specific to the job inspected.
  - ▪ The specifications must include detailed drawings and reference material as needed to fully explain all aspects of the scope, especially special conditions requiring unusual steps in the repair.
- ❑ **Final approval of plans and specifications**: LHC requires that plans and specifications are submitted for final review and approval. The following must be addressed prior to approval:
  - ▪ The final plans and specifications must be consistent with the scope of work defined in the Recipient's agreement with LHC.
    - ✓ Note that advertisements for construction contract bids may not be published until plans and specifications for such contract have been unconditionally approved by LHC.
  - ▪ Final construction cost estimates, including deductive alternatives, must be provided. Estimates for line item bids must include estimated quantities, unit costs and total costs.

- **Progress inspections:** Progress inspections are crucial to construction management for various reasons:

  - HUD requires that inspections be documented and include the signature of the inspector and the date.
  - An inspection will determine if work completed corresponds to the work write-up, the construction contract, and the schedule before payment is made to the contractor;
  - It may address a need for a change order and intervene in owner/contractor disputes in a rehabilitation project;
  - It ensures that safety and security measures are being taken and that all necessary code inspections have occurred;
  - It allows the inspector to view the project at key construction points.

- **Timing of inspections:** The construction schedule will determine the expected times for progress inspections.

  - Key points in the construction process would include inspections by qualified persons before work is concealed to determine that it is satisfactory and meets the work specifications and contract.
    - ✓ An inspection should occur when reinforcing bars are installed, wiring, plumbing, and insulation are in place.
  - An unscheduled inspection may reveal a great deal about work quality and progress, as well as answer concerns a property owner may have.
  - It may be necessary when a dispute arises between the parties involved.

- **10-Month review inspection:** A 10-month review inspection is not required, but is a good way to assess the quality and durability of the contractor's work and the satisfaction of the homeowner or feasibility of the rental project prior to the warranty expiration and prior to the end of the open window on serving again with HOME funds.

- **Final inspection:** A final inspection must be made by the appropriate professional and work must pass this inspection before the retainage is released to the contractor.

  - **Logistics**: Upon substantial completion of the project, the Recipient (i.e., city, county, nonprofit, or owner) must inform LHC that a final inspection is requested.
    - ✓ The Recipient will schedule a final inspection to be attended by the owner, project administrator/consultant, contractor(s) and LHC Inspector.
    - ✓ Notice of this inspection must be scheduled with LHC at least 3-5 days prior to the scheduled date.
    - ✓ The final inspection shall consist of a field inspection to confirm that the project has been completed.

- The following documents must be available at the final inspection:
  - ✓ Punch List(s);
  - ✓ Certificate(s) of Final Inspection; and
  - ✓ Release of Lien Form for each contractor
- General items of discussion at the final inspection include
  - ✓ Acceptance of work by all parties;
  - ✓ Transfer of insurance coverage to the owner;
  - ✓ Utility considerations;
  - ✓ Establishment of warranty period; and
  - ✓ Final payment (Disbursed by LHC 30 days from a successfully completed Final Inspection and receipt of close-out documents.)

❑ **Punch list and close out**: Although a few punch list items may be pending at the time of the final inspection, all major problems should be resolved and a Certificate of Final Inspection should be issued at this time.

- LHC requires that the Recipient's project inspector and architect, if applicable, conduct a pre-final inspection to ensure that a comprehensive punch list is developed and that the project will be substantially complete at the time of LHC's Final Inspection.
- A schedule for completing these items should be negotiated with the contractor, and a corresponding percentage of the cost, plus retainage, should be held back until the punch list items are completed.
- If an architect was used, he or she will issue a notice of substantial completion. This notice verifies that the structure may be used for its intended purpose.
- The notice of substantial completion may be issued either before or after punch list items are completed, depending on the situation and the extent of remaining items. In all cases, the Certificate of Final Inspection must be signed by LHC prior to release of final retainage payment.
- Even when an architect signs off on work, the Recipient must do its own inspection to verify that work is complete and complies with programmatic and other federal requirements.
- The final inspection must be performed by LHC staff.
- After completion of the punch list items, and (if appropriate) the architect's notice, the Recipient should see that the contractor provides:
  - ✓ Cost certifications;
  - ✓ Warranties of work performed;

- ✓ Operations manuals (for furnaces and other systems);
- ✓ Guarantees from manufacturers of materials and systems installed; and
- ✓ Release of liens by suppliers, all subcontractors, and the general contractor.

- No final payment should be made until all documents are received and lien releases are verified.
- An IDIS completion report must be submitted to LHC to close out the project.

❑ **Warranty inspection**: A one-year warranty period must be instituted for each contract completed to ensure that the workmanship and materials of the contractor(s) and subcontractor(s) have been sufficient.

- A final warranty inspection must be conducted by the Recipient and/or LHC staff eleven months after the initiation of the warranty period to finalize any adjustments needed to correct covered deficiencies.
- Any such deficiencies shall be noted by the Recipient or architect, if applicable, and provided to the contractor in writing and corrected.

Exhibit 11-4: Timing and Purpose of Property Inspections

When to Inspect:	Purpose:
Preliminary – before work begins	• Check existing conditions against drawings (for new construction) or against work write up/approve specification; • Review applicable codes and standards
During construction	• Determine adequacy of work completed; • Assess compliance with approved drawings or specifications; • Assess completed work against construction schedule; • Determine completed work that is eligible for payment; • Resolve any disputes among parties.
Final	• Go over items in "punch list" to determine completion; • Document compliance with codes and standards.
Warranty Inspection	• Assess workmanship and materials used; • Document deficiencies

SCREENING CONTRACTORS: BIDDING AND CONTRACT AWARD PROCESS

Recipients are expected to use applications, bidding documents, agreements, and pre-bid/pre-construction conferences for screening contractors. In general, performance standards and consequences to meet them must be part of every construction program and must be covered in sufficient detail in bidding documents and the pre-construction conference.

- LHC specific requirements for the bidding and contract award process are detailed below:

- **Advertisements for construction contract bids**. The Louisiana Revised Statues 39:1551(Louisiana Procurement Code) and LHC policy requires publication of advertisement for bids in a newspaper of statewide circulation one time in at least one newspaper of greatest general circulation in the state (i.e., The Advocate) or posting by electronic media.

  - The date of publication of the notice shall not be less than five (5) days nor more than 30 days before the date established for the receipt of bids.

  - Also, Recipients are required to notify the Louisiana Economic Development, Division of Minority and Women's Business Enterprise (DMWBE) of such advertisement.

  - In addition to statewide newspaper advertisement, Recipients may directly solicit prospective bidders and advertise in local newspapers or construction industry trade journals.

  - Note that advertisements may not be published until plans and specifications for such contract have been unconditionally approved by applicable agencies.

  - Additionally, wage determinations, if applicable, must be included as part of the contract documents for the project. Recipients are required to contact LHC 10 days prior to the bid opening date.

- **Interpretations of plans and specifications**. All questions regarding interpretation of the plans, specifications, drawings and other contract documents should be addressed only to the design architect.

  - Any inquiry or other action requiring written interpretation or instruction from the architect that will modify the plans and specifications and affect bidders (e.g., modified wage determination, redesigns, etc.) must be done so by addendum.

  - An addendum is written instruction issued prior to the opening of construction bids that modifies or interprets contract documents, drawings and specifications by additions, deletions, clarifications or corrections. All addenda must be approved by LHC prior to issuance.

- Addenda must be issued by certified mail at least five days prior to the date of bid opening. Failure to attain approval may result in disallowance of affected costs.

❑ **Receipt of all sealed bids** should be documented by date and time of receipt and the name of the submitting contractor. Bids received after the established deadline shall not be accepted.

- All bids shall be opened and read aloud by the Recipient at the time, date and location specified in the bid advertisement. The Recipient shall identify/verify:

  ✓ The name and address of the contractor;

  ✓ Inclusion of a bid bond, if applicable;

  ✓ Inclusion of any other required bid information (e.g., identification of subcontractors); and

  ✓ Receipt of all addenda (if any); and the base bid amount minus deductive alternatives which must be listed in numerical order.

- All of this information must be recorded on the Bid Tabulation Sheet or on a form of equal substance.

❑ **Bids in excess of project budget**. If the lowest base bid exceeds the amount of funds appropriated for project budget, then the application of deductive alternatives in numerical order will commence until the bid is within the appropriated amount.

- If the bid amount after applying all deductive alternatives exceeds the project budget by less than 25 percent, then the contract amount can be negotiated with the apparent low bidder until the amount is within the appropriated amount, provided the unit(s) will continue to meet state and local building codes.

- If, after the application of deductive alternatives, the amount exceeds the project budget more than 25 percent, then the project must be rebid after revising the plans and specifications. If the contract(s) is within the project budget, then the apparent low bidder(s) can be identified.

❑ **Apparent low bidder.** Once the apparent low bidder is identified, the Recipient must determine if he/she is responsible.

- At a minimum, the following items must be confirmed:

  ✓ Is the contractor licensed in Louisiana?

  ✓ Based upon past experience, is the prime contractor competent to perform the required work? Specific questions might include the following:

  ✓ Has the contractor had any bonds called in the last five years?

  ✓ What is his/her record of completing projects on time?

  ✓ What is his/her history of payment to subcontractors and suppliers?

  ✓ Does he/she maintain a permanent place of business?

- ✓ Are his/her equipment and resources adequate to do this project?
- ✓ What is his/her technical experience in this type of work?
- ✓ Is the prime contractor debarred or suspended from federally funded contracts and thus ineligible to be awarded the contract? To determine this, submit a Verification of Contractor Eligibility Form to your LHC HOME Program Specialist. All prime contractors are responsible for ensuring that the subcontractors they employ are not debarred or suspended.

- Other criteria may be established by the Recipient as necessary.

- If a bidder is determined to be non-responsible, the Recipient must document reasons for such decision in writing and proceed to evaluate the next apparent lowest bidder(s) until an acceptable bidder is determined.

❑ **Notification of bid award.** Once the apparent lowest responsive, responsible bidder(s) for each contract(s) is determined, the Recipient can notify all bidders whether or not they were successful.

- Successful bidders must be notified of acceptance of their bid within the time frame specified in the contract documents.

- Such notification shall be made through issuance of a Notice of Award which requests the contractor to provide acceptable payment and performance bond(s) and certificates of insurance within 10 calendar days.

- Upon reception of these documents, the Recipient must determine if:

  - ✓ The contractor has **sufficient bonding and insurance**. The insured amounts must be consistent with requirements of state law as specified in the contract documents, e.g., 100 percent payment and 100 percent performance bond(s) coverage and sufficient liability coverage amounts.

    - ✓ Note: Licensing and underwriting limitations of insurance companies in the state of Louisiana can be checked by viewing the following link: http://www.ldi.la.gov/industry/company-licensing/application-and-filing-requirements.

- Contracts must be awarded within the time frame specified in the contract documents.

- If the contract has not been awarded within 90 days of bid opening, the Recipient must notify the LHC HOME Department to determine if the wage determination (if applicable) is still valid. Any applicable modified or superseded wage determinations will apply to the project.

- **Note:** Wage determinations applicable on projects with 12 or more HOME- assisted units.

❑ **Post award requirements.** After all contract documents have been executed and sufficient bonding and insurance is confirmed, a fully executed set of contract documents must be submitted to the LHC.

- Occasionally, bid protests may arise regarding identification of the lowest responsible, responsive bidder. Should a bid protest arise, contact LHC.

PRE-CONSTRUCTION CONFERENCES

A pre-construction conference can be valuable in providing direction to the parties involved and prevent potential misunderstandings.

- LHC has the following expectations for all pre-bid meetings:
  - The architect or a representative of the HOME program Recipient shall coordinate scheduling the preconstruction conference with all applicable parties.
  - At a minimum, 10 days notice shall be given to LHC and the following persons who must attend the preconstruction conference:
  - Jurisdiction representative, if applicable
    - ✓ A preconstruction conference should not be held without the city or county representative present if a city or county is the HOME Recipient.
  - Recipient staff (project administrator/construction manager or consultant);
  - Executive Director of nonprofit entity, if applicable;
  - Developer/Owner, if different from LHC HOME Recipient;
  - Prime Contractors;
  - If applicable, the architect (especially the person representing the firm and the resident observer);
  - Representatives of the LHC and all other funding agencies; and
  - Subcontractors (if known)
- The preconstruction conference shall be conducted in accordance with the Preconstruction Conference Agenda and Report.
  - Signed copies of the report, with an attached attendance list, must be distributed to each of the parties identified above within five calendar days of the conference.
  - Location of the conference:
  - If it is suitable, the conference should be held at the property where rehabilitation/construction will occur. The property owner should be included.

Working with Contractors

Attracting and keeping high-quality contractors is a key to successful construction management. One key to successful construction management is having a qualified person in charge of the work who understands the business and the constraints faced by those in the building trades. Recipients should clearly inform contractors about work expectations, program requirements as they impact the project, about the payment process, and seek their feedback after project completion.

- If the project involves new construction, or the existing property is not suitable for a meeting, the conference can be held at the Recipient's offices.

❑ The timing of a pre-construction conference is after:

- Environmental Review and Request Release of Funds (RROF) have been completed, and
- Relocation notices have been sent, if applicable.

❑ The purposes of a pre-construction conference are to:

- Communicate the goals of the project to all team members to ensure everyone is clear on his or her role and responsibilities;
- Identify deadlines and critical phases of the work;
- Review the scope of work and schedule to prevent future problems;
- Explain basic operating procedures, including reports, meetings and other communications required and expected during construction;
- Review applicable programmatic and federal requirements, such as Davis-Bacon, labor standards, and Lead Safe Housing Rules;
- Review procedures for:
  - ✓ Inspections – when they must occur and who initiates them;
  - ✓ Payment requests – when they should be submitted, who receives them, what they must include, when payment will be made if satisfactory;
  - ✓ Change orders – the process for requesting one; what would/ would not be considered in weighing the request;
  - ✓ Lien releases – the process and who is involved;
  - ✓ Monitoring of progress and reporting;
  - ✓ Dispute resolution; and
  - ✓ Closing out the project.
- Review the construction contract and ensure all parties have read, understood, and signed it;
- Confirm that subcontractors' names, addresses, and phone numbers are accurately listed;
- For occupied structures:
  - ✓ Discuss the handling of service shut-offs and restricting access to bathrooms, kitchens, etc. during lead-paint work as well as other relevant rehabilitation work;
  - ✓ Define moving and relocation roles and schedules; and

- ✓ Review/discuss safety and security measures during construction.

- ❑ At the conclusion of the pre-construction conference and after the contractor has executed the construction contract, LHC will issue a notice to proceed with work.

- ❑ Construction should commence no later than 10 days after receipt of this Notice.

CONSTRUCTION SCHEDULE

- ❑ The person who sets the construction schedule (typically, a Construction or Rehabilitation Manager) must have access to many information sources and have an understanding of construction methods, trades involved, and the sequence of tasks that must occur;

- ❑ Construction scheduling requires a knowledge of:
  - The building materials required for the project, ordering and delivery methods and protocols;
  - The various applicable building codes and standards. The manager must anticipate the key points at which an inspection are required;
  - How weather variations can impact construction progress;
  - Each development team member's roles and responsibilities; and
  - The development budget:
    - ✓ What costs can be paid from each source:
      - ➢ When funds are available; and
      - ➢ How to request payment (including the form that will be used to request payments and the documentation to be provided.)

> **Timeliness and the Construction Schedule**
>
> In construction projects, delays not only increase costs - they may create timeliness issues for the Recipient that have a negative impact on performance.
>
> If construction will not start within twelve months from the date of property or land acquisition, the Recipient must have an adequate explanation; if funds will not be expended within the required five years of the allocation, a Recipient may also encounter timeliness issues with HUD. A construction schedule must be realistic – and enforceable.
>
> A good construction schedule will delineate: how much time the project will take to complete; when inspections are required; when the contractor may make payment requests; and the tasks for each contractor and subcontractor.

- ❑ The Construction or Rehabilitation Manager should document each step in the process and list them sequentially, recognizing that some steps must occur simultaneously;

- ❑ Develop diagrams to visualize the construction schedule, such as:
  - "To do" lists with milestones;
  - Flow charts; or
  - Critical path method diagrams.

- The purpose of diagramming is to coordinate the tasks required, reveal their interrelationships, decide which tasks are critical to timely completion, and promote efficiency.

- If a project is behind schedule, the Recipient may attempt one of the following options:

  - ✓ Eliminate or redesign the critical path activities (which may reduce the scope of the project);

  - ✓ Rearrange critical path activities so that some are performed simultaneously; or

  - ✓ Reduce the duration of critical activities (if the critical path is shortened, other activity paths through the network may become critical.)

- If none of these options can be accomplished, the project completion date must be adjusted; this will most likely have cost or timeliness ramifications and is highly undesirable.

❑ Failure to comply with timelines in the construction schedule may cause severe consequences to the project:

- Costs can increase, causing the project budget to be inadequate;

- Workers and materials may not be available as needed; and

- Housing units will not be ready for occupancy as anticipated.

❑ To ensure that timelines are met, or that there is ample recourse to pursue if they are not, schedules must be enforceable, the following recommendations can be critical:

- Reference the schedule in the written agreement between the developer and the PJ;

- Reference the schedule in the contract with the general contractor and all subcontracts;

- Reference it in the architect's contract.

❑ Cover the schedule and stress its importance during the pre-construction conference.

CHANGE ORDERS

❑ Any changes to construction documents must follow an explicit system for review and approval. Contractors must submit change orders when there is:

- A change to the project design or work specification;

- An alteration, addition, or deletion to the approved scope of work;

- An addition or change to the work schedule; or

- A change in cost for any reason.

❑ Change orders must be written and address its completeness and appropriateness and its effect on budget, timeframe.

- LHC requires that a Written Change Order is submitted any time that contract documents are changed, including additions, deletions, modifications, and time-extensions after bid opening.

- Also, all change orders must be reviewed and approved by LHC prior to issuance.

❑ An effective system for managing construction will attempt to limit the need for change orders by careful planning, thorough preparation of the work specifications, and review by all relevant parties prior to construction.

❑ Recipients should anticipate the need for change orders and use them to document alterations as well as to keeping the project moving ahead to successful completion.

- The better the work is planned up-front, the less the need will arise for change orders later.

- However, a contractor may suggest a more cost-effective solution than the architect or rehabilitation staff had planned.

- Even changes that have no cost implications (or reductions in costs) require a change order.

❑ Change orders will be evaluated for their impact on the project cost, schedule, and scope of work before they are approved by LHC.

Limiting Change Orders

❑ A few ways to limit the number of change orders include:

- Require unit pricing in bids so that if a particular item is expanded, the pricing is already determined.

- Request bid alternates in specifications for those items that might be needed, but the Recipient or owner is not sure prior to bid.

- Establish monetary or percentage-of-line-item limits requiring review.

- Reserve the option to pay no profit or overhead on change orders; require cost certification, thus limiting the contractor’s incentive to pursue unnecessary orders. [Note that this is risky, as contractors may avoid informing you of needed changes. It requires skilled inspectors and a rigorous inspection protocol.]

- “Red Flag” any project, contractor, or inspector with excessive change orders. Investigate, watching for abnormal correlations. Misleading bids are the primary source of improper change orders. Collusion with inspectors or owners is next.

- Make the lack of change orders that are attributable to poor specifications a performance measure for specification writers.

MANAGING CONTRACTORS

- ❑ An appropriate level of action must be taken when work is behind schedule or when the quality of work is inadequate.

  - The first level of action is to identify the problem and, if possible, allow the contractor to take remedial action.

- ❑ For new or inexperienced contractors, a moderate action to take would be to put them on probation and require them to limit the number of jobs underway at one time, and retain a higher level on progress payments.

  - In this instance, the contractor must be fully informed how to remove the probationary status. For example:

    - ✓ Completing a number of tasks within the work schedule successfully;
    - ✓ Completing training that is relevant to the problem; or
    - ✓ Training workers (if they are causing the problem) to improve performance.

  - If the contractor is experienced or if work continues to be a problem, the Construction/Rehabilitation Manager must alert LHC to the issues.

  - For more experienced contractors that continue to have work quality problems, repeated contract violations, and/or fail to perform warranty work, a higher level of remedial action may be appropriate:

    - ✓ Sanctions include suspending the contractor and all payments.

  - Methods for removing sanctions and probationary status could include:

    - ✓ Posting a higher performance bond;
    - ✓ Terminating employment of problem workers;
    - ✓ Completing training that is relevant to the problem;
    - ✓ Completing warranty work; or
    - ✓ Reimbursing the program for completion of the work.

  - Permanent debarment is the most serious sanction that a Recipient and LHC can impose on a contractor. It excludes the company from consideration on all program projects and puts their reputation into question for other customers.

- ❑ If a contractor continues to be a problem, the Construction/Rehabilitation Manager must involve LHC in any decision to suspend work, to terminate the contract, or to place the contractor on probation or debarment.

MANAGING PAYMENT DISBURSEMENTS

- ❑ The Recipient's system for processing construction payments should be part of the program's written policies and procedures, reviewed by:
  - The property owner and contractor prior to signing a rehabilitation contract;
  - The developer and contractor for smaller, uncomplicated new construction projects at the pre-construction conference; or
  - The entire development team for larger new construction projects at the pre-construction conference.
- ❑ **Retainage**: For all projects, a portion of all payments should be retained (often 10% - 15%) until 30 days after completion of the work or satisfactory completion of the final punch list items.
  - The draw schedule is usually included in the overall construction schedule. It establishes clear expectations for all parties when the contractor may request and can expect payments.
  - The Recipient should retain a percent of the payment to ensure that the contractor completes the work according to the contract and any latent construction defects have been addressed.
- ❑ **Payment requests**: For housing rehabilitation projects, the general contractor usually submits payment requests to the property owner or the Recipient's Rehabilitation Manager at the completion of each stage of the schedule. The owner should sign off on the request before the Recipient processes it.
  - For new construction projects, the developer assembles the draw requests for both hard and soft costs from the general contractor and other professionals involved in the project. The invoice should include:
    - ✓ Total budget obligated;
    - ✓ Amount of previous payments received to date;
    - ✓ Cost for materials stored;
    - ✓ Costs incurred during the particular pay period;
    - ✓ Total costs incurred to date (includes previous and current expenses);
    - ✓ Percentage of work completed to date:
      - ➢ Remaining budget; and
      - ➢ Amount of payment retained until project completion.
- ❑ No payment should be made when there have been changes to the original contract or scope of work without approval of a relevant change order.

- **Payment request documentation and review:** Each payment request should be logged in as soon as it is received and recorded as soon as it is released.

  - Recipients must have a procedure that includes:

    - ✓ Who reviews payment requests and approves them;

    - ✓ The documentation that must accompany a payment request, including:

      - ➢ For all projects, an inspection report that supports satisfactory completion of work according to the work write-up, specifications, and/or construction schedule;

      - ➢ Lien waivers as appropriate;

      - ➢ If needed, approved change orders;

      - ➢ For projects subject to Davis-Bacon requirements, signed certifications that demonstrate compliance.

  - Once a payment request has been approved by the Recipient, it should be paid promptly in accordance with the agreed-upon schedule.

  - Payment delays often discourage contractors from participating in public programs and if payment is delayed according to the construction schedule (through no fault of the contractor), the contractor is allowed to stop work.

- **Final payment and release of retainage:** Final payment, less any liquidated damages shall be made to the contractor after:

  - Final inspection is completed;

  - A Certificate of Final Inspection is signed;

  - Certificate of Plumbing, Certificate of Electrical, Certificate of HVAC are signed;

  - Release of Liens are received, if applicable;

  - All punch list items are resolved; and

  - Final payrolls and equal employment opportunity data are accepted by the Recipient, if applicable.

- **Contingency funding:** Contingency funds are those funds set aside for a project for which there is no known specific use at the beginning. Most projects – especially rehabilitation-involve unforeseen problems that will require funds. This is a way to assure the funds are available if needed. These funds may not be drawn or expended unless an appropriate written change order is executed.

  - Funding must be established at the beginning or project for unforeseen circumstances.

  - Set up is allowed but only work performed and documented through written change orders is paid.

- Typical amounts vary depending on size and complexity of job.
- Rehabilitation projects should always have a contingency planned.

PERIODIC PARTNER REPORTING

- ❑ During the construction period, the Recipient's manager should receive periodic status reports from partners such as contractors, private developers, and property owners.
- ❑ There are five key elements of reporting systems:
  - **Purpose**: A reporting system should assist the Recipient to track progress of meeting larger program goals, as well as tracking progress for individual projects.
  - The Recipient should work with other financial partners to develop a reporting system that would respond to everyone's ongoing concerns to eliminate duplication of effort.
  - **People and partners:** The quality of reporting systems is as good as the training and motivation of the people and partners who maintain and use them.
  - **Process:** HOME Recipients must determine:
    - ✓ What needs to be measured (e.g., milestones in the construction process, the draws against the contract);
    - ✓ When it needs to be measured (e.g., the critical points in a housing rehabilitation or development project); and
    - ✓ Who will measure it (e.g., which entity will be responsible for producing the report and who will review it for the Recipient).
  - **Software or template and hardware needed:** Recipients must determine what software or reporting template they currently use or what the need to provide the information they need to adequately track performance;
    - ✓ Software or template must be easy to learn and maintain;
    - ✓ There must be local technical support available; and
    - ✓ It must be easily integrated into other software the PJ is using.
    - ✓ Recipients may be limited with their software selection by the realities of their current electronic system and budget constraints to upgrade or change equipment.
  - **Commitment:** Buying new software or hardware does not guarantee an effective reporting system.
    - ✓ A reporting system is an investment in capacity (how much work can a Recipient expect from its partners and its own staff), in productivity (how efficiently the system will provide the necessary information to Recipients,) and in team building (how well the Recipients and its partners can work together.)

- The center of performance tracking is the submission of regular progress reports, however, the following principles will ensure reports are useful to Recipients and their partners in developing affordable housing:
  - Information requested must be important and useful. Recipients should not request information if its use cannot be explained. The essential information should be data for:
    - ✓ Performance milestones in the construction schedule or written agreement; or
    - ✓ Required for IDIS or the CAPER reporting.
  - Provide clear, detailed report forms and instructions to those responsible for initiating the report.
- Take immediate action if reports are late, inaccurate, or incomplete. If no one is tracking the receipt and implications of reports, partners will assume they are not important and the quality and timeliness of reports will deteriorate.
- Use the reported data fully. If reports are well-designed, they can serve multiple purposes.
  Inform partners that the information provided in reports is useful in:
  - Preparing reports for LHC;
  - Identifying performance and timeliness issues early;
  - Planning on-site monitoring visits;
  - Making future funding decisions; and
  - Developing descriptions of projects for elected officials and citizens.
- There are various ways to use progress reports:
  - **Milestone tracking**: Milestones can come from the construction schedule or written agreement.
    - ✓ Recipients can measure progress using these to track progress in individual projects; or
    - ✓ Compare progress in similar projects to identify slower performers and take further action.
  - **Financial tracking:** Recipients can examine funding requests to evaluate the fiscal aspects of performance against the construction schedule or written agreement.
  - **Exception reports:** Reports can identify any missed milestones and which projects have put the Recipient at risk of failing to meet timeliness requirements in the HOME program.
- Exhibit 11-5, Progress Reporting Example lists the various project stages and details that can be tracked as part of homeowner occupied rehabilitation projects.

Exhibit 11-5 Rehabilitation of Owner-Occupied Units		
What to Track	**How Often to report**	**How to Analyze information**
Date of application	At application	Look for demand (or lack) by targeted population
Date of requested income verifications; date received	When requested	Check for follow up activity if not received
Date of proof of ownership established	At time of proof	Check for determination of eligibility for assistance
Date of initial inspection	At time of initial inspection	Look for "fail" items and LBP
Date eligibility; ineligibility determined	At time of determination	Reserve funds in IDIS for eligible projects
Date, name of contractor selected	At time of selection	Check for compliance with PJ's approved system
Date of Pre-construction conference	At time of conference	Look for subjects covered, who was present, notes taken
Date of Proceed Order	At time of order	Check against approved procedures
Date of initial progress inspection	At time of inspection	Note items passed or failed
Pass/fail items in inspection	Same as above	Note for payment requests or change orders
Date of initial payment request; subsequent payments requested	Date of requests	Check for adequate documentation to support request
Date payments made	Date payments made	Check for time elapsed; is it late or on time
Date of final inspection	Date of inspection	Check against inspector's report of satisfactory work
Punch list items completed	Date of punch list	Check for completed work
Final release of liens received	Release date	Look for presences of all releases
Final payment	Date of payment	Check for timing; adequate documentation
Project closed	Date of close-out	Check for completion report and interim reports in IDIS

COMMON CONSTRUCTION PROBLEMS AND SOLUTIONS

- It is unrealistic to think that problems will not be encountered during construction and that issues can always be eliminated through better communication or reasonable controls. Since problems will arise, policies and procedures for dealing with them must be articulated. In all cases, the goal is a quick and inexpensive resolution.

- **Recognizing problems early** - Typical warning signs include:

  - **Job site tension and conflict**. A high number of on-site disputes between contractors and property owners or contractors and their employees may indicate that there is a potential conflict which could delay construction. These disputes may seem minor at the time, but they may be part of a larger problem that should be addressed as soon as possible.

  - **Lack of contractor communication about problems and potential claims**. A contractor's reluctance to correspond with the property owner or program manager points to a potential problem. A lack of correspondence on the part of the contractor may indicate a lack of interest in the overall project.

  - **Excessive requests for additional information**. A property owner frequently requesting additional information from the contractor can be an indication of a problem. Constant requests for additional information may indicate that the property owner does not think that the contractor is reliable and is doing the work according to codes and standards, and specifications.

- Common problems that Recipient managers should watch out for include:

  - Cost overruns;

  - Unsatisfactory workmanship;

  - Excessive change orders;

  - Delays; and

  - Theft from the project site.

- **Maintaining good relations with contractors**. The following are recommended to proactively manage contractors:

  - Attract good contractors and maintain their active participation in projects.

  - Ensure that property owners or developers understand their roles and responsibilities in choosing a contractor, and in facilitating and monitoring the construction process.

  - Make special efforts to keep property owners and contractors informed about program changes and involve them in project design decisions.

  - Clearly articulate eligibility and workmanship requirements and apply the requirements fairly. Contractors must be confident that the agency will make timely payments for completed work that meets the program standards.

- Seek feedback from contractors and property owners through periodic meetings and debriefings after project completion. In particular, property owners and contractors should be encouraged to discuss any problems they are having with program requirements or processes.

PART III: GOOD PRACTICES FOR MANAGING THE CONSTRUCTION PROCESS SUCCESFULLY

Given the number and complexity of the requirements related to construction covered under Parts I and II of this chapter, LHC expects Recipients will develop a process for managing construction. In this section, LHC recommends specific features for a successful management process, highlights the basic management tasks that must be performed, and provides guidance on how to approach the level of staff involvement in managing construction.

FEATURES OF A SUCCESSFUL MANAGEMENT PROCESS

With respect to developing processes that manage construction activities and result in successful projects, LHC encourages Recipients to develop processes that:

- **Recognize the value of construction management**: The primary purpose for construction management is to ensure that agreed to plans are carried out and that all the rules and requirements are followed and documented. Good construction management will save time and money, as well as ensure quality. Many different parties play a role in construction management, including the developer, the construction manager, the general contractor, the supervising architect, and the Recipient's project manager and inspectors.

- **Chose the appropriate level of involvement for Recipient staff on a particular project:** There are three general levels of Recipient involvement: intensive, moderate, and minimal. Selecting the appropriate level depends on the Recipient's staff capacity and the size and nature of the project. Recipients must employ an appropriate level of involvement to ensure protection of the public investment, while at the same time being sure that staff time spent makes a positive contribution to the project outcome.

- **Take the right steps to get a project off to a good start:** The project should start with a pre-construction meeting between all of the parties involved in the project to clarify roles, expectations, scheduling, and requirements. Depending on the nature of the project, the parties may include the property owner, construction manager, grantee, developer, and architect, among others.

- **Establish the best way to measure progress on a project:** A key tool in measuring progress is the construction schedule, and a key action is conducting inspections throughout construction. Several scheduling formats can be used, bar charts, logic networks, and critical path charts. Initial, progress, and final inspections should be conducted for every project.

- **Manage the change order process:** Change orders are used to authorize and record changes to construction work that may affect cost, time schedule, or the scope of the project. Recipients should have a change order system in place that allows staff to check each change order requested by contractors

- **Execute the appropriate steps for construction draw payments:** The general contractor usually submits a request for payment, which triggers an inspection to verify that it is appropriate to make the requested payment. The request for payment should include sufficient backup source documentation such as invoices, proof of code inspection, and proof of inspection by the supervising architect. Recipients must review the request and backup documents and make a site visit before approving the request for payment.

The method for processing payments should be set forth in the program's written policies and procedures, and covered in detail at the pre-construction conference.

- **Establish process for resolving disputes:** Recipients should have a process in place for resolving disputes quickly and cheaply but also fairly. The first approach for resolving disputes is for the Recipient construction management staff to try to reach an agreement between disputing parties. The next stage of resolution may involve professional mediation by LHC staff or arbitration services. The last resort for programs, property owners, and contractors should be legal action.

- **Make use of the appropriate enforcement mechanisms to protect the program:** Probation, suspension of payments, suspension of work, and debarment, unfortunately, must be part of every contracting program in order to enforce performance standards. Fairness, consistency, and clarity are critical factors in successful enforcement. Behaviors that result in sanctions, the nature of the sanctions, and remedies to restore good standing should be clearly described to the contractors.

- **Manage risk:** Recipients must establish policies and procedures to manage risk in order to protect their investments and those of the property owners. The commitment of political leaders the chief elected officials, agency directors, and owners to enforcing the policies and standards for contractors is essential to making a program work. Bonding, letters of credit, and insurance are three tools used to manage risk

BASIC MANAGEMENT TASKS

The process put in place by Recipients must ensure that basic management tasks are ably performed. The basic tasks include monitoring of:

- **Progress.** LHC makes periodic inspections to evaluate construction progress. Inspections are a necessary aspect of construction oversight because they ensure that all work is being completed on time, within stated quality guidelines, and is in compliance with all State and local codes and Federal program rules. The Recipient must ensure that LHC is notified when construction reaches the appropriate stages so that LHC staff can visit the property and make the necessary inspections.

- **Schedule.** Understanding when tasks are scheduled to occur and monitoring against that schedule ensures that the Recipient knows that:
  - Work is progressing as planned;
  - Trades workers scheduled to be on site is working;
  - Resources are available for the project, based on scheduled draws;
  - Due date for absolute project completion is set; and

- Appropriate inspections are done at key points in the process to ensure code and standards compliance.

- **Quality.** The LHC HOME Program property standards described in Part I must be adhered to during construction, including materials used and the methods of installation.

  - A well-written construction contract that provides the owner or developer the authority to demand the contractor's adherence to the prescribed property standards.

  - LHC uses its written agreement with the owner to require owners to include the necessary language in the construction contract.

- **Cost and expenditures.** By tracking the budget on a regular basis, a Recipient can ensure that the construction work is completed within budget, and all costs are reasonable, as based on the original budget projections. A Recipient can be alerted to possible cost overruns in a timely fashion so that alternative methods of funding or cost controls can be adopted.

  - Recipients should review payment requests from contractors and subcontractors. This process ensures that contractors and subcontractors are receiving appropriate payment for completed work, that they are not being overpaid or compensated for unfinished or incomplete work.

  - Recipients should have a formal role in change order requests to the plans and specifications. By reviewing these requests, Recipients will be able to approve appropriate and necessary changes and to reject those that are not. In addition, reviewing all change order requests will enable Recipients to track additional costs to the project's budget.

- **People.** Is the contractor and architect talking to one another? Does the homeowner know what work is scheduled for a particular time? These questions that can help Recipients assess whether there are problems with the project. Catching a problem before it derails a project can save time and money. Recipients should talk with the owner, general contractor, and subcontractors to assess potential issues that could lead to conflict.

- **Reporting.** Every project should have written construction monitoring and reporting procedures. The procedures should be referenced in, and attached to the written agreements, loan documents, and the construction contract. The purpose of monitoring is to keep the project team working toward the final deadline within the approved budget.

  - Formal monitoring consists of scheduled on-site visits, while informal monitoring may be unscheduled visits to the site, and regular communication with the property owner and contractor.

  - Establishing reporting formats in advance can assist to effectively execute project management. Examples include:

    - ✓ Requiring progress reports from the architect (monthly, quarterly or with each payment request) that should document any decisions that have been made in the field, including changes to the scope of the work, schedule, and resolutions to problems or disputes.

- ✓ Attending meetings held regarding construction progress (e.g. meetings involving the architect, financial partners, property owner, and contractor). Construction progress meeting discussions will include inspections, change orders, and any problems or disputes that have occurred during construction.

- ✓ Requiring notification before any work is concealed so that it can be inspected.

- ✓ Requiring notification prior to a state or local code inspection.

APPROPRIATE LEVEL OF INVOLVEMENT

Although a Recipient must provide oversight to construction projects, the appropriate level of involvement will vary based on staff size, capacity, the complexity of the project, and the sophistication of the development team.

- ❑ The degree of oversight can be influenced by:

  - **Project size.** Rehabilitation of existing housing units may have a less complicated process and only require only informal hands-on oversight. Design-Award-Build model projects with complicated processes, multiple players, numerous stages, and longer timeframes generally require that the Recipient carry out formal oversight procedures.

  - **Complexity**. The complexity and number of construction activities needed for project completion will affect the level of Recipient oversight that is required.

    - ✓ Example: A rehabilitation project may require a limited number of trades (e.g. plumbing, electrical) whereas broader construction activities may be needed on a new construction project.

  - **Contract service providers.** Certain professional skills are essential to complete project construction, including those of architects, engineers, construction managers, and general contractors.

    - ✓ It may be necessary for the Recipient to look outside its organization to acquire some or all of these skills.

    - ✓ If there is a large number of outside service providers involved in project construction, monitoring strategies are usually more complex and formal because there is a greater need for more attention to detail and a clear division of responsibilities.

  - **Staff expertise.** The extent of Recipient staff expertise will influence the construction management approach. Strategies may be less formal if the internal staff expertise is extensive.

- ❑ In general, there are three levels of Recipient involvement in construction management as described below. Note that the option selected depends on the factors listed above (project size, complexity, and contract service providers and staff expertise on hand).

  - **Intensive involvement**. In this model, the Recipient is extensively involved in the day- to-day construction process.

- ✓ This level of involvement is necessary where:
  - ➢ There is the potential for disputes;
  - ➢ The owner is unable to represent him/herself ;
  - ➢ The contractor or subcontractors are not well-known, or have experienced problems in the past; or
  - ➢ There are unforeseen conditions.
- ✓ Intensive Recipient involvement requires sufficient and capable staff. It is characterized by the following:
  - ➢ Recipient staff is frequently on-site during the construction process to conduct inspections, verify compliance with codes, act as the clearinghouse of information, and mitigate disputes.
  - ➢ Recipient gets regular construction progress and status reports from the architect, project manager, and owner or developer.
  - ➢ Recipient may initiate and facilitate construction progress meetings with the architect, property owner or developer, contractors and other financial partners to discuss any construction problems, disputes, and change orders.
  - ➢ Recipient reviews all payment requests and releases payments accordingly.
  - ➢ Recipient reviews and approves all change order requests.
  - ➢ Recipient tracks adherence to the budget.
  - ➢ Recipient attends the closeout inspection to ensure compliance with codes and standards and HOME Program and other Federal requirements are met.

- **Moderate involvement**. In this model, the Recipient continues to have hands-on involvement in the construction, but delegates more tasks. This level of involvement is typical in homeowner or small unit rehabilitation, where the owner is taking responsibility for day-to-day supervision of the contractor and the LHC HOME Recipient is a Recipient managing LHC's homeowner occupied program. It is characterized by the following:
  - ✓ Recipient staff attends inspections throughout the construction stage and checks to make sure that the construction manager documents the results of the inspection.
  - ✓ Recipient requires the supervising architect or construction manager to submit monthly construction progress and status reports.
  - ✓ Recipient staff meets with the architect, the property owner or developer, and other financial partners on a monthly, rather than a bi-weekly or weekly basis, to discuss any construction problems, disputes and change orders.
  - ✓ Recipient reviews all payment requests attends all payment inspections, and releases payments accordingly.
  - ✓ Recipient reviews change order requests that are above a certain dollar amount set by program guidelines.

- ✓ Recipient tracks adherence to the budget with each requested pay draw.
- ✓ Recipient attends the close-out inspection to ensure compliance with codes and standards and Federal program rules.

- **Minimal involvement**. A Recipient may choose to contract with construction professionals to do construction oversight. A Recipient should make sure that its representatives know that HOME Program funds are being used, and understand the program requirements that must be monitored. A Recipient's representative must also know all local rules and requirements that apply to the construction job. A monitoring system that relies on outside contractors has the following characteristics:

  - ✓ The Recipient relies on a third party to conduct periodic inspections throughout the construction stage and verify compliance with codes and standards and HOME Program and other Federal requirements.
  - ✓ Recipient staff requires periodic construction status reports.
  - ✓ Recipient meets with architect, local agency, sponsor, and other funding partners on an as-needed basis to discuss any construction problems, disputes, and change orders.
  - ✓ Recipient gives authority to a third party to review all payment requests and change orders and to make recommendations to staff about payment.
  - ✓ Recipient periodically tracks adherence to the budget.
  - ✓ Recipient uses a third party to conduct closeout inspection to ensure compliance.

Each time an application for HOME assistance is received or HOME funds are designated for an activity, a written record of compliance with HUD's environmental regulation is required.

This chapter details the HUD environmental review rules and related Federal laws and authorities that are applicable to all projects and activities receiving HOME assistance. It describes:

- ✓ The roles and responsibilities of LHC and Recipients, who have the primary responsibility for conducting environmental reviews;
- ✓ The role of CHDO's and nonprofit organizations as project partners in the environmental review process;
- ✓ The primary procedures and operating principles that guide the environmental review process; and
- ✓ The levels of environmental review required for various HOME funded activities and projects.

ENVIRONMENTAL REQUIREMENTS

The rule 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities, implements the policies I National Environmental Policy Act (NEPA), as well as other Federal laws and authorities, and departmental environmental requirements. Further discussion of these is contained in the section on "Compliance with NEPA and Related Federal Laws and Authorities."

Roles and Responsibilities of LHC and Recipients

- ❑ As outlined in 24 CFR Part 58, states and units of local government are required to assume Federal environmental review responsibilities for compliance with the National Environmental Policy Act (NEPA), and related Federal laws and authorities. HUD's environmental review regulations identify states and units of general local government as the "responsible entity" (RE). Responsible Entity are those entities having legal authority to assume this role because they exercise control over planning, permitting, and supplying infrastructure to support HUD-assisted projects for their jurisdictions. For the HOME Program, the RE is the participating jurisdiction (PJ)—that is, the state, unit of local government, or consortium that receives a formula allocation of HOME funds directly from HUD. In addition, through written agreement with the state PJ, in this case the Louisiana Housing Corporation (LHC), a Recipient that is a unit of local government assumes responsibility for compliance with NEPA and Part 58 instead of the state [24 CFR 92.504I(1)]. In cases where LHC has determined a unit of local government does not have the technical capacity or administrative capability (§ 58.12) to assume the role of RE or an applicant (e.g., CHDO, or nonprofit or for profit organization) has applied directly to LHC for HOME grant assistance, then LHC will take on this role of RE. LHC assumes the RE role in many instances.

In the role of responsible entity (RE), LHC or the Recipient not only assumes the responsibility for environmental review, decision-making, documentation, and mitigation (if necessary), but also the legal responsibility for compliance with NEPA and all other applicable laws, regulations, and authorizations.

Whenever Recipients have assumed the role of RE, then LHC is responsible for overseeing compliance with HUD's environmental review procedures, as well as providing assistance to Recipients in meeting their compliance responsibilities under Part 58. LHC's role in this capacity is to conduct post-review monitoring of Recipient's Environmental Review Records (ERR); enforcing violations of Part 58; receiving certifications of compliance from Recipients; accepting objections from the public or other agencies; and other responsibilities related to the release of funds process (§ 58.18 and Subpart H).

On those occasions LHC assumes the role of RE, then HUD performs the oversight responsibilities described in the paragraph above (24 CFR 58, Subpart H).

Environmental Review Process

- ❑ The RE must ensure that activities or projects that are funded by HOME assistance, in total or in part, are in compliance with NEPA and Part 58 requirements. This means creating a written *environmental review record* (ERR) for every activity and project regardless I level of review (§ 58.38). Later in this chapter more details will be provided as to the appropriate levels of environmental review for every type of HOME assisted activity or project.

The ERR is a type of "environmental diary" that the RE uses to substantiate its decisions and conclusions concerning protection and enhancement I environment as a result of approving the project. Keeping good records and having complete documentation is necessary to fulfill the RE's environmental review obligations. This is a public record. Legal challenges to a project's environmental compliance may be won or lost over how complete or incomplete the RE's ERR documentation is; therefore, this administrative record is important.

LHC will periodically monitor the content I RE's environmental records to determine whether corrective actions or sanctions are necessary. (On those occasions when LHC is the RE, the HUD Field Office will conduct a monitoring review of LHC's project ERRs).

The RE is required to maintain technical capacity and administrative capability to ensure compliance with NEPA and Part 58 is achieved (§ 58.12). With regard to technical capacity, the RE's staff needs to have sufficient knowledge I Federal laws and authorities, as well as an understanding of Part 58 requirements in order to make informed decisions about whether:

- The appropriate level of review has been completed;
- Compliance with NEPA and Federal laws and authorities has been achieved;
- The public notification requirements have been met (if required); and
- When HUD approval is necessary.

- This is true whether environmental reviews are completed by RE staff, prepared by program partners, or a consultant is hired to perform the review. The RE is still responsible for the content I ERR and must make an independent evaluation I environmental issues, take responsibility for scope and content I compliance findings, and make the final environmental decision concerning project approval.

- With regard to administrative capability, the RE's staff should have sufficient knowledge about the Part 58 procedures to understand when funds may be committed and spent, the time periods for the public notification and release of funds process, and the minimum content of the ERR.

Environmental Decision-Making

- For purposes of compliance with NEPA and Part 58, the chief executive officer I RE, or its formal designee, is the certifying officer (CO) (§ 288 I Act). The certifying officer is recognized as the "responsible Federal official under NEPA" (§ 58.13, 40 CFR 1508.12) and, therefore, the decision-maker as to whether a project is approved or rejected on the basis I environmental review findings. This is a Federal legal responsibility. As such, if someone other than the chief executive officer for the RE is designated to fulfill this role, HUD requires there be a formal designation by the governing body identifying this officer. (In making such designations, the RE may want to consider assigning the CO authority to the office being held rather than to a particular person since personnel will generally change.)

  The CO represents the RE in Federal court if there is legal challenge to the content I environmental review record and the RE's decision based upon that record [§ 58.13(a)]. The CO is also the only person with the legal authority to sign the Request for Release of Funds and Certification (HUD form 7015.15.)

Other responsibilities required of the CO are:

- To ensure that the RE reviews and comments on all EIS document prepared for Federal projects that may have an impact on HOME LHC's program [§ 58.13(b)];
- Making health and safety decisions related to whether or not to approve residential construction projects that are exposed to high levels or noise from major roadways, railroads, and/or military or civilian airports [HUD regulation on Noise Abatement and Control, 24 CFR 51.104(a)(2) and (b)(2)]; and
- Making health and safety decisions related to the construction, rehabilitation, or conversion of buildings exposed to blast overpressure or thermal radiation from above- ground storage tanks within line-of-site I project (HUD regulation on placement of HUD- assisted projects in the vicinity of explosive or flammable operations, 24 CFR 51.206.)

Environmental Action

- The RE is also responsible for ensuring that any environmental conditions or safeguards resulting from completion and approval I environmental review document are implemented. If necessary, the RE should develop an implementation/monitoring plan to ensure conditions that were identified as necessary for protecting and enhancing environmental quality or minimizing adverse environmental impacts are included in agreements or other relevant documents, and implemented during completion I project.

In addition, the RE must re-evaluate its environmental findings and decision if:

- Substantial changes in the nature, magnitude, or extent I project are proposed by the project proponent (e.g., new activities not anticipated in the original project scope);
- New circumstances and environmental conditions arise that were not previously considered or evaluated for effect (e. g, conditions discovered during implementation I project, such as archeological resources, asbestos containing materials, endangered species, underground storage tanks, dry wells, etc.); or
- The project proponent proposes selection of an alternative not previously considered.

❑ Upon re-evaluating its original findings and conclusions, the RE must decide whether or not its original determination is still valid, or that a new environmental review document must be prepared instead. If the original findings are still valid, document this in the ERR in writing.

Role of CHDO's and Nonprofit Organizations as Project Partners

❑ Any other individuals and entities that utilize HOME program assistance fall into the category of project *participants* with regard to compliance with Part 58 (§ 58.22). This includes CHDOs, public or private nonprofit or for profit entities, contractors, and individual borrowers receiving HOME grants and loans.

These partners must:

- Not acquire, repair, rehabilitate, convert, demolish, or lease properties or undertaking construction prior to receiving approval from the RE;
- Not commit non-HUD funds to project activities that would have an adverse environmental impact or limit the choice of project alternatives (These prohibited actions are discussed in the section on "Limitations Pending Environmental Clearance.");
- Carry out any mitigation and/or conditions associated with approval of a project;
- Provide the RE with information about the project.

❑ CHDOs or developers may also be requested by the RE (or required by executed agreement) to supply available, relevant information necessary for the RE to perform the environmental compliance review. This could mean the CHDO or developer submits certain types of information to the RE. Or, it could mean the CHDO or developer prepares the environmental compliance review for submission to the RE for its review and adoption. Or, the CHDO or developer may decide to hire a consultant to prepare the environmental review for the RE's review and adoption.

ENVIRONMENTAL REVIEW PROCEDURES

__Actions Triggering the Requirements of Part 58__

- Once a project participant (i.e., Recipients, CHDO's, developers, owners, sponsors of housing, and third party contractors) has submitted an application for HOME funds to LHC or a Recipient, or LHC has designated funds for a specific project in its Consolidated Plan or annual action plan, Part 58 requirements are applicable to the project. At this point the RE (i.e., LHC or Recipient) must request the participant to cease all project activity until the environmental review (ER) has been completed. Part 58 prohibits further project activities and actions from being undertaken prior to completion I ER and the determination of environmental clearance. Projects in violation of this prohibition risk the denial of HOME funds.

  Where a project participant has begun a project in good faith as a private project, LHC or the Recipient is not precluded from considering a later application for Federal assistance for the project, but must request the third party applicant to cease further actions on the project until the environmental review process is completed. Project participants may proceed with the project upon receiving approval from the LHC or Recipient, after the environmental review process has been completed for the project.

  There are certain kinds of activities that may be undertaken without risking a violation of requirements of Part 58. For example, the act of either hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards), or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions.

  Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the project participant's own funds, prior to obtaining environmental clearance to use HUD funds. This process may include public notification and approval from HUD. If prohibited activities are undertaken prior to receiving approval from LHC or the Recipient, the applicant is at risk for the denial of HOME assistance. Such actions include:

  - Purchasing real estate;
  - Demolishing structures or buildings;
  - Excavating or dredging soils;
  - Placing fill dirt on the site;
  - Rehabilitation or converting a new building; and
  - New construction.

- Undertaking any of these actions interfere with the RE's ability to comply with NEPA and Part 58. If prohibited actions are taken prior to environmental clearance, then environmental impacts may have occurred in violation I Federal laws and authorities and the standard review procedures that ensure compliance. Below is further discussion of issue under the heading, "Limitations Pending Environmental Clearance."

Limitations Pending Environmental Clearance

- According to the NEPA (40 CFR 1500-1508) and Part 58, the RE is required to ensure that environmental information is available before decisions are made and before actions are taken. The RE may not commit or expend resources, either public or private funds (HUD, other Federal, or non-Federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved. In other words, the RE must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made---that decision being based upon an understanding I environmental consequences, and actions that can protect, restore, and enhance the human environment (i.e., the natural, physical, social and economic environment.)

  In order to achieve this objective, Part 58 prohibits the commitment of HOME funds by LHC or the Recipient or project participant until the environmental review process has been completed and HUD (or LHC when Recipients are the Res) release of funds approval, when required, has been received.

- Moreover, until the Recipient has completed the environmental review process (including receipt of HUD or LHC approval, when necessary), neither the Recipient nor project participant may commit non-HUD funds or undertake an activity if that action would have an adverse environmental impact or limit the choice of reasonable alternatives.

  For the purposes I environmental review process, "commitment of funds" includes:

  - Execution of a legally binding agreement;
  - Expenditure of HOME funds;
  - Use of non-HUD funds on actions that would have an adverse impact--- e.g., demolition, dredging, filling, excavating; and
  - Use of non-HUD funds on actions that would be "choice limiting"---e.g., acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

- It should be noted that the standard for what constitutes a commitment of HOME funds for compliance with Part 58 is different from the HOME funds commitment and the CHDO reservation deadlines applicable under the HOME Program regulations in 24 CFR Part 92.

  Prior to completion I environmental review process and receiving HUD or LHC approval, the LHC may enter into a non-binding agreement to conditionally commit HOME funds---i.e., a contractual agreement between LHC and project participant to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance, or an executed written agreement reserving a specific amount of funds to a CHDO. The conditional commitment must incorporate language that will ensure the project participant does not have a legal claim to any amount of HOME funds to be used for the specific project or site until the environmental review process is satisfactorily completed. In addition, the agreement must explicitly state that the agreement to provide funds to the project is conditioned on the RE's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review. (See CPD Notice 01-11, page 10 for suggested agreement language.)

Other types of actions that are not considered a commitment of funds for purposes of Part 58 compliance are statements of funding reservation, e.g., approval of Consolidated Plan or annual action plan or planning for and reserving non-HUD funds, including tax credits for the project for HUD funding.

If LHC is considering an application from a prospective Recipient and is aware that the Recipient is about to take an action within the jurisdiction that is prohibited by Part 58, then LHC must take appropriate action to ensure that its objectives and procedures of NEPA and Part 58 are achieved [§ 58.22I]. LHC is ultimately responsible for establishing internal controls to enforce compliance with NEPA and Part 58.

EXHIBIT 12-1

DEFINING "CONTEMPLATE" AND "COMMITMENT FOR THE ENVIRONMENTAL REVIEW

Once the RE *contemplates* assisting a project or activity with HUD funds, (§ 58.32), neither HUD funds nor non-HUD funds may be *committed* (§ 58.22) until compliance with Part 58 has been achieved and documented. The following guidance is provided to clarify the meaning I terms *contemplate* and *commitment* as these apply to the environmental review process.

What is a contemplated HUD assisted action?

1. A Recipient is considering an application from a prospective owner or beneficiary.
2. A Recipient has identified a specific activity or project in its application.

What ***is*** a commitment of funds?

1. Execution of a legally binding agreement—e.g., awarding construction contracts, entering into project agreements with developer or Recipient, etc.
2. Expenditure of HUD funds—e.g., purchase of materials by a force account crew, hiring a consultant to prepare a Phase I Environmental Site Assessment, etc.
3. Use of HUD funds or non-HUD funds on "choice limiting actions":
   a. Actions having an adverse impact---e.g., demolition, dredging, filling, excavation.
   b. Actions limiting the choice of reasonable alternatives---e.g., real property acquisition, leasing, rehabilitation, demolition, related site improvements, relocating buildings or structures, conversion of land or buildings/structures.

What ***is not*** a commitment of funds?

1. Statements of funding reservation---e.g., approval of an application, CHDO reservations, planning for and reservation of non-HUD funds (including tax credits for the project for HUD funding.)
2. Non-legally binding agreements---e.g. An agreement with language such as, "Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by Recipient's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review."[1]

[1] See p. 10 of HUD Notice CPD 01-11, Environmental Review and the HOME Investment Partnerships Program. This Notice is available in Appendix B1, and online at: http://www.hud.gov/offices/cpd/lawsregs/notices/2001/01-11.pdf.

Aggregation of Project Activities

- To determine the appropriate level of environmental review for a project, the RE must group together (aggregate) all related project activities, whether or not the project is funded entirely by HOME funds, or only certain portions of the project will be funded by HOME funds. An environmental review must evaluate all activities that are geographically or functionally related, or part of a multi-year project. The appropriate level of environmental review for an aggregated project will be determined by whichever activity or activities being undertaken by the RE or its partners will have the greatest environmental impact. For instance, real property acquisition will have less of a physical impact on the human environment than newly constructing 30 units of affordable housing.

  "Functionally related" describes a specific type of activity that will be undertaken in several locales or jurisdictions. The environmental impacts will be the same or similar no matter where the project is located. For example, rehabilitation of single family units, or tenant- based rental assistance with a city or county.

  Geographically related project activities, for example, might include a proposal to acquire four units for rehabilitation and resale to first time homebuyers. All the related activities are occurring on a single site. In aggregation, all these activities must be evaluated in a single review, regardless of the fact that HOME funds may only be used for rehabilitation. One activity cannot occur without the others, and therefore all the associated environmental impacts must be evaluated together. The environmental review for the acquisition of the properties cannot be separated from the environmental review for the rehabilitation of the properties.

  Multi-year aggregation is a process that addresses phased project activities. For instance, consider a three-year project, during which, real property will be acquired in the first year, infrastructure improvements will be installed in years two and three, along with several phases of affordable housing construction. Again, a single environmental review must be completed for all phases of the project before any of the activities may be undertaken. Only one request for release of funds (covering all project phases) needs to be submitted to HUD for approval. After HUD approval is received, no other approval or environmental action is required; unless circumstances arise that require the RE to re-evaluate its original environmental findings.

Sources of Compliance Documentation

- There are several types of resources necessary to demonstrating compliance with NEPA and the Federal laws and authorities. These resources provide written documentation in the environmental review record that is credible, traceable, and supportive of the conclusions reached by the RE.

EXHIBIT 12-2

SOURCE DOCUMENTATION FOR ENVIRONMENTAL REVIEWS

FIELD OBSERVATION – A visit to the project site to make observations of the general site conditions. There should be written documentation of the conditions observed. Also include the name and title of the observer and the date of the site visit.

PERSONAL CONTACT – Personal contacts are useful only when the individual contacted is an accepted authority on the subject or subjects. Documentation should include the name and title of the person contacted, the date of the conversation, and brief notes of the key points. Whenever the person that was contacted cites reports, records, or other document, the title, date and source of the report should be noted. Contacts can include staff experienced in a particular area (e.g., engineer, planner, historian, etc.).

PRINTED MATERIALS – Printed materials such as comprehensive land use plans, maps, statistical surveys, and studies are useful sources of detailed information. The material must be current and reflect accepted methodologies. Environmental reviews that were completed by another governmental entity may also used if the information is relevant. Complete citations for all material must be included.

REVIEWER'S EXPERIENCE – Professional judgment by staff is acceptable if their expertise is relevant to the compliance issue. For example, the reviewer may have knowledge from reviewing previous projects in the same area. Another type of relevant experience is the professional finding of the reviewer in subjects where he or she has the background to make judgments about a specific factor. Some reviewers have the expertise to evaluate soil conditions, while others will need to consult an engineer or other specialist.

SPECIAL STUDY – This is a study conducted for a particular project performed by qualified personnel using accepted methodologies. Some tests are relatively simple to perform but others may require elaborate equipment or personnel with additional expertise. The reviewer is responsible for obtaining assistance from others in order to have the appropriate tests or studies conducted. Examples include archeological reconnaissance surveys, biological assessment concerning threatened and endangered species, or Phase I Site Assessments to determine site contamination.

See HUD Handbook 1390.2,
http://www.hudclips.org/sub_nonhud/cgi/hudclips.cgi

CATEGORIES OF ENVIRONMENTAL REVIEW

- One of the primary purposes that the environmental review process serves is to require states and units of local government to include environmental impacts as part of the overall deliberation process surrounding proposed projects. The HUD environmental review requirements at Part 58 were written so as to best strike a balance between the imposition of reasonable requirements upon the RE (i.e., expediting the decision process for activities that clearly have no physical impact and requiring sufficient analysis for those that will alter environmental conditions), while ensuring that project decisions are well-documented. Therefore, the environmental review requirements are divided on the basis of the level of impact that a proposed project might be anticipated to have were the RE to go through with funding approval.

- There are four (4) levels of environmental review identified in Part 58. The criteria for these levels span the range of possible impacts, from none whatsoever to significant physical impact. The levels under Part 58 include:

  - Exempt (§ 58.34);
  - Categorically Excluded (§ 58.35);
  - Environmental Assessment (§ 58.36 and Subpart E); and
  - Environmental Impact Statement (§ 58.37 and Subparts F and G).

- NEPA and the implementing regulations at 40 CFR 1500-1508 establish direction for these review levels. The bases for these review levels, and categorizing various HOME-funded activities into the review levels is to determine if there is potential to cause significant impact on the human environment (i.e., natural resources, ecosystems, aesthetic, historic, cultural, social, economic, health, etc.).

Exempt

- HUD has determined that exempt activities will neither have a physical impact, nor potential for altering any environmental conditions. Therefore, these actions are exempt from compliance with NEPA and the Federal laws and authorities cited at § 58.5.

  According to 24 CFR 58.34, the following types of activities have been categorized as exempt from NEPA and other environmental laws and authorities: (NOTE: Under HOME program rules, 24 CFR 92, in order to qualify as project costs, these activities must be associated with a specific project. Otherwise, they are considered administrative costs.)

  - Environmental and other studies, resource identification, and the development of plans and strategies;
  - Information and financial services;
  - Administrative and management activities;
  - Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, and welfare or recreation needs;
  - Inspections and testing of properties for hazards or defects;
  - Purchase of insurance;
  - Engineering or design costs;
  - Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threat to public safety including those resulting from physical deterioration; and

- Any of the categorical exclusions listed in § 58.35(a) provided there are no circumstances that require compliance with any other Federal laws and authorities cited in § 58.5.

Content of ERR – Exempt Activities

- ❑ The RE must document in writing its determination that an activity meets the conditions for exemption. Use the *Certification of Exemption for HUD Funded Projects* form at the end of this chapter to document the designation of a HOME project or activity as exempt. The RE does not have to issue a public notice or request release of funds (RROF) from LHC [§58.34(b)].

- ❑ In addition to making a written determination of exemption, the RE must also determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones. [See *Certification of Exemption for HUD Funded Projects* and discussion in "Other Requirements (§ 58.6]

__Categorical Exclusion__

- ❑ This term refers to a category of actions that do not individually or cumulatively have potential for significant effect on the human environment (40 CFR 1508.4). Therefore, neither an environmental assessment (EA) nor environmental impact statement (EIS) is required to comply with NEPA.

Although these actions are categorically excluded under NEPA, a determination must still be made as to whether they would alter any environmental conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. The laws and authorities cited in § 58.5 are freestanding from NEPA, such as the National Historic Preservation Act of 1966, the Executive Orders on Floodplain Management and Wetlands Protection, and several regulations specific to HUD concerning the health and safety of project occupants, to name a few. The RE must certify that it has complied with the requirements under these laws and consider the criteria, standards, policies and regulations of these laws and authorities. The section on "Compliance with NEPA and Related Federal Laws and Authorities" provides guidance on this.

However, HUD has determined that certain kinds of categorical exclusions, because of the nature of the actions, would never alter any environmental conditions to create circumstances requiring compliance with these laws and authorities. And so, § 58.35 identifies two types of categorical exclusions: categorical exclusions not subject to § 58.5, and categorical exclusions subject to § 58.5.

- ❑ **Categorical exclusions subject to §58.5**. Categorical exclusions *subject to* § 58.5 are excluded from compliance with NEPA, but must comply with the other related Federal laws and authorities cited in § 58.5. It is generally evident from the nature and magnitude of such activities they do not have potential to have a significant impact on the human environment; however, these types of activities are physical in nature and will alter environmental conditions that could, for example, affect historic properties, floodplains, wetland areas, and endangered species. Actions in this category include:

  - Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities (other than buildings)---e.g., replacement of water or sewer lines where the capacity is not changed more than 20 percent, reconstruction of curbs and sidewalks, and repaving of streets;

- Removal of material and architectural barriers restricting the mobility of and accessibility to elderly and disabled persons;

- Rehabilitation and improvement of single family (one-to-four unit) dwellings provided the unit density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or wetland;

- Rehabilitation and improvement of multifamily dwellings provided the unit density is not increased more than 20 percent, it does not change residential use to non-residential use, and the estimated cost of rehabilitation is less than 75 percent of the replacement cost;

- An individual action on one to four dwelling units where there is a maximum of four units on any one site. The term "individual action" refers to new construction, development, demolition, acquisition, disposition, or refinancing;

- An individual action on five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site;

- Acquisition (including leasing) or disposition of, or equity loans on, an existing structure provided the structure acquired, financed, or disposed of will be retained for the same use; and

- Any combinations of the above activities.

Content of ERR – Categorical exclusions subject to § 58.5

- ❑ The RE should complete the *Certification of Categorically Exclusion (subject to 58.5) and* the *Statutory Checklist* forms to document its environmental findings. Such documentation must support the RE's determinations related to compliance with the Federal laws and authorities cited in § 58.5. (Guidance on compliance is provided below in "Compliance with NEPA and Related Federal Laws and Authorities".) Upon completion of the checklist, the RE will make one of three environmental findings in writing:

  The project converts to exempt and *does not* require public notification or approval from LHC [§ 58.34(a)(12)];

  The project invokes compliance with one or more of the laws and/or authorities and, therefore, *requires* public notification and approval from LHC before funds are committed or spent; or

  The unusual circumstances of the project may result in a significant environmental impact and, therefore, compliance with NEPA is required. Therefore, an environmental assessment (EA) must be completed instead.

- ❑ The ERR must also contain:

  Supporting documentation used to prepare the review (See Exhibit 12-2 *Source Documentation for Environmental Reviews*).

  If the project did not convert to exempt, a copy of public *Notice of Intent to Request Release of Funds that was issued.*

Copy of the *Request for Release of Funds and Certification* (HUD form 7015.15); and

Copy of *Authority to Use Grant Funds* (HUD form 7015.16), issued by LHC (or HUD).

- In addition to making a written determination of categorical exclusion, subject to § 58.5, the RE must also determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones. [See *Compliance Documentation Checklist (58.6)* form and discussion in "Other Requirements (§ 58.)6]

- **Categorical exclusions not subject to § 58.5**. The activities that are categorically excluded *not subject to* § 58.5 have been determined by HUD not to have potential for altering any environmental conditions where a review or determination of compliance with the Federal laws and authorities would be required. Actions in this category include:

  - Tenant-based rental assistance;
  - Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction---e.g., closing costs, down payment assistance, interest buy-downs, and similar activities that result in the transfer of title;
  - Affordable housing pre-development costs with no physical impact---e.g., legal consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact; and
  - Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under Part 58, if the approval is made by the same RE that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.

Content of ERR – Categorical exclusion not subject to § 58.5

The RE must document in writing its determination that an activity meets the conditions for categorical exclusion not subject to § 58.5. Complete the *Certification of Categorical Exclusion (not subject to 58.5)* form to document designation of a HOME project or activity in this category. The RE does not have to issue a public notice or request release of funds (RROF) from LHC [§ 58.34(b)].

In addition to making a written determination of categorical exclusion, subject to § 58.5, the RE must also determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones. [See *Certification of Categorical Exclusion (not subject to 58.5)* form and discussion in "Other Requirements (§ 58.6]

- **Environmental Assessment**. Environmental Assessment refers to a category of actions which, either individually or cumulatively, have potential for significant effect on the human environment (40 CFR 1508.4). Therefore, the potential environmental impacts on the human environment resulting from the proposed activity must be analyzed and evaluated according to NEPA procedures, as well as the other Federal laws and authorities cited at §58.5.

  The environmental assessment (EA) is a public record that, upon completion, documents the RE's findings and conclusions about environmental effects, and the reasons for its decision concerning those effects, as well as compliance with Federal laws and authorities.

  Actions that may be funded by HOME and that fall into the category requiring an Environmental Assessment would include, but are not limited to:

  - New construction of five or more residential units on a single site;
  - New construction of five or more single family units on scattered sites that are less than 2,000 feet apart;
  - Major rehabilitation or reconstruction of residential units that increases or decreases the unit density more than 20 percent;
  - Expanding the footprint of a single family unit into the floodplain or wetland area;
  - Conversion of a non-residential structure to create a residential use;
  - Acquisition of land for development of a housing subdivision; and
  - Categorical exclusions with "extraordinary circumstances"---i.e., actions that are unique or without precedent, actions that are substantially similar to those that normally require an Environmental Impact Statement (EIS), actions that are likely to alter existing HUD policy or HUD mandates, or action that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

Content of ERR – Environmental Assessment (EA)

There must be a written determination by the RE that the project falls within this category. The EA includes the following information and analysis, according to NEPA regulations (40 CFR 1500-1508):

- Determination of existing conditions;
- Identification, analysis, and evaluation of all potential impacts on the human environment (i.e., social, economic and natural resources);
- Examination and recommendation of feasible ways to eliminate or minimize adverse environmental impacts;
- Examination of alternatives to the proposed action;
- Compliance determination for all other Federal laws and authorities cited in § 58.5; and
- Determination as to a finding of no significant impact (FONSI) or a finding of significant impact (FSI), which requires the execution of an Environmental Impact Statement (EIS).

The RE should use the *Environmental Assessment* form in evidence of compliance with NEPA and the Federal laws and authorities cited in § 58.5.

Upon completion of the environmental assessment, the RE will make either a finding of no significant impact (FONSI), or a finding of significant impact (FOSI) determination. In the event that a FONSI is made, the RE must issue two public notices, submit a release of funds request and certification to LHC, and receive a release of funds from LHC before funds are committed or spent.

- The ERR must also contain:
  - Supporting documentation used to prepare this review (See Exhibit 12-2 *Source Documentation for Environmental Reviews.*)
  - Copy of public Notice of Intent to Request Release of Funds, if project did not convert to exempt.
  - Copy of the *Request for Release of Funds and Certification* (HUD form 7015.15); and
  - Copy of the *Authority to Use Grant Funds* (HUD form 7015.16) issued by LHC (or HUD.)

In addition, the RE must also determine whether the project triggers any of the other requirements at 24 CFR 58.6, which are the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones. [See the *Environmental Assessment* form and discussion in "Other Requirements (§ 58.6)].

- **Environmental Impact Statement (EIS).** It is not typical for a HOME project to trigger the Environmental Impact Statement requirements. If an RE believes that a project it is contemplating as a possible HOME project may in fact trigger these requirements, it should consult with LHC immediately before taking any further action.

COMPLIANCE WITH NEPA AND RELATED FEDERAL LAWS AND AUTHORITIES

The following section provides guidance to assist REs in compliance with NEPA and the related Federal laws and authorities cited at § 58.5.

Historic Preservation (36 CFR Part 800)

- Section 106 of the National Historic Preservation Act requires RE's to:
  - Consider the effects of their undertakings on historic properties; and
  - Provide the Advisory Council on Historic Preservation with a reasonable opportunity to comment with regard to such undertakings.

- Compliance with Section 106 is achieved by initiating procedures the Advisory Council on Historic Preservation has outlined at 36 CFR Part 800. Section 800.2(a) recognizes the RE's certifying officer as having authority to carry out these procedural responsibilities.

  The focus of Part 800 is on the RE making a determination whether a proposed project will affect buildings, structures, or places that are listed on or are eligible for listing on the National Register of Historic Places (NR). In making this determination, the RE must follow a detailed review process in consultation with the State Historic Preservation Officer (SHPO). This process also provides an opportunity for interested persons, agencies, and Indian tribes to be part of the RE's decision concerning historic properties that may be affected.

  It is important to remember that before approval is given to proceed with HOME-funded projects, the environmental review record must show the Part 800 consultation process was completed.

- Basic steps for compliance with the Section 106 Review Process (36 CFR Part 800) include:

  - Determine whether the project is an undertaking, or has no potential to cause effects on historic properties;
  - Define the area of potential effects (APE) for the undertaking;
  - Identify and evaluate historic properties in the APE;
  - Determine the effect of the undertaking;
  - Assess the effects on listed and/or eligible properties; and
  - Resolve any adverse effects.

Compliance Documentation Required – Historic Preservation

The ERR should contain <u>one</u> of these types of documentation:

- Letter from SHPO that *no historic properties* will be affected;
- RE adequately documents its finding of *no historic properties affected* and SHPO does not object within 30 days;
- RE documents the project meets stipulations of a *Programmatic Agreement* executed with the SHPO; or
- *Memorandum of Agreement* has been executed between the RE and SHPO regarding mitigations measures that will be implemented to resolve adverse effects.

<u>Floodplain Management (Executive Order 11988 and 24 CFR Part 55)</u>

- The purpose of Executive Order 11988 is to require REs to consider alternatives to developing projects in floodplains when other alternatives are available that achieve the same objective.

This is to avoid risking lives and loss of property that results from occupying a floodplain, and to avoid losing the beneficial values of floodplains. Naturally vegetated floodplains can provide a broad area to spread and slow floodwaters, thereby reducing velocities and flood peaks. Slower floodwaters help maintain water quality because the slowed runoff allows sediments to be deposited. Floodplains are also important for recharging groundwater. Rainwater and surface water infiltrate through the generally porous soil of the floodplain into the groundwater.

RE's are required to avoid floodplain development whenever there are *practicable alternatives* to development in the floodplain. According to HUD regulation 24 CFR Part 55, floodplains are those land areas identified on maps published by FEMA as 100-year floodplain (Zones A or V). If the project is a "critical action," the regulation also applies to areas in the 500-year floodplain (Zone B). Coastal high hazard areas are subject to high velocity waters, such as hurricane wave wash. FEMA maps designate these as Zones V1- 30, VE, or V.

Most, if not all, communities in the U.S. have been mapped by FEMA. However, if a community has not been mapped by FEMA, the RE must establish whether or not the area is subject to one percent or greater chance of flooding in any given year [Section 6(c) of the Executive Order]. The RE must research the best available information to determine whether buildings or structures could be damaged by floodwaters because of their location. Sources of information may include: U.S. Corps of Engineers, Community Flood Administrators; U.S. Geological Survey Maps; U.S.D.A. Natural Resources Conservation Service (formerly Soil Conservation Service); state departments of water resources; county public works; or local flood control or levee districts. The RE may also contract to have a special study completed.

- ❑ Basic steps for compliance with floodplain management requirements are at Section 55.20, which identifies the "eight-step" decision making process REs must follow to comply with Executive Order 11988:

  - Step 1- Determine whether the proposed action is located in a 100-year floodplain;
  - Step 2- If the project is in a floodplain, publish notice of the proposal to consider an action in the floodplain (15 calendar day comment period);
  - Step 3- Evaluate practicable alternatives to locating the proposed action in a floodplain ("Practicable" means capable of being done within existing constraints);
  - Step 4- Identify the potential impacts associated with occupancy and modification of the floodplain;
  - Step 5- Design or modify the action to minimize adverse impacts and preserve the beneficial values of the floodplain;
  - Step 6- Reevaluate whether the proposed action is practicable;
  - Step 7- If the RE decides to proceed with the project, it must publish a notice of the decision, addressing why there is "no practicable alternative", the alternatives that were considered, and the mitigation measures being adopted. (Seven calendar day comment period.); and
  - Step 8- Implement the proposed action with mitigation measures.

- HUD has determined that certain activities are excluded from the 8-step decision-making process, including HUD assistance for purchasing, mortgaging or refinancing one-to four- family properties, and minor repairs or improvements on one-to four-family properties [§55.12]. In addition, Part 55 is not applicable if FEMA has issued a Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA) for the subject site in a floodplain.

Compliance Documentation Required – Floodplain Management

The ERR should contain one of these types of documentation:

- Evidence the proposed action is not within a special flood hazard area mapped by FEMA (i.e., 100-year floodplain or 500-year floodplain for critical actions);
- Documentation of the decision making process is not applicable (§ 55.12); or
- The 8-step decision making process was completed and a decision made that there is *no practicable alternative*

Wetlands Protection (Executive Order 11990)

- The purpose of the Executive Order 11990 (Wetlands Protection, May 24, 1977) is to:
  - Avoid, if possible, any long and short-term adverse impacts associated with destruction or modification of wetlands; and
  - To avoid direct or indirect support of new construction in wetlands whenever there is a *practicable alternative*.
- Basic Steps for Compliance with wetlands protection Requirements
  - If new construction or conversion of vacant land is being proposed in a designated wetland, the RE should follow the decision making process in § 55.20 (24 CFR Part 55) and conclude whether there is a practicable alternative to destroying or modifying the wetland.
  - NOTE: A permit from the U.S. Army Corps of Engineers is required if the wetland is within or adjacent to navigable waters of the U.S. or within the jurisdiction of the Corps.

Compliance Documentation Required – Wetlands Protection

The ERR should contain one of these types of documentation:

- The proposed action does not include new construction or expanding the footprint of a building;
- Evidence the new construction will not occur in a designated wetland or expand the footprint of a building into a wetland; or
- There is *no practicable alternative*, according to the completed 8-step decision making process. (U.S. Army Corps of Engineers has issued a permit where they have wetland jurisdiction).

Endangered Species (Endangered Species Act and 50 CFR 402)

- ❑ Section 7 of the Endangered Species Act requires that, when Federal assistance is used for a project, a determination must be made whether continued existence of *Federally-listed* endangered or threatened species is likely to be affected, and whether it will result in their Critical Habitats being destroyed or adversely modified. The regulation implementing compliance with the Act is 50 CFR 402, issued by the Departments of Interior (U.S. Fish and Wildlife Service) and Commerce (U.S. National Marine Fisheries). The regulation also covers species or critical habitat that is *proposed for Federal-listing* and is likely to be jeopardized by the project.

Compliance Documentation Required – Endangered Species
The ERR should contain one of these types of documentation: ▪ Evidence the habitat will not be altered or species affected. ▪ If the proposed action may affect species or their habitat, there is evidence the USFWS or NMFS has reviewed the biological assessment and agrees with the findings of *no effect*. ▪ If the proposed action will likely adversely affect species or their habitat, the USFWS or NMFS has issued either a "no jeopardy" or "jeopardy" biological opinion.

Coastal Zone Management Act

- ❑ When HOME funds will be used for physical changes to properties or land within or adjacent to the coastal zone, the RE must make a determination whether the project is *consistent* with the state's approved coastal management program.

The State of Louisiana does have coastal zones and the RE must address areas of environmental concern for all proposed development in coastal zones.

Compliance Documentation Required – Coastal Zone Management
▪ The ERR should contain a general location map or statement establishing there are no coastal zone management areas in the community or State of Louisiana, or use other documentation that may be available.

Sole Source Aquifers

- ❑ Aquifers are underground geological formations that yield a significant amount of water to a well or spring. The regulations at 40 CFR Part 149 require the RE to:
  - Determine whether a project is within a Critical Aquifer Protection Area designated by EPA; and
  - Whether project activities have the potential to contaminate the aquifer. For example, drilling water wells and constructing water treatment and industrial facilities have the potential of contaminating aquifers.

- More than 17,000 square miles of Louisiana falls within areas designated by the U.S Environmental Protection Agency as "Sole Source Aquifers" (SSAs). Currently, there are 70 designated SSAs in the United States. The Chicot SSA and the Southern Hills SSA together cover 25 parishes in Southern Louisiana and form one of the largest designated areas in the country. If a project is being proposed in one of the designated area, a copy of the SSA map regarding the proposed site should be included in the project ERR.

Compliance Documentation Required – Sole Source Aquifers

The ERR should contain <u>one</u> of these types of documentation:

- Documentation the proposed action is not within the boundaries of an EPA designated SSA;
- Documentation the action is not a regulated activity within the boundaries of a SSA; or
- Documentation that EPA has reviewed and commented on the proposed action within a SSA.

<u>Wild and Scenic Rivers Act</u>

- Entire river systems or portions of rivers may be designated wild, scenic, or recreational and included in the National Wild and Scenic Rivers System (NWSRS) either by Act of Congress, or may be designated by a state or states if the U.S. Secretary of Interior finds it meets the criteria established by the Act.

  In order to be in compliance with this Act, the RE must:

  - Determine whether any river listed in the NWSRS, or that is designated for inclusion in the NWSRS, would be directly and adversely affected by development activities associated with the project; and
  - If the project is located above or below a listed river, the RE must determine whether the project will impact the river management area or could unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

Compliance Documentation Required – Wild and Scenic Rivers

The ERR should contain <u>one</u> of these types of documentation:

- Evidence the proposed action is not within *one mile* of a designated Wild, Scenic, or Recreational River (http://www.nps.gov/rivers/wildriverslist.html); or
- Documentation that contact was made with the Federal (or State) agency that has administrative responsibility for management of the river and that the proposed action will not affect river designation.

<u>Clean Air Act</u>

- The Clean Air Act is a Federal law; however, the states do much of the work to carry out most of the Act. Each state develops state implementation plans (SIP) that contain its objectives and regulations for carrying out the Clean Air Act.

The purpose of an implementation plan is to ensure that ambient concentrations of any of six air pollutants are within the established levels of the National Ambient Air Quality Standards (NAAQS). The six pollutants are ozone, carbon monoxide, particulate matter, sulfur dioxide, lead, and nitrogen. Sources for pollutants include transportation vehicles, industrial facilities, and farming operations.

Asbestos removal and abatement is apart of the Clean Air Act. Refer to 40 CFR 61, Subpart M, National Emission Standards for Hazardous Air Pollutants (NESHAP.)

Compliance Documentation Required – Clean Air Act

The ERR should contain one of these types of documentation:

- A resource expert has determined the proposed action is not of a type that would contribute air pollution;
- The proposed action is within an area in *attainment* with the NAAQS for all six pollutants; or
- The proposed action is within a *non-attainment* area for one or more of the pollutants but is in conformance with the State Implementation Plan (SIP).

Farmland Protection Policy Act (7 CFR Part 658)

- The purpose of the Farmland Protection Policy Act is to minimize the effect of Federal programs on the unnecessary and irreversible conversion of farmland to nonagricultural uses. The Act does not apply to lands already in, or committed to, urban development (i.e., 30 structures per 40 acres or water impoundment). However, land that meets the definition of prime or unique farmlands, or is determined to be of statewide or local significance (with concurrence by the U.S. Secretary of Agriculture) is subject to the Act.

  If the RE cannot determine whether or not the land is classified as prime or unique, it should request the USDA Natural Resources Conservation Service (NRCS) to make the determination by submitting the Farmland Conversion Impact Rating Form (AD-1006). This form is available at NRCS offices or the Internet.

Compliance Documentation Required – Farmland Protection

The ERR should contain one of these types of documentation:

- Evidence the current zoning classification is not for farmland use (i.e., residential use, commercial use, etc.);
- Information from NRCS that shows the site is not prime or unique farmland; or
- Evidence from NRCS shows the site is classified prime or unique agricultural land, and the RE completed and submitted form AD-1006 to NRCS and received its comments.

Environmental Justice (Executive Order 12898)

- The Executive Order on Environmental Justice directs each Federal agency, and in the case of Part 58 the RE, to make achieving environmental justice part of its mission by "identifying and addressing as appropriate disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Presently, there aren't any regulations for implementing the Executive Order. However, HUD has issued a Strategy Plan for Implementing Environmental Justice, which it uses as guiding principle in deciding whether the project could result in disproportionate high and adverse effects on these populations.

  During the environmental review process, health and environmental issues may arise concerning the suitability of the project site for its intended use, particularly its suitability for human habitation. The RE should document how the Executive Order was given consideration in its final decision.

Compliance Documentation Required – Environmental Justice

The ERR should contain ALL these types of documentation:

- The proposed action is compatible with surrounding land uses;
- The site or surrounding neighborhood does not suffer from adverse environmental conditions;
- The proposed action would not create a negative environmental impact or aggravate an existing impact.

Site Contamination from Hazardous and/or Radioactive Materials [§ 58.5(i)(2)]

- Section 58.5(i)(2) states that all properties receiving HUD assistance must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances that *"could affect the health and safety of the occupants of conflict with the intended utilization of the property."* Properties having clear health risks for the occupants or inhabitants should be rejected. For multifamily housing (5 or more dwelling units) compliance with this policy requires efforts to identify any hazardous substances and radioactive materials that may be on site or off site that could harm inhabitants, as well as an evaluation of previous uses of the properties.

Compliance Documentation Required – Site Contamination

The ERR should contain one of these types of documentation:

- Evidence the site is not contaminated (For multifamily housing projects this includes on site and off site contamination and previous uses of the site);
- Evidence supporting a determination the hazard will not affect health and safety of the occupants or conflict with the intended use of the site.

Explosive/Flammable Operations (24 CFR 51, Subpart C)

- The purpose of this HUD regulation is to ensure there is an *acceptable separation distance* between people and buildings from stationary aboveground storage tanks more than 100 gallons in size and that contain materials that are explosive or flammable in nature (e.g., gasoline, fuel oil, kerosene, crude oil, propane). This is to prevent injury to people and damage to property from industrial accidents. The RE must determine if there are hazardous liquids and gases being stored within one mile of the project, and within line-of- sight of the project.

The regulation does not apply to rehabilitation of buildings that will not increase residential densities, convert buildings for habitation, or makes vacant buildings habitable (§ 51.201). Neither does the regulation apply to individual fuel supply for one to four family housing units (Memorandum from Office of Environment and Energy, HUD, October 3, 1992).

Compliance Documentation Required – Stationary Aboveground Storage Tanks

The ERR should contain one of these types of documentation:

- Document the proposed action does not meet the definition of a "HUD assisted project" (§ 51.201);
- Field review documentation or aerial photos show no aboveground tanks within *one mile*;
- If tanks are within one mile:
- There's an effective barrier;
- There's an *acceptable separation distance* for people and buildings;
- The people and buildings can be protected with mitigation measures.

Noise Abatement and Control (24 CFR 51, Subpart B)

- The purpose of this HUD regulation is to encourage suitable separation between noise sensitive lands uses, particularly housing, and major noise sources (i.e., roadways, railroads, and military and civilian airports). The RE must determine whether there are any major roadways with 1,000 feet, railroads within 3,000 feet, and military or civilian airports (regulated by the Federal Aviation Administration) that are within 15 miles of the project.

HUD's noise standards are based on the Day-Night Average (DNL) Sound Level System---a system of calculating noise exposure instead of measuring it with instruments. This system is a 24 hour average sound level (expressed in decibels), with an additional 10 decibels added for nighttime noise. The calculation is based upon projected conditions that are expected at least 10 years beyond the project approval date. Noise is considered *Acceptable* when the exterior noise level is *65 DNL or less*. Otherwise, attenuation measures must be incorporated into construction plans (*66-75 DNL, Normally Unacceptable*). If the exterior noise level is *above 75 DNL* (Unacceptable), the project requires special approval from the certifying officer, or it should be disapproved [24 CFR 51.104(a)(2)].

The RE must determine whether the exterior noise level at the project site is within HUD's standard for acceptability, or whether noise attenuation is required or another site should be selected for the project. Making this determination may require completing a noise calculation for roadways, railroads, and/or airports according to guidelines provided in The Noise Guidebook [HUD-953-CPD(1)]. This guidebook is issued by and available from HUD online.

Compliance Documentation Required – Noise Abatement and Control

The ERR should contain one of these types of documentation:

- Documentation the proposed action is not:
  - ✓ A *noise sensitive land use*, according to [§ 51. 101(a)(2)] (i.e., housing);
  - ✓ Within 1000 feet of a major roadway, 3,000 feet of a railroad, or 15 miles of a military of FAA-regulated civil airfield.
- If within those distances, documentation shows there's an effective noise barrier;
- If within those distances, documentation shows the noise level is *Acceptable* (at or below 65 DNL);
- Documentation shows the noise generated by the noise source(s) is *Normally Unacceptable*, and noise attenuation requirements are identified and will bring the interior noise level to 45 DNL and/or exterior noise level to 65 DNL.

Airport Clear Zones (24 CFR 51, Subpart D)

- ❑ Clear Zones, Runway Clear Zones, and Accident Potential Zones are designated areas at the end of airport runways where the greatest number of airplane accidents occur (about 75%). This HUD regulation prohibits using HUD assistance for:
  - New construction; and
  - Major or substantial rehabilitation and modernization activities if projects are located within a Clear Zone or Runway Clear Zone.
- ❑ It also prohibits using HUD assistance for these activities in an Accident Potential Zone, if such activities would:
  - Change the current use of the facility;
  - Significantly increase the density or number of people at the site; or
  - Introduce explosive, flammable, or toxic materials to the area.
- ❑ However, this prohibition does not apply to the purchase, sale or rental of existing properties, nor to minor rehabilitation/modernization or emergency assistance activities. (Minor rehabilitation/modernization would mean, for Clear Zones and Runway Clear Zones, it does not significantly prolong the physical or economic life of a building. For Accident Potential Zones, it does not change its use, increase density, or introduce explosive, flammable, or toxic materials. See § 51.302.)

Compliance Documentation Required – Airport Clear Zones

The ERR should contain one of these types of documentation:

- Documentation there are no FAA-regulated airports within 2500 feet and/or Dept. of Defense airfields within 15,000 feet (about 2.8 miles) of the proposed project;
- There's documentation the rule is not applicable to the proposed project (i.e., acquisition of an existing building, "minor" rehabilitation, or emergency action);
- The project is within the specified distances, but the map of the airport/airfield shows the proposed action is not located within a Runway Clear Zone, Clear Zone, or Accident Potential Zone.

Compliance with NEPA

- The focus of NEPA is on addressing potential impacts related to the human environment (i.e., social, economic and natural resources). So, not only must the Environmental Assessment (EA) to address compliance with the Federal laws and authorities (§ 58.5) that were previously discussed in this chapter, but the RE must also address additional environmental factors. To accomplish this, the RE must determine the effects of the proposed project on the character, features and resources of the project area. Determinations of impact should be based on site observations, information from relevant documents and reports, special studies, or correspondence with the appropriate government agencies (See Exhibit 2 in this chapter.)

  RE's should visit the project site to assess or determine the presence/absence of the following factors included in the *Environmental Assessment (*see section called *Environmental Assessment Checklist*):

  - Unique and natural features;
  - Site suitability, access, and compatibility with the surrounding environment;
  - Soil stability, erosion, and drainage;
  - Nuisances and hazards (manmade or built); and
  - Commercial/retail and transportation.

- In addition, REs must contact the appropriate local agencies to assess the impact that the project will have on the areas listed in the checklist. Detailed guidance is provided in the HUD publication entitled Environmental Review Guide For Community Development Block Grant Programs under Title I of the Housing and Community Development Act of 1974, as Amended (HUD-CPD-782(2), September 1991).

  A summary of some of this guidance is provided below:

  - **Unique and natural features.** To supplement the determination of unique and natural features, contact your state agency that deals with natural resources to determine if any designated Natural Areas or Rare Species Habitats will be affected by the project.

- **Site suitability, access and compatibility with the surrounding environment.** To supplement the determination of site suitability, access and compatibility with the surrounding environment, contact the local planning agency or board.

- **Soil stability, erosion and drainage.** To supplement the determination of soil stability, erosion and drainage, refer to the Natural Resource Conservation Service (NRCS) County Soil Survey to determine if engineering restraints are indicated. The Soil Survey may be obtained by contacting the local NRCS office. Provide comments from the site engineer or local development department if engineering restraints are indicated based on the Soil Survey. Where applicable, a review of a geologic map produced by the state geological surveys may be required.

- **Water supply/sanitary sewers.** To assess water supply/sanitary sewers, contact the local public works department.

- **Solid waste disposal.** To assess solid waste disposal, contact the local public works department.

- **School services.** To assess school services, contact the local school board.

- **Parks, recreation, and social services.** To assess parks, recreation, and social services contact the local planning department, parks and recreation department, and social services department.

- **Emergency health care, fire and police services.** To assess emergency health care, fire, and police services contact the local fire department, police department, and emergency management organization.

- **Transportation.** To assess transportation contact the state or city transportation department.

❑ Once determinations have been made, the appropriate impact code must be entered from the list provided in the EA:

- No impact anticipate;

- Potentially beneficial;

- Potentially adverse;

- Requires mitigation; and

- Requires project modification.

❑ The RE must note names, dates of contact, telephone numbers and page references as well as any mitigation measures required. Attach additional source documentation to the EA as appropriate.

OTHER REQUIREMENTS (§ 58.6)

The following section outlines other Environmental Review requirements.

Flood Insurance

- Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) requires that Federal funds shall not be provided to an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazard areas unless:
  - The community is participating in the National Flood Insurance Program, or it has been less than a year since the community was designated as having special hazards; and
  - Flood insurance is obtained.
- REs are responsible for ensuring that property owners receiving HOME assistance take flood insurance on properties located in a 100-year floodplain. Flood insurance must be taken for the life of a loan, or the useful life of an improvement funded by a grant.

Coastal Barriers

- HUD Assistance may not be used for HOME assisted activities proposed in the Coastal Barrier Resource System. The Act prohibits Federal assistance for development or improvement of barrier islands that are subject to frequent damage by hurricanes and high storm surges.

Runway Clear Zone or Clear Zone

- The RE shall advise buyers of existing property whether the property is located in a runway clear zone or clear zone. Additional, the RE shall inform the buyer of the implications of such a location, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information. (A copy of this disclosure statement, *Notice to Prospective Buyers of Properties Located in Runway Clear Zones and Clear Zones/Accident Potential Zones*, is contained in the EA form.)

RELEASE OF FUNDS AND APPROVAL PROCESS

There are several steps related to the release of funds and approval process.

Public Notification

- The public notification process is an integral part of the environmental review process that allows the public, interested persons, and agencies to voice their opinions about the project's potential environmental impact and the RE's environmental findings. Public notices are required when the RE determines that a project which is categorically excluded subject to § 58.5 cannot convert to exempt, or when the RE prepares an environmental assessment (EA) or environmental impact statement (EIS).

Categorical Exclusions That Cannot Convert to Exempt

- ❑ If the proposed activity triggers compliance with any of the Federal laws and authorities, and there is documentation supporting this finding, the RE must then issue a *Notice of Intent to Request Release of Funds*.

  Publish or post/mail a *Notice of Intent to Request Release of Funds* (NOI/RROF), according to §§ 58.45 and 58.70. A minimum of 7 calendar days must be allowed for public comment if the notice is published in a newspaper of general circulation in the affected community, or a minimum of 10 calendar days if the notice is posted and/or mailed, according to established citizen participation procedures.

  NOTE: If the notice is published, it only needs to appear once in the newspaper and does not have to be published again for each of the 7 days of the comment period. If posted, the notice must be maintained in place until after the public comment period has expired.

  The public comment period begins at 12:01 a.m. local time on the day following the publication or posting/mailing date of the notice (§ 58.21).

  The RE must consider and respond to any comments received, and resolve any outstanding issues before signing and submitting a *Request for Release of Funds and Certification* to LHC (or HUD). A copy of the public notice must accompany this request. LHC (or HUD) has 15 calendar days from the date it receives the RE's request (or 15 days from the date that appears in the notice, whichever is later) before it may approve release of funds (*Authority to Use Grant Funds* is issued).

- ❑ In addition to publishing or posting/mailing the notice, the RE must also disseminate a copy of the notice, at minimum, to individuals and groups known to be interested in the project/activities, to the local news media, to the appropriate tribal, local, state and Federal agencies, to Regional Office of the Environmental Protection Agency having jurisdiction, and to LHC (or HUD) (§ 58.45).

Environmental Assessments

- ❑ Upon completion of the EA, the RE will make either a finding of no significant impact (FONSI), or a finding of significant impact (FOSI) determination. In the event that a FONSI is made, the RE must issue two public notices: *Finding of No Significant Impact* (FONSI) and *Notice of Intent to Request Release of Funds* (NOI/RROF). These notices may be published concurrently.

  When there is a combined FONSI/NOI-RROF notice, a minimum of 15 calendar days must be allowed for public comment if the notice is published in a newspaper of general circulation in the affected community, or a minimum of 18 calendar days if the notice is posted and/or mailed, according to established citizen participation procedures.

  NOTE: If the notice is published, it only needs to appear once in the newspaper and does not have to be published again for each of the 15 days of the comment period. If the notice is posted, it must be maintained in place until after the public comment period has expired.

  The public comment period begins at 12:01 a.m. local time on the day following the publication or posting/mailing date of the notice (§ 58.21).

The RE must consider and respond to any comments received, and resolve any outstanding issues before signing and submitting a *Request for Release of Funds and Certification* to LHC (or HUD). A copy of the public notice must accompany this request. LHC (or HUD) has 15 calendar days from the date it receives the RE's request (or 15 days from the date that appears in the notice, whichever is later) before it may approve release of funds (*Authority to Use Grant Funds* is issued.)

In the event that a FOSI is made, the RE must initiate an Environmental Impact Statement (EIS) in accordance with Subparts F and G of Part 58. An EIS has additional public involvement and notification requirements. Consult with LHC is there is a FOSI determination.

- ❑ In addition to publishing or posting/mailing the notice, the RE must also disseminate a copy of the notice, at minimum, to individuals and groups known to be interested in the project/activities, to the local news media, to the appropriate tribal, local, state and Federal agencies, to Regional Office of the Environmental Protection Agency having jurisdiction, and to LHC (or HUD) (§ 58.45).

OTHER STATE AND LOCAL REQUIREMENTS

This section addresses State and local requirements and policies that must be adhered to as part of project planning and development. Only asbestos abatement and removal, which falls under the Clean Air Act, is apart of the Part 58 environmental review compliance process. Lead-based paint is addressed in the HOME program regulations.

<u>Solid Waste Disposal</u>

Legislation:	**Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901-6987**
Citations:	**40 CFR 240-265**
Applicability:	**Any activity generating solid waste that will require a disposal permit**
Contact Agency:	**Louisiana Department of Environmental Quality (LDEQ)** **Solid Waste Management Division** **602 North Fifth Street** **Baton Rouge, LA 70802** **1(866)-896-LDEQ (5337)**

- ❑ Any projects generating solid waste that will require permitted disposal methods must obtain any required permits from the Louisiana Department of Environmental Quality (LDEQ) Solid Waste Management Division. Copies of all applicable permits must be submitted to the Louisiana Economic Development Commission for review.

Lead Based Paint

Legislation:	**Lead Based Paint Hazard Elimination**
Citations:	**24 CFR 35, subpart A and Sections 1012 and 1013 of the Residential Lead-based Paint Hazard Reduction Act of 1992; EPA's Residential Lead-Based Paint Disclosure Program web page** at https://www.epa.gov/lead.
Applicability:	**Units built before 1978.**
Contact Agency:	**LDEQ** **Air Division – Asbestos/Lead Branch** **602 North Fifth Street** **Baton Rouge, LA 70802** **(225)-291-3300**

- Federal Requirements for lead-based paint are addressed in Chapter 13, Other Federal Requirements. Additional guidance regarding state lead-based paint rules can be obtained from LHC program staff.

Asbestos Identification and Abatement

Legislation:	**Asbestos Identification and Abatement**
Citations:	**The Clean Air Act of 1972, as amended; 40 CFR 61, dated November 20, 1990, as amended; Louisiana Environmental Regulatory Code (ERC), Title 33: Part III.**
Applicability:	**All projects involving rehabilitation of buildings**
Online Resource:	http://www.deq.louisiana.gov/portal/Portals/0/planning/regs/title33/33v03-201403.pdf
Contact Agency:	**LDEQ** **Air Division – Asbestos/Lead Branch** **602 North Fifth Street** **Baton Rouge, LA 70802** **(225)-291-3300**

- All projects involving the rehabilitation of existing buildings or structures must be free of friable asbestos. Testing by a state-certified asbestos testing company or individual for the presence of friable asbestos must be conducted before HOME assistance can be approved. Because of the expense involved in asbestos abatement, it is the policy of the Louisiana Housing Corporation to refrain from rehabilitation activities in asbestos –present buildings unless there is no other practical alternative.

All persons conducting asbestos tests and involved in mitigation of asbestos must be licensed by the LDEQ in accordance with the LDEQ Air Quality Regulations, LAC 33:III.5151.F1.f and LAC 33:III.5151.B. Because asbestos testing must be conducted prior to execution of the HOME Agreement, these costs are ineligible for project reimbursement. Any questions regarding asbestos detection and abatement must be referred to LHC HOME staff prior to project approval.

Forestry

- Projects located near state or national forests must be reviewed by:

  Department of Agriculture and Forestry
  State of Louisiana
  5825 Florida Boulevard
  Baton Rouge, LA 70806
  Telephone: (225) 922-1234 or 1(866) 927-2476

EXHIBIT 12-3

SUMMARY OF ENVIRONMENTAL REVIEW ACTION BY ACTIVITY

Activity	**Action**	**Documentation/Form**	**Notes**
Administration	Exempt § 58.34 (a)	Complete *Certification of Exemption*	Under HOME rules, funds must be associated with a specific project to be considered a project cost rather than administration cost.
TBRA	Cat. Ex. *not subject to* § 58.5 § 58.35 (b)(1)	Complete *Certification of Categorical Exclusion (not subject to* § 58.5)	Public notification and HUD or LHC approval <u>is not</u> required.
Homeowner-Rehabilitation	Cat. Ex. *subject to* § 58.5 § 58.35 (a)(3)(i)	Complete *Certification of Categorical Exclusion (subject to 58.5), Statutory Checklist, and Compliance Documentation Checklist (58.6)*	If project <u>does not</u> convert to exempt, public notification and HUD or LHC approval is required prior to committing and expending funds.
Homeowner-Reconstruction	Cat. Ex. *subject to* § 58.5 § 58.35 (a)(4)(ii)	Complete *Certification of Categorical Exclusion (subject to 58.5), Statutory Checklist, and Compliance Documentation Checklist (58.6)*	If project <u>does not</u> convert to exempt, public notification and HUD or LHC approval is required prior to committing and expending funds.

Homebuyer Acquisition existing unit	Cat. Ex. *subject to* § 58.5 § 58.35 (a)(5)	Complete *Certification of Categorical Exclusion (subject to 58.5), Statutory Checklist, and Compliance Documentation Checklist (58.6)*	If project <u>does not</u> convert to exempt, public notification and HUD or LHC approval is required prior to committing and expending funds.
Activity	**Action**	**Documentation/Form**	**Notes**
Homeowner-New Construction development (single family 1-4 units)	Cat. Ex. *subject to* § 58.5	Complete *Certification of Categorical Exclusion (subject to 58.5), Statutory Checklist, and Compliance Documentation Checklist (58.6)*	If project <u>does not</u> convert to exempt, public notification and HUD or LHC approval is required prior to committing and expending funds.
New Construction development (5 or more single family units on scattered sites: • The scattered sites are *more than* 2,000 feet apart, <u>and</u> • No more than 4	Cat. Ex. *subject to* § 58.5 § 58.35 (a)(4)(ii)	Complete *Certification of Categorical Exclusion (subject to 58.5), Statutory Checklist, and Compliance Documentation Checklist (58.6)*	If project <u>does not</u> convert to exempt, public notification and HUD or LHC approval is required prior to committing and expending funds.
Acquisition, Rehabilitation and Resale (single family 1-4 units)	Cat. Ex. *subject to* § 58.5	Complete *Certification of Categorical Exclusion (subject to 58.5), Statutory Checklist, and Compliance Documentation Checklist (58.6)*	If project <u>does not</u> convert to exempt, public notification and HUD or LHC approval is required prior to committing and expending funds.

Rental Acquisition existing building (single family 1-4 units or multifamily)	Cat. Ex. *subject to* § 58.5	Complete *Certification of Categorical Exclusion (subject to 58.5), Statutory Checklist, and Compliance Documentation Checklist (58.6)*	If project does not convert to exempt, public notification and HUD or LHC approval is required prior to committing and expending funds.
Rental Rehabilitation (multi-family 5 or more units): • Unit density will not change more than 20% as a result of rehab; • Current use will not changed from residential to non-residential; and/or • Estimated cost of rehab is less than 75% of replacement cost after rehab	Cat. Ex. *subject to* § 58.5	Complete *Certification of Categorical Exclusion (subject to 58.5), Statutory Checklist, and Compliance Documentation Checklist (58.6)*	If project does not convert to exempt, public notification and HUD or LHC approval is required prior to committing and expending funds.
Activity	**Action**	**Documentation/Form**	**Notes**
Vacant Land Acquisition for New Construction (Rental or Single Family, 5 or more units on a site)	Environmental Assessment	Complete *Environmental Assessment* (which includes NEPA and related Federal laws and authorities at § 58.5, as well as § 58.6 requirements)	Public notification and HUD or LHC approval is required prior to committing and expending funds
New Construction development (5 or more single family units on scattered sites: • The scattered sites are *less than* 2,000 feet apart, and/or • There a more than 4 units per site	Environmental Assessment	Complete *Environmental Assessment* (which includes NEPA and related Federal laws and authorities at § 58.5, as well as § 58.6 requirements)	Public notification and HUD or LHC approval is required prior to committing and expending funds

Homeowner-Rehabilitation • Footprint of building is increased in a floodplain or wetland.	Environmental Assessment	Complete *Environmental Assessment* (which includes NEPA and related Federal laws and authorities at § 58.5, as well as § 58.6 requirements)	Public notification and HUD or LHC approval is required prior to committing and expending funds

Rental Rehabilitation (multi-family 5 or more units): • Unit density is changed more than 20% as a result of rehab; • Current use will be changed from residential to non-residential or visa versa; and/or • Estimated cost of rehab is more than 75% of replacement cost after rehab	Environmental Assessment	Complete *Environmental Assessment* (which includes NEPA and related Federal laws and authorities at § 58.5, as well as § 58.6 requirements)	Public notification and HUD or LHC approval is required prior to committing and expending funds

NOTE: Except for administrative costs, combinations of activities above that make up a project must be evaluated in a single environmental review. Whichever of the project activities requires the highest level of review dictates the type of review required for the entire project (see section in this chapter on "Aggregation of Project Activities).

LHC FORMS REFERENCED IN CHAPTER

LHC has provided a link to environmental review resources at: http://www.lhc.la.gov/page/Asset-Management

The following documents may be viewed by accessing various pages in the link:

- Certification of Exemption for HUD funded projects
- Certification of Categorical Exclusion (not subject to 58.5)
- Statutory Checklist
- Instructions for Completing the Statutory Worksheet
- Compliance Documentation Checklist (58.6)
- Environmental Assessment
- Public Notice – Notice of Intent to Request Release of Funds
- Combined Public Notice – Finding of No Significant Impact and Notice of Intent to Request Release of Funds
- Request for Release of Funds and Certification (HUD form 7015.15)
- Authority to Use Grant Funds (HUD form 7015.16)
- Instructions for Completing HUD form 1015.15
- Insurance Coverage (Flood)
- Deficiency Notice

OTHER RESOURCES REFERENCED

- Environmental Websites
- Environmental Review Requirements Flowchart
- 24 CFR 51, Environmental Criteria and Standards
- 24 CFR 55, Floodplain Management
- 24 CFR 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

Besides the LHC HOME rules and requirements covered in the previous chapters, several additional Federal rules apply to all LHC HOME Program activities. Recipients must ensure that their programs comply with these additional Federal requirements.

The other Federal requirements addressed in this chapter include non-discrimination and equal access, employment and contracting, site and neighborhood standards, lead-based paint, and acquisition and relocation. A number of these other requirements are issued by Federal agencies other than HUD, including relocation (Department Of Transportation), non discrimination (Department Of Justice), employment and contracting (Department of Labor). This means that they are not necessarily included in the HOME final rule but are applicable nonetheless; LHC HOME Program Recipients should familiarize themselves with these agencies and the applicable regulations.

NON-DISCRIMINATION AND EQUAL ACCESS

- No person in the United States shall on the grounds of race, color, national origin, religion or sex be excluded, denied benefits or subjected to discrimination under any program funded in whole or in part by HOME funds.
- Consequently, HOME Program Recipients must take measures to ensure non-discriminatory treatment, outreach and access to program resources. This applies to employment and contracting, as well as to marketing and selection of program participants.

Fair Housing and Equal Opportunity

- Recipients must comply with all of the following Federal laws, executive orders and regulations pertaining to fair housing and equal opportunity. They are summarized below.
  - **Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.)**: States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color or national origin. The regulations implementing the Title VI Civil Rights Act provisions for HUD programs may be found in 24 CFR Part 1.
  - **The Fair Housing Act (42 U.S.C. 3601-3620):** Prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. Furthermore, section 104(b)(2) of the Act requires that each grantee certify to the secretary of HUD that it is affirmatively furthering fair housing. The certification specifically requires grantees to conduct a fair housing analysis, develop a fair housing plan, take appropriate actions to overcome the effects of any impediments identified and maintain records on the analysis, plan and actions in this regard. Fair Housing Act implementing regulations for HUD programs may be found in 24 CFR Part 100-115.

- **Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259)**: Prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. Equal Opportunity in Housing regulations may be found in 24 CFR Part 107.

- **Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101)**: Prohibits age discrimination in programs receiving Federal financial assistance. Age Discrimination Act regulations may be found in 24 CFR Part 146.

❑ The HOME Program Model Guidebook on Fair Housing for HOME Participants is resource that is located online at: http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/200510.pdf.

❑ LHC has additional expectations and requires Recipients to:

- Adopt any existing Fair Housing Ordinances in their jurisdictions;

- Adopt any existing Affirmative Marketing Plan developed by their jurisdictions; and

- Implement activities and projects consistent with the Analysis of Impediments to Fair Housing Choice (AI), specifically the appropriate actions identified to overcome the effects of impediments, in the most current Consolidated Plan.

Affirmative Marketing

❑ Recipients and developers/owners/sponsors must create an affirmative marketing plan for all housing with five or more HOME-assisted units.

❑ **Elements**: The plan will be reviewed for completeness in the following areas.

- Compliance with fair housing laws (for example: use of the Fair Housing logo, or equal opportunity language);

- Detailed description of what Recipients will do to affirmatively market housing assisted with HOME funds;

- Detailed description of what Recipients will do to inform persons not likely to apply for housing without special outreach; and

- Documentation of actions taken to affirmatively market HOME-assisted units and to assess marketing effectiveness.

- Additionally, Recipients have to describe how they will monitor the success of their affirmative marketing efforts, including the corrective actions that will be taken where affirmative requirements are not met and/or successful.

❑ All applicants are required to complete the Affirmative Fair Housing Marketing (AFHM) Plan for Single Family and/or Multi-Family Housing, as applicable to their programs.

Handicapped Accessibility

- The HOME final rule also requires adherence to the three regulations governing the accessibility of Federally-assisted buildings, facilities and programs:

  - **Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)**: Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.

  - **Fair Housing Act**: Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19).

  - **Section 504**: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in Federally assisted programs on the basis of handicap. Section 504 imposes requirements to ensure that "qualified individuals with handicaps" have access to programs and activities that receive Federal funds. Under Section 504, Recipients are defined more broadly than under the HOME program. Section 504 Recipients include any entity that receives Federal funding (for example, a Recipient or CHDO). The specific requirements under Section 504 are summarized in Exhibit 13-1.

  - For any Recipient principally involved in housing or social services, ***all*** of the activities of the agency -- not just those directly receiving Federal assistance -- are covered under Section 504.

  - Contractors and vendors are subject to Section 504 requirements only in the work they do on behalf of a Recipient.

  - The ultimate beneficiary of the Federal assistance is not subject to Section 504 requirements.

  - Under Section 504, Recipients are ***not*** required to take actions that create undue financial and administrative burdens or alter the fundamental nature of the program.

Exhibit 13-1 Section 504 Requirements

Removal of Physical Barriers

- For **new construction** of multi-family projects, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent of the units (but not less than one unit) must be accessible to individuals with sensory impairments.
- The Section 504 definition of **substantial rehabilitation** multi-family projects includes construction in a project with 15 or more units for which the rehabilitation costs will be 75 percent or more of the replacement cost. In such developments, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent (but not less than one unit) must be accessible to individuals with sensory impairments.
- When **rehabilitation less extensive than substantial rehabilitation** is undertaken, alterations must, to the maximum extent feasible, make the unit accessible to and usable by individuals with handicaps, until 5 percent of the units are accessible to people with mobility impairments. Alterations to common spaces must, to the maximum extent feasible, make the project accessible.
- Accessible units must be, to the maximum extent feasible, distributed throughout projects and sites and must be available in a sufficient range of sizes and amenities so as to not limit choice.
- Owners and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps. They also must take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.
- When an accessible unit becomes vacant, before offering the unit to a non-handicapped individual, the owner/manager should offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.
- The usual standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS), although deviations are permitted in specific circumstances.

Provide Program Accessibility

- Individuals with handicaps must be able to find out about, apply for and participate in Federally-assisted programs or activities.
- Special communication systems may be needed for outreach and ongoing communication (e.g., Telecommunications Devices for the Deaf (TDD), materials on tape or in Braille, accessible locations for activities and meetings).
- Policies and procedures must be non-discriminatory (e.g., housing providers may not ask people with handicaps questions not asked of all applicants, screen individuals with handicaps differently or assess an individual's ability to live independently).

Make Employment Accessible

- Employers must not discriminate.
- Employers must remove physical and administrative barriers to employment.
- Employers must make reasonable accommodations for individuals with known handicaps (e.g., job restructuring, providing readers or sign interpreters, making facilities accessible).

Administrative Requirements

- If Recipients have 15 or more employees, they must:
  - ✓ designate a Section 504 Coordinator, and
  - ✓ notify program participants and employees of non-discrimination policies.
- All Recipients must conduct self-evaluations of compliance with Section 504.

EMPLOYMENT AND CONTRACTING

The cross-cutting Federal regulations discussed below govern employment and contracting opportunities, including equal opportunity, labor requirements and contracting/procurement procedures.

Equal Opportunity

- Recipients must comply with the following regulations that ensure equal opportunity for employment and contracting.
  - **Equal Employment Opportunity, Executive Order 11246, as amended**: Prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin. Provisions to effectuate this prohibition must be included in all construction contracts exceeding $10,000. Implementing regulations may be found at 41 CFR Part 60.
  - **Section 3 of the Housing and Urban Development Act of 1968**: Requires that, to the greatest extent feasible, opportunities for training and employment arising from HOME will be provided to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work (all types) to be performed in connection with HOME will be awarded to business concerns that are located in or owned by persons residing in the program service area.
  - A number of resources are available online at: www.hud.gov/offices/fheo/section3/section3.cfm, including:
    - ✓ The Section 3 Regulations: 24 CFR 135;
    - ✓ A sample Section 3 Plan; and
    - ✓ The Section 3 Summary Report (HUD Form 60002).
  - Additional guidance from HUD on compliance and recordkeeping for Section 3 is also available online at: http://www.hud.gov/offices/cpd/communitydevelopment/toolkit/files/MBE-WBEOutreach.pdf. *Please refer to pages 2 and 3 of the Guidance.*
  - **Minority/Women's Business Enterprise**: Under Executive Orders 11625, 12432 and 12138, LHC must prescribe procedures acceptable to HUD for a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all contracts (See 24 CFR 85.36(e).).
  - LHC requires that all Recipients commit to support the participation of Louisiana Minority/Women's Business Enterprises (M/WBE) by establishing a goal to procure contracted goods and services from Louisiana M/WBEs. The Minority & Women Business Enterprises Plan is a part of the application form for LHC HOME funds.
  - LHC requires that the procurement officer responsible for administering compliance with the plan is listed on the M/WBE plan. Additionally, the highest elected official in the Recipient's jurisdiction/agency is required signatory to the M/WBE plan.

- Minimum acceptable outreach standards are specified by HUD and are available online at http://www.hud.gov/offices/cpd/communitydevelopment/toolkit/files/MBE-BEOutreach.pdf.
- Additionally, to assist Recipients, LHC provides 11 strategies and procedures that Recipients should incorporate in their Minority & Women Business Enterprise Plan. Applicants must project dates for implementing these initiatives and also document actual implementation.

Labor Requirements

- Recipients must comply with certain regulations on wage and labor standards. In the case of Davis-Bacon and the Contract Work Hours and Safety Standards Acts, every contract for the construction of housing (rehabilitation or new) that contains 12 or more units assisted with HOME funds triggers the requirements.
  - **Davis-Bacon and Related Acts (40 USC 276(A)-7)**: Ensures that mechanics and laborers employed in construction work under Federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed. This act also provides for the withholding of funds to ensure compliance, and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs. Additional information on compliance with Davis-Bacon requirements is provided in the Appendix.
  - **Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333)**: Provides that mechanics and laborers employed on Federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.
  - **Copeland (Anti-Kickback) Act (40 USC 276c)**: Governs the deductions from paychecks that are allowable. Makes it a criminal offense to induce anyone employed on a Federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.
  - **Fair Labor Standards Act of 1938, As Amended (29 USC 201, et. seq.)**: Establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work, and establishes child labor standards.
- Additional guidance on the Application of Federal Labor Standards to HOME Projects is provided in the Labor Relations Letters (Letter No. LR-96-02, October 21, 1996) located online at http://nhl.gov/offices/adm/hudclips/letters/lr96-02.txt.

SITE AND NEIGHBORHOOD STANDARDS

- Housing provided through the HOME Program must promote greater choice of housing opportunities. Specific rules are as follows:

- HOME-provided housing must be suitable from the standpoint of facilitating and furthering full compliance with the Title VI of the Civil Rights Act - 1964, the Fair Housing Act and Executive Order 11063.

- The Final Rule requires only new construction rental projects to meet site and neighborhood standards from 24 CFR 983.6(b), which places limiting conditions on building in areas of "minority concentration" and that are "racially mixed."

- LHC uses project information provided by applicants to complete the Site and Neighborhood Standards Review form and document compliance with the Site and Neighborhood requirements. LHC reserves the right to request additional clarification and materials from owners/developers/sponsors for adequate documentation of compliance.

LEAD SAFE HOUSING RULE

All units in a project assisted with HOME funds must comply with the Lead Safe Housing Rule (LSHR) at 24 CFR Part 35, implementing Title X of the 1992 Housing and Community Development Act. This regulation has been in effect since September 15, 2000.

❑ The lead-based paint regulation at 24 CFR Part 35 consolidates all lead-based paint requirements for HUD-assisted housing.

- Purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead.

- The regulation is divided into subparts. Subparts that apply to the HOME program include:

  - ✓ Subpart A: Disclosure
  - ✓ Subpart B: General Requirements and Definitions
  - ✓ Subpart J: Rehabilitation
  - ✓ Subpart K: Acquisition, Leasing, Support Services, and Operations
  - ✓ Subpart M: Tenant-Based Rental Assistance
  - ✓ Subpart R: Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction

<u>Summary of the Requirements</u>

❑ Approaches. HUD has defined four approaches to addressing lead-based paint in HOME- funded projects. See the following exhibit for more information about each approach.

- Approach 1: Do No Harm

- Approach 2: Identify and Stabilize Deteriorated Paint

- Approach 3: Identify and Control Lead-Based Paint Hazards

- Approach 4: Identify and Abate Lead-Based Paint Hazards

FOUR APPROACHES TO IMPLEMENTING
LEAD HAZARD EVALUATION AND REDUCTION

Lead Hazard Evaluation	Lead Hazard Reduction	Options
APPROACH 1. DO NO HARM		
• Paint testing performed on surfaces to be disturbed.	• Repair surfaces disturbed during work. • Safe work practices used when working on areas identified as lead-based paint. • Clearance performed.	• Presume lead-based paint is present and use safe work practices on all surfaces being disturbed.
APPROACH 2. IDENTIFY AND STABILIZE DETERIORATED PAINT		
• Visual Assessment performed to identify deteriorated paint.	• Paint stabilization of identified deteriorated paint. • Safe work practices used. • Clearance performed.	• Perform paint testing on deteriorated paint. Safe work practice requirements only apply to lead-based paint.
APPROACH 3. IDENTIFY AND CONTROL LEAD HAZARDS		
• Paint testing performed on surfaces to be disturbed. • Risk assessment performed on entire dwelling.	• Interim controls performed on identified hazards. • Safe work practices used. • Clearance performed	• Presume lead based paint and/or lead based paint hazards are present and perform standard treatments.
APPROACH 4. IDENTIFY AND ABATE LEAD HAZARDS		
• Paint testing performed on surfaces to be disturbed. • Risk assessment performed on entire dwelling.	• Abatement performed on identified hazards. • Interim controls performed on identified hazards on the exterior that are not disturbed by rehabilitation. • Safe work practices used. • Clearance performed.	• Presume lead-based paint and/or lead-based paint hazards are present and perform abatement on all applicable surfaces – deteriorated, impact, friction, chewable surfaces, and surfaces to be disturbed.

Types of Requirements

- The lead-based paint requirements established by the regulation fall into the five major categories listed below. These five activities are summarized in Exhibit 13-2. The specific lead safe housing requirements for each activity (rehabilitation, homebuying, and TBRA) are summarized in Exhibit 13-4.

  - **Notification.** Recipients must document and submit records of the four notification requirements listed below.

1. **Lead Hazard Information Pamphlet.** Occupants, owners, and purchasers must receive the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent.

2. **Disclosure.** Property owners must provide purchasers and lessees with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence. LHC HOME Recipients must document that the relevant disclosure has been provided.

3. **Notice of Lead Hazard Evaluation or Presumption**. Occupants, owners, and purchasers must be notified of the results of any lead hazard evaluation work or the presumption of lead-based paint or lead hazards.

4. **Notice of Lead Hazard Reduction Activity.** Occupants, owners, and purchasers must be notified of the results of any lead hazard reduction work.

- **Lead Hazard Evaluation.** The evaluation activity required depends on the nature of the activity funded and the amount of Federal funding. Evaluation methods include visual assessments, paint testing, and risk assessments.

  - ✓ Each of these evaluation activities must be performed by properly trained and accredited professionals.

  - ✓ LHC applications request information regarding the date the dwelling unit was constructed. All pre-1978 housing has to be inspected by state certified lead-based paint inspectors unless the presence of LBP is presumed.

- **Lead Hazard Reduction.** The reduction activity required depends on the nature of the activity funded and the amount of Federal funding. Reduction methods described include paint stabilization, interim controls, standard treatments, and abatement.

  - ✓ All lead hazard reduction work must be done by properly trained professionals. Certain work practices are prohibited (See Exhibit 13 – 3).

  - ✓ Clearance must be performed by a certified clearance examiner to demonstrate that hazards have been properly addressed.

  - ✓ LHC maintains a list of state certified abatement contractors. Recipients are encouraged to select their contractors from this list when conducting abatement.

  - ✓ Additionally, all reports related to reduction and abatement activities must be submitted to LHC HOME Program Specialists for record keeping purposes.

- **Ongoing Maintenance.** Ongoing maintenance is required for rental and TBRA activities. Ongoing maintenance includes periodic visual assessments to determine if lead-based paint hazards have reappeared.

  - ✓ All reports related to ongoing maintenance must be maintained on file by Recipients and made available to LHC upon request for record-keeping purposes.

- **Response to Children with Environmental Intervention Blood Lead Levels (EIBLL).** When a poisoned child with an environmental intervention blood lead level is identified in some types of properties, the new regulation prescribes certain activities. (For HOME purposes, these requirements apply only to TBRA.)

- Exhibit 13-2 provides a summary of required activities.

EXHIBIT 13-2

SUMMARY OF REQUIRED ACTIVITIES TO ADDRESS LEAD-BASED

Category	Required Activities
Notification	All of the following notices must be provided as appropriate: ✓ Pamphlet ✓ Disclosure ✓ Notice of Lead Hazard Evaluation or Presumption ✓ Notice of Lead Hazard Reduction Activity
Lead Hazard Evaluation	One or more of the following may apply: ✓ Visual Assessment* ✓ Paint Testing ✓ Risk Assessment (or Lead Hazard Screen)
Lead Hazard Reduction	One or more of the following may apply: ✓ Paint Stabilization ✓ Interim Controls (or Standard Treatments) ✓ Abatement The following always apply: ✓ Safe Work Practices ✓ Clearance
Ongoing Maintenance	This requirement may apply: ✓ Inspect and maintain lead hazard reduction work.
Response to Children with Environmental Intervention Blood Lead Level (EIBLL)	These requirements may apply. If they do, all of the following steps must be taken: ✓ Sharing and Comparing Information ✓ Risk Assessment ✓ Interim Controls or Abatement ✓ Notices and Disclosure

* A visual assessment is not considered a form of evaluation in the regulation; therefore, there is no requirement for a Notice of Lead Hazard Evaluation associated with this activity.

- Exhibit 13-3 provides a list of recommended and prohibited practices for addressing lead- based paint.

EXHIBIT 13-3

LEAD PAINT: RECOMMENDED AND PROHIBITED PRACTICES

Safe Treatment Methods

Safe treatment methods control the spread of dust and debris. They should be preceded by proper containment practices and followed-up with proper clean-up procedures. Examples of safe treatment methods include:

- Wet scraping or wet sanding
- Chemical stripping on- or off-site (except methylene chloride)
- Replacing painted components
- Scraping with an infra-red or coil type heat gun with temperatures below 1,100 degrees Fahrenheit
- Vacuum-sanding using a sander equipped with a High Efficiency Particle Air (HEPA) filter
- Using a HEPA vacuum needle gun
- Contained hydroblasting or high pressure wash with a HEPA vacuum
- Abrasive sanding with a HEPA vacuum
- Covering the painted surface with durable materials (such as wallboard) with joints sealed and caulked.

Prohibited Methods

Prohibited methods can spread lead dust or lead fumes.

- Open flame burning or torching
- Machine sanding or grinding without HEPA exhaust
- Uncontained hydroblasting or high pressure wash
- Abrasive blasting or sandblasting without a HEPA vacuum exhaust
- Heat guns operating above 1,100 degrees Fahrenheit
- Chemical paint strippers containing methylene chloride
- Dry scraping (except around electrical outlets or in conjunction with heat guns).

For more information about safe and prohibited methods, see the 1995 HUD Guidelines for the Evaluation and Control of Lead-Based Paint in Housing.

Compliance with the Lead Safe Housing Rule

❑ **Penalties [24 CFR 35.170]:**

- Failure to comply with the lead-based paint requirements will be subject to sanctions authorized under the Federal funding programs providing assistance to the property, and violations may be subject to other penalties available under state or local law.
- Notifying owners, purchasers, or occupants of possible lead-based paint hazards does not relieve LHC HOME Program Recipients of the responsibilities under the new regulation.

❑ **Addressing Other Regulations and Laws [24 CFR 35.145]:**

- Recipients must comply with other regulations – Federal, State, tribal, and local – that apply to lead-based paint hazard evaluation and reduction. When multiple regulations cover a program activity, Recipients must comply with the most stringent requirement.

- All lead-based paint activities must be performed in accordance with other applicable Federal laws and authorities. For example, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), OSHA worker safety regulations (29 CFR 1910.1200 and 29 CFR 1926.62), and other environmental laws and authorities cover activities related to lead-based paint evaluation and hazard reduction.

Record-keeping [24 CFR 35.175]

- There are numerous records that Recipients must keep to verify that they conducted the required lead hazard response activities.

  - **Lead Hazard Information Pamphlet**. A record of the distribution of the lead hazard information pamphlet is recommended, but not required.

  - **Notification, Evaluation, and Reduction Reports**. Recipients must keep a copy of each notification, lead hazard evaluation report, lead hazard reduction documentation (such as job specifications), and clearance or abatement report for at least three years, or for such other period as specified in the program regulations.

    - ✓ Again, all notifications and reports related to lead-based paint including lead hazard reduction and abatement activities must be submitted to LHC HOME Program Specialists for record keeping purposes.

  - **Ongoing Maintenance Records**. Grantees must keep ongoing maintenance records and records of relevant building operations for use during reevaluations.

    - ✓ All reports related to ongoing maintenance must be maintained by Recipients and made available to LHC for inspection upon request.

The following Exhibit 13-4 contains a summary of the notification, lead hazard evaluation, lead hazard reduction, ongoing maintenance, and environmental intervention blood lead level requirements for rehabilitation, tenant based rental assistance and homebuyer and special needs activities.

EXHIBIT 13-4: SUMMARY OF LEAD-BASED PAINT REQUIREMENTS BY ACTIVITY

	Homeowner and Rental Rehabilitation (Subpart J)			TBRA (Subpart M)	Homebuyer (Subpart K)
	≤$5,000	**$5,000 - $25,000**	**>$25,000**		
Approach to Lead Hazard Evaluation and Reduction	1. Do no harm	3. Identify and control lead hazards	4. Identify and abate lead hazards	2. Identify and stabilize deteriorated paint	2. Identify and stabilize deteriorated paint
Notification	Yes	Yes	Yes	Yes	Yes
Lead Hazard Evaluation	Paint Testing	Paint Testing and Risk Assessment	Paint Testing and Risk Assessment	Visual Assessment	Visual Assessment
Lead Hazard Reduction	Repair surfaces disturbed during rehabilitation Safe work practices Clearance	Interim Controls Safe work practices Clearance	Abatement (Interim Controls on exterior surfaces not disturbed by rehabilitation) Safe work practices Clearance	Paint Stabilization Safe work practices Clearance	Paint Stabilization Safe work practices Clearance
Ongoing Maintenance	Rental Only	Rental Only	Rental Only	Yes	No
EIBLL Requirements	No	No	No	Yes	No
Options	Presume lead-based paint Use safe work practices on all surfaces	Presume lead-based paint and/or hazards Use standard treatments	Presume lead-based paint and/or hazards Abate all applicable surfaces	Test deteriorated paint. Use safe work practices only on lead-based paint surfaces.	Test deteriorated paint. Use safe work practices only on lead-based paint surfaces.

ACQUISITION AND RELOCATION

- Whenever Federal funds are used in a project involving the acquisition, rehabilitation or demolition of real property, a Federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) generally applies. In some cases, the use of HOME funds in a project involving the demolition or conversion of lower income dwellings may also trigger another Federal law under Section 104(d) of the Housing and Community Development Act of 1974 (Section 104(d)). The purpose of this section is to provide Recipients with a general understanding of the requirements under both Federal laws in addition to where additional information and assistance may be obtained.

- **Note for all projects that may have relocation or displacement activities*:*** To ensure that accurate documentation is collected and proper compensation is provided to displaced/relocated persons and businesses, grantees should contact the LHC Program Manager before conducting any acquisition activities which appear to require the displacement or relocation of persons or businesses. Failure to do so may delay the start of construction and could result in termination of the project.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act or URA)

- The Uniform Act, passed by Congress in 1970, is a Federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or that displace persons from their homes, businesses, or farms. The Uniform Act's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects.
  - 49 CFR Part 24 are the government-wide regulations that implement the URA.
  - HUD Handbook 1378 provides HUD policy and guidance on implementing the URA and 49 CFR Part 24 for HUD funded programs and projects.

- What are the URA's objectives?
  - To provide uniform, fair, and equitable treatment of persons whose real property is acquired or who are displaced in connection with Federally funded projects;
  - To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement;
  - To ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means;
  - To help improve the housing conditions of displaced persons living in substandard housing; and
  - To encourage and expedite acquisition by agreement and without coercion.

- How do URA requirements impact a HOME project?

  - Recipients conducting a program or project under the URA must carry out their legal responsibilities to affected property owners and displaced persons.

  - Some of those responsibilities include:

    - ✓ For Real Property Acquisition (Involuntary Acquisition – under threat or use of eminent domain)

      - Appraise property before negotiations;
      - Invite the property owner to accompany the appraiser during the property inspection;
      - Provide the owner with a written offer of just compensation and a summary of what is being acquired;
      - Pay for property before possession; and
      - Reimburse expenses resulting from the transfer of title such as recording fees, prepaid real estate taxes, or other expenses.
      - Note that agency responsibilities for voluntary acquisitions differ. Refer to 49 CFR 24.101(b) and HUD Handbook 1378 Chapter 5 for additional information.
      - For Residential Displacements
      - Provide relocation advisory services to displaced tenants and owner occupants;
      - Provide a minimum 90 days written notice to vacate prior to requiring possession;
      - Reimburse for moving expenses; and
      - Provide payments for the added cost of renting or purchasing comparable replacement housing.

    - ✓ For Nonresidential Displacements (Businesses, Farms, and Nonprofit Organizations)

      - ➢ Provide relocation advisory services.
      - ➢ Provide a minimum 90 days written notice to vacate prior to requiring possession.
      - ➢ Reimburse for moving and re-establishment expenses.

  - Recipients should plan for the responsibilities noted above to ensure that adequate time, funding, and staffing are available to carry out their responsibilities. Resources available online at HUD's Real Estate Acquisition and Relocation website at (http://www.hud.gov/relocation) include:

    - ✓ Developing Projects With HOME Funds: Ten Things You Need To Know About Relocation and the Uniform Act (URA) * but might have been afraid to ask

- ✓ Planning and Budgeting Relocation Costs for HUD-Funded Projects

<u>Section 104(d) of the Housing and Community Development Act (Section 104(d))</u> <u>"The Barney Frank Amendment"</u>

- ❑ Section 104(d) of the Housing and Community Development (HCD) Act provides minimum requirements for HOME funded programs or projects when units that are part of a community's low-income housing supply are demolished or converted to a use other than low- or moderate-income dwellings.

  - **24 CFR Part 42** are the regulations that implement Section 104(d).

  - **HUD Handbook 1378** provides HUD policy and guidance on implementing Section 104(d).

- ❑ What are the Section 104(d) requirements?

  - Replacement, on a one-for-one basis, of all occupied and vacant (ready for occupancy) low- or moderate-income dwelling units that are demolished or converted to a use other than low- or moderate-income housing in connection with an activity assisted under the HCD Act; and

  - Provision of certain relocation assistance to any lower income person displaced as a direct result of the following activities in connection with Federal assistance:

  - Demolition of any dwelling unit; or

  - Conversion of a low- or moderate-income dwelling unit to a use other than a LMI residence.

- ❑ What triggers Section 104(d)?

  - Section 104(d) requirements are triggered by the use of HOME, CDBG, Section 108 Loan Guarantee, or UDAG funding in a project involving the demolition or conversion of low- or moderate-income housing. It should be noted that HOME funding used solely for relocation assistance or general administration does not trigger Section 104(d) requirements.

- ❑ What are the relocation requirements under Section 104(d)?

  - The relocation assistance and payments for eligible persons under Section 104(d) are similar to those required for the URA, but there are a number of differences. One significant difference is the period of time used to calculate a rental assistance payment: Section 104(d) factors in 60 months vs. 42 months for the URA. Section 104(d) eligible displaced persons may choose to receive relocation assistance under either Section 104(d) or the URA.

  - Recipients with questions about section 104(d) are urged to contact their LHC HOME Program Manager.

- ❑ For additional information and helpful resources visit HUD's Real Estate Acquisition and Relocation website at http://www.hud.gov/relocation

LIST OF LHC FORMS

LHC will make available all required forms related to the Other Federal and State requirements discussed in this chapter on their website, http://www.lhc.la.gov/. These forms include:

- Minority & Women Business Enterprises Plan
- Affirmative Fair Housing Marketing (AFHM) Plan for Single Family
- Affirmative Fair Housing Marketing (AFHM) Plan for Multi-Family Housing
- Site and Neighborhood Standards Review form

OTHER RESOURCES REFERENCED

- HUD Guidance on M/WBE Outreach (http://www.hud.gov/offices/cpd/communitydevelopment/toolkit/files/MBE-WBEOutreach.pdf)
- HUD Guidance on Section 3 (http://www.hud.gov/offices/cpd/communitydevelopment/toolkit/files/MBE-WBEOutreach.pdf)
- FHEO resource webpage on Section 3 -Economic Opportunities (http://www.hud.gov/offices/fheo/section3/section3.cfm).
- Application of Federal Labor Standards to HOME Projects (http://nhl.gov/offices/adm/hudclips/letters/lr96-02.txt)
- HUD's Real Estate Acquisition and Relocation (also addresses Section 104(d) requirements) (http://www.hud.gov/relocation)

> A premise of the National Affordable Housing Act, which authorized the HOME Program, is that providing affordable housing to low-income persons is the responsibility of all levels of government. Therefore, matching contributions are required as the state and local government stake in the HOME Program. LHC expects that all Recipients will share in this responsibility.

Match is the local contribution to affordable housing that is required of all grantees participating in the HOME program. Generally, PJs must provide match in an amount equal to 25 percent of the HOME funds drawn down for project costs. For some PJs, including LHC, the match obligation may be subject to a "Match Reduction" due to fiscal distress, severe fiscal distress, and Presidential disaster declarations. This chapter provides information regarding the match requirement, sources of match, how to meet the match obligation, and how to calculate and track match.

BASIC FACTS ABOUT MATCH

- ❑ The HOME Program requires that LHC provide a matching contribution in an amount equal to ***no less than 25 percent*** of the total HOME funds drawn down for project costs.
- ❑ Match is a permanent contribution to affordable housing.
- ❑ Match is not leverage. Match is the local, non-federal permanent contribution to the partnership with the HOME program. Leverage is the amount of debt relative to the total value of the assets in a project. The use of HOME funds in a project may increase the ability of a project to secure mortgage financing which is repaid over time.

<u>Keys to Understanding the Match Requirement</u>

- ❑ There are match ***credits*** and match ***debits***
  - **Debits**: For virtually every dollar of HOME funds drawn down for a project, there is a 25 cent match obligation.
  - **Credits:** Match credits are a community's non-federal contribution of cash, assets, services, labor and other resources of value to the HOME program.
- ❑ There are no match obligations (debits) associated with the following:
  - HOME administrative and planning funds;
  - CHDO operating expenses;
  - CHDO capacity-building funds; and
  - CHDO site control, technical assistance and seed money loans for projects that do not go forward.
- ❑ Additionally, LHC does not require TBRA projects to generate match contributions.

- Match credits and debits are not necessarily linked to the same project.
  - The match debit, or obligation to come up with matching contributions, is created by the draw-down of HOME funds for a particular project.
  - LHC expects that all Recipients will secure matching contribution (match credit) equal to the matching obligation created by the programs they administer.
    - ✓ The exception is TBRA program Recipients who are exempt from securing matching contributions.
- Match credit can be earned for investments in:
  - **Home-assisted projects**: projects that receive assistance under the HOME program.
  - **HOME-eligible projects**: a project that is not assisted with HOME funds, but that meets HOME requirements related to income, rent, quality standards and other HOME rules.
  - **Partially-assisted HOME projects and mixed use projects**: projects where some units are HOME-assisted and some are not, projects that are mixed HOME-assisted and commercial, and even projects that are mixed HOME-assisted, non-HOME residential and commercial.
  - ✓ Investments in the commercial space in mixed-use developments can be counted as match as long as 51 percent or more of the project space is residential and 50 percent or more of the dwelling units are HOME-assisted.
  - ✓ Investments in the non-HOME-assisted portion of mixed-income developments can be counted as match as long as 50 percent or more of the dwelling units are HOME-assisted. (If the non-HOME units meet the HOME eligibility requirements for affordability, then the contributions to any affordable non-HOME units apply, regardless of the percentage of HOME units in the project.)

Example: A modest rehabilitation project contains 20 units. Five of the units are HOME- assisted. The city provides $100,000 in infrastructure improvements. Only $25,000 can be counted as match (25 percent times $100,000), since only five units (25 percent) in the project are HOME-assisted.

Example: A similar moderate rehabilitation project contains 20 units. Eleven of the units are HOME-assisted. If the city provides $100,000 in donated equipment and materials as match, it can count the entire amount because more than 50 percent of the units are HOME-assisted.

Example: A project contains 50 units: 20 are HOME-assisted and 30 are HOME- eligible. The PJ invests $250,000 in HOME funds and donates the land for the project. The appraised value of the land (less any debt burden, lien or other encumbrance) counts as match; even though 30 of the units are not HOME-assisted (they are HOME- eligible).

- **Assistance to tenants**: Match credit can be earned by providing non-federal funds to tenants receiving HOME tenant-based rental assistance (TBRA) (for example, a utility deposit payment) or by supporting tenants through non-federal TBRA as long as the rental assistance meets certain HOME requirements .

- ❑ Match liability must be met in the year that it was incurred.

  - Match liability is incurred every time HOME funds subject to the matching requirements are drawn down from LHC's HOME Investment Trust Fund Treasury account. The liability must be satisfied by the end of the federal fiscal year in which it occurred. The federal fiscal year runs from October 1 through September 30 of the following year.

Example: All match obligations triggered by the draw-down of HOME funds between October 1, 2007 and September 30, 2008 must be met no later than September 30, 2008.

  - The resources used to meet the match liability can be generated ***before*** or ***after*** the HOME project is completed.

Example: Hometown undertakes the rehabilitation of a 200-unit apartment complex. All units are HOME-eligible. The PJ draws down $300,000 in HOME money and uses $200,000 from a locally supported housing trust fund to finance the project. Since the match obligation is only $75,000 (25 percent of $300,000) for this project, the PJ has "banked" an extra $125,000 in match credit.

ELIGIBLE FORMS OF MATCH

- ❑ The match obligation may be met with any of the following specific sources. Each is described in detail on the following pages.

  - Cash or cash equivalents from a non-federal source;

    - ✓ A number of foundations actively support affordable housing throughout the State, including Robert Wood Johnson Foundation, and the Walton Foundation.

  - Value of waived taxes, fees or charges associated with HOME projects;

    - ✓ This is a common source of match for many Recipients.

  - Value of donated land or real property;

  - Cost of infrastructure improvements associated with HOME projects from non-federal sources;

  - A percentage of the proceeds of single- or multi-family housing bonds issued by state, state instrumentality or local government;

    - ✓ This is another common source of match. LHC HOME assisted homebuyers often also receive housing bond loans.

  - Value of donated materials, equipment, labor and professional services;

✓ Donated professional services are more common than donated land or real property.

- Sweat equity;
- Direct costs of supportive services to residents of HOME projects; and
- Direct cost of homebuyer counseling to families purchasing homes with HOME assistance.

❑ Match counted for other Federal programs cannot be counted as HOME match. HOME can be counted as match for McKinney Act programs.

Match Source: Non-Federal Cash or Cash Equivalents

❑ There are many eligible forms of cash match. Cash contributions may be contributed from a public or private **non-federal** source. Exhibit 14-1 details acceptable and non-acceptable sources of cash match.

Exhibit 14-1	
Acceptable Sources of Cash Match	**Unacceptable Sources of Cash Match**
• Local or state general revenues • Housing trust funds • Foundations, donations • State appropriations • HFA reserves that are not federal funds (e.g., bond proceeds) • The interest rate subsidy achieved by the exemption of state or local taxes • Program income from Housing Development Action Grant (HODAG), Rental Rehabilitation Program (RRP), or Urban Development Action Grant (UDAG) after grant closeout • Present value of the interest subsidy for loans made at rates below market	• All CDBG funds • Other federal grant funds • Funds raised through federal Low Income Housing Tax Credits • The interest rate subsidy attributable to federal tax-exempt financing • Owner equity in a project • Cash contributions from investors, applicants for or recipients of HOME assistance • Expenditures on program administration

❑ **Calculating the value of "cash"**:

- The full, face value of a cash contribution can be counted as match if:

✓ It is from non-federal funds, and

✓ The contribution is permanent. Permanent contributions are those where all repayment, interest, or other return on investment is made to LHC's HOME Investment Trust Fund.

<u>Example A</u>: Hometown makes a $10,000, 3 percent, 15-year loan from their general fund to support rehabilitation of a single-family HOME project. All repayments of principal and interest are paid into the HOME account. The full $10,000 is counted as a match.

<u>Example B</u>: Hometown makes the $10,000 loan in the example above a forgivable, deferred-payment loan to the project. Since there will be no repayment, the full $10,000 is counted as a match.

<u>Example C</u>: Hometown arranges a $50,000, 5 percent, 10-year loan from state general monies to assist a HOME project. The principal and interest are repaid to the state general account and are not permanently available to the PJ's HOME program. Only the present discounted value of the interest foregone (the equivalent of a grant) can be counted as match, since the full face value of the loan is not permanently available to the PJ.

- Some cash payments are not permanent contributions to the HOME Program.
  - ✓ This occurs most frequently when below-market-interest-rate (BMIR) loans are used as a match credit for HOME, but the principal and interest are repaid to other than the HOME account.
  - ✓ The match value of BMIR loans that are not repaid to the HOME account is based on the discounted present value of the yield foregone under varying circumstances.

<u>Example A</u>: Hometown borrows $100,000 at 8 percent for 15 years from a bank, and loans the money to a HOME project at 4 percent interest for 15 years. The discounted cash value of the difference between the payments received from the 4 percent loan and the payments due on the funds borrowed is the value of the match.

Loan Amount	$100,000
Monthly payment from HOMETOWN to Lender @ 8%, 15 years	$955.65
Monthly payment from Borrower to HOMETOWN @ 4%, 15 years	-$739.68
Yield foregone	$215.96
NPV of yield foregone, 8%, 15 years	$22,598

<u>Example B</u>: Hometown makes a direct, BMIR loan using funds that are available to the community without borrowing. The payments of principal and interest are paid to the city treasury -- not the HOME account. The calculation of the present discounted value of the yield foregone is based upon the difference between the BMIR yield and the market interest rate, which is defined as the yield for varying types of Treasury notes:

Project Size	Type of Financing	Type of T-Note and Yield
1-4 units	Fixed	10 year + 200 basis points
1-4 units	Adjustable	1 year + 250 basis points
5+ units	Fixed or adjustable	10 year + 300 basis points

Example C: Hometown makes a non-amortizing, due-on-sale zero percent loan in the amount of $3,000 for downpayment assistance to a homebuyer. The funds are available to the community without borrowing, and repayment of principal will be made to the city treasury -- not the HOME account. The calculation of the present discounted value of the yield foregone is based upon the difference between the BMIR yield and the yield for a 10-year Treasury note, plus 200 basis points. The term of the loan is assumed to be five years--the period of affordability.

Calculating Match Contributions

HUD Notice 97-03 provides step-by-step instructions for calculating the value of grants, deferred payment loans and below-market interest rate loans. This notice is available online at http://www.hud.gov/utilities/intercept.cfm?/offices/cpd/lawsregs/notices/1997/97-3.pdf.

- **Why use cash as a match?** Cash match offers flexibility because it may be spent on HOME eligible activities, as well as other expenses that are not eligible expenditures of HOME funds. Cash match may be used for:
  - HOME-eligible activities, or
  - Other costs not eligible for HOME funds, including:
    - ✓ Payments to a project "reserve for replacements," beyond an 18-month rent-up period;
    - ✓ Operating subsidies;
    - ✓ Certain supportive services;
    - ✓ Ongoing homebuyer counseling; and
    - ✓ Cash contributions associated with non-HOME portions of a mixed-income or mixed-use HOME project (if certain requirements are met).

Match Source: Forbearance of Fees and Waived/Reduced Taxes

- Match for the value of foregone fees, taxes or charges applies only to HOME-assisted projects.
- Two "classes" of waived fees may be counted as match.
  - State and local taxes, charges and fees:
    - ✓ Value of foregone real estate taxes must be based on post-improvement value.
    - ✓ The value of fees, taxes or charges foregone for future years is the present discounted cash value of the amount forgiven, based on the Treasury security rate closest in maturity to the number of years for which fees, taxes or charges are foregone.

<u>Example</u>: Hometown decides to forego real estate taxes of $2,000 for 10 years credited at the start of each year. The Treasury security rate for 10-year notes is 4.5 percent.

Payment:	*$2,000 paid annually*
Interest Rate:	*4.5%*
Term:	*10 years*
Net Present Value:	*$15,825*

- Other charges or fees:
  - ✓ These are fees normally associated with property transfer or development, such as title searches, title insurance premiums and utility hook-ups or surcharges.
  - ✓ The fees and charges do ***not*** include donated professional labor. This is eligible (as of the Final Rule) for match credit under a separate provision discussed later in this chapter.
- Waived taxes, charges or fees are not match credit if:
  - ✓ The waived fees are associated only with the HOME Program. This means you cannot create a fee and waive or reduce it for HOME projects only.
  - ✓ Developers waive their own fees!

<u>Match Source: Value of Donated Land or Other Real Property</u>

❑ Land or real property permanently contributed to a HOME-assisted or a HOME-eligible project is a source of match.

- Property may be ***donated***.
- Property may be ***sold*** at below its market value.

❑ **Property acquired with non-federal resources**:

- If a property acquired with non-federal resources is donated to a HOME-assisted project or HOME-eligible project, the match credit is equal to 100 percent of the appraised value minus any debt burden, liens or other encumbrances.
  - ✓ Properties may be donated by the unit of local government, non-federal public entities, private entities or individuals.
  - ✓ Properties may ***not*** be donated by applicants for, or Recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for HOME assistance.
- The value must be determined by an appraisal.
  - ✓ The appraisal must be performed by an independent, certified appraiser.
  - ✓ The appraisal method must conform with generally recognized practices and procedures.

- ✓ Opinions of value must be based upon the best available data.

❑ **Property acquired with federal funds:**

- Properties acquired with federal funds and donated can provide match credit under certain circumstances:
  - ✓ The properties must have been acquired specifically for HOME-assisted housing or for a HOME-eligible project;
  - ✓ The property must have been acquired at demonstrably below the appraised value; and
  - ✓ The seller must acknowledge the sale at below-market value as a donation to affordable housing at the time of the acquisition.
- Federal funds include Community Development Block Grant (CDBG), UDAG, urban renewal, Low Income Housing Tax Credits and Homeownership Opportunities for People Everywhere (HOPE).
- Donations of land or property are credited at the time ownership of the land or property is transferred.
- If the property is ***acquired by the owner*** of the HOME-assisted or HOME-eligible project, the match credit is:
  - ✓ The difference between the appraised value at the time of acquisition with the federal funds and the acquisition cost.

Example: Using CDBG, a local government acquires a property from a private owner for $55,000. The appraised value at the time of the acquisition is $75,000. The private owner acknowledges in writing at the time of the donation that she is making a contribution to affordable housing. The match credit is $20,000 ($75,000 - $55,000).

- If the property is acquired with federal funds by an ***entity that donates the property to the owner*** of the HOME-assisted or HOME-eligible project, the match contribution is the difference between the appraised value and the acquisition cost.

*Example: A tract of land has an appraised value of $100,000. A PJ purchases the property with CDBG funds for $75,000 and **donates** the land to a CHDO. The seller acknowledges in writing that the $25,000 discount on the purchase price (the difference between the appraised value and the acquisition price) is a donation to affordable housing. The match credit based on the donation from the seller is the $25,000 ($100,000 - $75,000). The PJ used $30,000 in local funds and $45,000 in CDBG funds to help purchase the property. This produces additional match credit of $30,000 (the amount of the local fund contribution, but not the CDBG funds). The total match credit is $55,000.*

- If the property is acquired with federal funds by an ***entity that sells the property to the owner*** of the HOME- assisted or HOME-eligible project, the contribution is the difference between the sales price paid by the entity using the federal assistance and the appraised value at the time of acquisition by the entity.

Example: A PJ uses HOME funds to purchase a property with an appraised value of $100,000 and a sales price of $90,000. The seller acknowledges that the discounted sales price is a donation to affordable housing. The PJ sells the property to a CHDO for $60,000. The match contribution is only $10,000 ($100,000 - $90,000.)

Match Source: Investments in On- and Off-Site Infrastructure

- To receive match credit:
  - Infrastructure improvements must be directly related to HOME-assisted projects. (Remember: infrastructure improvements related to HOME-eligible housing do not provide match credit.)
    - ✓ The infrastructure improvement must ***directly facilitate the occupancy*** of HOME units. Examples include:
      - Streets;
      - Sidewalks;
      - Gutters;
      - Street lights; and
      - Utility lines and connections.
    - ✓ Parks, bridges, or highways are not eligible types of infrastructure improvements.
  - The improvement must be completed no earlier than 12 months before HOME funds are committed to the project. (It's not necessary for the infrastructure improvement to have been identified as serving a HOME-assisted project when it was installed.)
  - The improvement must be paid for from non-federal resources.
- Since infrastructure improvements may serve HOME and non-HOME units in a project, the investment must be prorated accordingly.

Example: $50,000 is spent on streetlights on a block with 10 homes. Two (20 percent) of the homes are HOME-assisted. The value of the match associated with HOME is $10,000 (20 percent of $50,000.)

Example: $100,000 is spent on sidewalks, curbs and gutters on a block with 20 homes. Ten of the homes (50 percent) are HOME-assisted. The value of the match is $50,000, because the value of the match must be pro-rated to reflect the percentage of units that are HOME-assisted.

Example: $100,000 is spent on sidewalks, curbs and gutters on a block with 20 homes. Nine of the homes are HOME-assisted. The value of the match is $45,000, because 45 percent of the units are HOME-assisted.

- Infrastructure improvements are credited when the funds are expended or if the improvements were made prior to the commitment of HOME funds -- when the HOME funds are committed.

Match Source: Proceeds from State or Local Housing Bonds

- The proceeds from affordable housing bonds which are repayable from the housing project may be used as match credit. However, HOME limits the amount of match credit PJs may earn from affordable housing bond proceeds. A PJ may count bond proceeds as follows:
    - 50 percent of the face value of each loan made to HOME-assisted or HOME-eligible multi-family housing.
    - 25 percent of the face value of each loan made to HOME-assisted or HOME-eligible single-family housing projects.
- To be eligible as match, the bond proceeds must be provided to a HOME-assisted or HOME-eligible project.
- No more than 25 percent of a PJ's match liability for any one year can be met through loans to housing projects from the proceeds of affordable housing bonds. However, the value of loans in excess of the 25 percent limit may be banked as match credit to offset future match liabilities.

Example: The State of Chaos, a PJ, issues a mortgage revenue bond (MRB) for homeownership. During the state's 1994 HOME Program year, $500,000 is committed to specific loans to qualified families. The state can count 25 percent, or $125,000, of the value of the loans toward the match obligation. The state's match liability for the year, generated by all of its HOME activities, is $300,000. Twenty-five percent of the $300,000 liability, or $75,000, can be satisfied by the MRB proceeds. The state can apply the excess match credit ($50,000) to meet future year's match obligations.

- A loan made from bond proceeds is credited at the time of loan closing.
- See HUD CPD Notice 97-03 which is available online at http://www.hud.gov/utilities/intercept.cfm?/offices/cpd/lawsregs/notices/1997/97-3.pdf for further guidance on calculating match from state and local bonds.

Match Source: Donated Materials, Equipment, Labor and Professional Services

- The value of donated materials for site preparation and construction of HOME-assisted or HOME-eligible housing may be counted as match.
    - Materials must have been purchased with non-federal funds.
    - The PJ must use its normal cost estimating procedures to determine the value of materials, and must document its value determination.
- The reasonable value of the use of site preparation and construction equipment donated to HOME-assisted or HOME-eligible housing may be counted as match.
    - The full value of the contribution may be counted (that is, the rental rate multiplied by the number of hours/days for which the equipment was donated.)
    - Documentation of the match must include a letter from the equipment owner stating the rental rate and number of hours/days donated.

- PJs may count the value of any donated or volunteer labor, including professional services, in connection with a HOME-assisted or HOME-eligible project.
  - HUD will make the hourly labor rate for donated unskilled labor available annually.
  - Skilled labor and professional services, such as those donated by a lawyer or accountant, will be valued at the rate normally charged by the entity providing the service.
  - The value of labor or professional services provided to affordable housing at a reduced rate as a donation by an individual or entity that has a contract to provide labor or services on a HOME-assisted project may be counted as match provided the individual or entity agrees to accept the reduced rate.
- Donations of material, equipment use, labor and professional services are credited at the time they are used for/contributed to the project.

Match Source: Sweat Equity

- The value of sweat equity provided to a homeownership project may be counted as match.
  - The contribution will be valued at the rate of unskilled labor. This value will be established by HUD.
  - The value of the labor can be contributed up until the time of project completion can be counted as match.
- The sweat equity must be contributed as part of an established program of the PJ.

Match Source: Direct Costs of Certain Supportive Services

- The direct cost of supportive services provided to residents of HOME-assisted projects or to families receiving HOME-funded tenant-based rental assistance (TBRA), if the services are:
  - Paid for with non-federal funds; AND
  - Provided during the period of affordability or term of the TBRA contract; AND
  - Necessary to facilitate independent living

or

  - Required as part of a self-sufficiency program provided to residents or TBRA recipients.
- Examples of such services include:
  - Case management;
  - Mental health services;
  - Assistance with tasks of daily living;
  - Substance abuse treatment and counseling;
  - Day care; and
  - Job training and counseling.

- ❑ Direct costs that may be counted as match are limited to salary costs and the cost of materials directly related to the provision of these services. Overhead costs (such as rent and utilities) are not considered direct costs.

- ❑ Match is credited at the time the supportive services are provided.

<u>Match Source: Homebuyer Counseling</u>

- ❑ The direct cost of counseling provided to families that complete home purchases with HOME assistance.

  - Counseling may include pre-purchase and/or ongoing counseling during the period of affordability.

  - The counseling may be provided as part of a program that is not HOME Program- specific (for example, a lender-run homebuyer counseling program or non-profit program). However, only the costs of services to families that complete purchases with HOME funds count toward the match.

- ❑ Direct costs that may be counted as match are limited to salary costs and the cost of materials directly related to the provision of these services. Overhead costs (such as rent and utilities) are not considered direct costs.

- ❑ The match is credited at the time the counseling services are provided.

- ❑ Only some forms of match can be counted in HOME-eligible projects. See the chart below to determine which forms of match may be counted for your projects.

Eligibility of Contributions as Match in HOME-Assisted and HOME Match-Eligible Housing		
Cash	X	X
Foregone Taxes, Fees and Other Charges	X	
Donated Land or Other Real Property	X	X
On-site and Off-site Infrastructure	X	
Proceeds from Affordable Housing Bonds	X	X
Donated Site Preparation and Construction Materials	X	X
Donated Use of Site Preparation and Construction Equipment	X	X
Donated or Voluntary Labor and Professional Services	X	X
Sweat Equity	X	X
Supportive Services	X	
Homebuyer Counseling Services	X	

INELIGIBLE SOURCES OF MATCH

- ❑ The following do ***not*** meet the requirements for eligible sources of match and do not count toward meeting the matching contribution requirement:

  - Contributions made with or derived from federal resources or funds (including CDBG), regardless of when the funds were received or expended;

  - Note that the properties acquired with federal funds can, in certain circumstances, provide match credit. The circumstances are described in detail under Match Source: Value of Donated Land or Other Real Property.

  - The interest rate subsidy attributable to the federal tax exemption on financing (such as bonds issued by the state) or the value attributable to federal tax credits (such as the Low Income Housing Tax Credit Program);

  - Owner equity or investment in a project (except for sweat equity);

  - Cash or other forms of contributions from applicants for or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for assistance for a HOME-assisted project (except for sweat equity or professional services donated by contractors who do not own any HOME projects);

  - The cost of administering HOME-assisted or HOME-eligible housing projects or rental assistance; and

  - Contributions counted as match toward any other federally-funded program.

- Other forms of contributions not meeting the HOME requirements (at 92.220) are also ineligible.

MEETING THE MATCH OBLIGATION

- Meeting the match obligation poses a challenge to many Recipients. That is why it is important to have a strategy for managing the match. Recipients need to:

  - Plan ahead to meet match needs.

    - ✓ To facilitate advance planning by all Recipients. LHC requires all Recipients to anticipate their match sources when they apply for LHC HOME program funds.

    - ✓ The match form located in the application package needs to be completed and submitted to LHC **before** the application for HOME funds is considered for funding.

  - Be creative when looking for matching contributions.

  - Set up a system for calculating and tracking both match obligations and match credits.

    - ✓ LHC reviews the match form submitted with the application annually and confirms with Recipients that anticipated sources of match funds were secured and expended during the program year.

    - ✓ Recipients should track anticipated match, in case the committed match contributions fall through and other sources of match have to be identified to make up for the shortfall.

- Have a strategy for finding match and addressing unexpected match shortfalls.

- Each of these is discussed below.

Plan Ahead to Meet Match Needs

- Many community development activities offer opportunities to find matching contributions. For example, Recipients can:

  - Check local capital improvement budgets and plans for opportunities to use infrastructure improvements as a source of match.

  - Confer with the tax assessors' offices to identify tax foreclosed and delinquent properties that may be available for conveyance.

  - Network with local foundations, charities, others to identify grant funds, volunteer labor, services and even property that can be used as match.

  Example: The Community Foundation in Hometown, which collects charitable donations from a broad cross-section of the business community, makes grants each year to worthy nonprofits for a variety of uses. Their Can-Do housing initiative mirrors many of the requirements of the HOME Program. A grant from them could be counted as match if the projects assisted meet the requirements set forth in the regulations.

Be Creative in Looking for Matching Contributions

- Remember that some types of investments in HOME-eligible as well as HOME-assisted projects can be counted as match.

- Look for projects supported with state funds and local public resources that might be HOME-eligible.

Example: Hometown has an ongoing homeowner rehabilitation program funded with general tax revenues. The households assisted meet the HOME income requirements, and the rehabilitation work meets local rehabilitation standards and codes upon completion. Program expenditures incurred since October 1, 1992 can be counted as a matching contribution.

- Review previous public improvement and infrastructure investments to determine if recent projects (those completed within the last 12 months) directly support HOME-assisted projects.

- Look for opportunities to use donated labor, materials and services for upcoming projects.

Example: A nonprofit in Hometown undertakes an annual "Christmas in April" program, where donated labor and materials are used to improve the homes of low-income households up to local rehabilitation standards and codes. The fair value of the donated labor and materials contributed to this program may be counted toward the match.

Create a Match Record-keeping System that Works

- LHC's Housing Production staff maintains a match log. LHC requires that all applicants report anticipated match sources and amounts.

- The match log should serve as a management tool for the Recipient.

  - Note that the match log is LHC's monitoring tool. LHC will look to determine that the match anticipated at the time of application is indeed expended during the course of implementing the HOME program and/or project. This monitoring will allow LHC to determine whether the Recipient has met its match requirement for the program year.

  - To that end, Recipients should monitor:

    - ✓ Anticipated match to be sure that it is committed and expended in the amounts that were reported in the program/project application to LHC; and

    - ✓ Match obligations to be sure that the HOME funds and match obligations anticipated are equal to the amount actually expended on the project.

      - Note that LHC does not require Recipients to keep track of match obligations and credits with each program/project draw.

      - However, Recipients might find it useful to track match obligations incurred with each draw to ensure that their match credits sufficiently cover actual match obligations.

- The Recipient is also required to provide documentation that all match contributions claimed:

  - Are eligible;

  - Have been made with respect to a HOME-assisted or HOME-eligible project; and

  - Have been valued in accordance with the HOME regulations and with customary and reasonable means of establishing value.

- Guidance on appropriately documenting match contributions is available in CPD Notice 97-03 located online at: http://www.hud.gov/offices/cpd/lawsregs/notices/1997/97-3.pdf.

- Recipients may also want to create a log that compares their **anticipated** match contributions against their actual, expended match contributions. This will help with planning for shortfalls, instances when committed sources of match contribution fall through.

- Recipients may want to consider supplying potential match contributors with voucher slips and timesheets, so that they can easily report their contributions in a standard format. These documents should also be used by the Recipients in-house to document in-house contributions.

EXHIBIT 14-2

HELPFUL HINTS: MANAGING THE MATCH
These tips will help Recipients manage match. ❑ Keep match in mind when planning an activity or designing a new affordable housing program. Consider the following strategies if they are not currently in use: ▪ Negotiate fee and tax abatements. ▪ Review capital expenditure budgets for possible infrastructure projects to support the HOME Program. ▪ Design and capitalize a housing trust fund. ▪ Negotiate financial commitments from state housing finance agencies. ▪ Talk to foundations and local charities about contributions to affordable housing. ❑ At the start of each fiscal year, try to anticipate the expenditures of HOME dollars. Then, calculate the total amount of match required and the likely years in which it may be needed. ❑ Develop a tracking system to keep tabs on the anticipated match contribution sources reported to LHC in case they fall through and new match sources have to be identified. ❑ Don't wait to the last moment to identify new and viable sources of match if the anticipated match contributions reported in your application fall through and are no longer available. Given the obligation to make matching contributions within the same fiscal year that an obligation is occurred, it is easy to get caught short should your anticipated match is no longer available. ❑ Examine capital improvements plans and schedules: ▪ Consider using non-federal monies for improvements in areas where HOME activities are likely, so that these count as match. ▪ Look at the schedules for infrastructure projects that might constitute match. Do they need to be changed so that they occur within one year of committing HOME monies? ❑ Time donations of land and real property so that they count when needed to meet the match.

LIST OF LHC FORMS

LHC will make available all required match forms on their website, http://www.lhc.la.gov/. These forms include:

❑ Match Log

OTHER RESOURCES REFERENCED

❑ HUD Notice 97-03 (available online at: http://www.hud.gov/utilities/intercept.cfm?/offices/cpd/lawsregs/notices/1997/97-3.pdf)

CHAPTER 15: RESOURCES

This section includes the following resources related to LHC's HOME Program:

- List of LHC Forms;
- Glossary of HOME Terms;
- List of HOME Publications;

LIST OF LHC FORMS and APPLICATIONS

LHC will appropriately posts all required HOME Program forms on their website http://www.lhc.la.gov/. All HOME Program forms are listed below and grouped according to topic and chapter of this manual. Forms that relate to more than one activity or that are referenced in multiple chapters are listed under each relevant topic below.

Chapter 2: Program Administration and Management Forms

- IDIS Activity Set Up Forms
- IDIS Activity Completion Forms

Chapter 4: Homeowner Housing Program Forms

- Preconstruction Conference Record

Chapter 5: Homebuyer Housing Program Forms

- Homeowner Rehabilitation, Reconstruction, and New Construction Application
- Preconstruction Conference Record

Chapter 6: Rental Housing Program Forms

- Environmental Assessment Form;
- Environmental Statutory Checklist;
- "Multi-Family Housing Minimum Design Standards Checklist"
- LHC"S Cost Certification Form
- HOME Rental Housing Income Limits

- ❑ HOME Rental Housing Rent Determination Chart 1 -- Low and High HOME Rents
- ❑ HOME Rental Housing Rent Determination Chart 2 -- Utility Allowance
- ❑ HOME Rental Housing Rent Determination Chart 3 -- Actual Maximum Rent Computation
- ❑ HOME Rental Project Compliance Report
- ❑ Section 3 Reporting Forms
- ❑ Affirmative Marketing, Tenant Selection and Lease Compliance Checklist

Chapter 7: Tenant Based Rental Assistance (TBRA) Program Forms

- ❑ HOME TBRA Program NOFA Application
- ❑ TBRA Set Up Report: HOME Program
- ❑ Environmental Certification Form
- ❑ Affirmative Fair Housing Marketing Plan

Chapter 8: CHDO Application and Forms

- ❑ CHDO Certification/ Designation Application
- ❑ CHDO Certification Checklist
- ❑ CHDO Recertification Checklist

Chapter 9: Recordkeeping, Reporting, and Monitoring Forms

- ❑ TBRA Set Up Form: HOME Program
- ❑ Homebuyer Set Up and Completion Form HOME Program
- ❑ Homeowner Rehab Set Up and Completion Form HOME Program
- ❑ Rental Set Up and Completion Form HOME Program
- ❑ HOME Projects/Programs Placed in Service/Funded Current Fiscal Year

Chapter 10: Procurement Form

- ❑ Minority & Women Business Enterprises Plan

Chapter 11: Construction Management Forms

- ❑ IDIS completion report

Chapter 12: Environmental Review Forms

Chapter 13: Other Federal Requirements Forms

- ❑ Minority & Women Business Enterprises Plan
- ❑ Affirmative Fair Housing Marketing (AFHM) Plan for Single Family
- ❑ Affirmative Fair Housing Marketing (AFHM) Plan for Multi-Family Housing
- ❑ Site and Neighborhood Standards Review form

Chapter 14: Match Form

- ❑ Match Log

GLOSSARY OF HOME TERMS

Action Plan: The one-year portion of the Consolidated Plan (see below). It includes the PJ's annual application for HOME funds.

Adjusted Income: Adjusted income is annual (gross) income reduced by deductions for dependents, elderly households, medical expenses, disability assistance expenses and childcare (these are the same adjustment factors used by the Section 8 Program). Adjusted income is used in HOME to compute the actual tenant payment in TBRA programs and the low HOME rent in rental projects in which rents are based on 30% of a family's adjusted gross income. Adjusted income is also used when a HOME (only) assisted tenant goes above the low income limit (i.e., they are over income).

Affordability: The requirements of the HOME Program that relate to the cost of housing both at initial occupancy and over established timeframes, as prescribed in the HOME Final Rule. Affordability requirements vary depending upon the nature of the HOME assisted activity (i.e., homeownership or rental housing).

Annual Income: The HOME Program allows the use of two definitions of annual income: Section 8 annual income or adjusted gross income as defined for reporting on IRS Form 1040.

Commitment: An eligible "commitment" under the HOME program is required for the purposes of meeting the 24-month commitment deadline. Commitments are represented by legally binning HOME written agreements and must comply with all of the requirements of the definition of "commitment" in the regulation and all additional prerequisite requirements. There are two types of HOME commitments: Commitment means one of three things: (1) The PJ has executed a legally binding agreement with a State recipient, subrecipient, or contractor to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance; or (2) has executed a written agreement with a CHDO to use HOME set-aside funds for a specific CHDO homebuyer or rental housing development project; or (3) has met requirements to commit HOME funds to a specific local project as defined below.

Commitment to a specific local project. Commitment to a specific local project means that a legally binding agreement was executed meeting one of the following sets of requirements: (1) For rehabilitation or new construction projects, the PJ (or other entity) and the project owner will execute an agreement for an identifiable project under which construction can reasonably be expected to start within 12 months of the agreement date. If the project is owned by the PJ or state recipient, the project must be set up in the disbursement and information system and construction reasonably expected to start within 12 months of the set-up date. (2) If the project consists of acquisition of standard housing by the PJ, the agreement must be a binding contract for the sale of an identifiable property and the property title must be transferred to the PJ (or other entity) within six months of the date of the contract. (3) If the project involves the acquisition of standard housing and the PJ is providing HOME funds to a purchaser, under the agreement, the title of the property must be transferred to the purchaser within six months of the agreement date. (4) If the project consists of TBRA, the PJ must enter into a rental assistance contract with the owner or the tenant in accordance with the provisions of 24 CFR Part 92.209. Before a PJ can make a commitment of HOME funds to a project, all necessary financing must be secured, a budget and schedule must be established, underwriting and subsidy layering reviews must be completed, and construction must be scheduled to begin within 12 months.

Community Housing Development Organization (CHDO): A private, nonprofit organization that meets a series of qualifications prescribed in the HOME regulations at 24 CFR Part 92.2. A participating jurisdiction must award at least 15 percent of its annual HOME allocation to CHDOs.

Consolidated Plan: A plan prepared in accordance with the requirements set forth in 24 CFR Part 91 which describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including HOME.

Consortium: Geographically contiguous units of general local government consolidated to be in a single unit of general local government for HOME Program purposes when certain requirements are met.

Development: A site or an entire building or two (2) or more buildings, together with the site or sites on which the building are located, that are under common ownership, management and financing and are to be assisted with HOME Program funds-under commitment by the owner-as a single undertaking.

Development Fees: Compensation to the developer for developing the property, includes overhead and profit, consult/processing agent fees, project administration, the value of personal guarantees and a portion of any reserves determined by the housing credit agency to be in excess of industry norms.

Draw-Down: The process of requesting and receiving HOME funds. PJs and authorized state recipients draw down funds from a line of credit established by HUD.

Equity: The value of a property less the amount of outstanding debt on it.

Extremely Low-Income Families: Families whose annual incomes do not exceed 30 percent of the median income for the area (adjusted for family size).

Final Rule: HUD published a Final Rule in the Federal Register on July 24, 2013 to amend the

HOME Investment Partnerships (HOME) Program regulations. In general, the provisions of the 2013 Rule are applicable to projects for which HOME funds are committed on or after August 23, 2013 (30 days following publication date of the Final Rule).

Financing Plan: The proposed financing for a project.

General Partner: A partner who is liable and responsible for completing a project as proposed, managing the partnership and guaranteeing funding required to complete the project. A general partner oversees construction, leasing and property management; maintains the books and records of the partnership; and submits periodic reports to the limited partners on the project's financial status.

General Partnership: A form of ownership in which all partners participate materially in the partnership's operations and share liability.

Group Home: Housing occupied by two or more single persons or families consisting of common space and/or facilities for group use by the occupants of the unit, and (except in the case of shared one-bedroom units) separate private space for each family.

HOME-Assisted Units: A term that refers to the units within a HOME project for which rent, occupancy and/or resale restrictions apply. The number of units designated as HOME-assisted affects the maximum HOME subsidies that may be provided to a project.

HOME Funds: All appropriations for the HOME Program, plus all repayments and interest or other returns on the investment of these funds.

HOME Investment Trust Fund: The term given to the two accounts - one at the Federal level and one at the local level - that "hold" the PJ's HOME funds. The Federal HOME Investment Trust Account is the U.S. Treasury account for each participating jurisdiction. The local HOME Investment Trust Fund account includes repayments of HOME funds, matching contributions and payment of interest or other returns on investment.

Housing Investment Partnerships Act ("HOME Program"): The act that created a formula-based allocation program intended to support state and local affordable housing programs. The goal of the program is to increase the supply of affordable rental and ownership housing through acquisition, construction, reconstruction, and moderate or rehabilitation activities (Title I, National Affordable Housing Act of 1990).

HUD: U.S. Department of Housing and Urban Development.

Household: One or more persons occupying a housing unit.

Insular Areas: Guam, the Northern Mariana Islands, the United States Virgin Islands and American Samoa.

Interest Subsidy: The amount of subsidy required to reduce the interest rate on a loan to a below-market rate over the term of the loan.

Jurisdiction: A state or unit of general local government.

Limited Partner: A passive investor in a limited partnership who, in exchange for contributing equity to the project, receives a pro rata share of cash flow and tax benefits and the right to approve the sale or refinancing of the property and removal of the general partner in the event of gross negligence or breach of contract.

Limited Partnership: An ownership vehicle comprising limited and general partners that allows for central management but has no tax liability, instead passing tax benefits through to its limited and general partners.

Low-Income Families: Families whose annual incomes do not exceed 80 percent of the median income for the area (adjusted for family size).

Match: Match is the PJ's contribution to the HOME Program -- the local, non-Federal contribution to the partnership. The PJ's match contribution must equal not less than 25 percent of the HOME funds drawn down for projects in that fiscal year.

New Construction: The creation of new dwelling units. Any project which includes the creation of new or additional dwelling units in an existing structure is considered new construction.

Participating Jurisdiction (PJ): The term given to any state, local government or consortium that has been designated by HUD to administer a HOME Program. HUD designation as a PJ occurs if a state or local government meets the funding thresholds, notifies HUD that they intend to participate in the program and has a HUD-approved Consolidated Plan.

Program Income: Gross income received by the PJ, state recipient, or a subrecipient directly generated from the use of HOME funds or matching contributions.

Project: A site or an entire building or two or more buildings, together with the site or sites on which the building or buildings is located, that are under common ownership, management and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking. The HOME Final Rule eliminated the requirement that all buildings fall within a four block radius.

Project completion: A project is considered complete when it meets certain conditions, including: construction completion, title transfer, property standards met, funds disbursed and drawn, completion information entered into IDIS (homebuyer projects require beneficiary data, while rental projects can be completed as "vacant". For TBRA, project completion means the final draw-down has been disbursed for the project.

Recapture: Repayment of HOME funds to the PJ from a homebuyer project during the period of affordability.

Reconstruction (also rehabilitation): The rebuilding, on the same lot, of housing standing on a site at the time of project commitment. The number of housing units on the lot may not be changed as part of the reconstruction project, but the number of rooms per unit may change. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing.

Restrictive Covenant: A limitation placed on a property, which is recorded and attached to the deed, thereby passing to subsequent owners.

Section 8 Tenant-Based Rental Assistance Program: A federal program that provides rental assistance to low-income families who are unable to afford market rents. Assistance is provided in the form of vouchers.

Single-Room Occupancy (SRO): Housing consisting of single-room dwelling units that is the primary residence of its occupant or occupants. The unit must contain food preparation and/or sanitary facilities if the project involves new construction, conversion of non-residential space, or reconstruction. If the units do not contain sanitary facilities, the building must contain sanitary facilities shared by the tenants.

Soft Costs: Development costs exclusive of the cost of acquisition, site improvements, construction and contingencies.

Soft Second Mortgage: A loan provided by public and nonprofit lenders at below- market interest rates and with flexible repayment terms, using as collateral a second mortgage on the project property, to fill a financial gap for a project serving a public purpose (for instance, affordable housing.)

State Recipient: State PJs can award their HOME funds to units of local government to run HOME locally. Any unit of local government designated by a state to receive HOME funds is called a "state recipient." The state is responsible for ensuring that HOME funds allocated to state recipients are used in accordance with the HOME regulations and other applicable laws. **Note:** LHC generally refers to State Recipients as "Recipients."

Subrecipient: A public agency or nonprofit organization selected by a PJ to administer all or a portion of the PJ's HOME Program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subrecipient. **Note:** LHC generally does not refer to its HOME participants as "Sub- recipients" with the exception of TBRA recipients.

Substantial Rehabilitation: The cost of a rehabilitation project that costs more than $25,000.

Surplus Cash (Net Operating Income-NOI): The operating income derived by the project owner from development cash flow that exceeds 1st mortgage loan payments and the following operating expenses: property management fee, grounds maintenance, accounting services, amounts deposited into a replacement reserve account, legal services, taxes and insurance, and utility expenses, each specifically related to the development. Developer fees and depreciation of assets may not be included in calculating expenses.

Syndicates: Individuals or firms who arrange for the sale of ownership shares in a project to raise equity from investors.

Targeting: Requirements of the HOME Program relating to the income or other characteristics of households that may occupy HOME-assisted units.

Tenant-Based Rental Assistance (TBRA): A form of direct rental assistance in which the recipient tenant may move from a dwelling unit with a right to continued assistance. Includes security and utility deposits associated with the rental of dwelling units.

Total Development Cost ("TDC"): The sum of all costs for site acquisition, relocation, demolition, construction and equipment, interest and carrying charges.

Very-Low-Income Families: Families whose annual incomes do not exceed 50 percent of the median income for the area (adjusted for family size).

Violence Against Women Act (VAWA) of 2013: VAWA requires HUD to adopt a model emergency transfer plan for housing providers and to explain how housing providers must address their tenants requests for emergency transfers. The Act extends the basic protections (e.g., no eviction or termination of lease to survivors of domestic violence) to tenants residing in HOME assisted housing. The effective date of the HUD final rule is December 16, 2016.

LIST OF ATTACHMENTS

LIST OF HOME PUBLICATIONS

This list includes publications referenced on the "HOME Program Issuances and Documents" Web site: http://www.hud.gov/offices/cpd/affordablehousing/library/index.cfm. Many publications listed are available through HUD's information center, **Community Connections**. Contact Community Connections at (800) 998-9999, TDD 1-800-483-2209, or online at http://www.comcon.org.

Find detailed information on HOME publications on the following pages of this document:

HOME Statute

A copy of the latest HOME statute may be obtained through the HOME Program Web site at http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/laws/home/homelaws.pdf. The statute can also be obtained by calling Community Connections. Copies of other HOME statute publications may be obtained by calling HUD's Office of Affordable Housing Programs (OAHP) at 202-708-2684, TTY 1-800-877-8339.

Impacts of the 1999 Appropriations Act on HOME and SHOP. Memorandum from the Deputy Assistant Secretary for Grant Programs to CPD Division Directors, HOME Participating Jurisdictions and SHOP Grantees. Clarifies prohibition on using HOME funds for public housing. March 25,1999.

Quality Housing and Work Responsibility Act of 1998 (P.L. 105-276). Authorizes income determinations for lease-purchase to be made at the time the agreement is signed and for contract-to-purchase housing to be made at the time the contract is signed, repeals federal preferences and prohibits the use of HOME for public housing activities. October 21, 1999 (See HOMEfires Vol.1 No. 10, December 1998).

Impacts of the 1999 Appropriations Act on HOME and SHOP. Memorandum from the Deputy Assistant Secretary for Grant Programs to CPD Division Directors, HOME Participating Jurisdictions and SHOP Grantees. Includes information about HOME concerning income caps, homebuyer eligibility, repeal of Federal preferences, and prohibition against using HOME funds for public housing. November 23, 1998.

New Changes in the HOME Program from the 1994 Legislation. Memorandum from the Assistant Secretary for CPD. May 10, 1994.

Housing and Community Development Act of 1992 (P.L. 102-550). Changes Affecting CDBG Entitlement Program. Memorandum from the Acting Assistant Secretary for CPD to Field Office Staff. Includes information on CDBG program changes affecting HOME Program Administration funding. January 6, 1993.

Operating Instructions for the HOME Program Based on the Housing and Community Development Act of 1992. Memorandum from the Acting Assistant Secretary for CPD to all HOME PJs. November 9, 1992.

Housing and Community Development Act of 1992 Changes to CHAS, HOME and HOPE 3 Programs. Memorandum from the Director, OAHP, to Field Staff. October 22, 1992.

HOME Investment Partnerships Act. Title II, Investment in Affordable Housing. Cranston-Gonzalez National Affordable Housing Act. 42 U.S.C., P.L. 101-625, Title II, 104 Stat. as amended. November 28, 1990.

HOME Regulations

The Office of Affordable Housing Programs (OAHP) has prepared a consolidated version of the Final HOME Rule incorporating all current changes. The Final HOME Rule is online at http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/regs/finalrule.pdf.

HOME Investment Partnerships Program; Amendments to Homeownership Affordability Requirements, Interim Rule. 24 CFR Part 92, 69 FR 224: 68050-68052. This interim rule revises the homeownership affordability requirements of the HOME Investment Partnership program. First, the interim rule clarifies that, upon the sale of HOME-assisted homeownership housing before the close of the required affordability period, a participating jurisdiction may recapture an amount less than or equal to the net proceeds of the sale. Second, the interim rule also provides a participating jurisdiction with the flexibility to invest additional HOME funds in homebuyer housing for which HOME funds have already been used. November 22, 2004.

HOME Investment Partnerships Program; American Dream Downpayment Initiative, Interim Rule. 24 CFR 92, 69 FR 61, 16758-16768. This interim rule establishes regulations for a new downpayment assistance component under the HOME Investment Partnerships Program, referred to as the American Dream Downpayment Initiative (ADDI). Through the ADDI, HUD will make formula grants to participating jurisdictions under the HOME Investment Partnerships Program for the purpose of assisting low-income families achieve homeownership. This interim rule codifies the statutory formula for allocation of ADDI funds to HOME participating jurisdictions, identifies eligible activities and costs under the ADDI, and establishes other applicable requirements. March 30, 2004.

HOME Investment Partnerships Program; Additional Streamlining; Final Rule. 24 CFR part 92, 62 FR 163: 44838-44840. Establishes a separate formula for calculating match value of BMIR rehab loans; replaces HOME hearing procedures with Department-wide procedures; provides that HOME funds will be closed out in accordance with procedures established by HUD; replaces the competitive reallocation requirements with a citation; for floating HOME units, allows over- income tenants to pay market rents. October 22, 1997.

HOME Investment Partnerships Program; Technical Amendment to Final Rule. 24 CFR part 92, 62 FR 102: 28926-28930. Makes a number of technical and clarifying changes to the Final Rule. May 28, 1997.

HOME Investment Partnerships Program - Additional Streamlining; Proposed Rule. 24 CFR part 92, 61 FR 239: 65298-65299. Proposes streamlining changes. December 11, 1996.

HOME Investment Partnerships Program; Final Rule. 24 CFR part 92, 61 FR 180: 48736-48787. Makes a number of changes as a result of public comments, and sets forth the regulations to implement the HOME program. September 16, 1996.

HOME CPD Notices

CPD Notices provide detailed guidance on a specific subject. *HOME CPD Notices* explain how the HOME Program regulations should be interpreted or applied. A listing of all CPD Notices is available online at http://www.hud.gov/offices/adm/hudclips/. Copies of individual CPD HOME Notices may be obtained by calling Community Connections, or through the HOME program Web site at http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/index.cfm. Please note that some of the notices listed below have expired or have been replaced by more recent notices. *Please note: Match reduction and designating Consortia notices are published each year, so they are not included in the following list.*

HUD Notice CPD 08-01: Notice of Procedures for Designation of Consortia as a Participating Jurisdiction for the HOME program (Supercedes Notice 07-04)
February 8, 2008

HUD Notice CPD 07-06: Commitment, CHDO Reservation, and Expenditure Deadline Requirements for the HOME Program
June 1, 2007

HUD Notice CPD 07-14: HUD Procedures for Rejecting a Participating Jurisdiction's Consolidated Plan/Action Plan HOME Certification(s)
February 26, 2007

HUD Notice CPD 06-05: HOME Program - Instructions for Designating New Participating Jurisdictions (PJs); Reserving and Obligating Funds; Reallocating Funds; and Numbering HOME Investment Partnerships Agreements
May 4, 2006

HUD Notice CPD 06-01: Administrative costs, project-related soft costs, and community development housing organization operating expenses under the HOME Program and ADDI
February 1, 2006

HUD Notice CPD 05-02: Notice of Implementation of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), February 3, 2005
April 13, 2005

HUD Notice CPD 04-10: Notice of guidelines for Ensuring Equal Treatment of Faith-based Organizations participating in the HOME, CDBG, HOPE 3, HOPWA, Emergency Shelter Grants,

Shelter Plus Care, Supportive Housing, and Youthbuild Programs
September 29, 2004

HUD Notice CPD 04-02: Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as Amended, in HOPE VI Projects (Supercedes 02-8)
February 3, 2004

HUD Notice CPD 03-13: Accessibility Notice: Section 504 of the Rehabilitation Act of 1973 and The Fair Housing Act and their applicability to housing programs funded by the HOME Investment Partnerships Program and the Community Development Block Grant Program
(Extends CPD Notice 00-9)
November 26, 2003

HUD Notice CPD 03-10: Notice of Use of HUD Resources to Assist Colonias
October 8, 2003

HUD Notice CPD 03-08: HOME Program - Using HOME Program Funds to Address the Challenges of Homelessness
July 30, 2003

HUD Notice CPD 03-05: Guidance on Manufactured Housing under the HOME Program
March 11, 2003

HUD Notice CPD 01-13: Commitment, CHDO Reservation, and Expenditure Deadline Requirements for the HOME Program.
(Supercedes Notice 00-02)
October 12, 200

HUD Notice CPD 01-11: Environmental Review and the HOME Investment Partnerships Program
(Supercedes Notice 94-11)
July 17, 2001

HUD Notice CPD 01-05: The Use of HOME Funds for Projects to be Occupied by Children in Foster Care
April 24, 2001

HUD Notice CPD 01-01: Guidance on Combining Program Funds of the McKinney Act Programs, the HOPWA, Property Disposition Initiatives, with the HOME Program (Supercedes HUD Notice CPD 94-11)
January 17, 2001

HUD Notice CPD 00-09: Accessibility Notice: Section 504 of the Rehabilitation Act of 1973 and The Fair Housing Act
December 26, 2000

HUD Notice CPD 98-09: HOME Program Conflict of Interest Provisions
(Supercedes CPD 93-06)
July 14, 1998

HUD Notice CPD 98-02: Allocating Costs and Identifying HOME-assisted Units in Multifamily Projects
(Supercedes CPD 94-12)
March 18, 1998

HUD Notice CPD 98-01: Layering Guidance for HOME Participating Jurisdictions When Combining HOME Funds with Other Government Subsidies
(Supercedes CPD 94-24)
January 22, 1998

HUD Notice CPD 97-11: Guidance on Community Housing Development Organizations (CHDOs) under the HOME Program
(Supercedes CPD 94-02)
October 8, 1997

HUD Notice CPD 97-09: HOME Program Income, Recaptured Funds, Repayments and CHDO Proceeds
September 12, 1997

HUD Notice CPD 97-08: Guidance on the Use of HOME funds with HOPE VI and Public Housing Funds
June 30, 1997

HUD Notice CPD 97-03: HOME Program Match Guidance
(Supercedes CPD 95-01)
March 27, 1997

HUD Notice CPD 96-09: Administrative Costs, Project-Related Soft Costs, and Community Development Housing Organization (CHDO) Operating Expenses under the HOME Program
(Supercedes CPD 94-13)
December 20, 1996

HUD Notice CPD 96-07: Guidance on Tenant-Based Rental Assistance under the HOME Program
November 1, 1996

HUD Notice CPD 96-05: Procurement of Consulting Services by Community Development Block Grant (CDBG) Recipients, HOME Participating Jurisdictions, and Sub- recipients
October 11, 1996

HUD Notice PIH 96-63 (HA): Determining Section 8 Rents for Units in HOME-assisted Projects
October 9, 1996

HUD Mortgagee Letter 96-21: Single Family Loan Production -- Using 203(k) Rehabilitation Mortgage Insurance with Participation by State and Local Housing Agencies and Non-Profit Organizations
April 26, 1996

HUD Notice CPD 94-20: Rent Exceptions for HOME-Assisted Rental Projects
July 25, 1994

HUD Notice CPD 94-18: Guidance on the Environmental Review Process under the HOME Program
(Supercedes Notice CPD 93-16)
July 8, 1994

HUD Notice CPD 94-17: Field Office Guidance on Manufactured Housing under the HOME Program
(Supercedes CPD 92-32)
July 5, 1994

HUD Notice CPD 94-05: Implementation of the Fire Administration Authorization Act of 1992 (Public Law 102-522)
(applies to CPD Housing Assistance programs)
January 31, 1994

HUD Notice CPD 94-01: Using HOME Funds for Single Room Occupancy (SRO) and Group Housing
(Supercedes CPD Notice 92-31)
January 4, 1994

HUD Notice CPD 93-42: Community Land Trusts and the HOME Program
December 20, 1993

HUD Notice CPD 93-29: Field Office Monitoring of HOME Investment Partnerships Program Participating Jurisdictions
September 9, 1993

HUD Notice CPD 92-19: Using Community Development Block Grant (CDBG) Funds in Implementing the HOME Investment Partnerships and Homeownership for People Everywhere (HOPE) Programs
June 9, 1992

HOME Memoranda

Copies of HOME memoranda may be obtained by calling HUD's Office of Affordable Housing Programs (OAHP) at 202-708-2684. Copies of the latest monthly Commitment Status Reports, CHDO Reservations Status Reports and Disbursement Status Reports also may be obtained on the HOME Web site: http://www.hud.gov/offices/cpd/affordablehousing/reports/deadlinecompliance.cfm.

Commitment Status Report, CHDO Reservation Status Report and Disbursement Status Report by PJ. Memorandum from the Director, OAHP to all CPD Division Directors. Forwards reports on the commitment, reservation and disbursement of HOME funds. Monthly.

Tracking HOME Program Performance. Memorandum from the Acting Director, Office of Executive Services, CPD. September 28, 1998.

Consolidated Annual Performance and Evaluation Reporting for Entitlement Grantees for 1997 Program Year. Memorandum from the Assistant Secretary for Community Planning and Development. Covers reporting for the HOME program. February 18, 1998.

Implementing New Definition of "Commitment" for HOME Program. Memorandum from Director, OAHP, to Field Offices and Participating Jurisdictions. October 6, 1994.

HOMEfires

HOMEfires is the Official Policy newsletter of the HOME Program. Each *HOMEfires* answers a specific policy question. *HOMEfires* are available on the HOME Program Web site at http://www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm.

Vol. 10, No. 2: February, 2009
Does the recently issued final rule on "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs" affect the way that Participating Jurisdictions (PJ) determine income-eligibility of HOME participants?

Vol. 10, No. 1: January, 2009
What limits must Participating Jurisdictions (PJs) use as the maximum purchase price or after-rehabilitation value limits for their HOME-assisted homeownership housing, now that the Economic Stimulus Act of 2008 (Public Law 110-185) has expired and the Housing and Economic Recovery Act of 2008 (Public Law 110-289) has established a new procedure for determining Section 203(b) mortgage limits?
Note: This policy supersedes Vol. 9, No. 3

Vol. 9, No. 4: August, 2008
Can Participating Jurisdictions (PJs) use the higher statutory exceptions to the maximum Section 221(d)(3) mortgage amounts, authorized by Section 221 of the General Provisions of Title II, Division K of the FY 2008 Appropriations Act, to determine their maximum HOME per-unit subsidy limits.

Vol. 9, No. 3: March, 2008
Can Participating Jurisdictions (PJs) use the temporary Section 203(b) limits authorized by the Economic Stimulus Act of 2008 (Public Law 110-185) as the maximum purchase price or after rehabilitation loan value limits for their HOME-assisted homeownership housing?
Note: This policy has been superseded by Vol. 10, No. 1

Vol. 9, No. 2: March, 2008
What constitutes acceptable documentation of commitments that a PJ made before the 24-month commitment deadline for projects or agreements not set up in IDIS?

Vol. 9, No. 1: January, 2008
How can Participating Jurisdictions help existing homeowners who are having difficulty paying their private mortgages because of unfavorable financing terms?

Vol. 8, No. 1: October, 2007
Can a participating jurisdiction (PJ) use its HOME funds for projects outside its boundaries?

Vol. 7, No. 2: October, 2006
When HOME funds are used to rehabilitate a unit, must the entire unit meet the applicable property standards?

Vol. 7, No. 1: January, 2006
What are Participating Jurisdictions' (PJs) responsibilities for developing, disseminating, and implementing affirmative marketing procedures?

Vol. 6, No. 2: October, 2005

What are the participating jurisdictions responsibilities for performing inspections of units purchased with HOME or ADDI assistance? Can PJs rely on inspections performed by third parties (such as consumer inspections) to determine compliance of HOME or ADDI units with applicable property standards?

Vol. 6, No. 1: August, 2005
What are the rules and expectations for entering HOME project completion information and beneficiary data into the Integrated Disbursement and Information System (IDIS)?

Vol. 5, No. 5: November, 2003
Can a Participating Jurisdiction (PJ) include both resale and recapture requirements in a written agreement on the same HOME-assisted homebuyer unit and choose the option to be imposed at the time of resale?

Vol. 5, No. 4: October, 2003
Are the periods of affordability for homebuyer projects calculated in the same manner for projects under the resale and recapture provisions?

Vol. 5, No. 3: July, 2003
What is the impact of the regulations amending the calculation of annual income and adjusted income for disabled families and for families with members who are persons with disabilities on income and rent calculations for the HOME Program?

Vol. 5, No. 2: June, 2003
Does the termination of the affordability restrictions on a HOME-assisted project due to foreclosure or transfer in lieu of foreclosure relieve the Participating Jurisdiction (PJ) of the requirement to repay the HOME investment in projects in which the affordability requirements are not met for the full affordability period?

Vol. 5, No. 1: April, 2003
Can nonprofit organizations removed from the FHA Nonprofit Organization Roster participate in the HOME Program?

Vol. 4, No. 4: September 2002
What are a Participating Jurisdiction's (PJ's) responsibilities for monitoring with respect to entities using its HOME funds?

Vol. 4, No. 3: July 2002
How should a Participating Jurisdiction (PJ) determine which amenities are suitable to include in HOME assisted projects?

Vol. 4, No. 2: June 2002
Must the environmental review process be completed before any HOME funds are committed or actions undertaken? What steps must participating jurisdictions take when dealing with third-party partners?

Vol. 4, No. 1: April 2002
How often must a PJ re-qualify a non-profit organization as a Community Housing Development Organization (CHDO)?

Vol. 3, No. 10: November 2001
For the purpose of determining the rent applicable to a HOME unit, are enhanced Section 8 vouchers, sometimes referred to as "sticky" vouchers, considered project-based rental assistance or tenant-based rental assistance?

Vol. 3, No. 9: October 2001
Are Community Land Trusts (CLTs) automatically considered to be CHDOs?

Vol. 3, No. 8: June 2001
What changes have been made to the methodology for calculating Section 8 income limits? What impact will these changes have on the calculation of HOME income limits?

Vol. 3, No. 7: May 2001
Can HOME funds be used in conjunction with the homeownership option of the Housing Choice Voucher Program?

Vol. 3, No. 6: May 2001
Why must HOME PJs, which are permitted to determine the start date of the program year for their HOME and other CPD programs, meet their HOME match obligations based upon the Federal fiscal year (October 1-September 30)?

Vol. 3, No. 5: April 2001
The definition of "commitment" in the HOME Final Rule states that, when a PJ commits funds to a specific project, there must be a reasonable expectation that construction will begin within twelve months for rehabilitation or, for acquisition only projects, be transferred within six months. Does this mean that projects that do not meet this requirement are ineligible and must be canceled?

Vol. 3, No. 4: March 2001
Are back taxes, fees or charges an eligible project soft cost for a project being acquired or rehabilitated with HOME funds?

Vol. 3, No. 3: March 2001
May Participating Jurisdictions use Section 8 "exception rent limits" as the basis for determining HOME program rents? What is the difference between "exception rent limits and HOME rent exceptions"?

Vol. 3, No. 2: February 2001
The HOME Final Rule states that each Participating Jurisdiction must perform on-site inspections of HOME-assisted rental housing. How frequently should these inspections be informed?
How should each PJ determine the number of units that must be inspected?

Vol. 3 No. 1: January 2001
What are written rehabilitation standards and what is their function in the HOME Program?
How do they differ from property standards?

Vol. 2 No. 5: April 2000
I have heard a great deal about the IDIS HOME data clean-up effort.
Why is this endeavor such a priority for HUD? What is quality data and how can I assist HUD in its effort to improve the reliability of HOME program information in IDIS?

Vol. 2 No. 4: September 1999 (HUD is updating this policy)
What are the HOME income, rent, per-unit subsidy and purchase price/after rehab value limits that apply to my community? Where can I find the latest limits?
Note: This is no longer available on the Web. HUD is updating this policy.

Vol. 2 No. 3: May 1999
Are wards of the State and wards of the Court eligible beneficiaries of HOME-assisted transitional housing?
Note: This is no longer available on the Web. HUD has withdrawn this policy.

Vol. 2 No. 2: April 1999
Occasionally members of PJ, State recipient and subrecipient staffs serve as board members of CHDOs and other nonprofit organizations that receive HOME funding for the provision of low-income housing. What are the HOME conflict of interest provisions that apply to persons serving on these boards?

Vol. 2 No. 1: March 1999
What are eligible CHDO activities in the HOME program?

Vol. 1 No. 10: December 1, 1998
How will the recently passed Quality Housing and Work Responsibility Act of 1998 affect income eligibility requirements for participants in HOME-funded lease-purchase housing programs?

Vol. 1 No. 9: October 1, 1998
What are the HOME and other Federal requirements that apply to property receiving HOME downpayment assistance?

Vol. 1 No. 8: July 1, 1998
What is an Individual Development Account (IDA)? And can HOME funds be used for them when buying a home is the goal?

Vol. 1 No. 7: April 1, 1998
What are the lead-based paint (LBP) requirements applicable to HOME-assisted projects?
Note: This is no longer available on the Web. The policy has been superseded by the issuance of new Part 35 regulations.

Vol. 1 No. 6: February 24, 1998
How should I set up an activity and commit funds in IDIS under HOME to purchase, rehabilitate, and rent out homes at different locations? Is there a way to set up and fund this activity without knowing the addresses of the properties? Can one activity have more than one property address? Would the same process work for a first-time homebuyer program which provided HOME assistance at different locations?

Vol. 1 No. 5: February 2, 1998
What are the Section 504 requirements for handicapped accessibility to federally assisted housing activities and programs in general, and the HOME Program in specific?

Vol. 1 No. 4: October 30, 1997 (HUD has withdrawn this policy)
Can a PJ provide HOME assistance to a project that will serve only a certain special needs group (i.e., elderly, homeless, physically disabled, etc.)? How would the HOME affirmative marketing requirements apply to such a project?

Vol. 1 No. 3: September 15, 1997
May HOME funds be used to construct replacement units for demolished public housing which

would be owned by a Public Housing Authority (PHA) and receive operating subsidies under an annual contributions contract?
Note: This is no longer available on the Web. The policy has been superseded by changes made by the Quality Housing and Work Responsibility Act of 1998.

Vol. 1 No. 2: July 1, 1997
Applicability of HOME Program Requirements to Purchasers of 2-4 unit Owner-Occupied Projects

Vol. 1 No. 1: June 1, 1997
What are the constraints on using HOME funds for housing counseling?

HOME *FACTS*

HOME *FACTS* is OAHP's Official Financial and Information Services Division newsletter for the HOME Program. Each HOME *FACTS* will address a topic related to HOME finance, such as HOME grants, deadline compliance, and repayments, or HOME computer systems processed in the Integrated Disbursement and Information System (IDIS). HOME *FACTS* are available online at the HOME Program Web site:
http://www.hud.gov/offices/cpd/affordablehousing/library/homefacts/.

Vol. 2, No. 2: February, 2009
Topic: The purpose of this issue of HOME FACTS is to notify all HOME participating jurisdictions (PJs) about the September 30, 2009, expiration of the right to draw down Fiscal Year (FY) 2002 HOME grant funds. As of that date, any unexpended balances in FY 2002 grants will be recaptured by the United States Treasury. This deadline and expenditure requirement has been established by the U.S. Treasury, and is in addition to the HOME program's regulatory 5-year disbursement requirement.

Vol. 2, No. 1: January, 2009
Topic: This HOME FACTS specifies how HUD determines when a HOME participating jurisdiction's (PJ's) 24-month commitment period begins and ends. Specifically, HUD must ensure that the date HUD executes a PJ's HOME Investment Partnerships Agreement (HUD-40093) and the date on the transmittal letter to the PJ are the same as its congressional release date, prior to forwarding the grant agreement to the PJ.

Vol. 1, No. 3: September, 2008
Topic: This issue of HOME FACTS explains how to use the Integrated Disbursement and Information System (IDIS) PR 27 Status of HOME Grants report to compute a participating jurisdiction's (PJ's) commitment requirement and total commitments; CHDO reservation requirement and total CHDO reservations; and expenditure requirement and total expenditures for the HOME Program.

Vol. 1, No. 2: May, 2008
Topic: This issue sets forth the process to be followed by a PJ to request a reduction to its community housing development organization (CHDO) set aside in one or more years to an amount less than 15 percent of its HOME allocation in those years.

Vol. 1, No. 1: April, 2008

Topic: The process for the repayment of funds expended on ineligible costs or activities to a HOME participating jurisdiction's (PJ's) HOME Investment Trust Fund Treasury Account. Instructions are also provided on making revisions in IDIS to reflect changes in draws when funds are repaid. The previous guidance found in IDIS Live Issue 45, November 2000, has outdated information.

HOME Model Program Guides

Copies of individual HOME model program guides may be obtained through Community Connections. Model descriptions are available on the HOME Program Web site at http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/index.cfm.

Fair Housing for HOME Program Participants
HUD-2005-10-CPD. May 2005.

Technical Guide for Determining Income and Allowances for the HOME Program
HUD 1780-CPD. Supersedes HUD 1780-CPD June 1999). January 2005.

CHDO Toolbox for HOME PJs
HUD-2004-08-OAHP. July 2004.

HOME and Neighborhoods: A Guide to Comprehensive Revitalization Techniques
HUD-2003-20-CPD. April 2004.

Fitting the Pieces Together: Using Private and Public Financing Tools with HOME-Assisted Homebuyer Programs
HUD-2003-14-CPD. February 2004.

Good Habits of a Highly Effective Rehabilitation Manager
HUD-2003-17-CPD. January 2004.

Mixed Income Housing and the HOME Program
HUD-2003-15-CPD. January 2004.

HOME Program Rehabilitation Tune-up
HUD-2003-13-CPD. January 2004.

Measuring Up: Productivity and Performance in the HOME Program
HUD-2003-16-CPD. January 2004.

Monitoring HOME Program Performance.
HUD-2030-CPD. October 2000.

Employer-Assisted Housing and the HOME Program. HUD-2019-CPD. May 2000.

Asset Management: Strategies for the Successful Operation of Affordable Rental Housing. HUD-2018-CPD. May 2000.

Financing Rental Housing Under the HOME Program: Second Edition. HUD-1794-CPD. January 2000.

Using HOME to Develop a Homebuyer Assistance Program. HUD-1782-CPD. June 1999.

Homeownership Options Under the HOME Program: A Model for Publicly Held Properties and Land Trusts.
HUD-1781-CPD. Supersedes HUD-1414-CPD (October 1993). June 1999.

Technical Guide for Determining Income and Allowances for the HOME Program (Second Edition).
HUD-1780-CPD. Supersedes HUD-1470-CPD (May 1994). June 1999.

Using HOME with Low-Income Housing Tax Credits (Revised).
November 1998.

The HOME Program: An Introductory Guide to HOME.
HUD-1747-CPD. Supersedes HUD-1335-CPD (June 1995). October 1998.

The HOME Program: What Are Your Community's Most Urgent Affordable Housing Needs?
HUD 1746-CPD. October 1998.

Using HOME Funds for Homebuyer Programs: Structuring Recapture and Resale Provisions.
HUD-1674-CPD. May 1997.

Tenant Based Rental Assistance: A HOME Program Model. HUD-1658-CPD. January 1997.

Building Public-Private Partnerships to Develop Affordable Housing. HUD-1583-CPD. May 1996.

Rental Housing Development and HOME: Four Case Studies. HUD-1584-CPD. April 1996.

Cost Saving Construction Opportunities and the HOME Program: Making the Most of HOME Funds.
HUD-1503-CPD. December 1994.

Financing Rental Housing Under the HOME Program.
HUD-1414-CPD. September 1994.

Energy Conservation and Housing Rehabilitation Under the HOME Program.
HUD-1469-CPD. May 1994.

Sweat Equity and the HOME Program.
HUD-1425-CPD. October 1993.

HOME Repair/Modification Programs for Elderly Homeowners.
HUD-1408-CPD. October 1993.

First-Time Homebuyers and the HOME Program: Using the HOME Investment Partnership Program.
HUD-1369-CPD. March 1993.

Owner-Occupied Rehabilitation -- A Direct Loan Model.
HUD-1386-CPD. January 1993.

From Rental Rehabilitation to the HOME Program -- Making the Transition.
HUD-1370-CPD. January 1993.

HOME Rent, Income and Subsidy Limits

The current fiscal year HOME Income Limits and Rent Limits may be obtained at HUD's HOME Web site (http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/).
Other rent, income and subsidy limit publications may be obtained by calling HUD's Office of Affordable Housing Programs (OAHP) at 202-708-2684, TTY 1-800-877-8339.

HOME Training Guides and Courses

The HOME Program offers three different training options: on-site training, online training (the HOME Front), and manuals. Information on all types of HOME training is available online at: http://www.hud.gov/offices/cpd/affordablehousing/training/index.cfm.

Manuals: Copies of the *Building HOME: A HOME Program Primer* training manual and PowerPoint slides may be obtained through Community Connections or on the HOME Web site.

On-Site Training: Training seminars related to the HOME Program are sponsored by HUD's Office of Affordable Housing Programs. Descriptions and registration information for these courses can be found on the HOME Web site.

Web-Based Training Modules: The ***HOME Front*** is HUD's interactive Web-based HOME training and technical assistance site for individuals and organizations. To access the online training please visit http://www.hud.gov/offices/cpd/affordablehousing/training/web/index.cfm.

HOME Allocations and Fund Assignments

A copy of the latest fiscal year allocations may be obtained through Community Connections or online at: http://www.hud.gov/offices/cpd/about/budget/index.cfm.

Integrated Disbursement and Information System

HUD makes a variety of IDIS learning and reference tools available. These resources provide information on a range of IDIS topics, including technical components, release notes, news articles, links to other HUD sites, and more. Updated regularly, these resources reflect the way IDIS currently operates so that grantees can work at peak efficiency. Information on IDIS is available online at: http://www.hud.gov/offices/cpd/systems/idis/resources/index.cfm

Also available on the IDIS Web site is the latest version of the IDIS reference manual. The CPD-maintained IDIS Reference Manual was originally published in April, 1999. CPD updates chapters as needed to stay current with the most recent release of IDIS. The IDIS Technical Assistance Unit (TAU) is available by calling (800) 273-2573.

HOME Forms

Copies of HOME forms may be obtained through the HOME Program Web site at http://www.hud.gov/offices/cpd/affordablehousing/library/forms/index.cfm or through Community Connections.

Cross-Cutting Requirements

In addition to the HOME Statute and the HOME Final Rule, there are a number of other HUD and federal laws and regulations that apply to the use of HOME funds.

Information on federal cross-cutting requirements may be obtained through the HOME Web site at http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/fedreq/.

Other Resources

OMB Circulars: These can be downloaded via: http://www.whitehouse.gov/omb/circulars/.

On-line Systems and Databases: Links to relevant systems and databases can be accessed on the Web at: http://www.hud.gov/offices/cpd/systems/index.cfm.

The Office of Affordable Housing Programs mailing list (sign up to receive an email each time the HOME Web site is updated): http://www.hud.gov/subscribe/index.cfm

Consolidated Planning: Additional information is available on the Web at http://www.hud.gov/offices/cpd/about/conplan/.