

# **I. HOME ADMINISTRATIVE REQUIREMENTS**

## **2. CONTRACT & PROJECT ADMINISTRATION**

**(This chapter applies to DED)**

### **2.1 HOME Requirements**

The requirements in this manual provide awardees with standards for administering the HOME Program in a consistent manner. The Department fully expects awardees of Nebraska HOME funds to comply with all administrative requirements. Awardees must become educated on all administrative components, elements and requirements of the HOME Program.

The principal contact at the Department for a particular HOME project is the program representative assigned to the project. The program representative is familiar with the project and assists the local government, public housing agency or non-profit organization with implementation.

#### **2.1.1 Administration of a HOME Project – Overview of the Process**

##### **HOME Contract**

The Department will send the awardee a HOME Contract shortly after the Notice of Approval. The contract contains a project description, time of performance, sources and uses of funds, conditions governing the use of HOME funds, and the special conditions for release of funds.

The contract must be signed by the awardee and returned to the Department within one month. In most cases, the special conditions of the contract must be satisfied within three months and the project completed within two years (See Chapter 6 – HOME Contract for more information). The contract between the Department and the awardee provides for termination for cause and or for convenience. In the event the Department suffers a loss of funding or termination of the federal grant that permits it to fund in full or in part a HOME award, the contract will terminate in full or in part.

##### **Special Conditions for Release of Funds**

Awardees of HOME funds are advised to carefully review their HOME Contract before implementing the funded project.

In the contract, the Special Conditions for Release of Funds section clearly states that funds will not be released by the Department until the special conditions are met. The Department also reserves the right to cancel the contract if the special conditions are not met within the specified time frame.

Please note: Project costs cannot be obligated or incurred prior to the Department issuing a written Notice of Release of Funds.

### Typical Special Conditions for Release of Funds:

- HOME Program Awardee Information Sheet – Awardee must complete and return this form.
- HOME Authorization to Request Funds – Awardee must complete and return this form.
- Environmental Review – Awardee must receive environmental clearance from HUD. To do so, the awardee must complete the Environmental Review Record (ERR), publish with the proper public comment period, complete the proper Request for Release of Funds notice, complete the HUD 15-day objection period, and receive the HUD Authority to Use Grant Funds form (if applicable).
- Procurement Standards – Awardee must provide documentation evidencing the adoption of appropriate procurement standards applicable to the awardee.
- Excessive Force Certification - If the awardee is a unit of general local government, it must provide documentation of an adopted policy to prohibit the use of excessive force by law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.
- Fair Housing – Awardee must provide a description of at least one new action it will take to affirmatively further fair housing. This documentation must be on official letterhead. The new fair housing action(s) must be performed during the course of the current HOME Project to fulfill the requirements. The awardee must maintain and provide documentation of the impact of the Fair Housing Activity undertaken, recording number of people affected or served and the outcome, if any, of the action.
- Implementation/Development Schedule – Completion and submission to the Department of this form.
- Limited English Proficiency - Awardee must submit documentation evidencing completion of its responsibilities to ensuring meaningful access to the Project activities and services for persons with Limited English Proficiency (“LEP”) as required by Title VI of the Civil Rights Act of 1964; Executive Order 13166; and HUD's final “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons”, which was published in the Federal Register on January 22, 2007 and which became effective on March 7, 2007 (“HUD LEP Guidance”).
- Documentation from the Nebraska Department of Environment and Energy - If the Project involves new construction, the Recipient must submit documentation from the Nebraska Energy Office that shows the plans and specifications for the Project are in compliance with the most recent version of the International Energy Conservation Code.
- Excessive Force Certification - If the Awardee is a unit of general local government, then it must provide documentation that it has adopted a policy to prohibit the use of excessive force by local law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

### Additional Special Conditions that might also be included in a HOME CHDO contract:

- Program Guidelines, Sales Proceeds and Recapture Reuse Plan.

- Program Income Reuse Plan.
- Rehabilitation Procedures.
- Any other special condition item as specified in the contract.

Additional Special Conditions that may be included in a HOME Rental Project Contract:

- Budget & Proforma
- Cost Allocation
- Project Completion Schedule
- Proposed Tenant Selection Policy
- Proposed Lease/HOME Addendum
- Final Commitments from all sources

The above list represents typical special conditions; however, all HOME Contracts are tailored to a specific project with unique conditions.

The Department’s website contains forms needed to complete Special Condition requirements.

The Special Conditions for Release of Funds in the HOME Contract must be satisfied before the Notice of Release of Funds will be issued for the project.

### **Release of Funds**

Upon receiving the “Notice of Release of Funds” letter, the awardee may obligate non-administrative costs and draw down funds for eligible costs incurred. A Release of Funds will not be approved if there are any unresolved audit findings relating to a past grant and remains unresolved beyond the normal period or is deemed to be extreme misconduct.

### **Setting Up Funds**

After the Department issues a Notice of Release of Funds and prior to requesting HOME funds an awardee must complete a HOME Activity Set-Up Report to “set-up” HOME funds per address (activity). Upon approval by the Department of a Set-Up Report a number will be provided to the awardee for that activity (address). More information on set-ups is available in Chapter 3 – Financial Management.

### **Requesting HOME Funds**

The awardee must complete and send to the Department a Request for HOME Funds only as funds are needed for the project. Funds can only be requested for those activities that are set-up (except for organizational operating). HOME funds will be disbursed electronically to the awardee’s bank. The awardee has only 15 working days to spend HOME funds following receipt. More information on requesting funds is available in Chapter 3 – Financial Management.

### **Contract Amendments/Extensions**

Awardees must request approval from the Department for any of the following changes:

- Changes to the budget.
- Extensions of the contract end date.
- Decreases in proposed accomplishments.
- Amendments to housing program guidelines, tenant selection process and/or lease agreements.

The Department will review amendment requests considering the following factors:

- How the amendment would have affected the application in the selection process; and
- Awardee's performance and capacity.

An on-site visit may be required before a determination can be made.

The HOME Contract Amendment Request Form is available at the Department's website:

[https://opportunity.nebraska.gov/wp-content/uploads/2017/06/HOME\\_contract\\_amendment\\_request.pdf](https://opportunity.nebraska.gov/wp-content/uploads/2017/06/HOME_contract_amendment_request.pdf)

### **Recordkeeping Requirements**

Rental Records:

- General 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 ends.

Homebuyer and Homeowner Rehabilitation Records:

- General records must be kept for five years from the date of the Certificate of Completion letter issued by the Department.
- Resale/Recapture records must be kept five years after the affordability period ends.

See Chapter 6 – Monitoring for more information on files and recordkeeping.

### **Reporting Requirements**

The Department requires awardees to submit reports at various stages during the course of a project. Chapter 5 describes the reports and due dates for receipt by the Department. Note that not all of the reports are applicable to every project.

Awardees should use the most current form for a particular report they are submitting. Current forms are available on the Department's website in an area called "Performance of HOME Contract Forms & Templates." <https://opportunity.nebraska.gov/program/home/#forms>

See Chapter 5 – Reporting Requirements for more information on reporting requirements. Contact the HOME Program Representative to provide assistance, if needed, with locating and/or sending to the awardee a copy of the current form.

### **Monitoring**

All HOME projects are monitored for compliance with HOME rules. See Chapter 6 – Monitoring for more information on monitoring.

### **Closeout**

The following items/steps are required to be satisfactorily completed before the Department will issue a Certificate of Completion for a HOME project:

- The Final Financial Report (awardee must submit within 3 months of the project's last drawdown).
- The Final Performance Report (awardee must submit within 3 months of the project's last drawdown).
- The Final Wage Compliance Report, if applicable (awardee must submit within 3 months of the project's last drawdown). Projects requiring adherence to labor standards, see Chapter 12 – Construction & Labor Standards.
- The Department has completed the initial compliance review of the project and monitoring clearance is achieved (note: The Department is required to monitor rental projects throughout the affordability period).
- The awardee has fulfilled all audit requirements satisfactorily.

See Chapter 7 – Audit & Closeout for more information on closeout.

## **2.2 Other Contract Requirements**

### **2.2.1 Administrative Costs**

Administrative costs are the costs associated with implementation of the grant. These costs may include salaries for personnel who devote full or part time to the grant, cost of equipment and supplies used for grant activities, and the cost of administrative services provided by other agencies. Costs that are administrative in nature but are in direct support of a project activity should be charged to the project activity and not to General Administration. General administration and housing management are typically the administrative line items in the budget in the HOME Contract. Housing management funds are set-up and drawn on an address (activity) by address (activity) basis.

Each HOME award is unique. The Department provides funds for administrative costs in a variety of ways depending upon the nature of the project and the type of awardee. Awardees should understand the budget in the HOME Contract, including the line item to be used for administrative costs.

Awardees should confirm with their program representative as to the budget line item authorized for general administration of the award. This often will vary from the budget submitted with the original application.

Note: The terms housing management, housing administration and project soft costs are interchangeable.

All administrative costs charged to the project must be documented, i.e., through timesheets, purchase orders, and invoices. 2 CFR 200 Subpart E provides guidelines for determining allowable costs.

See Chapter 3 – Financial Management for more information on administrative costs.

### **2.2.2 Matching Requirements/Other Funds**

Matching funds committed to the project as a part of the approved HOME Contract should be accounted for in grant records. The receipt and expenditure of the matching funds should be carefully documented. If matching funds are derived from a source outside the local government or non-profit, project records should identify the source and amount during application and commitment of matching funds prior to release of funds.

Note that HOME does not require proportional drawdowns (showing matching funds in the same proportion as in the budget in the HOME Contract), however matching funds must be shown on Request for HOME Funds forms, Activity Completion Reports and the Final Financial Report for the project. Awardees failing to meet the match required in the HOME Contract budget by the end of the project are subject to penalties that include repayment of HOME funds to the Department.

### **2.2.3 Conflict of Interest**

#### **State Recipients and Subrecipients**

The HOME Program regulations require State Recipients and subrecipients to comply with provisions in 2 CFR 200.112 and .318 and 24 CFR §92.356 regarding conflict of interest.

At a minimum, these standards must:

- Require that no employee, officer, agent of awardee 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 employees, officers, and agents not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements.
- 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 awardee.
- Any member of an employee's, agent's, or officer's immediate family.
- An employee's, agent's, or officer's partner.
- An organization that employs or is about to employ an employee, agent, or officer of the awardee.

Activities covered by HOME regulations. In cases not covered by 24 CFR 200, including the award of unit benefits or housing assistance, the HOME regulations at 24 CFR §92.356 governing conflict-of-interest apply. No persons who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

Exceptions. Upon written request, exceptions to both sets of provisions may be granted by the Department and HUD on a case-by-case only after the awardee has done both of the following:

- Disclosed the full nature of the conflict and submitted proof that the disclosure has been made public, and
- Provided a legal opinion stating that there would be no violation of state or local law if the exception were granted.

### **Owners and Developers**

No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required period of affordability specified in §92.252(e) or §92.254(a)(4).

This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

Exceptions to this conflict-of-interest provision (governing owners, developer and sponsors of HOME-assisted housing) may be granted by the Department 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.
- Any other factor relevant to the Department's determination, including the timing of the requested exception.

## **2.3 Contract Execution**

### **2.3.1 Notice of Approval**

A letter announcing the award is sent to each successful HOME program applicant. The letter specifies the amount of the award and the activity or activities funded. The amount of the award may be smaller than the requested amount. An awardee will also find in the Notice of Approval contact information for the program representative, the Department staff person assigned as the principal contact for all matters concerning the grant.

An approved applicant is required to designate an employee to have principal day-to-day responsibility for the administration of this grant. In addition, awardees may procure and contract for administrative services to assist in the implementation of the HOME award.

The award letter cautions the awardee about incurring costs. Non-general administrative costs incurred prior to receiving a Notice of Release of Funds cannot be reimbursed with HOME funds. Only a very limited number of costs may be incurred prior to receiving a Notice of Release of Funds. Only costs associated with the general administration of a grant are allowable such as contracting for administrative services or hiring staff to administer the grant. Administrative costs include those necessary for completing the Special Conditions requirements of the HOME Contract. Contracts for general administration services must be executed after the Notice of Approval date. All expenses incurred prior to the Notice of Approval cannot be reimbursed by HOME funds.

Note that each HOME award is unique. The Department provides funds for administrative costs in a variety of ways depending upon the nature of the project and the type of awardee. Awardees should understand the budget in the HOME Contract, including the line item to be used for administrative costs.

Awardees should confirm with their program representative as to the budget line item authorized for general administration of the award. This often will vary from the budget submitted with the original application.



### **2.3.2 Contract Terms & Special Conditions**

The HOME Contract contains a project description, time of performance, sources and uses of funds, conditions governing the use of HOME funds and the special conditions for release of funds. In most cases, the special conditions of the contract must be satisfied within three months and the project completed within two years.

Each awardee is responsible for adhering to all the terms of their HOME Contract. A substantial number of regulations, acts and statutes apply to the HOME award. It is a good idea to understand all the requirements of the contract. The Department will hold the awardee responsible for any conditions of the contract not fulfilled and seek repayment if necessary.

Awardees of HOME funds are advised to carefully review their HOME Contract before implementing the funded project.

Contained within the contract is a section entitled Special Conditions for Release of Funds. The section begins by stating “Funding of the amount stipulated in §1.01 will not be released to the Awardee by the Department until the following Special Conditions for Release of Funds are met.” These Special Conditions must be satisfactorily completed by the identified date, or the Department reserves the right to cancel the contract if these special conditions are not met within this specified time frame.

Typical Special Conditions for Release of Funds:

- HOME Program Awardee Information Sheet – Awardee must complete and return this form.
- HOME Authorization to Request Funds – Awardee must complete and return this form.
- Environmental Review – Awardee must receive environmental clearance from HUD. To do so, the awardee must complete the Environmental Review Record (ERR), publish with the proper public comment period, complete the proper Request for Release of Funds notice, complete the HUD 15-day objection period, and receive the HUD Authority to Use Grant Funds form (if applicable).
- Procurement Standards – Awardee must provide documentation evidencing the adoption of appropriate procurement standards applicable to the awardee.
- Excessive Force Certification - If the awardee is a unit of general local government, it must provide documentation of an adopted policy to prohibit the use of excessive force by law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.
- Fair Housing – Awardee must provide a description of at least one new action it will take to affirmatively further fair housing. This documentation must be on official letterhead. The new fair housing action(s) must be performed during the contract period of the current HOME Project to fulfill the requirements. The awardee must maintain and provide documentation of the impact of the Fair Housing Activity undertaken, recording number of people affected or served and the outcome, if any, of the action.
- Implementation/Development Schedule – Completion and submission to the Department of this form.
- Limited English Proficiency - Awardee must submit documentation evidencing completion of its responsibilities to ensuring meaningful access to the Project activities

and services for persons with Limited English Proficiency (“LEP”) as required by Title VI of the Civil Rights Act of 1964; Executive Order 13166; and HUD's final “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons”, which was published in the Federal Register on January 22, 2007 and which became effective on March 7, 2007 (“HUD LEP Guidance”).

- Documentation from the Nebraska Department of Environment and Energy - If the Project involves new construction, the Recipient must submit documentation from the Nebraska Energy Office that shows the plans and specifications for the Project are in compliance with the most recent version of the International Energy Conservation Code.
- Excessive Force Certification - If the Awardee is a unit of general local government, then it must provide documentation that it has adopted a policy to prohibit the use of excessive force by local law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

Additional Special Conditions that might also be included in a HOME CHDO contract:

- Program Guidelines, Sales Proceeds and Recapture Reuse Plan.
- Program Income Reuse Plan.
- Rehabilitation Procedures.
- Add rental special condition item
- Any other special conditions as specified in the contract.

Additional Special Conditions that may be included in a HOME Rental Project Contract:

- Budget & Proforma
- Cost Allocation
- Project Completion Schedule
- Proposed Tenant Selection Policy
- Proposed Lease/HOME Addendum
- Final Commitments from all sources

The above list represents typical special conditions; however, all HOME Contracts are tailored to a specific project with unique conditions.

Disclaimer: The above list represents a list of typical special conditions; however, all HOME Contracts are tailored to a specific project with unique conditions. The Special Conditions for Release of Funds in the HOME Contract must be satisfied before the Notice of Release of Funds will be issued for that project.

**Forms and samples to assist in completing special condition requirements are available on the Department’s website: <https://opportunity.nebraska.gov/program/home/>**

Project costs cannot be obligated or incurred prior to the Department issuing a written Notice of Release of Fund to the awardee.

### **2.3.3 Execution & Authority to Obligate Funds**

The awardee will receive an electronic copy of the HOME Contract after receiving the Notice of Approval. This is the contract between the Department and the awardee. The awardee should thoroughly review the terms and conditions of the contract with its attorney.

The Chief Elected Official of a local government and the Authorized Official of a non-profit, local unit of government, public housing agency or owner/developer are the only individuals recognized by the Department as authorized to sign and execute HOME contractual documents. This applies to any contract extensions and amendments involving changes in terms, conditions and amounts. At the time of application, the local government awardee should have passed a resolution authorizing the Chief Elected Official to sign such documents. Non-profits, local unit of government, public housing agencies and owner/developers should provide the Department with documentation as to whom the organization has designated as the Authorized Official to execute grant documents.

The awardee has one month to sign the HOME Contract and provide the executed contract to the Department.

## **2.4 Administrative Procedures**

### **2.4.1 Period of Performance**

The time of performance of a HOME project, as stated in the contract, is generally one, two or three years.

However, with the exception of awards strictly funding organizational capacity, all HOME awards must comply with the requirements of 24 CFR Part 92 regarding periods of affordability. Affordability periods range up to twenty years and vary by the type of activity and amount of assistance provided. Please read the chapters on homeowner, homebuyer, and rental as applicable for more details on compliance with periods of affordability. It is not until full compliance is met by the awardee at the end of the affordability period(s) that the contract is fulfilled. Failure to fulfill the contract through the end of the required affordability period(s) subjects the awardee to actions by the Department, including possible repayment.

### **2.4.2 Appeal of Department Decisions**

An appeal is a written request directed to the Department by an applicant or awardee for reconsideration of a decision made by Department staff. The following procedures will be followed:

1. An applicant or awardee appealing a decision of Department staff must submit a written appeal requesting a reversal of the decision based upon facts of the situation. This appeal must come to the Department from the Chief Elected Official of the local government or the Authorized Official of an agency.
2. The Housing Manager will consider the issues and respond within 30 days to the applicant or awardee.

3. If dissatisfied with the Housing Manager's decision, the applicant or awardee may appeal to the Department Director. The Department Director may, at the request of the parties, schedule a hearing or simply render a written decision. If a hearing is held, all interested parties will participate.
4. The purpose of this informal hearing will be to determine the facts of the situation, the appropriateness of the decision, and the justification and appropriateness of the appeal.
5. The Director will make a decision within 30 days of the hearing. This written decision will be sent to all parties.
6. The Director's decision is the final administrative action that will be taken by the Department.

### **2.4.3 Complaints**

Individuals or authorized representatives of individuals who believe they have been the subject of discrimination based on race, color, national origin, religion, sex, disability, and familial status (i.e., presence of children in the household) may file a complaint with the Department or the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development located in Kansas City.

#### **Complaints Against the Awardee's Administration**

The Department will accept complaints against awardee administration of the program. Only written complaints against the awardee's administration of the program will be received and acted upon by the Department.

The Department will implement the following procedures for disposition of complaints against local administration:

1. The Department will forward a copy of the written complaint to the awardee.
2. The Housing Manager will request that the awardee respond to the complaint and inform the Department within 30 days of the action to be undertaken to resolve the complaint.
3. If the response by the awardee is determined to be satisfactory, in consultation with the Complaint Review Committee, the awardee will be notified along with the party lodging the complaint.
4. If the response is determined to be inadequate, the awardee will be put on official notice by the Department that the response was inadequate and will be granted 15 days to reconsider and respond to the party lodging the official complaint. The awardee will submit to the Department the actions occurring to resolve the complaint.
5. The Complaint Review Committee will review the awardee's actions to resolve the complaint. If the actions are deemed satisfactory, the awardee will be notified along with the party lodging the complaint.
6. If the Complaint Review Committee does not consider the awardee's actions satisfactory in resolving the complaint, the Department will impose administrative sanctions upon the

awardee. The sanctions will not be lifted until the Department is satisfied with the awardee's actions.

7. The Department Director, or his or her designee, may be consulted to arbitrate all complaints. If, after consulting with the Director or the designee, the awardee and/or the party lodging the complaint are not satisfied with the decision, they may appeal to HUD officials.

### **Complaints Against the State's Administration**

The Department will receive complaints against state administration of the program. The Department will only respond to written complaints against the state's administration of the program.

The Department will implement the following procedures in response to complaints against state administration of the HOME Program:

1. When a complaint is received by a Department official it will be forwarded to the Housing Manager.
2. Within 30 days of receiving the complaint the Housing Manager, in consultation with the appropriate parties, will respond to the complaint.
3. Complaints will be responded to in writing.
4. If dissatisfied with the disposition of the complaint, the party may lodge an official appeal of a decision to the Department Director.

#### **2.4.4 Amendments/Extensions**

Awardees must request approval from the Department for any of the following four changes:

1. Changes to the budget.
2. Extensions of the contract end date.
3. Decreases in proposed accomplishments.
4. Amendments to housing program guidelines.

The Department will review amendment requests using the following factors:

- The effect the amendment will have on the points earned in the selection process.
- Recipient's performance and capacity.

An on-site visit may be required before a determination can be made.

A HOME Contract Amendment Request Form that details the required documentation to include in a contract change request is available on the Department's website.

## 2.5 Uniform Administrative Requirements

The awardee is required, pursuant to 24 C.F.R. §92.505 and §92.506 and Department requirements, to comply with various uniform federal administrative requirements concerning: financial management standards including cost principles; procurement standards and property management standards; and audit requirements.

Units of Local Government & Non-profit Organizations acting as subrecipients (not including nonprofits acting as CHDOs undertaking non CHDO set-aside projects) must adhere to 2 CFR 200, which replaces the requirements formerly set out in 24 CFR §§84 and 85.

Developers, including nonprofits acting as CHDOs doing CHDO set-aside projects, must adhere to these requirements as indicated in their contract.

The following sections apply to HOME funded projects:

- 2 CFR 200.92 Subawards.
  - .213 Debarment and suspensions. ([SAM](#))
  - .302 Financial management.
  - .305 Payment.
    - .310 Property Standards – Insurance coverage
    - .311 Real property
    - .313 Equipment
    - .314 Supplies
    - .315 Intangible property
    - .316 Property trust relationship
    - .318 General procurement standards
    - .319 Competition
    - .320 Methods of procurement to be followed
    - .323 Contract cost and price
    - .326 Contract provisions
    - .328 Monitoring and reporting program performance
    - .338 Remedies for noncompliance
    - .339 Termination
    - .344 Post closeout adjustments and continuing responsibilities
    - .345 Collections of amounts due

The awardee must gain understanding of all the requirements that they are agreeing to comply with. The following is meant as a summary of some of the requirements and not a complete coverage of the responsibilities of HOME awardees.

- Awardee agrees to establish internal controls in order to have reasonable assurance that Awardee is carrying out the Project in compliance with federal statutes, regulations, and terms and conditions of their contract, as required by 2 C.F.R. §200.303, as now in effect, and as such law may be amended during the term of their contract. Awardee also agrees to comply with provisions regarding protection of personally identifiable information as required by 2 C.F.R. §200.303 and 2 C.F.R. §200.512.

- Awardee is responsible for the efficient and effective administration of the HOME Funds provided to the Awardee under their contract. Awardee agrees to administer the HOME Funds in a manner consistent with their contract, HUD's administrative requirements for the HOME Program, and with the provisions of the Department's HOME Program Administration Manual, and with all federal (and state) laws, regulations, and executive orders applicable to the HOME-assisted Project.
- Audits of the conditional grant will be conducted in accordance with the Single Audit Act of 1984, as amended, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, (which have been adopted by HUD through [2 C.F.R. Part 2400](#)) as now in effect, and as such law may be amended during the term of the contract. Generally Accepted Government Auditing Standards (GAGAS) must be followed. Awardee is required by 2 C.F.R §200.512 to submit the required audit reporting package to the Federal Audit Clearinghouse (“FAC”) within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period.

The closeout of a Project does not affect the right of the Department or duly authorized officials of the state and federal government to disallow costs and recover funds from the Awardee on the basis of a later audit or other review. In other words, the obligation of the Awardee to return any funds due as a result of an audit is not affected by closeout of a Project.

- The HOME Funds will be accounted for separately upon the books and records of the Recipient, in such manner as to allow funds tracing and a current status review of the HOME Funds at all times. A separate bank account for the HOME Funds is not required.
- Accounting practices must be consistent with cost principles of 2 C.F.R. Part 200, must support the accumulation of costs as required by the cost principles, and must provide for adequate documentation to support costs charged to the HOME Program.
- The Awardee will keep all records concerning the HOME Funds in a manner which is consistent with generally accepted accounting principles. Payments from such HOME Funds will be obligations incurred in the performance of the contract; and will be supported by contracts, invoices, brochures, and other data, as appropriate, evidencing the necessity for such expenditures.
- The Awardee agrees to comply with the provisions of 2 C.F.R. §§200.311 through 200.316 regarding title, use and disposition of property, supplies, and equipment, as applicable to the Project.
- In accordance with 2 C.F.R. §200.310, Awardee agrees to, at a minimum, provide insurance coverage for real property acquired or improved with HOME Funds that is equivalent to the insurance Awardee provides for Awardee’s other property (or, ensure that such insurance coverage is provided by the owner of the real property).

### 2.5.1 Civil Rights and Equal Opportunity Provisions

- **Title VI of the Civil Rights Act of 1964** – Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination based on race, color and/or national origin under any program or activity receiving federal financial assistance. (Regulations implementing the provisions for HUD programs may be found in 24 CFR Part 1.)
- **Section 109 of the Housing and Community Development Act of 1974** – Provides that no person shall be excluded from participation in (including employment), defined program benefits of, or subject to discrimination on the basis of race, color, national origin, religion, or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.
- **Age Discrimination Act of 1975** – Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. (Regulations in 24 CFR Part 146.)
- **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, awardees and subrecipients are defined more broadly than under the HOME program. Section 504 awardees and subrecipients include any entity that receives federal funding (for example, a subrecipient or CHDO).
  - o For any awardee or subrecipient 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.
  - o Contractors and vendors are subject to Section 504 requirements only in the work they do on behalf of an awardee or subrecipient.
  - o The ultimate beneficiary of the federal assistance is not subject to Section 504 requirements.
  - o Under Section 504, awardees and subrecipients are not required to take actions that create undue financial and administrative burdens or alter the fundamental nature of the program.

The specific requirements under Section 504 are summarized below.

#### Removal of Physical Barriers

- o 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.



- o 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.
- o 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.
- o 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.
- o 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.
- o 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.
- o 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

- o Individuals with handicaps must be able to find out about, apply for and participate in federally assisted programs or activities.
- o 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).
- o 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

- o Employers must not discriminate.
- o Employers must remove physical and administrative barriers to employment.
- o Employers must make reasonable accommodations for individuals with known handicaps (e. g., job restructuring, providing readers or sign interpreters, making facilities accessible).

### Administrative Requirements

- o If awardees or subrecipients have 15 or more employees, they must designate a Section 504 Coordinator, and notify program participants and employees of non-discrimination policies.
  - o All awardees and subrecipients must conduct self-evaluations of compliance with Section 504.
- **Architectural Barriers Act of 1968** – Standards for the design, construction and alteration of publicly owned residential structures to ensure that physically handicapped persons have ready access to and the use of such structures can be met by following the Uniform Federal Accessibility Standards outlined in Appendix A of 24 CFR Part 40.
  - **Americans with Disability Act** – Compliance with all provisions of the Americans With Disabilities Act (ADA) with respect to hiring, training, and employment practices, including reasonable accommodation of persons with disabilities in hiring, training, and employment practices; and in assuring access by persons with disabilities to facilities and services provided by the awardee to the general public. The Act 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.
  - **Executive Order 11246** – 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. The awardee, and subcontractors, will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The awardee, and subcontractors, will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. The awardee must post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - **Executive Orders 11625, 12432, and 12138** – These orders require awardees of federal funds to provide maximum opportunities to disadvantaged minority owned business enterprises and to women owned business enterprises to participate in the performance of contracts financed in whole or part with HOME funds.

## 2.5.2 Fair Housing Standards

- **Title VIII of the Civil Rights Act of 1968, As Amended by the Fair Housing Amendments Act of 1988** – This law, seeking fair housing practices throughout the United States, prohibits any person from discriminating in activities associated with housing, because of race, color, national origin, religion, sex, handicap, or familial status. The awardee must also administer programs and activities relating to housing and urban development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII. Fair Housing Act implementing regulations may be found in 24 CFR Part 100-115.
- **Executive Order 11063, As amended by Executive Order 12259** - This order directs the awardee to take all action necessary and appropriate to prevent discrimination because of race, color, religion, sex, or national origin; in the sale, leasing, rental, and other disposition of residential property and related facilities (including land to be developed for residential use); or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions from the federal government. Equal Opportunity in Housing regulations may be found in 24 CFR Part 146.
- **Affirmatively Furthering Fair Housing** – Awardees must certify that they will take affirmative action to further fair housing (Title VIII of the Civil Rights Act of 1968). This requirement dictates some form of new action be undertaken by the awardee, not just passive compliance with existing laws and ordinances. Fair housing is generally thought of as the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, creed, sex, or national origin. Awardees as a Special Conditions requirement must inform the Department of actions they will undertake to further fair housing. Some suggested actions are:
  - o Adopt a fair housing ordinance with means of enforcement.
  - o Undertake a review of existing fair housing ordinances, zoning and land use practices for discriminatory policies or practices.
  - o Support and participate in educational programs coordinated with local realtors, home builders, and mortgage lenders designed to provide information on fair housing rights.
  - o Provide housing referral and counseling services, which assist minorities, women, and the handicapped seeking housing within the awardee’s jurisdiction. Encourage local employers to cooperate in efforts to find housing for their employees and to promote equal housing choices within the community.
  - o Request assistance from the Nebraska Equal Opportunity Commission or other advocacy groups in undertaking fair housing informational or technical assistance seminars in your community or region.
  - o Use the Equal Housing Opportunity logo on official letterhead and prominently display posters, logo and informational material on fair housing and periodically

print a notice in local newspaper that the awardee is an active supporter of fair housing laws.

- o Host a Fair Housing Month (April) event.

### 2.5.3 Environmental Standards

(For more information on environmental requirements see Chapter 8 – Environmental Review.)

- **National Environmental Policy Act of 1969** and regulations at 24 C.F.R. Part 58
- **Historic Preservation** - The awardee will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. §470), Executive Order 11593, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. §469 a 1, et. seq.) by:
  - o Consulting with the state Historical Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R. Part 800.0) by the proposed activity; and,
  - o Complying with all requirements established by the state to avoid or mitigate adverse effects upon such properties.
- **Lead Based Paint Poisoning Prevention Act of 1971** – This law (and regulations at 24 CFR Part 35) prohibits the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance of any kind and requires the elimination of lead-based paint hazards.
- **Flood Insurance** - The awardee will comply with the flood insurance purchase requirement of §102(a) of the Flood Disaster Protection Act of 1973. §102(a) requires, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards.

### 2.5.4 Labor Standards

(For more information on labor standards requirements see Chapter 12 – Construction & Labor Standards.) Note that not all projects are subject to all the following provisions.

- **Davis-Bacon Act** – 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.

- **Copeland Anti Kickback Act** – Section 2 of the 1934 Act, popularly known as The Copeland Anti Kickback Act, 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** – 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.
- **Contract Work Hours and Safety Standards Act** - 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.
- **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.
- **Debarred, Suspended, or Ineligible Contractors** – Under 24 CFR Part 24, HOME funds may not be used, directly or indirectly, to employ, award contracts to, otherwise engage the service of, or fund, any contractor or subrecipient during any period of debarment, suspension, or placement on ineligible status.

### 2.5.5 Acquisition & Relocation

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – For more information on compliance with this act, see Chapter 9 – Acquisition, Relocation & One-For-One Replacement.
- Section 104(d) of the Housing and Community Development Act of 1974 – Requires replacement, on a one-for-one basis, of all occupied and vacant occupiable low-income dwelling units that are demolished or converted to a use other than low-income housing in connection with an activity assisted under HOME, and provision of certain relocation assistance to any low-income person displaced as a direct result of a HOME activity.