CHAPTER 1 – WELCOME TO HOME

Purpose of Manual
The Nebraska Department of Economic Development (Department) provides this manual as a resource for local program administrators and property managers implementing HOME-assisted projects and local government, public housing agency and non-profit organization staff who are contemplating applying for activities under the Nebraska Affordable Housing Program (NAHP).

The on-line version of this manual contains the latest information provided by the Department to assist HOME grantees in complying with state and federal requirements. Additional reference material and forms are available at the Department’s website (http://www.neded.org/community).

Updates
Users of this manual are encouraged to check for monthly updates at the Department’s website. Updated material is clearly identified for those wanting only to print off new or updated material to incorporate into their hard copy manuals. Information may change for a variety of reasons, including changes in federal regulations, state requirements, and in the interpretation or clarification of a federal regulation.

The HOME Program
The HOME Program, created by the National Affordable Housing Act of 1990 (NAHA), is referred to as the HOME Investment Partnerships Act, and has been amended several times by subsequent legislation.

The United States Department of Housing and Urban Development (HUD) administers the HOME Program. HUD uses the following to implement NAHA:

- CPD Notices provide detailed guidance on a specific subject by explaining how the HOME program regulations should be interpreted or applied.
- HOMEFires is the official policy newsletter of the HOME Program. Each HOMEFires answers a specific policy question.

Other resources, such as Model Program Guides, are available from HUD in the on-line HOME Library.

The intent of the HOME Program is to:
- Provide decent affordable housing to lower-income households
- Expand the capacity of non-profit housing providers
- Strengthen the ability of state and local governments to provide housing
- Leverage private-sector participation.
HOME in Nebraska

HUD allocates HOME funds by formula to Participating Jurisdictions (PJs). PJs are state and local governments that receive funds to operate the program. The State of Nebraska receives funds as a PJ and the Department administers the program for the State.

The following are the principal means by which the Department describes the investment of HOME funds and provides administrative guidance:

- The Housing and Community Development Consolidated Plan
- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- HOME Administration Manual
- HOME Training Workshops
- HOME Program Representatives
- The Department’s Regional Housing Specialists

The Department invests HOME funds in the following housing activities:

- Homeowner Rehabilitation: Assist owner-occupants with the repair, rehabilitation or reconstruction of their homes.
- Homebuyer Activities: Finance the acquisition and/or rehabilitation or new construction of homes for homebuyers.
- Rental Housing: Affordable rental housing may be acquired and/or rehabilitated, or constructed.

States are given broad discretion in administering HOME funds. HUD allows State PJs to use HOME funds anywhere within the state including within the boundaries of local PJs. The Department invests in programs and projects developed, implemented and administered by local and regional organizations. Typical partners involved in the use of the state’s HOME allocation:

- Local Governments – some also qualify as a PJ and receive a direct HOME allocation from HUD
- Consortia – contiguous units of local government formed for the purpose of qualifying for a direct allocation of HOME funds from HUD.
- Community Housing Development Organizations (CHDO) – a designation by the Department of a private, non-profit organization that meets a series of qualifications. The Department invests a minimum of 15 percent of its annual allocation of HOME funds for housing owned, developed or sponsored by CHDOs.
- Subrecipients – a public agency or non-profit organization selected by the Department to administer a portion of the HOME Program.
- Developers, Owners and Sponsors – nonprofits participating in the HOME Program as owners, developers and sponsors of housing.
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Administrative Requirements
The Department fully expects recipients of State of Nebraska HOME funds to comply with all administrative requirements. Recipients must become educated on all administrative components, elements and requirements for HOME. A project management plan should include a list of responsibilities for each project team member, a timeline of implementation steps, and a detailed outline of a filing system.

The requirements in this manual provide grantees with standards for administering the HOME Program in a consistent manner. These requirements are in addition to the National Affordable Housing Act of 1990 (NAHA). The federal requirements for the program are described in 24 CFR Part 92.

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.

Eligibility
Eligibility requirements for participation in the HOME Program are specified in the NAHP Application Guidelines that are published annually and are consistent with the Housing and Community Development Annual Action Plan.

Appeal of Department Decisions
An appeal is a written request directed to the Department by an applicant or grantee for reconsideration of a decision made by Department staff.

Procedures
1. An applicant or grantee 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 HOME Program Manager will consider the issues and respond within 30 days to the applicant or grantee.

3. If dissatisfied with the HOME Program Manager’s decision, the applicant or grantee 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.

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.

Against Grantee Administration
The Department will accept complaints against grantee administration of the program. Only written complaints against the grantee’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 grantee.

2. The Department Complaint Manager will request that the grantee 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 grantee is determined to be satisfactory, in consultation with the Complaint Review Committee, the grantee will be notified along with the party lodging the complaint.

4. If the response is determined to be inadequate, the grantee 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 grantee will submit to the Department the actions occurring to resolve the complaint.

5. The Complaint Review Committee will review the grantee’s actions to resolve the complaint. If the actions are deemed satisfactory, the grantee will be notified along with the party lodging the complaint.
6. If the Complaint Review Committee does not consider the grantee’s actions satisfactory in resolving the complaint, the Department will impose administrative sanctions upon the grantee. The sanctions will not be lifted until the Department is satisfied with the grantee’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 grantee and/or the party lodging the complaint are not satisfied with the decision, they may appeal to HUD officials.

Against State 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 HOME Program Manager.
2. Within 30 days of receiving the complaint the HOME Program 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.

Administration of a HOME Project – The Keys
Application
Most funding within the Nebraska Affordable Housing Program (NAHP) is available to local governments, public housing agencies and non-profits on a competitive basis. The Department notifies potential applicants when NAHP application guidelines are available for an upcoming application period. The application guidelines describe eligible applicants, eligible activities, the application process, and the deadline for acceptance of an application.

The Department also holds workshops on the NAHP applications each year. It is a good idea to contact the Department’s regional housing specialist serving your area before starting an application. Look for information on Department staff contacts, application guidelines and workshops on the Department’s website (www.neded.org).

Notice of Approval or Denial
Following the Department’s application review period, letters will be sent to all applicants informing each of the decision to fund or not fund their application. Those applicants not funded are encouraged to meet with Department staff and work toward a fundable application in the future.

The Notice of Approval notifies the grantee of the amount and type of funds awarded and the activities that the grantee will undertake with the funds. **However, the grantee must not obligate or incur project costs prior to satisfying contract conditions and receiving a Notice**
of Release of Funds from the Department. Prior to the Notice of Release of Funds and after Notice of Approval, costs necessary to complete general administrative requirements such as satisfying the Special Conditions contained in the HOME Contract can be obligated and incurred.

Administrative Costs
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 grantee. Grantees should understand the budget in the HOME Contract, including the line item to be used for administrative costs.

Grantees 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.

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 (code 0580) funds are set-up and drawn on an address (activity) by address (activity) basis.

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.

HOME Contract
The Department will send the recipient 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 recipient 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 grantee 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 grant, the contract will terminate in full or in part.
Special Conditions for Release of Funds
Recipients 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 Grantee Information Sheet
  Grantee must complete and return this form.
- HOME Authorization to Request Funds
  Grantee must complete and return this form.
- Environmental Review
  Grantee must receive environmental clearance from HUD. To do so, the grantee 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.
- Procurement Standards
  Grantee must provide documentation evidencing the adoption of appropriate procurement standards applicable to the grantee.
- Excessive Force Certification
  If the grantee 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
  Grantee 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 grantee 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.

Additional Special Conditions, as applicable:
- Program Guidelines.
- Program Income Reuse Plan.
- Rehabilitation Procedures.
- Any other special conditions as specified in the contract.
Disclaimer: The above list represents typical standard special conditions; however, all HOME Contracts are tailored to a specific project with unique standard 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.

Additional guidance on fulfilling contract conditions is available in Chapter 6 – HOME Contract. More information is also in this manual on environmental review, procurement and financial management. The Department’s website contains forms needed to complete Special Condition requirements.

Release of Funds
Upon receiving the “Notice of Release of Funds” letter, the grantee 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 for non-general administrative uses, a grantee 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 grantee for that activity (address). More information on set-ups is available in Chapter 13 - Financial.

Requesting HOME Funds
The grantee 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 general administration). HOME funds will be disbursed electronically to the grantee’s bank. The grantee has only 15 working days to spend HOME funds following receipt. More information on requesting funds is available in Chapter 13 - Financial.

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.

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. Grantees 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.

Contract Amendments/Extensions
Grantees 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 using the following factors:
• How the amendment will affect the application selection process.
• Grantee’s performance and capacity. An on-site visit may be required before a determination can be made.

More information on amendments is available in Chapter 6 – HOME Contract and a HOME Contract Amendment Request Form is available at the Department’s website.

Conflict of Interest
The HOME Program regulations require grantees (including Community Housing Development Organizations “CHDOs” undertaking non-CHDO set-aside projects) to comply with provisions in 2 CFR 200 §§.112 and .318 regarding conflict of interest.

At a minimum, these standards must:
• Require that no employee, officer, agent of grantee 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 subagreements.
• 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 grantee.
• 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 grantee.

Activities covered by HOME regulations:
In cases not covered by 2 CFR 200, 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 grantee 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. (1) No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a 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.
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 after project completion.
- Resale/Recapture records must be kept five years after the affordability period ends.

See Chapter 15 – Monitoring for more information on recordkeeping.

Reporting Requirements

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

Grantees should use the most current form for a particular report they are submitting. Current forms are available at the Department’s website near the on-line version of this manual in an area called “Forms.” The grant’s program representative will provide assistance, if needed, with locating and/or sending to the grantee a copy of the current on-line form.

See Chapter 14 – Reporting Requirements for more information on reporting requirements.

Monitoring

All HOME projects are monitored for compliance with HOME rules.

See Chapter 15 – 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 (grantee must submit within 3 months of the project’s last drawdown).
- The Final Performance Report (grantee must submit within 3 months of the project’s last drawdown).
- The Final Wage Compliance Report, if applicable (grantee must submit within 3 months of the project’s last drawdown projects requiring adherence to labor standards, see Chapter 10 – Construction & Labor Standards).
- The Department has completed the initial compliance review of the project and monitoring clearance is achieved (note that the Department is required to monitor rental projects throughout the affordability period).
- The grantee has fulfilled all audit requirements satisfactorily.
See Chapter 16 – Audit & Closeout for more information on closeout.

**Lead-Based Paint**
All units in a project assisted with HOME funds must comply with the regulation implementation Title X of the 1992 Housing and Community Development Act (24 CFR Part 35). This regulation has been in effect since September 15, 2000.

**Overview**
The lead-based paint regulation at 24 CFR Part 35 consolidates all lead-based paint requirements for HUD-assisted housing. The 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.

**Summary of the Requirements**
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

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## Approach Lead Hazard Evaluation Lead Hazard Reduction Options

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 of all surfaces being disturbed.

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.

3) Identify and control lead hazards
- Paint testing performed on surfaces to be disturbed. Risk analysis 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.

4) Identify and abate lead hazards
- Paint testing performed on surfaces to be disturbed. Risk analysis 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:

#### Notification
Grantees must meet four notification requirements.

- **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.

- **Disclosure**
Check that property owners have provided 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.

- 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.

- 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.

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.

Ongoing Maintenance
Ongoing maintenance is required if the grantee has an ongoing relationship with the Federal government (e.g., rental activities). Ongoing maintenance includes periodic visual assessments to determine if lead-based paint hazards have reappeared.

Compliance
Penalties [24 CFR 35.170]
Failure to comply with the lead-based paint requirements under the new regulation 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 grantees of the responsibilities under the new regulation.

Addressing Other Regulations and Laws [24 CFR 35.145]
Grantees 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, grantees 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.
HUD may modify or waive its lead-based paint requirements if it determines that the requirement duplicates a Federal, State, or local requirement and provides a comparable level of protection from lead-based paint hazards.

**Recordkeeping [24 CFR 35.175]**

There are numerous records that grantees must keep to verify that they conducted the required lead hazard response activities. These documents must be located in program and project files.

**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**

The grantee 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 five years, or for such other period as specified in the program regulations.

**Ongoing Maintenance Records**

Grantees must keep ongoing maintenance records and records of relevant building operations for use during reevaluations.

**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.
Prohibited Methods include:

- 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.
CHAPTER 3 – HOMEOWNER REHABILITATION

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Overview of HOME Program Requirements
The chapter covers eligible homeowner rehabilitation activities, applicant eligibility requirements, forms of financial assistance, and property standards and value. A summary of the key homeowner rehabilitation rules and how to document compliance with these rules is provided as Attachment 1.

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

Eligible Activities
HOME funds may be used to assist existing homeowners with the repair, rehabilitation or reconstruction of owner-occupied units.

Whenever HOME funds are used for rehabilitation, the work must be performed according to the Department’s Rehabilitation Standards (Attachment 2) and the unit must be brought up to the applicable local code. If a local code does not exist, the unit may be brought up to the standards of one of the national model codes.

All of these types of repairs are eligible if they are undertaken within a more comprehensive scope of work that brings the unit up to the applicable codes and standards:

- Weatherization programs.
- Emergency repair programs.
- Handicapped accessibility programs.
Forms of Financial Assistance
Grantees may structure HOME assistance for owner-occupied rehabilitation using any of the following five forms:

- Grants.
- Deferred-payment loans.
- Non-interest-bearing loans.
- Interest-bearing loans.
- Interest subsidies.

Regardless of the type of assistance, grantees may choose to finance all of the rehabilitation cost or only a portion of the cost.

- If financing all of the cost of rehabilitation, a grant or deferred-payment loan is often necessary to provide the deep subsidy required by the very low-and low-income participants of rehabilitation programs.
- In some cases, a low-interest loan may be affordable or more appropriate. Examples of such cases include owner-occupants with sufficient income to repay a loan on a monthly basis; or when refinancing of existing debt, necessary to lower the owner-occupant's overall housing debt, is included as part of the rehabilitation loan.
- If a grantee chooses to finance only a part of the rehabilitation cost, it may structure its assistance to be used in combination with other financing. For example, the grantee and a private lender could jointly loan the funds needed for rehabilitation. This arrangement, referred to as a participation loan, results in one loan from the lender and one from the grantee, usually at a low interest rate. The size of the HOME loan is typically dependent upon the amount available for the conventional loan.
- Another option would be for the grantee to provide HOME assistance as a grant or deferred-payment loan to "write down" the principal amount of a private loan thus making the monthly loan repayment affordable to the homeowner. This technique is often referred to as principal reduction.
- Interest subsidies, also referred to as interest reduction grants or interest rate buydowns, are similar to principal reduction grants or loans except that the HOME funds are used to "buy down" the interest rate to an affordable level. In this case, the HOME subsidy is paid directly to the lender and not provided to the homeowner.

Eligible Homeowner Rehabilitation Costs
Under HOME, both the actual cost of rehabilitating the housing and related soft costs are eligible. The Department may also provide HOME funds for general administrative expenses associated with the grant.
Hard Costs

- Meeting the rehabilitation standards.
- Meeting applicable codes, standards and ordinances.
- Essential improvements.
- Energy-related improvements.
- Accessibility for disabled persons.
- Repair or replacement of major housing systems.
- Incipient repairs and general property improvements of a non-luxury nature.
- Site improvements and utility connections.
- Lead-based paint hazard reduction.

Note: Lead hazard reduction costs are not counted as hard costs for the purposes of determining the level of assistance under 24 CFR Part 35 (the Lead Safe Housing Rule).

Soft Costs

- Financing fees.
- Credit reports.
- Title binders and insurance.
- Recordation fees, transaction taxes.
- Legal and accounting fees.
- Appraisals.
- Architectural/engineering fees, including specifications and job progress inspections.

Other Costs

Refinancing of secured existing debt if the housing is owner-occupied and refinancing allows the overall costs of borrower to be reduced and the housing is made more affordable.

Refinancing existing secured debt is an eligible cost if:

- The housing is owner-occupied.
- HOME funds are loaned for rehabilitation.
- Refinancing allows the borrower's overall housing costs to be reduced and the housing is made more affordable.

Example: Mr. and Mrs. Brown are seeking HOME funds to rehabilitate their home. They have an outstanding principal balance on their first mortgage of $40,000, at 10% interest, with a monthly payment of $386. The cost of rehabilitation is $15,000. The grantee is offering the rehabilitation loan at 3% for a 20-year term, with a monthly cost of $83.19. The monthly payments for both loans total $469.20.
Because the Browns are on a fixed income, the increased mortgage cost would create a financial burden, requiring them to pay well above 30% of their monthly income for their housing. Refinancing the first mortgage along with the rehabilitation costs using HOME funds would allow them to finance the total $55,000 debt at 3% interest for 20 years. This results in a monthly cost of $305.03, a savings of $164.00 per month, making the rehabilitation possible for the Browns and substantially lowering their monthly housing-related expenses.

Refinancing eligible owner-occupants' secured debt has several implications:

- Refinancing makes overall housing costs, including rehabilitation costs, affordable to the owner.
- Refinancing will reduce the amount of funds available to other applicants, thus reducing the number of families that can be assisted.

92.206(d)(6) is revised to clarify that the PJ’s, State recipient’s or subrecipient’s staff and overhead costs related to carrying out a project cannot be charged to, or paid by, low-income families. These costs can be charged as administrative or project costs. Examples of these costs are construction management fees, loan servicing fees, loan processing fees, and underwriting fees.

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

**CHDOs (Community Housing Development Organizations)**

Homeowner rehabilitation is not an eligible CHDO set-aside activity. CHDOs, like other non-profit agencies, may act as a subrecipient.

**Eligible Property Types**

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

- Occupied by an income-eligible homeowner
- The owner's principal residence.
The following property types may be included under the program:

- Traditional single-family housing that is owned fee simple (this housing may contain one to four dwelling units).
- A condominium unit.
- A manufactured home.

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

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

The Nebraska Affordable Housing Program considers a Mobile Home to be a housing unit constructed off-site that does not meet the definition of a Manufactured Home.

If HOME funds are used to assist the rental units in a two-to-four-unit property, the HOME rental requirements apply—including provisions regarding tenant occupancy, initial rent levels and long-term affordability.

If HOME funds are used to rehabilitate only the owner-occupied unit in a two-to-four-unit property, the rental housing rules do not apply.

Example: A four-unit owner-occupied property is being rehabilitated. HOME funds are used to upgrade the owner's unit, but CDBG funds are used to upgrade the other units. Therefore, the HOME rental housing rules do not apply.

**Maximum Property Value**

The HOME program statute requires that no housing have a purchase price or after-rehabilitation value that exceeds 95 percent of area median purchase price, in order to ensure that HOME-assisted housing is modest and non-luxury.

In the 2013 Rule, §92.254(a)(2)(iii) is amended to eliminate the use of the 203(b) limit and to change the methods for determining 95 percent of area median purchase price. HUD will determine and issue limits that represent 95 percent of the area median purchase price separately for newly constructed and existing single family housing units.

- **HUD-determined limits for newly constructed single family housing** units to be developed or acquired with HOME funds, will be based on 95 percent of the median purchase price for the area using FHA single family mortgage program data for newly constructed housing. PJs can use
the greater of this limit or 95 percent of the statewide nonmetropolitan area median purchase price for newly constructed housing, which will also be provided by HUD.

• **HUD-determined limits for existing single family housing** units being acquired and/or rehabilitated with HOME funds, will be based on 95 percent of the median purchase price of existing housing in the area using data from the FHA single family mortgage program data for existing housing and other appropriate data that are available nationwide for sales of existing housing. PJs can use the greater of this limit or 95 percent of the statewide nonmetropolitan area purchase price using this data, which will also be provided by HUD.

PJs also continue to have the option to determine the actual 95 percent of area median value limit for their jurisdiction using the methodology in the regulation [at §92.254(a)(2)(iii)]¹, which remains unchanged.

**Property Standards**

Properties that are rehabilitated with HOME funds must meet the following standards:

- The Department’s Rehabilitation Standards (Attachment 2).
- Local Code Requirements, or one of the following national model codes:
  - Uniform Building Code (ICBO)
  - National Building Code (BOCA)
  - Standard Building Code (SBCCI)
  - Council of American Building Officials one-or two-family code (CABO)
  - Minimum Property Standards at 24 CFR 200.925 or 200.926 (FHA)
- Handicapped accessibility requirements, where applicable.

The Final HOME Rule imposes additional requirements to the Property Standards for Rehabilitation projects undertaken with HOME funds. The complete list of those standards can be found at the end of Chapter 3 in Attachment 4. The entire text of 24 CFR Part 92 can be accessed by following this link. Final HOME Rule

The Department generally requires manufactured housing units to have permanent utility hook-ups or permanent foundations to be eligible for rehabilitation with HOME funds.

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

The Nebraska Affordable Housing Program considers a Mobile Home to be a housing unit constructed off-site that does not meet the definition of a Manufactured Home.
The Applicant/Beneficiary
To be eligible for HOME funds, the homeowner must:

- Be low-income; that is, with an annual (gross) income that does not exceed 80% of median for the area
- Occupy the property as a principal residence.

Income Eligibility Requirements
The Department requires grantees to use the Annual (Gross) Income definition found at 24 CFR Part 5.609 (also referred to as the Section 8 method) to determine applicant income eligibility. Eligibility is based on anticipated income during the next 12 months. A detailed explanation of the Annual (Gross) Income definition can also be found in the “Technical Guide for Determining Income and Allowances for the HOME Program” on pages 11-34.

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

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

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

To conduct third party verifications, a grantee must obtain a written release from the household that authorizes the third party to release required information.

Some third party providers may, however, be unwilling, unable or charge a fee to provide the needed information in a timely manner. In such cases, the grantee should attempt to find suitable source documentation without the third-party verification – for example, bank statements.

Review of Documents
Source documents provided by the applicant may be more appropriate for certain types of income such as persons that are self-employed, and can be used as an alternative to the third party verification method. Source documents, such as wage statements, interest statements, unemployment compensation statements and income tax returns, etc. are reviewed to determine annual (gross) income.
Calculating Annual (Gross) Income
The Part 5 definition of annual income “inclusions” – types of income to be counted and “exclusions” – types of income that are not considered (income of minors, etc.) comes directly from 24 CFR PART 5.609.

Timing of Income Determinations
Income determinations must be completed before HOME assistance is provided. Income need not be reexamined at the time HOME assistance is actually provided unless more than six months has elapsed since the initial determination.

Ownership Requirements
Ownership of property assisted with HOME funds must be documented. A family or individual is considered to own the property if that family or person:

- Has fee simple title to the property; or
- Maintains a 99-year leasehold interest in the property; or
- Owns a condominium; or
- Maintains an equivalent form of ownership approved by the Department and HUD.
  - A contract for deed (also known as an installment contract or land sales contract) is not an eligible form of homeownership

Loan documents or other forms of written agreement between the purchaser and the grantee must incorporate the requirement that the owner occupies the property as their principal residence.

Other Federal Requirements
Attachment 3 identifies the other federal requirements that must be followed when HOME is used for rehabilitation of homeowner properties. This exhibit is meant to serve as a checklist only.

HUD's new consolidated Federal lead-based paint regulation took affect September 15, 2000. This regulation makes several important changes in the requirements for federal community development programs that fund housing.

Implementing a Homeowner Rehabilitation Program
Suggested Reading: HOME Program Rehabilitation Tune-up Kit & Good Habits of a Highly Effective Rehabilitation Manager – Publications of the U.S. Department of Housing & Urban Development (HUD). Contact HUD or the Department to obtain either publication.

Program Guidelines
Formulate program guidelines regarding the type of financial assistance, program recipients, rehabilitation standards, advisory committees (if any), and operational procedures.

Detailed written eligibility criteria and property rehabilitation standards must be developed to guide program operation. The grantee must adopt standards and guidelines for rehabilitation before the Department will issue a release of funds for this grant.
Homeowner Rehabilitation Program Guidelines must contain the following information:

- Clearly defined Application Process
  - Applicant eligibility, including income eligibility. Persons assisted with HOME funds must have incomes at or below 80% of the area median income. The Annual (Gross) Income definition found at 24 CFR 5.609 must be included in the guidelines.
  - Formal notification of selection and non-selection.
  - Application acceptance dates.
  - Application review process.
- Priority Ranking System for selection, if applicable, must not contain discriminatory criteria.
- Conflict of Interest Clause.
- Grievance Procedures.
- Process for Amending Program Guidelines, including language that amendments must be approved by the Department Program Representative.
- Types of assistance provided, including HOME funds and other sources such as employer contributions in an employer assisted housing program.
- Amounts of assistance allowed, including HOME funds and other sources such as employer contributions in an employer assisted housing program.
- Eligible Properties, including the geographic boundaries where the properties must be located.
- Determination of homeownership, including the acceptable forms of proof of homeownership by the occupant.
- Determination of infeasibility, including the criteria used to determine that a home is infeasible to rehabilitate and the plan, if any, to provide alternative assistance to the homeowner, such as replacement housing.
- Affordability Period, if the program requires, the home is occupied as principle residence for a minimum time period.
- Methods for ensuring the affordability period and principle residence requirement, if applicable, must include 1) program-wide recapture provisions; and 2) legal instruments to be used.
- Relocation policy, if applicable
- Rehabilitation process, including who will conduct work write-ups, how contractors will be procured, and the process for compliance with LBP requirements. All programs must comply with HUD’s lead-based paint regulation requirements.
- Return beneficiaries, including policies on whether homeowners that have received rehabilitation assistance in previous years can receive additional assistance and any parameters related to this policy.
- The maximum after-rehab value cannot exceed the 95% of the median sales price for the area or the pre-stimulus 2008 Section 203(b) Single Family Mortgage Limit. State the limit for the counties you are serving. Also, state what the after-rehab value maximum will be for your program.
• The Nebraska Affordable Housing Program financial assistance to the unit provided to the homeowner cannot exceed the Maximum per unit NAHP Subsidy.
• The Fair Housing Act must be complied with.
• Department Rehabilitation Standards must be met.
• If the rehabilitation program includes replacement housing for homes that are infeasible to rehabilitate, newly constructed housing must meet or exceed the 2009 International Energy Conservation Code and the Nebraska Energy Office must approve building specifications.

Remember that there is no model that is perfect for all grantees. How the grantee resolves each of the above issues should reflect local conditions and needs. The grantee should contact the Department and communities in the area to determine the kinds of programs that have worked well. Many of the developed procedures or processes may be transferable. These guidelines would be available at no cost since they were originally developed through the HOME program.

Designing a Program
Become familiar with commonly accepted rehab practices and procedures and the applicable laws, regulations and administrative requirements governing HOME-assisted housing rehabilitation.

It is generally agreed that housing rehabilitation (rehab) is one of the most complex activities eligible for HOME funding. In order to successfully design and implement a rehab program, it is essential to have a thorough understanding of sound rehab practices and the applicable laws and regulations that govern them.

It is of critical importance to understand the HUD regulation on controlling lead-based paint hazards in housing receiving federal-assistance (24 CFR Part 35). Subpart J of the regulation provides guidance on meeting lead-based paint requirements for rehabilitation assistance programs.

Common Deficiencies:
• Unfamiliarity with accepted rehab practices and procedures.
• Unfamiliarity with applicable laws and regulations.
• Unfamiliarity with lead-based paint requirements.
• Inability to expend funds within the contract period due to lack of qualified and interested contractors.

Maximum Amounts
In addition to deciding whether to go with either a grant or loan program, or a mix, the grantee must specify the maximum amount of assistance to be made available to any applicant. There are several factors to take into consideration:
• What is the general condition of the housing to be rehabilitated?
• What standards of rehabilitation will be adopted?
How much money is needed to bring the target housing up to the proposed rehab standards?

If the housing to be rehabbed is badly deteriorated, a small maximum grant amount (for example, $5,000) will probably not be sufficient to bring the property up to the minimum Department Rehab Standards as attached to this chapter. Most communities with badly deteriorated target housing have found a $10,000 - $12,000 maximum insufficient to meet these standards. On the other hand, if the housing is only mildly deteriorated a modest grant/loan maximum may be appropriate. Have a contractor or building inspector actually estimate needed repairs on a couple of typical units. Use these estimates as the basis for setting grant/loan limits. Also, be sure to specify a procedure which will allow the limits to be changed over time, as needed.

Eligible Applicants
The written program guidelines must also delineate applicant eligibility. The guidelines should include provisions barring conflict of interest to the extent feasible. This is extremely important. A rehab program provides direct benefits to individuals. A rehab program is therefore subject to political pressures, cronyism, and nepotism.

In addition, the guidelines must specify income limits that are in compliance with HUD’s definition of low and moderate income households. The Department specifies that applicants’ gross income be computed as defined in 24 CFR Part 5.609.

Eligible Property
The guidelines should also identify the geographic eligibility criteria pertaining to the target area(s). If rehab is only eligible within the designated target area(s), the guidelines should say so and describe the area(s). The Department may permit spot rehab outside the target area(s) for the benefit of low to moderate income families or to eliminate specific conditions detrimental to public health and safety.

However, Spot rehab can open a program to substantial pressure to spread the benefits around and this undermines the potential for private activity stimulated by concentration of resources. On the other hand a program can find itself unable to assist households in acute need who live outside target areas. It is recommended that provisions be made for spot rehab and that the guidelines explicitly describe the conditions under which it will be made available.

If a property is located within a HUD designated area of flood hazard and the grantee proposes a substantial repair, then it is required that flood insurance be purchased by the time of completion of the rehab. The cost of the insurance is an eligible HOME activity.

Length of ownership is also a factor some grantees may want to consider. If a high vacancy rate is a problem, the program may only require that the unit become occupied at the completion of the rehab. This way new owners may be enticed into the community to buy vacant, but fixable units. As long as they are otherwise qualified, there is no reason that a new owner cannot participate.
Eligible Improvements and Rehab Standards
The guidelines must also specify the standards that properties must meet after rehab. Housing must meet the Department’s Rehabilitation Standards and local codes. If no local codes exist, it must meet one of the HOME-recognized national model codes. Assisted housing must also comply with lead-based paint hazard elimination standards.

Any improvement needed to bring a unit up to the required standards should be specified as an eligible improvement. It is recommended that the grantee consider making energy conservation improvements a priority. Energy conservation standards must be included in standards that are adopted for housing rehab. Many grantees include exterior painting or siding as eligible improvements since the work is immediately noticeable and can have a significant “bandwagon” effect on rehab in the neighborhood. It is not recommended that general property improvement—carports, patios, decks, etc.—be eligible for grant funding. For a loan, the grantee may want to allow such improvements but limit their cost to a low percentage of the total loan.

Contracting Requirements
The homeowner is to authorize the contract for rehab services. Because the grantee remains responsible for monitoring contractor compliance with federal standards, financial management, and other program requirements you probably will want a three-party contract to afford the grantee greater visibility in the process.

The guidelines should specify contracting procedures and any other procedures which govern the conduct of work, such as those relating to change orders, dispute resolution, and acceptance of work. Regarding the latter, the grantee should assume final authority for sign-off on completion of work, if the homeowner has not borrowed the HOME funds.

Applicant Selection
Since demand for rehab assistance typically outstrips the resources available, a grantee must establish procedures for selecting recipients and include them in the program guidelines.

A priority rating system combined with staggered review and award periods will allow the grantee to meet such demand in an equitable fashion. A priority rating system means that each application is assigned points and ranked on the basis of such household characteristics as income and housing condition. In addition elderly and/or disabled applicants may receive priority points. A rating system must be carefully thought out to assure that the criterion used does not have the effect of discriminating against racial minorities or women. For example, credit worthiness criteria could easily discriminate against female-headed households. The grantee may want to differentiate rating guides for grant versus loan assistance.

Development of the priority rating system is something for which citizen board or resident representative input can be appropriately requested. The actual selection, however, should be a staff responsibility. It should not be done by a citizen board. Information on applicants is confidential and should remain so.
Operating Procedures
The guidelines should specify such other issues as complaint procedures, responsibilities of the recipient, infeasible rehabs, relocation policies in the event of the need for temporary relocation, and so forth. Complaints are a given with rehab programs. It is important to distinguish between the rational and the irrational. The best prevention is to conduct frequent on-site inspections of the work, and stop the work when there are problems. Also make sure that the recipients are well-informed about the contract work, have signed-off on the work write-up, and have a copy of the program guidelines. The complaint procedure itself should include written responses from city representatives and an appeal procedure.

The guidelines should be developed by staff, with input from citizens and elected officials. They should always include a clause describing the process by which they can be changed.

They should be adopted by resolution. They should be written in plain language and be available to all potential applicants. And changes to the guidelines must also be approved by the Department. They should also be followed as written.

Common Deficiencies:
- Guidelines are not written.
- Guidelines lack conflict of interest provisions.
- Guidelines lack housing alternatives for infeasible rehab.
- Priority Rating Guides included but not used.
- Lack of prompt response to homeowner/contractor complaints.
- Exceeding per-unit maximum assistance amounts allowed under the program guidelines with out Department approval.

Supporting Materials
Minimum Standards for Rehabilitation (Attachment 2).

Staffing
In staffing a rehab program, it is helpful to understand the specific skills that will be needed.

First, there is a need for a person who can deal with applicants, process paper, and manage the program. Someone must talk to applicants, visit their homes to complete family surveys, and keep track of the rehab program and process.

Second, there is a need for a person with experience and knowledge in the areas of home construction, local codes, inspection (building, electrical and plumbing), and cost estimating. These skills are found in experienced contractors, building inspectors, and architects familiar with rehab.

For small rehab programs, it may not be feasible to hire full-time staff. The grantee may be able to locate people to assist on a contract basis. The grantee might also consider a cooperative arrangement with nearby communities or a regional agency to pool resources and share staff. Special arrangements utilizing the staff of larger city programs may also be worked out.
The quality and success of a rehab program depends on the abilities and experiences of the people implementing the program. Every effort should be made to hire qualified staff.

Lead-based paint requirements necessitate using people with the proper qualifications to do specific functions of the rehab project.

**Common Deficiencies**
- Inadequate number of staff.
- Unqualified staff.
- Lack of adequate administrative budget for rehab.
- Lack of budget for staff training and development.

**Marketing**
Inform target area residents about the program, conduct family surveys, distribute information on lead-based paint and make preliminary determination of eligibility.

The grantee must inform property owners of the availability of rehab assistance. Generally, grantees have found that very little information solicits a large number of persons interested in rehab grants while a greater “sales” effort is necessary to obtain eligible loan applicants. Since the grantee has designated one or more target areas in the application, they should direct their efforts to reaching that population. The program should be well-publicized, and thoroughly explained to all interested individuals to allow for equal opportunity to all potential eligible beneficiaries.

All interested applicants should be screened first for eligibility under income and other criteria as specified in the guidelines. Although the cost of improvements is also a critical factor, a preliminary eligibility review can spare substantial costs of inspections and work write-ups for ineligible applicants. The information needed to determine basic eligibility can be obtained through a household survey guide that solicits information on income, family composition, place of employment, tenure, and so forth. Usually, the rehab officer will conduct the interview. The grantee must verify ownership, income, and employment. Verification should be done carefully and sensitively since many people do not wish others to know they have applied for assistance. The information solicited is confidential and should be treated as such.

All applicants are to be informed of the hazards of lead based paint. This information should be distributed to everyone even if they don’t qualify.

**Common Deficiencies:**
- Solicitation of recipients is left to chance.
- Preliminary assessments of eligibility are not conducted.
- Income, employment, and ownership are not verified.
Files
Maintain documentation that rehab is being carried out in conformance with applicable laws, regulations and sound rehab practices.

A separate file must be maintained for each rehab applicant with all of the documentation. Unsuccessful as well as successful applications must be kept. A file checklist should be kept in each applicant file to assure the same required documentation is collected for all applicants.

Note: good resources for establishing files for a rehabilitation program are the homeowner rehabilitation checklists located in Chapter 15 – Monitoring.

Common Deficiencies
- Inadequate documentation, forms not signed by all parties.
- No documentation from the State Historical Preservation Office (an environmental review requirement).

Rehabilitation Preparation
Screen applicants for those whose homes can be brought up to established standards within the grant amount, and select which applicants shall receive the grants/loans.

An inspection of the property should be conducted to determine the type and cost of work necessary to bring the property into compliance with the established property rehab standard. This is termed a work write-up or deficiency list. The work write-up should be designed so that it can form the basis of bid specifications if a loan or grant is made. The work write-up should specify all the work that must be done to bring the building to the standards required, including the elimination of lead-based paint hazards.

A deficiency list identifies all items to be repaired, but leaves the repair method up to the contractor. In both cases a technical specification manual or code book should be referenced for specific and acceptable construction method.

Some grantees with experienced staff have blank forms the inspector fills in as she/he goes along. Grantees with inexperienced staff have sometimes adopted very detailed check-off forms. The inspector checks for each one and specifies action needed to remedy the problem. It is better to err on the side of caution. If local codes exist, the city inspector should certify by signature to the work write-up that the specified repairs will be adequate to bring the unit up to code.

Computerized write-ups are also used by some rehab specialists. The software is easy to use but would require access to a personal computer and printer.

Once the work write-up has been prepared, the cost of the work has to be estimated. The cost estimate is necessary to know whether or not the work can be done within the grant/loan limits, and, for a loan, is within the owner’s ability to repay. The person doing cost estimates should be familiar with the going rates for materials and labor in the area and be able to estimate accurately the time required to complete each task.
Although there is no substitute for experience, if staff is inexperienced, they should talk with building supply people, contractors, and other communities and non-profits in order to increase their knowledge of local costs. Cost estimation is important because if your estimates are low, contractors will not bid the job within grant/loan limits, or they will and will then attempt to get change orders. Good, reliable cost estimates are critical.

Some grantees allow property owners to perform some of the required improvements themselves. Self-help can increase the resources available to bring the house up to rehab standards. If self-help is to be allowed, the grantee must assume responsibility for judging that the property owner possesses sufficient skill to perform agreed-upon improvements and must inspect the work for quality of workmanship and timely completion.

With the work write-up and cost estimate in hand, eligible applicants are rated according to the adopted priority rating guides. A rating sheet should be prepared for each applicant and placed in the file, permitting the grantee to explain to each applicant, if requested, the basis upon which they were selected or denied.

The grantee should write a letter to each applicant as to the results of the review process, indicating next steps for successful applicants and informing unsuccessful applicants that their application will be automatically reconsidered during the next review period.

Caution: Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35 provide specific circumstances in which additional procedures and trained professionals are required in order to ensure there are no lead-based paint hazards remaining after or created by the rehab activity.

Common Deficiencies
- Work write-ups are insufficiently detailed or do not reference a technical specification.
- Cost estimates are not based on current costs.
- Selection procedure is informal and undocumented.
- Selection of applicants whose homes cannot be brought up to required standards within the maximum loan/grant amount.
- Non-selected applicants not formally notified of non-selection.

Rehabilitation Work
The lack of availability of interested and/or qualified contractors has been a major impediment for some grantees to implement a rehab program. Depending on the level of construction activity in the area, home building and remodeling contractors may not be interested in relatively small jobs for repairing homes in poor condition.

The grantee staff should try to identify possible contractors and attempt to interest them in program participation. The yellow pages of the telephone book, the Chamber of Commerce, conversations with construction materials suppliers, and word of mouth are all information resources to aid in developing a bidders list. All contractors working on HOME funded projects must be registered with the Nebraska Department of Labor Contractor Registry.
In order to promote the participation of small contractors, try to eliminate procedural barriers. Bonding requirements for small contractors can be prohibitive. Grantees should demand the minimum bonding and insurance required by federal and local law.

Technical assistance approaches some grantees have adopted are: financial management assistance to small contractors; talking to local suppliers to assure them of payment for any credit extended to rehab contractors for HOME funded jobs, guaranteed through two party checks, if necessary; talking to local financial institutions to encourage them to extend lines of credit. In order to expedite payment to small contractors, who often have cash flow problems, discuss with them the drawdown process and set specific procedures for providing ample notice for payment.

The pool of qualified contractors has been further limited by the additional requirements of the lead-based paint regulations associated with construction worker qualifications for rehab in pre-1978 housing.

**Rehab Contract**
The contract for rehab must include the language and requirements specified in applicable federal, state, and local laws binding the program. Davis-Bacon and other Labor Standards provisions do not apply unless the rehab to be undertaken in the contract is for twelve or more units. However, the payment of overtime is a law by which rehab contractors must abide.

Grantees should also consider including provisions in rehab contracts which require the contractor to obtain and pay for all necessary permits and licenses; perform all work in conformance with local codes and requirements whether or not covered by the specification and drawings; keep the premises clean and orderly during repairs and remove all debris at the completion of work; obtain written consent for changes to the specifications; not assign the contract without written consent; and warrant the work for one year from final acceptance. In order to be a complete contract document, the applicable HOME and local terms and conditions must be included.

**Contractor Selection**
Requirements of the grantee concerning bidding are dictated by 2 CFR 200 §§318 – 326 (Procurement Standards) and State Law. If the grantee is not directly contracting for the rehab, i.e. they approve the contract on a third party basis, competitive bidding is not required. Homeowners should be given maximum preference with selecting their contractor.

Following award of the contract, the contract package should be executed by all parties. It is a good idea to have the homeowner sign the work write-up to reduce possible misunderstandings about the scope of work to be performed. Following any Right of Recission period, a Notice to Proceed must be issued to the contractor that must specify the time period within which the work should begin and when the work should be completed.
Many small contractors will want progress payments. However, these payments must be tied to inspection of the work. Progress payments should generally not total more than 80% of the work satisfactorily completed and cannot include the value of uninstalled material or equipment. Project milestones triggering progress payments should be specified in the contract.

**Inspections**
Systematic, thorough and frequent inspections are critical to successful housing rehab. Inspection should identify and remedy problems as early as practical. Payments are the primary leverage over contractors and should be withheld until faulty work is corrected. If serious deficiencies are identified through inspection, the grantee can terminate the contract, compute the cost of unsatisfactory work and escrow this money, and solicit another contractor to complete the job paying the original contractor from the escrow account only if sufficient funds remain for the new contractor to complete the work. The grantee should also recognize that its staff may have to intercede on behalf of the contractor with the property owner who may have unfounded complaints about the repairs.

When repairs are completed and a final invoice is received from the contractor certifying completion in accordance with the contract and warranty, the grantee must make a final inspection. If the work is satisfactory and complete, the job should be accepted. After the receipt of a release of liens and applicable warranties from the contractor, all subcontractors and suppliers, and the elapse of the requisite lien period, final payment can be made. The grantee should perform a follow-up visit to the property owner in roughly 60 days to determine the existence of any problems with the job. If problems have occurred, the grantee should assist the property owner to obtain corrective action according to the warranty. A second follow-up visit should be held prior to the expiration of the contractor’s warranty period.

**Common Deficiencies**
- Failure to include required language in contract documents.
- Failure to control the use of change orders.
- Failure to perform thorough inspections.
- Failure to set specific procedures for pay requests.
- Failure to condition progress payments on inspection of “in-place” rehab work.
- Failure to assure release of liens.
- Failure to anticipate or promptly respond to complaints.
- Failure to require prompt corrective action by the contractor and to withhold payment in complaint cases.
- Failure to assist the property owner in receiving satisfaction under the warranty.

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1...In lieu of the limits provided by HUD, the participating jurisdiction may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows. The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. The participating jurisdiction may determine separate limits for existing housing and newly constructed housing. For housing located outside of metropolitan areas, a State may aggregate sales data from more than one county, if the counties are contiguous.
and similarly situated. The following information must be included in the annual action plan of
the Consolidated Plan submitted to HUD for review and updated in each action plan.

(A) The 95 percent of median area purchase price must be established in accordance with a
market analysis that ensured that a sufficient number of recent housing sales are included in the
survey.

(B) Sales must cover the requisite number of months based on volume: For 500 or more
sales per month, a one-month reporting period; for 250 through 499 sales per month, a 2-month
reporting period; for less than 250 sales per month, at least a 3-month reporting period. The data
must be listed in ascending order of sales price.

(C) The address of the listed properties must include the location within the participating
jurisdiction. Lot, square, and subdivision data may be substituted for the street address.

(D) The housing sales data must reflect all, or nearly all, of the one-family house sales in
the entire participating jurisdiction.

(E) To determine the median, take the middle sale on the list if an odd number of sales, and if an
even number, take the higher of the middle numbers and consider it the median. After identifying
the median sales price, the amount should be multiplied by 0.95 to determine the 95 percent of
the median area purchase price.
### SUMMARY OF HOMEOWNER REHABILITATION RULES & HOW TO DOCUMENT

#### Eligible Participants

<table>
<thead>
<tr>
<th></th>
<th>Key HOME Requirement</th>
<th>Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner Income</td>
<td>Gross income ≤ 80% of median income based on the upcoming 12 months.</td>
<td>Completed application in the client file.</td>
</tr>
<tr>
<td></td>
<td>Gross income is defined by 24 CFR Part 5.</td>
<td>Source documentation (wage statements, interest statements) in the client file.</td>
</tr>
<tr>
<td>Owner Occupancy</td>
<td>Applicant must occupy unit as his/her principal resident.</td>
<td>Client must sign a clause on the application form certifying that the property is the principal residence.</td>
</tr>
<tr>
<td>Ownership of Property</td>
<td>Applicant of property must have ownership of property through one of the following:</td>
<td>Title search documentation in client file.</td>
</tr>
<tr>
<td></td>
<td>• Fee simple title,</td>
<td>Copy of deed or other approved ownership document in the client file.</td>
</tr>
<tr>
<td></td>
<td>• 99-year leasehold interest</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Other form approved by the Department</td>
<td></td>
</tr>
</tbody>
</table>

*It is the expectation that a title search, title check, or some other form of review be completed that includes the review items noted below. How a grantee obtains that info is up to them.

It is the expectation for grantees to obtain a title search in order to: 1) Establish proof of ownership [chain of title], 2) determine defects to title/ownership [if any], 3) Identify outstanding mortgages and other liens, and 4) to disclose any recorded covenants, conditions, restrictions, easements, condemnations, etc.

The above mentioned items would be searched for, likely through a title company, or other source, that can provide all of this information.
### Eligible Property

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Key HOME Requirement</th>
<th>Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Eligible property types include:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• One-to-four unit property</td>
<td></td>
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<tr>
<td></td>
<td>• Condominium unit</td>
<td></td>
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<tr>
<td></td>
<td>• Manufactured housing</td>
<td>If two-to-four units, indicate status of non-owner-occupied units and verify no HOME funds provided as assistance to these units.</td>
</tr>
<tr>
<td>Property Location</td>
<td>Property must be located in program area as designated in approved program guidelines.</td>
<td>Client application must contain address.</td>
</tr>
<tr>
<td>HOME Minimum &amp; Maximum Subsidy</td>
<td>A minimum of $1,000 in HOME funds must be invested in each assisted unit.</td>
<td>Maintain records demonstrating that each unit assisted received at least $1,000 in HOME assistance but not more than the maximum NAHP subsidy allowed.</td>
</tr>
<tr>
<td></td>
<td>Assistance must not exceed NAHP subsidy limit on a unit by unit basis.</td>
<td></td>
</tr>
<tr>
<td>Property Value</td>
<td>A unit’s after-rehab value must not exceed the applicable pre-stimulus 203(b) limit or 95% median sales price limit.</td>
<td>Document unit’s estimated after-rehab value and method for determining the estimate.</td>
</tr>
<tr>
<td>Property Standards</td>
<td>Property must meet Department’s Rehabilitation Standards and applicable codes (local or one of the accepted national codes).</td>
<td>Document local code or model code used.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Maintain written rehab standards in program files.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Include inspection report or certification by inspector in client file.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Keep inspection checklist and work write-up in client file.</td>
</tr>
<tr>
<td>Eligible Activities</td>
<td>Rehabilitation and reconstruction</td>
<td>Document all expenditures.</td>
</tr>
</tbody>
</table>
MINIMUM STANDARDS FOR REHABILITATION  
Nebraska Department of Economic Development  

A. MINIMUM STANDARDS FOR BASIC EQUIPMENT AND FACILITIES  

1. KITCHENS – Every dwelling shall have a kitchen room or kitchenette equipped with a kitchen sink, properly connected to both hot and cold running water lines, under pressure, and in working order.  

2. TOILET ROOM REQUIRED – Every dwelling unit, except as otherwise permitted for rooming houses, shall contain a room that is equipped with a flush water closet and properly installed lavatory. Said lavatory shall be properly connected to both hot and cold running water, under pressure, and shall be in working order. Fixtures shall be properly installed, free of hazards, leaks and defects, and in functional and sanitary order.  

   Said flush water closet shall be properly connected to the water supply, under pressure, and shall be in working order.  

3. SHARED TOILET FACILITIES – Shared toilet rooms shall be equipped with a flush water closet and lavatory basin, and shall be connected as provided in Section 2 above. In rooming house type structures, at least 1 toilet and 1 lavatory basin, properly connected as set forth above, shall be supplied for each 8 persons or fractions thereof residing within a rooming house, including members of the operator’s family whenever they share the use of said facilities, provided that in rooming houses where rooms are let only to males, flush urinals may be substituted for not more than ½ of the required number of toilets.  

4. BATH REQUIRED – Every dwelling unit shall contain a bathtub and/or shower. Fixtures shall be properly installed, free of hazards, leaks and defects, and shall be in functional and sanitary order.  

   Potable water supply piping, water discharge outlets, backflow prevention devices or similar equipment shall not be so located as to make possible their submergence in any contaminated or polluted liquid or substance.  

   Said bathtub and/or shower may be in the same room as the flush water closet and lavatory, or said bathtub and/or shower may be in a separate room. In all cases, these facilities shall be properly connected to both hot and cold running water lines, under pressure, and shall be in working order.  

   In rooming house type structures, at least 1 bathtub and/or shower, properly connected as set forth above, shall be supplied for each 8 persons or fractions thereof, residing within a rooming house, including members of the operator’s family whenever they share the use of said facilities.  

5. PRIVACY IN ROOM CONTAINING TOILET AND BATH – Every toilet and every bath shall be contained in a room or within separate rooms which affords privacy to a person within said room or rooms. Said rooms shall not be the only passageway to the exterior.  

   Toilets and bathrooms shall have doors with a privacy type lock and such doors, locks and hardware shall be in working order.
6. **LOCATION OF COMMUNAL TOILETS AND BATHS** – Every communal bath required to be provided in accordance with other provisions, shall be located within a room or rooms accessible to the occupants of each dwelling unit sharing such facilities, without going through a dwelling unit of another occupant and without going outside of the dwelling.

In rooming houses, said room or rooms shall be located on the same floor of the dwelling as, or on the floor immediately above or below, the dwelling unit whose occupants share the use of such facilities.

7. **WATER SUPPLY** – All fixture water supplies shall be properly connected to public or private water system.

All water supply inlet orifices (mouth of an opening from any pipe or faucet supplying water) shall have an air gap (The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the floor level rim of the receptacle.) or shall be protected by vacuum breakers (also known as backflow preventers).

8. **HOT AND COLD WATER LINES TO BATH AND KITCHEN** – Every dwelling shall have supplied water-heating facilities which are properly installed; in working condition and free of leaks; properly connected to hot water lines required; and are capable of supplying hot or tempered water at not less than 110°F to be drawn for every bath, as well as general usage.

Hot water storage associated with water heating facilities shall not be less than the following minimum capacities:

- a. 1 dwelling unit 30 gallons
- b. 2 dwelling units 40 gallons
- c. 3 or more dwelling units 50 gallons or more

Sizes and/or number of water heaters are to be based upon the number of units served. No water heaters shall be allowed in bathrooms or bedrooms. All hot water heaters shall be properly vented and sealed and equipped with a pressure relief valve and drip leg a maximum of 6” above the floor.

The local rehabilitation division and/or building inspection division may adjust the above-required capacities upward or downward based on the type and recovery time of the hot water system.

9. **CONNECTION OF SANITARY FACILITIES TO SEWAGE SYSTEM** – Every kitchen sink, toilet, lavatory basin and bathtub/shower shall be in working condition and properly connected to an approved public or private sewage system.

All sewers and vents shall function properly and be free of leaks and blockages.

10. **EXITS** – Every exit from every dwelling and/or dwelling unit shall comply with the following requirements:

- a. It shall be functional;
- b. It shall be unobstructed;
c. All stairways and steps of 4 or more risers shall have at least 1 handrail, and all stairways and steps that are 5 feet or more in width or open on both sides shall have a handrail on each side where possible;

d. Every dwelling unit shall have 2 independent ways of egress;

e. All handrails shall be not less than 30” or more than 42” vertically above the nose of the stair treads and not less than 36” above the stairway platform;

f. All balconies and platforms that are 30” or more above grade, shall have protective guards not less than 30” in height above the balcony or platform level;

g. All multiple dwellings (1 & 2 family residences exempted) shall have a second exit stairway or approved fire escape available to all occupants of units located on second or higher stories;

h. All stairs and steps shall have a riser height of no more than 8” and a tread depth of no less than 9”. This requirement may be waived on the programmatic level if in an existing structure, it would be impossible or cost prohibitive to meet this requirement. In such cases, new stairs could be put in having the same rise and run as the old;

i. In basement units where one means of an exit shall be a window, it shall comply with the International Residential Code, Section 310 Emergency Escape and Rescue Openings.

11. FIRE PROTECTION AND SMOKE ALARMS – All fire protection systems and devices shall be in operable condition. When a dwelling is occupied by any hearing impaired person, smoke alarms shall have an alarm system designed for hearing impaired persons in accordance with NFPA 74 (or successor standards).

Smoke alarms shall be installed:
- On each story, including basement and cellar (Alarms are not required in unfinished attics and crawl spaces)
- Outside of each bedroom
- In each bedroom

B. MINIMUM STANDARDS FOR LIGHT, VENTILATION AND HEATING

1. REQUIRED WINDOW AREA – Every habitable room, provided such rooms are adequately lighted, shall have at least one open air space. The minimum total window area, measured between stops, for every habitable room shall be as follows:

   a. 1/12 of the floor area if two or more separate windows exist or

   b. 1/10 of the floor area if only one window exists;

   c. a minimum of 12 square feet of window area is required in habitable rooms other than kitchens;

   d. a kitchen may pass without a window area, provided there is a mechanical means of ventilation in working order.
Whenever the only window in a room is a skylight type window, the total window area of such skylight shall be equal to at least 15% of the total floor area of such room. Skylight type windows, if less than 15% of the total floor area shall be increased to 15% of the total floor area, unless another window is to be installed to provide adequate light and ventilation.

2. **ADEQUATE VENTILATION REQUIRED** - Every habitable room shall have at least one window or skylight which can easily be opened, or other such device as will adequately ventilate the room.

3. **LIGHT AND VENTILATION REQUIREMENTS FOR BATHROOMS, TOILET ROOMS AND KITCHENS**
   Every bathroom, toilet room, and kitchen shall comply with the light and ventilation requirements for habitable rooms contained above, except that no window shall be required in adequately ventilated bathrooms, toilet rooms, or kitchens equipped with a ventilation system that filters or exhausts to the exterior.

4. **ALTERNATIVE LIGHT AND VENTILATION** – Artificial light or mechanical ventilation complying with the International Building Code shall be permitted.

5. **CLOTHES DRYER VENTING** – Clothes dryer exhaust vent shall be a single purpose vent in compliance with the manufacturer’s instructions and vent to the exterior.

6. **ELECTRIC OUTLETS AND SERVICE REQUIRED** - Where there is suitable electricity available from supply lines no more than 300 feet away from a dwelling, including all existing dwellings now supplied with electrical services, every habitable room within such dwelling shall contain a minimum of two separate and remote wall type electric convenience outlets. Habitable rooms measuring more than 120 square feet shall contain a minimum of three separate and remote wall type electric convenience outlets. Temporary wiring, extension, or zip cords shall not be used as permanent wiring.

   Every habitable room shall have at least one ceiling or wall type electric light fixture, controlled by a wall switch, or a wall type grounded electric convenience outlet controlled by a remote switch. Every toilet room, bathroom, laundry room, furnace room, and hallway (hallway where applicable) shall contain at least 1 supplied ceiling or wall type electric light fixture, controlled by a wall switch, and at least one wall type grounded electric convenience outlet. Convenience outlets used in bathrooms shall be the GFI type.

   Each individual kitchen based on its size and layout shall be wired to meet the requirements of the National Electric Code (N.E.C.).

   Receptacle convenience outlets in or on open porches, breezeways or garages shall be of the GFI type with a weather proof receptacle box.

   All wall and/or ceiling type lighting fixtures shall be controlled by a wall switch, except porcelain type fixtures used in cellars and/or attics, which may be controlled with a proper pull chain.

   All electrical equipment, appliances and wiring shall be properly installed and in safe condition.

   All broken and/or missing switch and receptacle plates shall be replaced.
All outlets and fixtures shall be properly installed, shall be in working condition and shall be connected to the source of electric power in a proper manner and in accordance with the electrical code of the city and/or the N.E.C., as applicable.

Minimum electrical service for each dwelling and/or dwelling unit’s circuit breaker box shall be by a three wire 120/240 volt single phase service rated no less than 100 amps, or as adjusted for size and usage of equipment and appliances in accordance with the ICC Electrical Code and approved, in writing, by the electrical inspector of the local jurisdiction or program.

7. **HAZARDOUS ELECTRICAL CONDITIONS** – Where any condition of the electrical system in the dwelling or structure is identified as, and constitutes a hazard, the hazardous conditions shall be corrected.

8. **HEATING FACILITIES** – Heating facilities shall be properly installed, be in working condition and be capable of adequately heating all habitable rooms, and toilet rooms contained therein, or intended for use by the occupants capable of maintaining a room temperature of 68°F (20°C) when the outdoor temperature is within the winter outdoor design temperature for the locality as cited in Appendix D of the International Plumbing Code. Space heaters shall not substitute for a central heating unit.

Every installed central heating system shall comply with the following requirements:

a. The central heating unit shall be safe and in good working condition;

b. Every heat duct, steam pipe and hot water pipe shall be free of leaks and obstructions and deliver an adequate amount of heat where intended;

c. Every seal between any and all sections of a hot air furnace shall be air-tight so noxious gases and fumes will not escape into the heat ducts;

d. Required clearance from combustible materials shall be maintained;

e. All chimneys and vents shall have a flue liner intact and in safe working condition.

Every existing **space heater** shall comply with the following requirements:

a. No space heater burning solid, liquid or gaseous fuels shall be of a portable type;

b. Every space heater burning solid, liquid or gaseous fuels shall be properly vented to a chimney or duct leading to outdoor space and be installed to provide proper draft;

c. Every fuel burning space heater shall have a fire-resistant panel between it and the floor or floor covering as required by the unit’s manufacturer;

d. Whenever a space heater is located within 2 feet of a wall, said wall shall be protected with insulation sufficient to prevent overheating of the wall as required by the unit’s manufacturer;

e. Every space heater smoke pipe shall be equipped with approved thimbles or guards, properly constructed of non-flammable material, at the point where the pipe goes through any wall, ceiling or partition;
f. Each dwelling and/or dwelling unit shall be supplied with its own heating systems. Local option may provide for one central forced air system to serve no more than two separate dwelling units.

9. LIGHTING OF PUBLIC HALLS AND STAIRWAYS

a. Public halls and stairways in every dwelling containing 2 to 4 dwelling units shall be provided with convenient wall-mounted light switches controlling an adequate lighting system that will provide at least 2 foot candles of illumination on all parts thereof and be turned on when needed. An emergency circuit is not required for this lighting;

b. Public halls and stairways in every dwelling containing 5 or more dwelling units shall be lighted at all times with an artificial lighting system. Said system shall provide at least 2 foot candles of illumination on all parts thereof at all times by means of properly located electric light fixtures, provided that such artificial lighting may be omitted from sunrise to sunset where an adequate natural lighting system is provided;

c. Wherever the occupancy of the building exceeds 100 persons, the artificial lighting system as required herein, shall be on an emergency circuit;

d. All basements and cellars shall be provided with a lighting system that permits safe occupancy and use of the space and contained equipment as intended, and which may be turned on when needed;

e. The required intensity of illumination shall apply to both natural and artificial lighting.

a. SCREENS REQUIRED - For protection against flies, mosquitoes and other insects, every door opening directly from a dwelling unit or rooming unit, to the outdoor space where feasible, shall be supplied with a screen covering at least 50% of the window area of the door, and said door shall be equipped with a self-closing device.

Every window or other opening to outdoor space used or intended to be used for ventilation shall likewise be supplied with screens covering the entire window areas required for ventilation. The material used for all such screens shall be no less than 16 mesh per inch, properly installed, and repaired when necessary to prevent the entrance of flies, mosquitoes and other insects.

Half-screens on windows may be allowed, provided they are properly installed and are bug and insect proof.

11. SCREENS FOR BASEMENT AND CELLAR WINDOWS - Every dwelling unit having operable basement or cellar windows shall be screened to prevent the entry of insects and rodents.

12. EXISTING HEATING TO DWELLINGS OR PARTS THEREOF - Every dwelling owner or operator who rents, leases or lets for human habitation any unit contained within such dwelling, on terms either expressed or implied, shall supply or furnish heat to the occupants.

Whenever a dwelling is heated by means of a furnace, boiler or other heating apparatus under the control of the owner or operator, in the absence of a written contract or agreement to the contrary, said owner and/or operator shall be deemed to have contracted, undertaken, or bound to furnish heat in accordance with the provisions of this section to every unit that contains radiators, furnace heat duct outlets, or other heating apparatus outlets, and to every communal bathroom and communal toilet room located within such unit.
a. Every central heating unit, space heater, water heater and cooking appliance shall be located and installed in a safe working manner to protect against involvement of egress facilities or egress routes in the event of uncontrolled fires in the structure;

b. Every fuel burning heating unit or water heater shall be effectively vented in a safe manner to a chimney or duct leading to the exterior of the building. The chimney duct and vents shall be designed to assure proper draft, shall be adequately supported, and shall be clean;

c. No fuel-burning furnace shall be located in any sleeping room or bathroom unless provided with adequate ducting for air supply from the exterior, and the combustion chamber for such heating unit is sealed from the room in an airtight manner. Water heaters are prohibited in bathrooms and sleeping rooms.

d. Every steam or hot water boiler and every water heater shall be protected against overheating by appropriate temperature and pressure limit controls;

e. Every gaseous or liquid fuel burning heating unit and water heater shall be equipped with electronic ignition or with a pilot light and an automatic control to interrupt the flow of fuel to the unit in the event of failure of the ignition device. All such heating units with plenum have a limit control to prevent overheating.

C. MINIMUM STRUCTURAL STANDARDS

1. SIDEWALKS AND DRIVEWAYS – All sidewalks, driveways, stairs and similar areas shall be free of hazardous conditions and in proper repair.

2. PREMISE IDENTIFICATION NUMBERS – Address numbers easily visible and legible from the street or road shall be installed. Numbers shall contrast in color with their background and be at least 4 inches high with a minimum stroke width of one half inch.

3. FOUNDATIONS, EXTERIOR WALLS, ROOFS, SOFFITS AND FASCIA - Every foundation, exterior wall, roof, soffit, and fascia shall be structurally sound, weather-tight, and rodent/insect-proof.

All exterior surface materials shall be protected by lead-free paint or other protective coating in accordance with acceptable standards. The exception is all types of exterior materials acceptable to weatherizing without deterioration.

4. INTERIOR WALLS, FLOORS, CEILINGS, DOORS, AND WINDOWS – Every interior partition, wall floor, ceiling, door and window shall be structurally sound.

Holes in walls should be replastered before new paint is applied.

All interior doors shall be capable ofaffording privacy for which they were intended.

5. GRAunding AND RAINWATER DRAINAGE FROM ROOF - All rainwater shall be drained and conveyed from every roof so as not to cause dampness within the dwelling. All rainwater drainage devices, such as gutters, downspouts, leaders and splashblocks shall be in safe working order. Ground areas around the habitable unit shall be sloped or drain away from foundation walls to prevent standing water.
6. **WINDOWS, EXTERIOR DOORS AND BASEMENT OR CELLAR HATCHWAYS** - Every front, rear, side and basement or cellar door shall be no less than 2'4" in width and no less than 6' 6" in height. In existing structures, if replacement to meet these requirements would be impossible or cost-prohibitive, said requirement may be waived by the grantee.

   Every window, exterior door and basement or cellar hatchway shall be substantially tight and rodent-proof. In addition, the following requirements shall be met:

   a. All exterior doors to the outside or to a common public hall shall be equipped with adequate security locks. Means of egress door locks shall be easily opened from the egress side without a key or special knowledge. All windows accessible from ground level without the aid of mechanical devices shall have a security device. Emergency escape windows shall be openable from the inside without the use of a key, code or tool;

   b. Every window sash shall be fully equipped with windowpane glazing materials free of cracks or holes, and all panes shall be secured with retaining devices or an adequate amount of putty. Said putty shall not be cracked, broken or missing;

   c. Every window sash shall be in good condition and fit tightly within its frame;

   d. Every window, other than a fixed window, shall be easily opened and held in position by window hardware;

   e. Every exterior and interior door, door hinge, door latch, and/or lock shall be in good working condition;

   f. Every exterior and interior door, when closed, shall fit well within its frame;

   g. Every window, door and frame shall be constructed in relation to the adjacent wall construction, to exclude rain and wind as completely as possible from entering the dwelling or structure;

7. **STAIRWAYS, DECKS, BALCONIES AND PORCHES** - Every interior and exterior stairway, porch, deck, balcony and appurtenance thereto, including hand and guard rails, shall be constructed to be sound and safe to use and capable of supporting the load that normal use may place upon it.

8. **SUPPLIED PLUMBING FIXTURES** - Every plumbing fixture and water and waste pipe shall be properly installed in safe, sanitary working condition, free from leaks, defects, and obstructions.

9. **BATHROOM, TOILET ROOM, KITCHEN AND UTILITY ROOM FLOORS** - Every bathroom, toilet room, kitchen, and utility room floor surface shall be constructed to be impervious to water and to permit such floors to be easily kept clean and sanitary.

   Indoor-outdoor type carpeting, when properly installed, shall be allowed in bathrooms, toilet rooms, kitchens and utility rooms except when in conflict with required interim controls or standard treatments required to comply with the lead-based paint regulation.

10. **CHIMNEYS AND SMOKE PIPES** - Every chimney and smoke pipe shall be adequately supported, structurally sound, and clean.
11. **TREES AND VEGETATION** – Trees and vegetation endangering the unit and/or its occupants shall be eliminated.

12. **INTERNATIONAL RESIDENTIAL CODE FOR ONE AND TWO-FAMILY DWELLINGS** – All rehabilitation work must meet or exceed the requirements of the International Residential Code as promulgated by the International Code Council in its current edition or as adopted in ordinance by the local jurisdiction.

   a. Work must comply with the permitting and inspection requirements of the local jurisdiction.

   b. In the absence of local permitting and inspection services, the local recipient program shall engage qualified inspectors and document code inspection and compliance.

13. **LEAD-BASED PAINT** – As required under 24 CFR Part 35, the Final HUD Regulation on Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance, all assisted dwelling units constructed before January 1, 1978, will be evaluated for lead-based paint hazards or presumed to have lead-based paint present throughout the unit when paint is disturbed.

   a. Evaluation will be done by a qualified, certified or licensed person as required under the regulation.

   b. All lead-based paint hazards will be identified and reduced or eliminated through paint stabilization, interim controls or abatement with work being done by supervised, trained, qualified, certified or licensed persons as required under the regulation.

   c. Safe work practices will be followed at all times.

   d. Occupants shall be protected or temporarily relocated as required by the regulation. With some exceptions, as listed at 24 CFR 35.1345, occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe and similarly accessible dwelling unit that does not have lead hazards.

   e. The dwelling unit and worksite shall be secured. The worksite shall be prepared and warning signs shall be posted as required by the regulation.

   f. Clearance examinations will be performed by qualified personnel and final clearance shall be achieved as required by the regulations.

14. **ENERGY CONSERVATION** –

   a. Equipment, appliances, windows, doors and appurtenances replaced during rehabilitation shall be replaced with Energy Star qualified products.

   b. If feasible, attics should be insulated to R38 and walls to a minimum of R11.

   c. Replacement heating and/or cooling systems shall be properly sized as evidenced by completion of ACCA/ANSI Manual J® or an equivalent sizing calculation tool.

   d. All accessible air ducts shall be tightly sealed.
e. Heating or cooling supply running through unconditioned space should be avoided or rerouted, but when present and accessible, shall be insulated.

15. **INDOOR AIR QUALITY** – The scope and conduct of rehabilitation of each dwelling unit shall take into consideration the improvement and maintenance of satisfactory and healthy air quality within the unit.

a. A carbon monoxide detector installed per manufacturers’ recommendations shall be present in each unit, and receive primary power from the building wiring or battery. If the house is all electric a carbon monoxide detector is not required.

b. Devices and appurtenances identified to contain mercury shall be removed or replaced excluding CFL bulbs.

c. Materials and methods used in carrying out rehabilitation, shall to the extent feasible, minimize and prevent dust, outgassing, volatile organic compounds and other contaminants within the dwelling unit.

16. **UNIVERSAL DESIGN AND ACCESSIBILITY** – Rehabilitation of each unit shall be carried out with consideration for the needs of its occupants and to the maximum practical extent in accordance with the principles of universal design. For guidance in implementing universal design features, visit www.design.ncsu.edu/cud

D. **MINIMUM SPACE, USE AND LOCATION REQUIREMENTS**

1. **CEILING HEIGHT** - Wherever possible, no habitable room in a dwelling or dwelling unit shall have a ceiling height of less than 7’ 6". At least 1/2 of the floor area of every habitable room located above the first floor shall have a ceiling height of 7’ 6"., and the floor area of that part of any room where the ceiling height is less than 5’ shall be considered as part of the floor area in computing the total floor area of the room for the purpose of determining maximum floor area.

2. **ROOM WIDTH** - All rooms, except kitchens and/or kitchenettes and baths, shall have a minimum width of 7’. Kitchens shall have a clear passage dimension of no less than 3 feet between walls, appliances and cabinets.

3. **CELLAR SPACE NOT HABITABLE** - No cellar space shall be converted or rehabilitated as habitable room or dwelling unit.

4. **REQUIREMENTS FOR HABITABLE BASEMENT SPACE** - No basement space shall be used as a habitable room or dwelling unit unless all of the following requirements are met:

   a. Such required minimum window area is located entirely above the grade of ground adjoining such window area, or an adequate window well of sufficient size as to allow escape of inhabitants residing within such basement apartment, has been constructed;

   b. Such basement dwelling unit or rooming unit shall be entirely sealed off from the central heating plant with a one hour fire separation. To assist grantees in evaluating existing building components, HUD has published the “Guideline on Fire Ratings of Archaic Materials and Assemblies”, February 2000, available at http://www.huduser.org/publications/destech/fire.html;

   c. Such basement dwelling unit or rooming unit provides two means of exit, with at least one means of opening directly to the outside;

5. **MINIMUM STORAGE AREAS** - Each dwelling unit shall have at least one closet with a minimum of 6 square feet of floor area and a minimum height of 6’, located within the dwelling unit. Dwelling
units with 2 or more bedrooms shall have a storage floor area of at least 4 square feet per bedroom. This storage requirement does not necessarily have to be located in the bedrooms.

E. MINIMUM STANDARDS FOR GARAGES, FENCES AND PREMISES

1. PROTECTION OF EXTERIOR WOOD SURFACES - All exterior wood surfaces shall be properly protected from the elements against decay and rot by lead-free paint, or other approved protective coating.

2. FENCES - Every residential fence shall be in a state of maintenance and repair or shall be removed. Wood materials that are not decay resistant shall be protected against decay by use of lead-free paint or by other preservative material.

   If a fence is removed and replaced, said installation shall conform with all local requirements.

3. CONDITION OF PREMISES - All areas and all parts of the premises upon which any dwelling or dwelling units are located and all areas adjacent thereto and a part of the premises shall be in a clean and sanitary condition. This shall include, but not be limited to, removal of abandoned and junked automobiles, automobile bodies, chassis, parts, and trailers; inoperable machines and appliances; lumber piles and building materials not used in actual construction; tin cans, broken glass, broken furniture, boxes, crates, and other debris, rubbish, junk and garbage.

4. WATER SUPPLY - CONNECT TO WATER MAIN - Every owner of a dwelling situated on property that abuts any street or alley in which a water main is laid, shall be connected to such main to provide water service.

5. ABANDONED WELLS AND CISTERNS - Every owner of a dwelling that contains an abandoned well or cistern on the premises shall permanently seal or fill it in a proper manner.

6. INFESTATION AND EXTERMINATION – Structures shall be free from rodent and insect infestation.
Attachment 3

DO OTHER FEDERAL REQUIREMENTS APPLY TO HOMEOWNER REHAB?

Non-Discrimination and Equal Access Rules

Fair Housing and Equal Opportunity – Yes, Must affirmatively further Fair Housing
  Regulatory Citations & References:
  - 92.202 and 92.250
  - Title VI of Civil Rights Act of 1964 (42 U. S. C. 2000d et. seq.)
  - Fair Housing Act (42 U. S. C. 3601-3620)
  - Executive Order 11063 (amended by Executive Order 12259)
  - Age Discrimination Act of 1975, as amended (42 U. S. C. 6101)
  - 24 CFR 5.105(a)

Affirmative Marketing - Yes
  Regulatory Citations & References:
  - 92.351

Handicapped Accessibility – No (Note: Accessibility improvements are eligible costs)
  Regulatory Citations & References:
  - Section 504 of the Rehabilitation Act of 1973 (implemented at 24 CFR Part 8)
  - For multi-family buildings only, 24 CFR 100.205 (implements Fair Housing Act)

Employment and Contracting Rules

Equal Opportunity Employment – Yes, small projects especially offer opportunities for minority and resident-contractors.
  Regulatory Citations & References:
  - Executive Order 11246 (implemented at 41 CFR Part 60)

Section 3 Economic Opportunity – Yes, if amount of assistance exceeds $200,000 OR contract or subcontract exceeds $100,000.
  Regulatory Citations & References:
  - Section 3 of the Housing and Urban Development Act of 1968 (implemented at 24 CFR Part 135)

Minority/Women Employment – Yes
  Regulatory Citations & References:
  - Executive Orders 11625, 12432 and 12138
  - 24 CFR 85.36(e)

Davis-Bacon - No
  Regulatory Citations & References:
  - 92.354
  - Davis-Bacon Act (40 U. S. C. 276a -276a-5)
  - 24 CFR Part 70 (volunteers)
  - Copeland Anti-Kickback Act (40 U. S. C. 276c)
Conflict of Interest – Yes

Regulatory Citations & References:

- 92.356
- 2 CFR 200 §§.318 and .319

Debarred Contractors – Yes, check HUD's list of debarred contractors

Regulatory Citations & References:

- 24 CFR Part 5

Other Federal Requirements

Environmental Reviews – Yes, neighborhood reviews may facilitate targeted programs, but individual checklists still required for each project site. Special attention should be paid to flood insurance, noise and historic requirements.

Regulatory Citations & References:

- 92.352
- 24 CFR Part 58.35 a(4)
- National Environmental Policy Act (NEPA) of 1969

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

Regulatory Citations & References:

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

Site and Neighborhood Standards - No

Regulatory Citations & References:

- 24 CFR 893.6(b)

Lead-Based Paint – Yes, for pre-1978 units. Notices to owners. Paint testing of surfaces to be disturbed. Risk assessment, if applicable, based on level of rehabilitation assistance. Appropriate lead-hazard reduction activity (based on level of rehabilitation assistance). Safe work practices and clearance. Provisions included in all contracts and subcontracts.

Regulatory Citations & References:

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

Relocation – Yes, relocation is required for tenants are living in the other units. Relocation is not required for owner-occupied units unless lead hazard reduction activities require it.

Regulatory Citations & References:

- 92.353
- 49 CFR Part 24
- 24 CFR Part 42 (subpart B)
- Section 104(d) "Barney Frank Amendments"
§92.251 Property standards.

The FINAL HOME RULE

The changes to §92.251 reorganize the presentation of the property standards requirements and clarify and update the standards. The reorganization is intended to minimize confusion about the applicability of the codes and standards across different housing activities. It creates separate requirements for projects involving:

• New construction [§92.251(a)]
• Rehabilitation [§92.251(b)]
• Acquisition of standard housing [§92.251(c)]
• Housing occupied by tenants receiving HOME tenant-based rental assistance [§92.251(d)]
• Manufactured housing [§92.251(e)]
• Ongoing property standards for rental projects [§92.251(f)]
• Inspection procedures [§92.251(g)].

Revisions to the property standards also address the codes cited in the pre-2013 HOME Rule that have been superseded and/or updated. The 2013 Rule provides additional specificity to the rehabilitation standards requirements in order to ensure that adequate improvements are made to support the long-term viability of HOME-funded rehabilitation projects. For new construction and rehabilitation, the 2013 Rule requires a higher degree of oversight by the PJ. It imposes requirements for the PJ to review and approve construction-related documents prior to construction, and to monitor construction progress.

NOTE: The changes cited above have been suspended to date, while PJs await additional guidance from HUD on the implementation of these standards. Until final guidance is received, the Property Standards in place prior to the Final HOME Rule are applicable. Department Rehabilitation Standards can be found in Attachment 2.

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

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

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

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

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

(v) [Reserved]

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

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

(viii) **Uniform Physical Condition Standards.** The standards of the participating jurisdiction must be such that, upon completion, the HOME-assisted project and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703. HUD will establish the minimum deficiencies that must be corrected under the participating jurisdiction's rehabilitation standards based on inspectable items and inspected areas from HUD-prescribed physical inspection procedures (Uniform Physical Conditions Standards) pursuant to 24 CFR 5.705.
(ix) **Capital Needs Assessments.** For multifamily rental housing projects of 26 or more total units, the participating jurisdiction must determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the project through a capital needs assessment of the project.

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

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

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

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

(3) Existing housing that is acquired for homeownership (e.g., downpayment assistance) must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the specific deficiencies proscribed by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (Uniform Physical Condition Standards) issued pursuant to 24 CFR 5.705. The participating jurisdiction must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) or it cannot be acquired with HOME funds.
(d) Occupied housing by tenants receiving HOME tenant-based rental assistance. All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards in 24 CFR 982.401, or the successor requirements as established by HUD.

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

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

   (i) Compliance with State and local codes, ordinances, and requirements. The participating jurisdiction's standards must require the housing to meet all applicable State and local code requirements and ordinances. In the absence of existing applicable State or local code requirements and ordinances, at a minimum, the participating jurisdiction's ongoing property standards must include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (Uniform Physical Condition Standards (UPCS)) prescribed by HUD pursuant to 24 CFR 5.705. The participating jurisdiction's property standards are not required to use any scoring, item weight, or level of criticality used in UPCS.
(ii) **Health and safety.** The participating jurisdiction's standards must require the housing to be free of all health and safety defects. The standards must identify life-threatening deficiencies that the owner must immediately correct and the time frames for addressing these deficiencies.

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

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

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

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

(5) **Inspection procedures.** The participating jurisdiction must establish written inspection procedures inspections. The procedures must include detailed inspection checklists, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors. The procedures must also describe how frequently the property will be inspected, consistent with this section, §92.209, and §92.504(d).
CHAPTER 4 – HOMEBUYER ACTIVITIES

Chapter Overview
Overview of HOME Program Requirements
Eligible Activities
Forms of Financial Assistance
Eligible Homebuyer Costs
Eligible Property Types
Maximum Property Value

Property Standards
The Applicant/Beneficiary
Income Eligibility Requirements
Other Eligibility Requirements
Long-Term Affordability
Recapture/Resale

Overview of HOME Program Requirements
The chapter covers the kinds of HOME assistance that may be provided to homebuyers, eligibility criteria, and long-term affordability. HOME funds may be used for acquisition only, acquisition/rehabilitation, or new construction of homes. A summary of the key homebuyer rules and how to document compliance with the requirements of these rules is provided as Attachment 1.

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

Eligible Activities
Homebuyer programs can be structured in any number of ways to encourage the acquisition, acquisition and rehabilitation, or the new construction of affordable homes. Program design will be guided mainly by community needs and the local housing market.

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

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

HOME funds can also be used to fund rehabilitation activities. In areas where there is insufficient standard housing, the agency may want to incorporate a rehabilitation component into its homebuyer program.

In this case, there are two acceptable approaches:

- The grantee might acquire and rehabilitate, or assist a developer to acquire and rehabilitate, substandard properties to be sold after rehabilitation to low-income purchasers.
- As an alternative, the grantee might provide assistance directly to the homebuyer to perform the rehabilitation after the purchase. In such programs, the grantee will often offer rehabilitation loans in addition to, or instead of, the downpayment and closing cost assistance discussed above under Acquisition.

**New construction**

In areas where there is an insufficient supply of appropriate housing, the grantee may want to provide subsidies to stimulate construction of new housing. The grantee may develop housing itself or may work directly with developers to construct this housing. Another option is to provide HOME funds to other organizations or individuals to contract for the construction.

**Site improvements**

On-site improvements are an HOME eligible activity in connection with HOME-assisted housing. On-site improvements include sidewalks, utility connections, sewer and water lines.

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

**Lease-Purchase**

A lease-purchase option may be used in conjunction with a homebuyer program.

Ownership must be conveyed to an eligible homebuyer within 36 months of signing the lease-purchase agreement, or within 42 months of project completion. If at the end of the 36-month period, the household occupying the lease-purchase unit is not eligible or able to purchase the unit, the agency has an additional six months to identify an eligible homebuyer to purchase the unit.

If lease-purchase housing is not conveyed within 36 months of signing the lease purchase agreement, or within 42 months of project completion, the project becomes a HOME rental project subject to HOME rental rules.

The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed. Lease-purchase arrangements can assist households at the lower end of the income range by helping them to accumulate a downpayment while they build their "ownership skills."
Rental to Homeownership
HOME-assisted rental units may be converted to homeownership units with or without the use of additional HOME funds by having the owner of the rental units sell, donate or otherwise convey the units to the existing tenants.

If additional HOME funds are used to help the tenants become homeowners, the minimum period of affordability is the affordability period required by the amount of direct homeownership assistance provided.

If no additional HOME funds are used, the homeownership units are subject to the resale provisions and to a minimum period of affordability equal to the remaining affordability period that would apply if the units continued as rental units.

Forms of Financial Assistance
Generally, for homebuyer assistance programs, grantees will use any and all of the following forms of assistance:

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

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

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

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

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

The most efficient way to reduce the size of the monthly payment is to provide the homebuyer a grant or a loan (deferred-payment or below-market interest) to reduce the principal amount that he or she must borrow (however, the grantee may also consider an "interest buydown" -- providing funds directly to the lender to reduce the interest rate on the borrower's loan).
The gap financing, if provided as a loan, can be paid in small monthly installments (for a below-market-rate loan) or at the sale of the property (if a deferred-payment loan).

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

Eligible Homebuyer Costs

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

Soft Costs
- Financing fees.
- Credit reports.
- Title binders and insurance.
- Surety fees.
- Recordation fees, transactions taxes.
- Legal and accounting fees, including cost certification.
- Appraisals.
- Architectural/engineering fees, including specifications and job progress inspections.
- Environmental investigations.
- Builders' or developers' fees.
- Affirmative marketing and marketing costs.
- Fees paid to real estate agents.
- Homebuyer counseling provided to purchasers of HOME-assisted housing.
- Management fees.

Relocation Costs
- Replacement housing, moving costs and out-of-pocket expenses.
- Advisory services.
- Staff and overhead related to relocation assistance and services.
92.206(d)(6) is revised to clarify that the PJ’s, State recipient’s or subrecipient’s staff and overhead costs related to carrying out a project cannot be charged to, or paid by, low-income families. These costs can be charged as administrative or project costs. Examples of these costs are construction management fees, loan servicing fees, loan processing fees, and underwriting fees.

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

**Eligible Property Types**

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

- A one-unit single-family property.
- A two-to-four-unit single-family property.
  If HOME funds are used to assist a purchaser to acquire one unit in a two-to-four-unit rental property and that unit will be the principal residence of the purchaser, the long-term affordability requirements apply to the assisted ownership unit only.
- A condominium unit.
- A manufactured home.
  At the time of project completion, the manufactured housing must be connected to permanent utility hook-ups and must be located on land that is owned by the manufactured housing unit owner.

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

The Nebraska Affordable Housing Program considers a Mobile Home to be a housing unit constructed off-site that does not meet the definition of a Manufactured Home.

**Maximum Property Value**

The HOME program statute requires that no housing have a purchase price or after-rehabilitation value that exceeds 95 percent of area median purchase price, in order to ensure that HOME-assisted housing is modest and non-luxury.

In the 2013 Rule, §92.254(a)(2)(iii) is amended to eliminate the use of the 203(b) limit and to change the methods for determining 95 percent of area median purchase price. HUD will
determine and issue limits that represent 95 percent of the area median purchase price separately for newly constructed and existing single family housing units.

- **HUD-determined limits for newly constructed single family housing** units to be developed or acquired with HOME funds, will be based on 95 percent of the median purchase price for the area using FHA single family mortgage program data for newly constructed housing. PJs can use the greater of this limit or 95 percent of the statewide nonmetropolitan area median purchase price for newly constructed housing, which will also be provided by HUD.

- **HUD-determined limits for existing single family housing** units being acquired and/or rehabilitated with HOME funds, will be based on 95 percent of the median purchase price of existing housing in the area using data from the FHA single family mortgage program data for existing housing and other appropriate data that are available nationwide for sales of existing housing. PJs can use the greater of this limit or 95 percent of the statewide nonmetropolitan area purchase price using this data, which will also be provided by HUD.

PJs also continue to have the option to determine the actual 95 percent of area median value limit for their jurisdiction using the methodology in the regulation [at §92.254(a)(2)(iii)][1], which remains unchanged.

**Acquisition Only**
In the case of property that does not require rehabilitation, the sales price of the HOME property to be acquired by a homebuyer may not have a value that exceeds 95% of median purchase price limit.

**Acquisition and Rehabilitation**
If rehabilitation is required, the value of the property after rehabilitation may not exceed the 95% of median purchase price limit. The after-rehabilitation value estimate must be completed prior to investment of HOME funds.

**Determining After-Rehabilitation Value**
The process for determining the after-rehabilitation value for a HOME-assisted property is the same for properties rehabilitated by the existing homeowner as it is for properties purchased and rehabilitated by a new homebuyer. Grantees must use a reasonable method to determine property value. Acceptable methods include:

- An estimate of value performed by the grantee.
- An appraisal performed by a licensed fee appraiser.
- A tax assessment of a comparable, standard property, if current and computed for 100 percent of the after-rehabilitation value.

These methods are discussed further in Chapter 3 - Homeowner Rehabilitation, under the section on Maximum Property Value.
Property Standards

The FINAL HOME RULE

The changes to §92.251 reorganize the presentation of the property standards requirements and clarify and update the standards. The reorganization is intended to minimize confusion about the applicability of the codes and standards across different housing activities. It creates separate requirements for projects involving:

• New construction [§92.251(a)]
• Rehabilitation [§92.251(b)]
• Acquisition of standard housing [§92.251(c)]
• Housing occupied by tenants receiving HOME tenant-based rental assistance [§92.251(d)]
• Manufactured housing [§92.251(e)]
• Ongoing property standards for rental projects [§92.251(f)]
• Inspection procedures [§92.251(g)].

Revisions to the property standards also address the codes cited in the pre-2013 HOME Rule that have been superseded and/or updated. The 2013 Rule provides additional specificity to the rehabilitation standards requirements in order to ensure that adequate improvements are made to support the long-term viability of HOME-funded rehabilitation projects. For new construction and rehabilitation, the 2013 Rule requires a higher degree of oversight by the PJ. It imposes requirements for the PJ to review and approve construction-related documents prior to construction, and to monitor construction progress.

NOTE: The changes cited above have been suspended to date, while PJs await additional guidance from HUD on the implementation of these standards. Until final guidance is received, the Property Standards in place prior to the Final HOME Rule are applicable. Department Rehabilitation Standards can be found in Attachment 5 at the end of this chapter.

Meeting the Appropriate Codes
As with all HOME-assisted properties, homebuyer properties must meet certain written standards. There are some significant changes to the Property Standards requirement made in the Final HOME Rule. The entire text of the Final HOME Rule can be accessed by following this link Final HOME Rule. In addition, the Property Standards portion of the Rule has been added to the end of the chapter in Attachment 5.

Acquisition or Acquisition and Rehabilitation
Housing that is being purchased or rehabilitated must meet the Department’s Occupancy Standards and all applicable local codes and zoning ordinances. If no local codes apply, the property must meet a national model code (Uniform Building Code, National Building Code, Standard Building Code) or the Council of American Building Officials one- or two-family code or minimum property standards at 24 CFR 200.925 or 200.926.

There are additional requirement for Property Standards in the Final HOME Rule referenced above and in Attachment 5 at the end of Chapter 4.
**New Construction**
Housing that is being constructed after the submittal of the project’s application to the Department must meet all applicable local codes and zoning ordinances. If no local codes apply, the property must meet a national model code (Uniform Building Code, National Building Code, Standard Building Code) or the Council of American Building Officials one- or two-family code or minimum property standards at 24 CFR 200.925 or 200.926. New construction must also meet the 2009 International Energy Conservation Code.

There are additional requirement for Property Standards in the Final HOME Rule referenced above and in Attachment 5 at the end of the chapter.

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

**Housing Visitability**
All ground floor units must be visitable to the maximum extent feasible, unless doing so would impose an undue financial burden on the project. A visitable design provides that new single-family homes, duplexes, and triplexes are more accessible and usable to persons with disabilities. Housing units built to visitable standards have features that allow a person using a wheelchair or other mobility device to visit without any special assistance, and are more easily modified should a resident need adaptations in the future.

The Department uses the Nebraska Assistive Technology Partnership definition of visitability, which includes the following requirements:

- No-step/zero grade entrance with a 36” door into the unit’s main floor (at least one).
- Minimum 32” clear space opening in interior doorways.
- Minimum 36” wide hallways.
- First floor bathroom which allows for wheelchair access (while maintaining privacy).
- Reinforcement in bathroom walls to permit future installation of grab bars.
- Modification in location of light switches, electrical outlets and environmental controls.

See the following HUD guidance on the Department website for additional information concerning HOME requirements and visitability. [CPD 05-09](HOME Policies and Notices)
Manufactured Housing
Manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280, which preempt state and local codes covering the same aspects of performance for such housing.

Grantees providing HOME assistance to install manufactured housing units must comply with applicable state and local laws or codes. In the absence of such laws or codes, the agency must comply with the manufacturer's written instructions for installation of the manufactured housing units.

Manufactured housing that is rehabilitated with HOME funds must meet the requirements outlined above that apply to all housing constructed or rehabilitated with HOME funds.

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

- The grantee must inspect the property prior to occupancy for health and safety defects. The property must be free from any defects that pose a danger to the health and safety of occupants before occupancy and not later than six months after property transfer.
- The grantee must inspect the property again at project completion. The property must meet the Department’s Rehabilitation Standards and local codes and ordinances (or a model code if no local code) at project completion, and within two years of property transfer to the owner.

The Applicant/Beneficiary
To be eligible for HOME funds, the prospective purchaser must:

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

Income Eligibility Requirements
The purchasing household must be low-income in one of the following cases:

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

Income of All Persons Residing in the Housing
§92.254(a)(3) and §92.254(b)(2) are revised to specify that to the extent a person’s income “counts” in accordance with the definition of income the PJ has adopted, the income of all persons residing in the HOME-assisted housing must be included when determining the income of a family applying for homebuyer or homeowner rehabilitation assistance. This clarification is
intended to address situations where not all household members are related, or where several adult members will reside in a HOME-assisted unit.

The Department requires grantees to use the Annual (Gross) Income definition found at 24 CFR Part 5.609 (also referred to as the Section 8 method) to determine applicant income eligibility. Eligibility is based on anticipated income during the next 12 months. A detailed explanation of the Annual (Gross) Income definition can also be found in the “Technical Guide for Determining Income and Allowances for the HOME Program” on pages 11-34.

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

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

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

To conduct third party verifications, a grantee must obtain a written release from the household that authorizes the third party to release required information.

Some third party providers may, however, be unwilling, unable or charge a fee to provide the needed information in a timely manner. In such cases, the grantee should attempt to find suitable source documentation without the third-party verification – for example, bank statements.

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

Calculating Annual (Gross) Income
The Part 5 definition of Annual Income Inclusions and Exclusions comes directly from 24 CFR Part 5.609.

- Inclusions—types of income to be counted.
- Exclusions—types of income that are not considered (income of minors, etc.).
Timing of Income Determinations
Income qualifications must be completed in accordance with the timeframes outlined above. Income need not be reexamined at the time HOME assistance is actually provided unless more than six months have elapsed since the initial determination.

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

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

Fee simple title in a 1- to 4- unit dwelling or condominium unit or at least a 99-year leasehold interest, except:

- Housing located on an Indian trust or restricted Indian land, for at least 50 years
- Housing located on land owned by a community land trust, for at least 50 years
- Manufactured housing on a ground lease that is at least equal to the applicable affordability period.
- Additional guidance on manufactured housing is found at §92.251(e).

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

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

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

- A deed restriction or covenant running with the land should incorporate this requirement.
- The loan documents should also incorporate this requirement.
- Temporary subleases are not allowed (exceptions can be made for military families).
- Loan default and subsequent foreclosure negates the principal residence limitation.

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

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

<table>
<thead>
<tr>
<th>HOME Funds Provided</th>
<th>Affordability Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;$15,000</td>
<td>5 years</td>
</tr>
<tr>
<td>$15,000 - $40,000</td>
<td>10 years</td>
</tr>
<tr>
<td>&gt;$40,000</td>
<td>15 years</td>
</tr>
</tbody>
</table>

**Recapture/Resale**

The Department requires grantees to define in their program guidelines the method that will control the resale of homebuyer property. There are two options allowed by the HOME program: resale and recapture. Grantees must specify the option to be used in their homebuyer program or explain the circumstances that will dictate the use of a particular option on a property. The option must be specified in the approved homebuyer program guidelines and communicated to the homebuyer before any assistance is provided to the homebuyer. The grantee cannot allow the homebuyer to select the option.

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

Direct subsidy: A direct subsidy consists of any financial assistance that reduces the purchase price from fair market value to an affordable price, or otherwise subsidizes the purchase (e.g., downpayment or closing cost assistance, subordinate financing).

Development subsidy: A development subsidy is the difference between the cost to develop housing and the market price. For example, the grantee might provide a $50,000 construction loan to a developer. The appraised value after construction will be $45,000 because of neighborhood and market conditions. The $5,000 difference between the $45,000 sale price and $50,000 construction loan is not repaid to the grantee and represents a development subsidy provided to the developer. While the subsidy does not go directly to the homebuyer, it helps make development of an affordable home feasible.

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

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

**The Recapture Option**

This is a mechanism to recapture all or a portion of the direct HOME subsidy if the homebuyer assisted with HOME funds decides to sell the house **within the affordability period** at whatever price the market will bear. Recaptured funds may be used by the grantee, if approved by the Department, for HOME-eligible activities as specified in the approved plan.

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

Example: Mrs. James agrees to buy her first home for $50,000, and her lender, Citywide Federal, requires a 10 percent ($ 5,000) downpayment. Since Mrs. James is low-income and has qualified for private financing, the city's HOME Program agrees to provide a $4,000 deferred-payment loan –$3,000 for downpayment assistance and $1,000 to help with closing costs. The $4,000 loan will be subject to recapture should Mrs. James sell her property during the five-year period of affordability.

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

**Forgiveness**: The grantee may decide to forgive part or all of the direct HOME subsidy, either to compensate for uncertain market conditions (for example, to encourage families to move into a transitional neighborhood), or to provide protection to the homebuyer in the event that the sale proceeds are insufficient to repay the HOME subsidy and the homebuyer's investment.

- The decision to forgive must be made as part of the homebuyer program design process and spelled out in the program guidelines, not on a case-by-case basis.
- The grantee must make the conditions for forgiveness clear to the homebuyer at the time of purchase.
- Forgiveness must be tied to the length of time the homebuyer has occupied the home in relation to the period of affordability (that is, the grantee would forgive 50 percent of the subsidy amount for an owner who sold the home half-way through the period of affordability).

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

**Sharing of net proceeds**: When the net proceeds are insufficient to repay the direct HOME subsidy and the homebuyer's investment, the net proceeds may be shared in either of two ways:

- Option #1: Recapture of the HOME funds may be based on the ratio of the HOME subsidy to the sum of the homeowner's investment (downpayment and any capital improvement investment made by the owner since purchase), plus the HOME subsidy.

\[
\text{[HOME Subsidy/HOME Subsidy + Homeowner Investment] x Net Proceeds = HOME Recapture}
\]

Example: Mrs. James invested $3,000 in her home, including a $2,000 downpayment and $1,000 in closing costs. When she sells the house at the end of year two, the net proceeds are $5,000.
The amount of direct HOME subsidy to be recaptured equals:
\[ \frac{$4,000}{$4,000 + $3,000} \times $5,000 = $2,857 \]

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

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

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

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

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

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

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

- The new purchaser must be low-income, meeting the HOME Program definition, and occupy the property as the family's principal residence.
- The sales price must be "affordable" to the new purchaser. Affordable is defined by the grantee in the program guidelines; some define it as a maximum percentage of the purchaser's income that can be used to pay the fixed costs of owning a home (that is, loan payments of principal and interest, taxes and insurance, the sum of which is called PITI in the lending industry).

Example: The City of Clarendon has implemented the resale option for its homebuyer program. It has chosen to define affordability for a subsequent homebuyer as PITI, which does not exceed 32 percent of annual (gross) income.

- The original homebuyer, now the home seller, must receive a "fair return" on his or her investment. Fair return is also defined by the grantee.
Example: The City of Clarendon has defined a fair return as the return of the homebuyer's initial investment during the affordability period. Program managers considered allowing the homebuyer to keep part of any appreciation that might accrue, but decided against it in hopes of creating a strong incentive to retain ownership for the duration of the affordability period.

Grantees must use deed restrictions, land covenants or other similar legal mechanisms to enforce these resale restrictions.

Enforcement of the recapture or resale options: Attachment 3 shows the legal instruments that can be used to meet the requirements of the recapture or resale restrictions.

Selecting an Appropriate Recapture/Resale Method
Grantees may use either the recapture option or the resale option, or both, to meet the resale requirements of the HOME Program. However, the options and the criteria for use must be specified in the program guidelines approved by the Department. The option can not be selected by the homebuyer. The homebuyer must be informed prior to assistance as to the particulars of the resale or recapture method the grantee is using.

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

- The homebuyer can resell the property on the open market to any willing buyer at whatever price the market will bear.
- Lenders are generally comfortable with the recapture option, since it does not restrict or affect the resale transaction until the lender's loan has been repaid.
- The grantee can tailor the level of the homebuyer's risk to market conditions.

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

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

- The recapture of HOME funds can be an important source of funds for the grantee if they have been approved by the Department to use recaptured funds.
- The recapture option is relatively easy to administer, since the agency’s role is limited to ensuring that funds are disbursed appropriately at settlement.
Recapture cannot be used when: (1) no direct HOME subsidy of $1,000 or greater is provided to the homebuyer (i.e., development subsidy only) or (2) when the direct assistance is provided as a grant.

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

- Used in rapidly appreciating neighborhoods or communities, the resale option ensures that the price of the property remains affordable to low-income buyers for the duration of the period of affordability. If additional HOME funds are invested in the property at resale, the affordability period begins anew.

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

- Homebuyers may have difficulty understanding the implications of the resale option, or may view the requirement for the resale price to be affordable as an unreasonable constraint on their ability to profit from the transaction.

- The resale option is more complex to administer than the recapture option and requires a greater level of effort to enforce.

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

**Conversion of Unsold Homeownership Units to Rental Housing**

§92.254(a)(3) imposes a new requirement that PJs must convert homebuyer housing to rental housing if it does not have a ratified sales contract with an eligible homebuyer within nine months of the completion of construction or rehabilitation. If converted, this rental housing must comply with all provisions of §92.252. If an unsold homebuyer unit is not converted to rental housing, the grantee must repay the HOME funds expended on it.

**Other Federal Requirements**

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

**Implementing a Homebuyer Program**

**Program Guidelines**

Homebuyer Program Guidelines must contain the following information:

1. Clearly defined Application Process that includes the following:
   a) Applicant eligibility, including income eligibility. Persons assisted with HOME funds must have incomes at or below 80% of the area median income. The Annual (Gross) Income definition found at 24 CFR 5.609 must be included in the guidelines.
b) Formal notification of selection and non-selection.
c) Application acceptance dates.
d) Application review process.
2. Priority Ranking System for selection, if applicable, must not contain discriminatory
criteria such as preference for minorities or large families.
3. Conflict of Interest Clause
4. Grievance Procedures
5. Process for Amending Program Guidelines, including language that amendments must be
approved by the Department Program Representative.
6. Types of assistance provided, including HOME funds and other sources.
7. Amounts of assistance allowed, including HOME funds and other sources. The HOME
financial assistance per unit cannot exceed the Maximum per unit HOME Subsidy. Do
not include general administration in your per unit costs for this calculation.
8. Eligible Properties, including the geographic boundaries where the properties must be
located. Address how all programs will comply with HUD’s lead-based paint regulation
requirements. Address how all units assisted with HOME funds will meet Property
Standards and Department Rehabilitation Standards. The maximum purchase price or
after-rehab value will not exceed 95% Median Sales Price limit as established by HUD.
9. Affordability Period. The first buyer and subsequent buyers (unless recapture provisions
are used) must occupy property purchased by a new homebuyer as a principal residence
for the affordability period, which will be at least 5 years from the date that HOME funds
are invested in the property. Please state the required affordability period for your
project in your answer. Renting a unit is not permitted unless the tenant is part of a short-
term lease/purchase program in which the unit will be purchased within 36 months.
10. Methods for ensuring the affordability period and principle residence requirement that
include (1) program-wide recapture or resale provisions and (2) legal instruments to be
used. Deed restrictions or other enforcement mechanisms must reflect this occupancy
requirement.
11. Appropriate Lead Based Paint Procedures, this applies to all programs.
12. Relocation policy, if applicable
13. Rehabilitation process, if applicable. Purchase/rehabilitate/resale programs and
Acquisition/Rehabilitation Programs must include rehabilitation procedures, including
LBP procedures, in the guidelines. Address how all units assisted with HOME funds will
meet Department Rehabilitation Standards where homes will be rehabilitated.
14. Plan for Reuse of Recaptured Funds (funds recaptured during the HUD-imposed
affordability period) that includes (1) HOME eligible activities (excluding general
administration), (2) reference to Program Guidelines that apply to reused Recapture
Funds OR (3) a statement that all Recapture funds will be returned to the Department for
reuse.
15. Newly constructed housing must meet or exceed the 2003 International Energy
Conservation Code and the Nebraska Energy Office must approve building
specifications.
16. Provide a statement that assures all programs will be in compliance with the Fair Housing
Act, including a narrative with a specific reference to all areas of the Fair Housing Act
applicable to the project.
17. Marketing procedures that include marketing to local or regional residents and tenants of public housing and manufactured housing, other families assisted by public housing agencies, and households identified to be potentially eligible but least likely to apply.

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

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

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

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

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

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

Applicant Selection
Applicants can be chosen on a first-come, first-serve basis or a priority system may be developed. Grantees should use their discretion in developing a priority system.
Complaint Procedures
The development of appeal or grievances procedures for those applicants that have been rejected is important in the implementation of homeownership programs. An example of an appeal procedure is an applicant’s request, in writing for reconsideration and the reason for the request. A committee (created for this purpose) could then respond to this request and obtain more information from the lender or insurance underwriter if the denial is from them.

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

Distribution of Funds
Generally, the grantee and the first mortgage lender conduct a loan closing with the homebuyer. This procedure consists of reviewing all documents involved in the loan (eg. mortgages or notes). Normally, a local lender will be responsible for scheduling both the permanent and homeownership program loan closings with the borrower, participating agency and appointed attorney. The lender shall facilitate and coordinate the closing process with all participants. The Right of Rescission to the borrower will be forwarded by the lender within a designated time period (eg. 4 days). Once the borrower receives the Notice of Right of Rescission regarding the homeownership program loan, the attorney will prepare and have the homeownership program borrower execute the promissory note and deed of trust. The attorney will then file the deed of trust and promissory note at the Registrar of Deeds Office. During the homeownership program loan close-out, the local lender shall transmit a copy of the borrower’s entire application and closing documents, including income to the nonprofit corporation. The grantee shall maintain and keep all applications, as well as all other required documents, records and other evidence in conformance with HOME regulations.

Reuse of Funds
Grantees should be aware that the reuse of funds is subject to requirements stated in Chapter 9 – Income & Proceeds.

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1 ...In lieu of the limits provided by HUD, the participating jurisdiction may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows. The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. The participating jurisdiction may determine separate limits for existing housing and newly constructed housing. For housing located outside of metropolitan areas, a State may aggregate sales data from more than one county, if the counties are contiguous and similarly situated. The following information must be included in the annual action plan of the Consolidated Plan submitted to HUD for review and updated in each action plan.
(A) The 95 percent of median area purchase price must be established in accordance with a market analysis that ensured that a sufficient number of recent housing sales are included in the survey.

(B) Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a 2-month reporting period; for less than 250 sales per month, at least a 3-month reporting period. The data must be listed in ascending order of sales price.

(C) The address of the listed properties must include the location within the participating jurisdiction. Lot, square, and subdivision data may be substituted for the street address.

(D) The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire participating jurisdiction.

(E) To determine the median, take the middle sale on the list if an odd number of sales, and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by 0.95 to determine the 95 percent of the median area purchase price.
## SUMMAR OF KEY HOMEBUYER RULES & HOW TO DOCUMENT

### Eligible Participants

<table>
<thead>
<tr>
<th>Key HOME Requirement</th>
<th>Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Owner Income</strong></td>
<td>Gross income (\leq) 80 percent of median income based on the upcoming 12 months. Gross income is defined by 24 CFR Part 5.</td>
</tr>
<tr>
<td><strong>Owner Occupancy</strong></td>
<td>Applicant must purchase property and maintain it as his/her principal residence.</td>
</tr>
</tbody>
</table>
| **Ownership of Property** | Applicant must obtain ownership of the property through:  
- Fee simple title,  
- 99-year leasehold interest, or  
- Other form approved by the Department (see page 4-11) | Title insurance documentation in client file. Title search* documentation in project file Copy of deed or other approved ownership document in the client file. |

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*It is the expectation that a title search, title check, or some other form of review be completed that includes the review items noted below. How a grantee obtains that info is up to them.

It is the expectation for grantees to obtain a title search in order to: 1) Establish proof of ownership [chain of title], 2) determine defects to title/ownership [if any], 3) Identify outstanding mortgages and other liens, and 4) to disclose any recorded covenants, conditions, restrictions, easements, condemnations, etc.

The above mentioned items would be searched for, likely through a title company, or other source, that can provide all of this information.
### Eligible Property

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Key HOME Requirement</th>
<th>Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Eligible property types include:</td>
<td>If two-to-four units, indicate status of non-owner-occupied units the application.</td>
</tr>
<tr>
<td></td>
<td>• One-to-four unit property;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Condominium unit; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Manufactured or mobile home</td>
<td></td>
</tr>
<tr>
<td>Property Location</td>
<td>Property must be located in program area as designated in approved program guidelines.</td>
<td>Client application must contain address.</td>
</tr>
<tr>
<td>HOME Minimum &amp; Maximum Subsidy</td>
<td>A minimum of $1,000 in HOME funds must be invested in each assisted unit.</td>
<td>Maintain records demonstrating that each unit assisted received at least $1,000 in HOME assistance but not more than the maximum HOME subsidy allowed.</td>
</tr>
<tr>
<td>See page 4-5</td>
<td>Sales price must not exceed 95% median sales price limit as determined by HUD.</td>
<td>Document method for determining value in file.</td>
</tr>
<tr>
<td>See Attachment 5 page 4-29</td>
<td>If acquisition only, property must meet the Department’s Rehabilitation Standards.</td>
<td>Document local code or model code used.</td>
</tr>
<tr>
<td></td>
<td>If rehabilitation, property must be free of safety and health hazards prior to occupancy or within 6 months of property transfer, whichever is sooner.</td>
<td>Maintain written rehab standards in program files.</td>
</tr>
<tr>
<td></td>
<td>Also, if rehabilitation, property must meet Department’s Rehabilitation</td>
<td>Include inspection report or certification by inspector in client file.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Keep inspection checklist and work write-up in client file.</td>
</tr>
</tbody>
</table>
Standards and applicable codes (local codes/standards or one of 3 nationally accepted codes) within 6 months of transfer.

New construction must meet local codes/ standards or one of the nationally accepted codes and the 2009 International Energy Conservation Code.


<table>
<thead>
<tr>
<th>Eligible Activities</th>
<th>Acquisition w/ or w/o rehabilitation and construction</th>
<th>Document all expenditures.</th>
</tr>
</thead>
</table>

**Long Term Affordability**

<table>
<thead>
<tr>
<th>Affordability Period Recapture/Resale</th>
<th>Key HOME Requirement</th>
<th>Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>See Attachment 6 page 4-33</td>
<td>Property must be subject to either resale or recapture provisions for the period of affordability.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Resale: future sale of property must be to and affordable to low-income buyer.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Recapture: portion or all of assistance to buyer must be recaptured at time of sale.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Resale: mortgage and/or note and deed restriction or covenant restricting future sales.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Recapture: mortgage or note showing formula by which funds will be recaptured.</td>
<td></td>
</tr>
</tbody>
</table>
### ADVANTAGES AND DISADVANTAGES OF VARIOUS SUBSIDY APPROACHES

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

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Recapture</th>
<th>Resale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal residence</td>
<td>Deed restriction or land covenant, affidavit, lien</td>
<td>Deed restriction or land covenant, affidavit, lien</td>
</tr>
<tr>
<td>Affordability period</td>
<td>Lien</td>
<td>Deed restriction or land covenant, lien</td>
</tr>
<tr>
<td>Repayment of HOME subsidy</td>
<td>Lien</td>
<td>Deed restriction or land covenant, lien</td>
</tr>
<tr>
<td>Fair Return to owner</td>
<td>N/A</td>
<td>Deed restriction or land covenant, lien</td>
</tr>
<tr>
<td>Affordable resale price</td>
<td>N/A</td>
<td>Deed restriction or land covenant, sales contract</td>
</tr>
<tr>
<td>Subsequent buyer’s income</td>
<td>N/A</td>
<td>Verification, deed restriction or land covenant</td>
</tr>
</tbody>
</table>

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

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**
DO OTHER FEDERAL REQUIREMENTS APPLY TO HOMEBUYER PROGRAMS?

Non-Discrimination and Equal Access Rules

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

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

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

Regulatory Citations & References:
- 92.351

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

Regulatory Citations & References:
- Section 504 of the Rehabilitation Act of 1973 (implemented at 24 CFR Part 8)
- For multi-family buildings only, 24 CFR 100.205 (implements Fair Housing Act)

Employment and Contracting Rules

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

Regulatory Citations & References:
- Executive Order 11246 (implemented at 41 CFR Part 60)

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

Regulatory Citations & References:
- Section 3 of the Housing and Urban Development Act of 1968 (implemented at 24 CFR Part 135)

Minority/Women Employment – Yes

Regulatory Citations & References:
- Executive Orders 11625, 12432 and 12138
- 2 CFR 200.321
**Davis-Bacon** – **Yes**, if construction contract includes 12 or more units that are HOME-assisted.

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

**Conflict of Interest** – **Yes**

Regulatory Citations & References:
- 92.356
- 2 CFR 200 §§.318 and 319

**Debarred Contractors** – **Yes**, check HUD's list of debarred contractors

Regulatory Citations & References:
- 24 CFR Part 5

**Other Federal Requirements**

**Environmental Reviews** – **Yes**

Regulatory Citations & References:
- 92.352
- 24 CFR Part 58.35 b(5)
- National Environmental Policy Act (NEPA) of 1969

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

Regulatory Citations & References:
- Section 202 of the Flood Disaster Protection Act of 1973 (42 U. S. C. 4106)

**Site and Neighborhood Standards - No**

Regulatory Citations & References:
- 24 CFR 893.6(b)

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

Regulatory Citations & References:
- 92.355
- Lead Based Paint Poisoning Prevention Act of 1971 (42 U. S. C. 4821 et. seq.)
- 24 CFR Part 35
- 982.401(j) (except paragraph 982.401(j)(1)(i))
Relocation – Yes, required notifications to tenants. Required language in offers and contracts for acquisition of property.

Regulatory Citations & References:

- 92.353
- 49 CFR Part 24
- 24 CFR Part 42 (subpart B)
- Section 104(d) "Barney Frank Amendments"
§92.251 Property standards.

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

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

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

(ii) [Reserved]

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

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

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

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

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

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

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

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

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

(v) [Reserved]

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

(vii) **State and local codes, ordinances, and zoning requirements.** The participating jurisdiction's standards must require the housing to meet all applicable State and local codes, ordinances, and requirements or, in the absence of a State or local building code, the International Existing Building Code of the International Code Council.
(viii) **Uniform Physical Condition Standards.** The standards of the participating jurisdiction must be such that, upon completion, the HOME-assisted project and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703. HUD will establish the minimum deficiencies that must be corrected under the participating jurisdiction's rehabilitation standards based on inspectable items and inspected areas from HUD-prescribed physical inspection procedures (Uniform Physical Conditions Standards) pursuant to 24 CFR 5.705.

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

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

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

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

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

(3) Existing housing that is acquired for homeownership (e.g., downpayment assistance) must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the specific deficiencies proscribed by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (Uniform Physical Condition Standards) issued.
pursuant to 24 CFR 5.705. The participating jurisdiction must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) or it cannot be acquired with HOME funds.

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

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

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

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

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

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

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

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

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

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

[78 FR 44670, July 24, 2013]

Department Rehab Standards:
http://www.neded.org/files/crd/housing/Minimum_Standards_For_Rehabilitation.pdf
Resale/Recapture

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

Below is a description of the HOME guidelines used for resale and recapture of HOME funds. This information is also available on the DED website at: http://neded.org/consolidatedplan

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

Use of Resale Provisions for HOME-Funded Projects:
Resale provisions ensure that the housing is made available for subsequent sale to a HOME Program eligible buyer and that such buyer will use the property as their principal residence. Resale provisions will be utilized for projects involving development subsidies. A development subsidy is the difference between the cost of developing or producing the housing unit and the market value of the housing unit. A development subsidy does not go directly to the homebuyer; it makes the development of an affordable housing unit more feasible.
Resale provisions will be enforced through imposition of liens (such as mortgages or deeds of trust), deed restrictions, covenants running with the land, or other similar mechanisms. Projects will be monitored for the duration of the affordability period to ensure that the housing is affordable to purchasers subsequent to the original homeowner, that subsequent purchasers are eligible, and that the original HOME-assisted owner receives a fair return on investment.

Any HOME-assisted unit that is resold will be made available to a reasonable range of low-income homebuyers (i.e. 70% to 80% of the Area Median Income) that will use the property as their principal residence and remain in the home for the period of affordability.

Fair return on investment will be calculated for the original HOME-assisted homebuyer upon sale of the HOME-assisted unit to a subsequent homebuyer. DED will not tie fair return on investment to the sales price that a specific, subsequent homebuyer is able to pay. DED will take into account both market appreciation and depreciation. In a depressed or declining market, a loss on investment could constitute a fair return.

Fair return on investment will include:
1) The HOME-assisted homebuyer’s original investment (i.e. any down payment);

2) The value of specific types of capital improvements made by the original homebuyer that may add value to the property. The value of capital improvements will be calculated utilizing the average percent of the cost recouped that a specific type of improvement brings at the time of home sale (i.e. kitchen remodels, basement finishes, additions, etc.) based on industry estimates from the “Cost versus Value Report”. The most current value estimates can be found at: http://www.remodeling.hw.net/cost-vs-value/2014 and;
3) The percentage of change as calculated by the Housing Price Index (HPI) Calculator of the Federal Housing Finance Agency. The HPI Calculator is currently located within the Federal Housing Finance Agency website at: http://www.fhfa.gov/DataTools/Tools/Pages/HPI-Calculator.aspx and projects what a given house purchased at a point in time would be worth today if it appreciated at the average appreciation rate of the homes in the area. The calculation shall be performed for the state of Nebraska or the applicable Metropolitan Statistical Areas and Divisions (MSA/MSAD) where the home is located (the current HPI data for Nebraska’s MSA/MSAD include: Grand Island, NE; Lincoln, NE; Omaha-Council Bluffs, NE-IA; and Sioux City, IA-NE-SD). Once the percentage is calculated, that percentage of change in home value will be multiplied by the HOME-assisted homebuyer’s original investment (i.e. any down payment) and value of capital improvements to determine what the total “fair return on investment” will be for the original homebuyer.

For example, if a PJ provided HOME funds for the construction of a single-family home unit in 2004 in Norfolk for $105,000 and the home was sold to a homebuyer who provided $5,000 in Annual Action Plan STATE OF NEBRASKA 78 OMB Control No: 2506-0117 (exp. 07/31/2015)

Down payment assistance:
The homebuyer owned the home for 10 years until 2014, and during that time completed a bathroom remodel at a cost of $8,000. In order to calculate the fair return on investment it would be necessary to determine the amount of downpayment assistance ($5,000); the value of the capital improvement ($8,000 x 58%= $4,640); and the percentage of change using the HPI Calculator.

For purposes of using the Federal Housing Finance Agency’s HPI Calculator, the home was purchased in the 3rd Quarter of 2004, and will be calculated using the most current Quarter available. For the $105,000 home purchased in 2004, the current value using the HPI Calculator would be $115,698, so the percentage of change would be a 10.2 percent increase since the original purchase ($115,698-$105,000/$105,000 x 100%=10.2%). In this example, the total fair return on investment at the time of sale, assuming the price at sale permitted the original homebuyer to realize a full return on his/her investment, would be $983 ($5,000 +$4,640= $9,640 x 10.2%=$983.

In order to realize a full return on investment to the original homebuyer, the sales price of the home would have to be approximately $115,623 (original home $105,000 plus $5,000 in downpayment assistance; plus $4,640 in the value of capital improvements; and a fair return of $983=$115,623).

In the event that the minimum sales price must be less to ensure affordability to a subsequent low-income homebuyer, which would be less than the minimum sales price to ensure a fair return on investment, the home sales price would be adjusted upward to include HOME assistance available for down payment and closing cost assistance. In this instance, the subsequent homebuyer would receive priority consideration for down payment and closing cost assistance provided by DED HOME funds available within the service area from DED HOME-
funded homebuyer assistance providers, or additional HOME resources in order to ensure that unit is affordable to the subsequent homebuyer.

These restrictions may terminate upon the occurrence of events such as foreclosure or transfer in lieu of foreclosure, but shall be revived according to their original terms if, during the original affordability period, the owner of record before the termination event, or any newly formed entity that includes the former owner, or those with whom the former owner has or had family or business ties, obtains an ownership interest in the housing unit.

Use of Recapture Provisions for HOME-Funded Projects:
When a homebuyer receives direct homebuyer assistance from HOME funds, recapture provisions are placed on the transaction to ensure that HOME funds are recouped if the housing unit does not continue to be the principal residence of the household for the duration of the HOME-required affordability period. Annual Action Plan STATE OF NEBRASKA 79 OMB Control No: 2506-0117 (exp. 07/31/2015)

Amount subject to recapture: The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but does not include the amount, if any, of development subsidy provided (the amount between the cost of producing the unit and market value of the property).
Any recaptured funds must be used to carry out HOME-eligible activities in accordance with the requirements of 24 CFR Part 92.254.

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

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

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

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

When HOME recapture funds are received by the DED grantee, these funds must be utilized for additional HOME-eligible activities and must comply with the HOME rules at 24 CFR Part 92 and must also comply with the DED-approved Homebuyer Guidelines or be returned to DED. Additional recapture provisions to be established in the DED Grantee homebuyer guidelines. The DED grantee must adopt the above provisions and establish additional recapture provisions in the DED grantee’s Homebuyer Guidelines. These additional requirements include selecting the option that will be utilized by the DED grantee in the case where HOME funds are recaptured during the period of affordability. These options include:
1) The DED grantee will recapture the entire amount of the HOME investment from the homeowner, but the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

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

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

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

For example, a homebuyer receives $10,000 of HOME downpayment assistance and purchases a home developed with HOME funds for $10,000 below fair market value. The total direct HOME subsidy to the homebuyer is $20,000 and requires a 10-year period of affordability. If the homebuyer sells the unit in year 5 of the 10-year period of affordability, the DED grantee would forgive 50 percent of the direct HOME subsidy and recapture 50 percent of the direct HOME subsidy, or $10,000 of the $20,000 HOME investment, assuming that there are sufficient net proceeds available.

Using the above mentioned formula of: Number of years homebuyer occupied the home X Total direct HOME subsidy = Recaptured Amount.

Period of Affordability:
The DED grantee would receive a recaptured amount of $10,000.
5 years (homebuyer occupied the home) X $20,000 HOME funds = $10,000 Recaptured Amount
10-year period of affordability

3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds? See 24 CFR 92.254(a)(4) are as follows:

The HOME Purchase and Resale Program Guidelines, as noted above, include information that ensures the affordability of units acquired with HOME funds remain affordable for the period of affordability.
When resale provisions are used, these provisions are enforced through the imposition of liens (such as mortgages or deeds of trust), deed restrictions, covenants running with the land, or other similar mechanisms. In addition, projects will be monitored for the duration of the affordability period to ensure that the housing is affordable to purchasers subsequent to the original homeowner. When recapture provisions are used, lien restrictions are generally used to ensure the units remain affordable. Overall, the sub-recipient is required to submit program guidelines to DED that must be approved prior to utilizing any HOME resources. One element of these guidelines includes ensuring that units remain affordable for the period of affordability.
CHAPTER 5 - RENTAL HOUSING ACTIVITIES

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Overview of Program Requirements
HOME funds may be used for the acquisition, new construction or rehabilitation of affordable rental housing. This chapter covers the basic program requirements governing HOME-assisted rental housing, such as eligible activities and costs, income and occupancy requirements and rent levels.

WARNING: The HOME Administration Manual contains information on eligible uses and requirements of HOME funds as general guidance. However, the Department further defines eligible uses and requirements for HOME funds administered by the Department via the Housing and Community Development Annual Action Plan, NAHP Application Guidelines and the HOME Program Contract. Applicants and grantees must adhere to the requirements imposed on HOME funds for the particular program year and specific award.
**Eligible Activities**
HOME funds may be used for acquisition, new construction or rehabilitation of affordable rental housing. The developers or owners of the rental housing may be small-scale property owners, for-profit developers, nonprofit housing providers, CHDOs, the local government, redevelopment organizations or public housing agencies.

**Forms of Assistance**
The Department provides assistance to rental projects as grants or loans with specific terms and restrictions incorporated on a project-by-project basis.

HOME funds may be used to refinance existing debt if the HOME funds are used to rehabilitate the property and refinancing is necessary to permit or continue affordability.

**Home-Eligible Rental Housing Costs**

**Hard Costs**
- Acquisition of land (for a specific project) and existing structures
- Site preparation or improvement, including demolition
- Securing buildings
- Construction materials and labor

**Soft Costs**
- Financing fees
- Credit reports
- Title binders and insurance
- Surety fees
- Recodration fees, transactions 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**
- Payment for replacement housing, moving costs and out-of-pocket expenses
- Advisory services
- Staff and overhead related to relocation assistance and services
Operating deficit reserve: The Final Rule clarifies 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 in the project at the Department’s discretion.
- The disposition of any remaining funds at the end of the 18-month period must be determined in the agreement between the developer/owner and the Department.

Maximum HOME Investment
The investment of HOME funds is limited by per-unit subsidy limits based on number of bedrooms and location. The Maximum Per-Unit Subsidy Limits are kept current for all Nebraska counties on the Department’s website.

http://www.neded.org/community/grants/housing/home

Example: A six-unit structure with six two-bedroom units will be rehabilitated with HOME funds in Clay County. The maximum per-unit HOME subsidy for two-bedroom units in Clay County is $191,476. Thus, the HOME subsidy for this project cannot exceed $1,148,860. (6 X $191,476). 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.
- 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. The HOME program allows the Department to determine what is required and reasonable.

Example: Three two-bedroom units in a six-unit structure in Clay County will be rehabilitated with HOME funds. The maximum-per-unit HOME subsidy for two-bedroom units in Clay County is $191,476. Thus, the HOME subsidy for this project cannot exceed $574,304 (3 X $191,476). 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.
Determining the HOME-Assisted Units

What is a HOME-assisted unit? Unlike other federal programs, such as CDBG, 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 HOME rent and occupancy rules apply only to HOME-assisted units.
- The number of HOME-assisted units in project must be specified in the HOME Contract.
  - HOME rules create a floor 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.
  - The Department may require a higher number of HOME-assisted units in a project.
  - Some projects may consist of only HOME-assisted units.

Example: The Department is considering a request for HOME funds from Excellent Housing Corporation for a 20-unit building. The HOME-eligible development costs total $400,000. The applicant has requested $100,000 in HOME funds. Since the HOME funds represent one-fourth of the total eligible development costs, the Department must require the project to have at least five units designated as HOME-assisted units, the "floor." The Department may choose to require more than five units to be designated as HOME-assisted.

- The Department may choose to specify a minimum number of units that must be designated as HOME-assisted, and then develop the needed subsidy amount based on the total HOME-eligible costs.

Example: When Can-do CHDO approached the Department for development funds for a 30-unit rehabilitation project, the Department decided to subsidize half of their units. All of the units were comparable in size, features, number of bedrooms and development cost. Consequently, the Department 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.

Fixed and Floating Units
For properties with both assisted and non-assisted units, the Department specifies in the HOME Contract whether the units are "fixed" or "floating". This designation can not be changed after the initial contract has been executed.

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. Designating fixed units allows the project to have a composition of HOME-assisted units by unit size (number of bedrooms) that varies from the composition of non-HOME assisted units by unit size (number of bedrooms). In other words, a project with two three-bedroom units and four four-bedroom units could “fix” one three-bedroom unit and one four-bedroom units as HOME-assisted.
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. HOME-assisted floating units must represent the same percentage of all comparable unit sizes in the project. In other words, a project with two three-bedroom units and four four-bedroom units could “float” one three-bedroom unit and two four-bedroom units (thus “floating” fifty percent of each unit size in the project. “Floating” often results in an increase in total HOME-assisted units required in a project.

- 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.

Example #1: The Meadow View Ridge Townhouse Estates is a 20-unit project. 10 of the units are 3-bedroom, 5 are 2-bedroom and 5 units are one-bedroom. The project is required to have 5 HOME-assisted units. It is determined it would be most beneficial for these units to be the 3 bedroom units due to the HOME rent limits. Therefore, these units must be fixed HOME-assisted units.

Example #2: The Prairie View Ridge Townhouse Estates is a 20- unit project. 10 he units are 3-bedroom, 5 are 2-bedroom and 5 are 1-bedroom. The project is required to have 5 HOME-assisted units, 25% of the project units. The project owner would like to float units for maximum flexibility. Therefore, three 3-bedroom units, two 2-bedroom units and 2 one-bedroom units are required in order to be at least 25% of each comparable unit designation. This results in a total of 7 HOME-assisted units required in the project in order to designate these units as floating.

Allocating Costs to the HOME-Assisted Units
Before determining the allowable HOME subsidy amount, the Department must establish the total HOME-eligible cost for the project.

- For mixed projects with HOME-assisted and non-HOME-assisted units, the Department 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 if HOME units float).

Example: The Department 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 Department plans to underwrite fifteen of the units (ten one-bedrooms and five two-bedrooms) and the applicant 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.

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 or building.
• HOME funds may be used to assist mixed-income projects (but, only HOME-eligible tenants may occupy HOME-assisted units).
• Transitional as well as permanent housing, including group homes and SROs, is allowed. (See Attachment 1 at the end of this chapter for additional details.)
• There are no preferences for project or unit size or style.
• HOME funds may be used for the initial purchase and initial placement costs of Elder Cottage Housing Opportunity (ECHO) units that meet the HOME requirements. ECHO units are small, free-standing, barrier-free, energy-efficient and removable units designed to be installed adjacent to existing single-family dwellings (See Attachment 2 at the end of this chapter for additional details).

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 operations or modernization of public housing projects financed under the Housing Act of 1937.
• 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.
Property Standards

Properties that are rehabilitated with HOME funds must meet the following standards:

- The Department’s Rehabilitation Standards (Attachment 2 in Chapter 3)
- Handicapped accessibility requirements, where applicable.
- Also, one of the following:
  - Local Code Requirements
  - Uniform Building Code (ICBO)
  - National Building Code (BOCA)
  - Standard Building Code (SBCCI)
  - Council of American Building Officials one-or two-family code (CABO)
  - Minimum Property Standards at 24 CFR 200.925 or 200.926 (FHA)

New construction with the use of HOME funds must meet the following standards:

- 2009 International Energy Conservation Code
- Handicapped accessibility requirements, where applicable.
- New construction of rental housing must meet site and neighborhood standards at 24 CFR 893.6(b)
- Also, one of the following:
  - Local Code Requirements
  - Uniform Building Code (ICBO)
  - National Building Code (BOCA)
  - Standard Building Code (SBCCI)
  - Council of American Building Officials one-or two-family code (CABO)
  - Minimum Property Standards (FHA) at 24 CFR 200.925 (for multi-family) or 200.926 (for one- and two-unit dwellings)

1 §92.251 Property Standards
The changes to §92.251 reorganize the presentation of the property standards requirements and clarify and update the standards. The reorganization is intended to minimize confusion about the applicability of the codes and standards across different housing activities. It creates separate requirements for projects involving:
- New construction [§92.251(a)]
- Rehabilitation [§92.251(b)]
- Acquisition of standard housing [§92.251(c)]
- Housing occupied by tenants receiving HOME tenant-based rental assistance [§92.251(d)]
- Manufactured housing [§92.251(e)]
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- Ongoing property standards for rental projects [§92.251(f)]
- Inspection procedures [§92.251(g)].

Revisions to the property standards also address the codes cited in the pre-2013 HOME Rule that have been superseded and/or updated. The 2013 Rule provides additional specificity to the rehabilitation standards requirements in order to ensure that adequate improvements are made to support the long-term viability of HOME-funded rehabilitation projects. For new construction and rehabilitation, the 2013 Rule requires a higher degree of oversight by the PJ. It imposes requirements for the PJ to review and approve construction-related documents prior to construction, and to monitor construction progress.
Acquisition of existing housing (no rehab or construction) must meet the following standards:

- Applicable local housing quality standards and code requirements.
- If no local standards/codes apply, DED Rehabilitation Standards
- Handicapped accessibility requirements, where applicable.

Owners must maintain properties in accordance with property standards throughout the affordability period. The Department conducts periodic property inspections to insure continued compliance.

§92.251 is effective as of January 24, 2015, and applies to projects to which HOME funds are committed after this date (which is 18 months after publication of the Final Rule). The changes to §92.504(d) related to property inspections, such as frequency of inspections and sampling, are effective July 24, 2014 (12 months after publication of the Final Rule). For existing HOME-assisted rental projects and for projects to which funds are committed before the effective date of the new ongoing property standards, the inspections should be based on the standards that were in effect at the time the HOME funds were committed. (In other words, the new ongoing property inspection requirements must be implemented by July 24, 2014 but until the new property standards in §92.251 are in effect on January 24, 2015, PJ’s will use their existing property standards.) These changes to §92.251 are still undergoing review by HUD and have not been fully implemented to date (November 2015). Standards adopted prior to the passage of the HOME Final Rule continue to be in place. When additional guidance is received by HUD, this section will be updated and a Policy Statement will be issued.

Other Standards
The site and neighborhood standards of 24 CFR 983.6(b) apply only to new construction of rental housing.

1. The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

2. The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, and implementing HUD regulations.

3. The site must not be located in an area of minority concentration and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

In addition, the Department will not approve new construction of rental housing proposed in an area of low-income concentration.

Housing Visitability
All ground floor units must be visitable to the maximum extent feasible, unless doing so would impose an undue financial burden on the project. A visitable design provides that new single-family homes, duplexes, and triplexes are more accessible and usable to persons with disabilities. Housing units built to visitable standards have features that allow a person using a wheelchair or other mobility device to visit without any special assistance, and are more easily modified should a resident need adaptations in the future.
The Department uses the Nebraska Assistive Technology Partnership definition of visitability:

The requirements include having at least one no-step/zero grade entrance with a 36” door into the unit’s main floor, minimum 32” clear space opening in interior doorways, minimum 36” wide hallways, a first floor bathroom which allows for wheelchair access (while maintaining privacy), reinforcement in bathroom walls to permit future installation of grab bars, and modification in the locations of light switches, electrical outlets and environmental controls.

Affirmative Marketing Requirements
HOME rental project grantees must adopt affirmative marketing procedures and requirements for all housing with five or more HOME-assisted units. State-designated CHDOs must adopt an affirmative marketing plan and procedures for all HOME projects.

Affirmative marketing procedures must include the following elements:

- Methods for informing the public, owners and potential tenants about fair housing laws and the grantee’s policies (for example: use the Fair Housing logo or equal opportunity language).
- A description of what owners and/or the grantee will do to affirmatively market housing assisted with HOME funds, and maintenance of records that document the actions taken in this marketing effort.
- A description of persons not likely to apply for housing without special outreach and on what basis the owners and/or the grantee made this determination.
- A description of what owners and/or the grantee will do to inform persons not likely to apply for housing without special outreach, and maintenance of records that document the actions taken in this marketing effort.
- A description of how efforts will be assessed and what corrective actions will be taken where requirements are not met, and maintenance of records that document an assessment of the effectiveness of the marketing effort.

This requirement has been expanded in the FINAL HOME RULE issued August 23, 2013. The full text of the rule can be found in Attachment 4 at the end of this chapter.

Long-Term Affordability
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:

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>AVERAGE AMOUNT OF HOME FUNDS PER UNIT</th>
<th>MINIMUM AFFORDABILITY PERIOD</th>
</tr>
</thead>
</table>
| Rehabilitation or Acquisition of Existing Housing | <$15,000 per unit
$15,000 - $40,000 per unit
>$40,000 per unit | 5 years
10 years
15 years |
| Refinance of Rehabilitation Project | Any $ amount | 15 years |
Any $ amount

HOME affordability periods are minimum requirements. The Department may establish longer terms of affordability.

If a shorter affordability period is desirable on a project that does not include refinancing or new construction, the Department and applicant can take one of the following steps 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
- The developer may choose to designate a higher number of HOME-assisted units than required by the "floor" in order to reduce the HOME investment per unit.

Example: The Department provided $100,000 in HOME funds for the $400,000 20-unit Excellent Housing Corporation rehabilitation project and required that five of the 20 units be designated HOME-assisted. Under this arrangement, Excellent Housing Corporation would be obligated to keep the development affordable for 10 years ($100,000 ÷ 5 = $20,000 HOME funds per unit requiring a 10-year affordability period). If Excellent Housing Corporation designates 10 of the units as HOME-assisted, the per-unit HOME investment will be reduced to $10,000 per-unit, requiring only a five-year affordability period.

The HOME Rule does allow for termination of affordability restrictions upon foreclosure or transfer in lieu of foreclosure as a means to encourage lenders to participate in the HOME program. However, the Department must repay the U.S. Department of Housing and Urban Development if HOME-assisted housing fails to meet the affordability requirements for the full affordability period without regard to the term of any loan or mortgage or the transfer of ownership, even in the event of foreclosure, transfer in lieu of foreclose or assignment to the U.S. Department of Housing and Urban Development. Therefore, the Department will require grantees to repay the Department the full amount of the HOME funds drawn for projects where affordability requirements are not met in full.

**Long-Term Lease-Purchase**

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

If additional HOME funds (direct assistance) are used to help the tenants become homeowners, the minimum period of affordability is the affordability period required by the amount of direct homeownership assistance provided.

If no additional HOME funds are used, the homeownership units are subject to resale provisions and to a minimum period of affordability equal to the remaining affordability period that would apply if the units continued as rental units.
Rent and Occupancy Requirements

Initial Occupancy of Vacant Units
The introductory paragraph to §92.252 is revised to adopt two deadlines within which HOME-assisted rental housing must be occupied by low-income households:
• Within six months from the date of project completion, if a rental unit remains unoccupied, the grantee must provide to HUD (DED) information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible.
• Within 18 months from the date of project completion, if efforts to market the unit are unsuccessful and the unit is not occupied by an eligible tenant, HUD (DED) will require repayment of all HOME funds invested in the unit. A unit that has not served a low- or very low-income household has not met the purposes of the HOME program. Therefore, the costs associated with the unit are ineligible.

Grantees must enforce rent and occupancy agreements through one of the following:

• Covenants running with the property
• Deed restrictions
• Other mechanisms approved by the Department and HUD
• The mechanisms to secure affordability restrictions must be recorded in accordance with State recordation laws.

Covenants and deed restrictions may be suspended upon transfer by foreclosure or deed-in-lieu of foreclosure.

HOME Rents
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."

• Annually, the Department establishes maximum monthly rents for HOME-assisted rental projects. Based on changes in area income levels or market conditions, HOME rents, as calculated by HUD and approved by the Department, may increase.
• 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.
• The Department with HUD’s approval 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.
There are two HOME rents used in the HOME program:

- High HOME Rents: The maximum amount an owner can collect per month on a “High” HOME-assisted unit.
- Low HOME Rents: The maximum amount an owner can collect per month on a “Low” HOME-assisted unit.

The HOME rent limits are kept current via the Department’s website. The limits as displayed look similar to the following:

<table>
<thead>
<tr>
<th>Example</th>
<th># of bedrooms</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Efficiency</td>
</tr>
<tr>
<td>Logan County</td>
<td>LOW HOME RENT LIMIT</td>
</tr>
<tr>
<td></td>
<td>HIGH HOME RENT LIMIT</td>
</tr>
<tr>
<td></td>
<td>For Information Only:</td>
</tr>
<tr>
<td></td>
<td>FAIR MARKET RENT</td>
</tr>
<tr>
<td></td>
<td>50 RENT LIMIT</td>
</tr>
<tr>
<td></td>
<td>65 RENT LIMIT</td>
</tr>
</tbody>
</table>

Note: The Low HOME rent limits and the High HOME rent limits are the limits placed upon HOME-assisted units. The fair market rent, the 50 rent limit and the 65 rent limit are used by HUD to determine the HOME rent limits.

**Understanding Home Rent Limits**

It is imperative that grantees understand HOME rent limits as they apply to their project.

**HOME Rents and Utility Allowances**

*Implementation of the changes in the FINAL HOME RULE regarding utility allowances and the calculation thereof has been delayed as of this date (November 2015). When and if those changes are implemented, changes will be made to this section of the HOME Manual.*

The Department adopts HUD published Low and High HOME rents limits. HUD’s calculation of Low and High HOME rents assumes the owner pays the utilities. If the tenant pays utilities, the maximum allowable rent that could be collected by the owner would be the applicable Low or High HOME rent minus a utility allowance. The Department approves utility allowances on a project by project basis based upon allowances prepared by local public housing authorities or local utility providers. The HOME rent limits restrict the maximum total rent (minus the utility allowance) that can be received by project owners regardless of the amount of rental assistance provided to a tenant.

*Example: [These calculations are for example only and do not reflect actual rent or utility limits.]* A HOME-assisted rental project in Logan County has Low HOME one and two bedroom...
units and High HOME one and two bedroom units. The tenants pay all utilities and the project does not have any project-based rental subsidy. The Department has approved a monthly utility allowance of $70 for the one-bedroom units and $90 for the two-bedroom units. The following chart shows how the maximum total rent, from the tenant or from any assistance program, that can be received by a project owner is calculated for each unit.

<table>
<thead>
<tr>
<th>1 Bedroom High HOME Unit</th>
<th>2 Bedroom High HOME Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>$326 High HOME Rent Limit</td>
<td>$416 High HOME Rent Limit</td>
</tr>
<tr>
<td>-$70 Utility Allowance</td>
<td>-$90 Utility Allowance</td>
</tr>
<tr>
<td><strong>$256</strong></td>
<td><strong>$326</strong></td>
</tr>
</tbody>
</table>

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</tr>
<tr>
<td><strong>$256</strong></td>
<td><strong>$326</strong></td>
</tr>
</tbody>
</table>

Low HOME Units and Project-Based Rental Subsidy
The only instance when a HOME-assisted unit is not restricted to HOME rent limits is for a Low HOME unit in a project that receives federal or state project-based rental subsidies and the tenant pays no more than 30% of their adjusted income for rent. The maximum rent may then be the rent allowable under the project-based subsidy program. **Note: this only applies to LOW HOME UNITS and the HOME income limits still apply.** However, tenant-based rental subsidy programs do not supersede Low HOME rent requirements.

Implementing New HOME Rent Limits
The Department will inform grantees of updated HOME rent limits upon the Department’s approval of new HUD-published limits (generally in the spring each year). However, tenants’ rents should not be adjusted until their leases are renewed.

Income Eligibility Requirements for Owners
Owners may not refuse to lease HOME-assisted units to a certificate or voucher holder 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.

High HOME-Assisted Units
The Department, to meet HOME requirements, requires all initial tenants of High HOME-assisted units to have incomes at or below 60% of the area median income. Subsequent tenants are restricted to the income as specified in the HOME Contract for the project. The maximum income allowed under the HOME program for rental projects is 80% of the area median income; however the Department may further restrict the income level for a project.
The rents collected by the owner on High HOME-assisted units are restricted to the High HOME rent limits less tenant paid utilities per an approved utility allowance.

Low HOME-Assisted Units
The Department, to meet HOME requirements, requires all projects with five or more HOME-assisted units to designate at least 20 percent of the HOME-assisted units as Low HOME units. Tenants must have incomes at or below 50% of the area median income to occupy Low HOME-assisted units. The Department via the HOME Contract may require more Low HOME-assisted units for a project than the HOME rules require.

The rents collected by the owner on Low HOME-assisted units are restricted to the Low HOME rent limits less tenant paid utilities per an approved utility allowance. The only exception is for Low HOME units in a project that receives federal or state project-based rental subsidies and the tenant pays no more than 30% of their adjusted income for rent. The maximum rent may then be the rent allowable under the project-based subsidy program.

Income Eligibility Requirements for Grantees
The Department requires grantees to use the Annual (Gross) Income definition found at 24 CFR Part 5.609 (also referred to as the Section 8 method) to determine applicant income eligibility. Eligibility is based on anticipated income during the next 12 months. A detailed explanation of the Annual (Gross) Income definition can also be found in the “Technical Guide for Determining Income and Allowances for the HOME Program” on pages 11-31.

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

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

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

To conduct third party verifications, a grantee must obtain a written release from the household that authorizes the third party to release required information.

Some third party providers may, however, be unwilling, unable or charge a fee to provide the needed information in a timely manner. In such cases, the grantee should attempt to find suitable source documentation without the third-party verification – for example, bank statements.
Review of Documents
Source documents provided by the applicant may be more appropriate for certain types of income such as persons that are self-employed, and can be used as an alternative to the third party verification method. Source documents, such as wage statements, interest statements, unemployment compensation statements and income tax returns, etc. are reviewed to determine annual (gross) income.

Calculating Annual (Gross) Income
The Part 5 definition of annual income “inclusions” – types of income to be counted and “exclusions” – types of income that are not considered (income of minors, etc.) comes directly from 24 CFR PART 5.609.

Timing of Income Determinations
Income determinations must be completed before a tenant occupies a HOME-assisted unit. If the income determination was completed more than six months before the tenant occupies a HOME-assisted unit, the determination will need to be redone.

Remember: Income eligibility is based on anticipated income. When collecting income verification documentation, property owners (or managers) must 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.

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 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 the Department performs on-site inspections of the project, it will verify that tenant income recertification documentation is in the tenant files.

Methods of Recertification
The final HOME rule allows two additional methods of income recertification, in addition to the method of collecting source documentation.

- One option is a written statement from the family indicating family size and annual income. This must include a certification from the family that information is complete and accurate, and must indicate that source documents will be provided upon request.

- Another option is a written statement from the administrator of another government program under which the family receives benefits, and that examines the annual (gross) income (not adjusted gross income) of the family each year. The statement must also indicate the family size, or provide the current income limit for the program and a statement that the family's income does not exceed that limit.
Using Alternative Recertification Methods
If the agency chooses to use either of the two alternative methods described above, owners are still required to collect full source documentation every sixth year of the tenants lease period.

Increases in Tenant Income
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 correct number of High and Low HOME rent units.
- Rents must be adjusted for tenants whose incomes rise above 80 percent of the area median income.
- Owners of projects assisted with HOME and Low Income Housing Tax Credits must comply with the specific requirements associated with combining these funding sources. (See additional information later in this chapter).

Keeping the Correct Number of High and Low HOME Rent Units
The owner should take the following steps to maintain the correct numbers of High and Low HOME rent units.

If the income of a tenant occupying a Low HOME rent unit increases, but does not exceed 80 percent of area median income, that unit becomes a High HOME rent unit. To replace the Low HOME rent unit, the owner must rent the next available comparable unit (for "floating" unit projects) or HOME-assisted unit (for "fixed" unit projects) to a very-low-income tenant (income at or below 50% of the area median income). Subject to the terms of the lease, the rent of the 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.

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.

Adjusting Rent for Over-Income (Above 80% of AMI) Tenants in “Floating Units”
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. Rent may only be increased at lease renewal. In projects where the HOME units float, the next available 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 subject to HOME rules after a HOME-eligible household rents a comparable unit.

Note: In units that are financed with both HOME and Low Income Housing Tax Credits (LIHTCs), the LIHTC rules apply when a tenant’s income exceeds 80% of AMI. 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.

Adjusting Rent for Over-Income (Above 80% of AMI) Tenants in “Fixed Units”

Over income tenants in HOME-assisted "fixed" units must pay 30 percent of their adjusted income for rent and utilities. Rent may only be increased at lease renewal. There is no rent cap for "fixed" units.

Computing adjusted income for purposes of adjusting rent for over-income tenants is derived by subtracting any of the following deductions (also called allowances) that apply to the household from a household's annual (gross) income:

- $480 for each dependent (includes any of the following family members who are not the head of household or spouse: persons under 18, handicapped/ disabled family members, or full-time students);
- Reasonable child care expenses (for children 12 and under) during the period for which annual income is computed that enable a family member to work or go to school, if no adult is available in the household to provide child care.
- For elderly households (62 and older) only, medical expenses, including medical insurance premiums, in excess of three percent of annual income that are anticipated during the period for which annual income is computed and that are not covered by insurance.
- Reasonable expenses in excess of three percent of annual income for the apparatus and care of a handicapped or disabled family member that enable that person or another person to work that are anticipated during the period for which annual income is computed.
- $400 for any elderly family (head of household or spouse is 62 or older or handicapped or disabled).

For a detailed discussion of calculating annual and adjusted income under 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).

Leases

The lease between the owner and the tenant in a HOME-assisted property must be for at least one year, unless another lease length is mutually agreed upon by the tenant and the owner. The lease between the owner and tenant in a HOME-assisted property can not contain any of the following provisions either explicitly stated or implied:

- 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 that is clearly defined in the lease.

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

**Monitoring**
The Department monitors rental projects for compliance using on-site reviews and submitted reports. Grantees must keep superb records to document compliance of all requirements including demonstrating that:
The project is marketed to qualified applicants.
Tenants are screened for eligibility.
Rent and occupancy targets are observed.
Adequate property maintenance is conducted.

Hiring a qualified property manager will help ensure all necessary actions are taken.

In order to verify compliance with property standards and the information submitted by owners on tenants' incomes, rents and other HOME rental requirements during a project's period of affordability, HOME rules require on-site inspections of HOME properties according to the total number of units in a project as follows:

<table>
<thead>
<tr>
<th>Number of Units</th>
<th>Inspection Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 4</td>
<td>Every 3 years</td>
</tr>
<tr>
<td>5 – 25</td>
<td>Every 2 years</td>
</tr>
<tr>
<td>26 or more</td>
<td>Annually</td>
</tr>
</tbody>
</table>

Note: The Department may inspect properties more frequently than the HOME rules require.

HOME rules require that at least a “sufficient” sample of HOME-assisted units are inspected during an on-site visit. A good "rule-of-thumb" is that the Department will inspect at least 20 percent of the HOME-assisted units in a project, and a minimum of one unit in every building of eight units or more.

**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 more extensive. This section briefly describes the record-keeping responsibilities associated with rental housing for the property owner.

**Property Owner Records**
One of the owner's responsibilities is to keep adequate records, to be able to 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.

**Reporting**
The Department requires that agencies submit a Rental Housing Project Compliance Report annually until the end of the project’s affordability period. The form is available on the Department’s website.

*The 2013 Rule amends §92.252(f)(2) to require that a PJ must review and approve the rents for each HOME-assisted rental project each year to ensure that they comply with the HOME limits and do not result in undue increases from the previous year. In the pre-2013 Rule, PJs were required to approve initial rents, then provide the published maximum HOME rents to project owners, and examine reports submitted by owners that report the rents and occupancy data of all HOME-assisted units on an annual basis. The new requirement ensures that PJs expressly examine and approve the rents for each project annually.*

**Other Federal Requirements**
Attachment 3 identifies the other federal requirements that must be followed in implementing rental housing activities. The attachment is meant to serve as a checklist only.

**Tenant Selection Procedure**
An eligible Lease Agreement must contain the following requirements related to:

- Educational services the tenant must participate in
- Tenant contributions, above and beyond rent, to be used at time of home purchase (if applicable) and how these funds will be managed. The lease agreement cannot contain many prohibited provisions either explicitly stated or implied. Look for a list of prohibited provisions earlier in this chapter.

If the project is a long-term lease/purchase program, homebuyer program guidelines must include the following:

- Requirements of the Tenant, including income eligibility requirements, monthly or annual contributions to a home purchase fund, participation in educational programs, required time period of tenancy required before purchase, etc.
- Management of the Home Purchase Fund. If the tenant is making contributions to a fund that will eventually be used to purchase a home, an explanation of who will manage the fund, how it will be managed and how the funds will be distributed if the tenant is not ready, willing or able to purchase an eligible property at the end of the allowable period.
- Conflict of Interest Clause.
- Grievance Procedures.
- Process for Amending Program Guidelines, including language that amendments must be approved by the NDED Program Representative.
• Types of Assistance Provided to Purchase a Home, including NAHP funds and other sources such as employer contributions in an employer assisted housing program.
• Amounts of Assistance Allowed for Purchasing a Home, including NAHP funds and other sources such as employer contributions in an employer assisted housing program.
• Eligible Properties, including whether the tenant must by the occupied unit, the geographic boundaries where the properties must be located, etc.
• Methods for ensuring the affordability period and principle residence requirement, including project-wide recapture or resale provisions, legal instruments to be used, and how rental project affordability period requirements will be maintained if the NAHP-assisted unit is purchased prior to the end of the NAHP affordability period.
• Appropriate Lead Based Paint Procedures, if applicable.
• Relocation policy, if applicable.
• Rehabilitation process, if applicable.

Using the Low Income Housing Tax Credits with HOME Funds
There are essentially four ways HOME funds can be used with low-income housing tax credits.

Market Rate Loan
If the HOME funds are provided at or above the applicable federal rate, these funds are not treated like a federal subsidy. The project qualifies for the 9% credit for eligible improvement costs and is eligible for the 130 percent basis for projects in "qualified census tracts" or "difficult development areas" (QCT/DDA).

Below Market Rate Loan with 9% Credit
If HOME funds are provided at an interest rate below the applicable federal rate, they may still be counted in the eligible basis and the project may receive a 9% credit if the project meets stricter occupancy requirements. The project may receive the 9% credit if 40% of the residential rental units are occupied by tenants with incomes at or below 50% of the area median income. However, such projects are not eligible for the 130 percent basis for projects in "qualified census tracts" or "difficult development areas".

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.

Grant
HOME funds may be provided in the form of a grant, but, they may not be counted in the eligible basis for the project, and therefore do not contribute to the credits for which the project is eligible. Therefore, a loan instrument is generally preferable to a grant. (Note that deferred payment loans are generally permissible provided the debt service accrues and there is a reasonable expectation that the loan can be repaid no later than when the loan matures.) In some cases, however, a grant of a small amount of HOME funds may be preferable to a below market
interest rate loan, particularly if the project is eligible for the 130% QCT/ DDA basis. Some experts have estimated that it could be more cost effective to provide a HOME investment of up to 20% of basis as a grant rather than a loan in such circumstances.

Projects using HOME funds with Low Income Housing Tax Credits have to consider a number of items in blending the two sets of program rules. The following chart provides an overview of tax credit rules and the requirements for combining the two programs.

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### RULES FOR COMBINING HOME FUNDS AND TAX CREDITS

<table>
<thead>
<tr>
<th>Occupancy Requirements</th>
<th>Tax Credit Program Rules</th>
<th>Combining Tax Credits with HOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>The most restrictive income targeting requirements apply to the project. For instance, if HOME funds are provided at below the market interest rate, at least 40 percent of the units must be reserved for households with incomes at or below 50 percent of the area median income to qualify for the 9 percent credit. Otherwise, on projects with 5 or more HOME-assisted units 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).</td>
<td></td>
</tr>
</tbody>
</table>

| Rent Requirements | Rents for qualified units must not exceed the rent limit set for the LIHTC program. These limits are set by bedroom size and are based on the qualifying incomes of an imputed household size. They are provided by the Nebraska Investment Financing Authority (NIFA). | 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. |

<p>| 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 --The Department also requires the use of the Section 8 definition of income for HOME. Asset Income --Follow more stringent HOME rules and verify all asset income. |</p>
<table>
<thead>
<tr>
<th>Tax Credit Program Rules</th>
<th>Combining Tax Credits with HOME</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reexaminations of Income</strong></td>
<td>Reexaminations are performed annually following the same procedures as at initial certification; however, an owner may request a waiver from NIFA for reexamination requirements if all units in the project are tax credit units.</td>
</tr>
<tr>
<td><strong>Over-Income Tenants</strong></td>
<td>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 credit. &quot;Over-income&quot; is defined as above 140 percent of the project income limit.</td>
</tr>
<tr>
<td><strong>Monitoring</strong></td>
<td>Projects are monitored annually throughout the affordability period. Statement of compliance is submitted annually with documentation of occupancy. On-site inspections are conducted by NIFA.</td>
</tr>
</tbody>
</table>

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).

**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:
In order to take the 9 percent credit in conjunction with below-market-rate HOME funds, joint HOME/ tax credit projects must meet a higher occupancy standard than either the tax credit program or the HOME program alone requires:

- 40 percent of the units must be occupied by tenants with incomes at or below 50 percent of area median. (However, such projects are not eligible for the 130 percent increase in basis for projects in "qualified census tracts" or "difficult development areas."

To receive the 130 percent increase, the project must either take the four percent credit, or use the HOME funds at or above the applicable federal rate.)

In all other cases, projects must ensure that they meet both sets of program rules. For example, a project receiving a market rate loan can comply with both sets of rules by establishing a 20 percent set-aside for households with incomes at or below 50 percent of the area median income (as long as all remaining HOME-assisted units are leased to tenants with incomes at or below 80 percent of the area median income).

Of course, projects may choose and may be required 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.
- High HOME rent units are subject to the lower of the High HOME rent and the tax credit rent.

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

- 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.
- Tax credit rules state that 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.
- 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 the Section 8 definition of annual (gross) income is used.
- The Department requires the use of the Section 8 definition of annual (gross) income for HOME projects.

A 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.

Reexaminations of Tenant Eligibility
The tax credit program does not allow alternative methods of tenant recertification allowed under the HOME program.

For projects with both HOME funds and tax credits, owners may seek a project waiver from the state allocating agency to allow certification documentation similar to HOME. Alternatively, the project must comply with the tax credit rules (and, thus, automatically comply with the HOME requirements).

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 tenant’s 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. The Department and the Nebraska Investment Finance Authority will each monitor according to their program requirements.

**Using Nebraska HOME and Local PJ HOME Funds**
A project’s financing may include Nebraska HOME funds and Lincoln or Omaha HOME funds. In this case, the subsidy levels, HOME-assisted unit designation, allocating costs in the project, and other related items must be decided cooperatively between the department and the local HOME PJ to ensure that all HOME requirements are met cumulatively prior to project approval.

**Using HOME and Other Local, State and Federal Subsidy Programs**
Nebraska HOME funds may be used with other subsidy programs, including but not limited to, Lincoln and Omaha Community Development Block Grant programs, USDA- Rural Development 515 and 538 programs, HUD 202 and 811 programs, Nebraska Energy Office interest buy-down programs, and Rehabilitation Tax Credits for historic buildings.

There are no circumstances where the HOME program specifically identifies one of these programs and defers requirements to other funding source requirements. Therefore, where both funding sources provide restrictions, the most restrictive requirement applies.
## SROs AND GROUP HOUSING COMPARED

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>SRO</th>
<th>GROUP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>Single-room occupancy units (SROs) are single-room dwelling units with either sanitary and/ or food preparation area in the unit. If project is new construction or reconstruction, it may have both. If acquisition or rehabilitation, not required to have sanitary and food preparation areas. May have common facilities. NOT student housing.</td>
<td>One unit with separate bedroom(s) and shared living, kitchen, dining, and/or sanitary facilities. Occupied by two or more single persons or families. NOT student housing.</td>
</tr>
<tr>
<td>Maximum Subsidy</td>
<td>Based on zero-bedroom unit subsidy limit times number of HOME-assisted units; common area costs prorated based on percent of HOME-assisted units.</td>
<td>Based on number of bedrooms, including bedrooms of caretakers.</td>
</tr>
<tr>
<td>Targeting</td>
<td>All tenants of HOME-assisted units must be low-or very-low-income.</td>
<td>All tenants, excluding live-in service providers, must be low-income.</td>
</tr>
</tbody>
</table>
### Rents

If the unit has neither food preparation nor sanitary facilities, or only one, the rent may not exceed 75 percent of the FMR for a zero-bedroom unit. The "lesser of" rule comparing the FMR to 30 percent of 65 percent of area median income and low HOME rents does not apply.

If the unit has food and sanitary facilities, High and Low HOME rents apply. In projects with 5 or more units, 20% of the units should have Low HOME rents.

Low HOME rents are defined for SROs as not more than 30 percent of the occupant's monthly adjusted income or not more than 30 percent of the gross income of a family at 50% of the area median income, adjusted for family size.

High HOME rents apply to all other units. (They are defined, as for other projects, as the lesser of the FMR or 30% of 65% of area median income, adjusted for family size.)

Maximum rent based on appropriate FMR (based on number of bedrooms excluding rooms occupied by live-in service providers); each household pays proportionate share of rent. There is no Low HOME rent requirement.

### Tenancy

Permanent and transitional rental housing.

Permanent and transitional rental housing.
ELDER COTTAGE HOUSING OPPORTUNITY UNITS

Elder Cottage Housing Opportunity (ECHO) units are small, free-standing, barrier-free, energy-efficient, removable and designed to be installed adjacent to existing single-family dwellings.

- The owner of an ECHO unit must be the owner-occupant of the single-family host property on which the ECHO unit will be located, or a non-profit organization.
- During the affordability period, the tenant must be a low-income family and an elderly or disabled family as defined in 24 CFR 5.403.
- HOME rental housing restrictions apply, except for the following:
  - Only one ECHO unit may be provided per host property.
  - The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit rent, but if a rent is charged, it must meet HOME requirements.
  - The ECHO unit must meet the HOME affordability restrictions. If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:
    - Rent the unit to another eligible occupant on site;
    - Move the ECHO unit to another site for occupancy by an eligible occupant; or

If the owner of the ECHO unit is the host property owner-occupant, the owner may repay the HOME funds in accordance with the Department’s recapture provisions.
DO OTHER FEDERAL REQUIREMENTS APPLY TO RENTAL ACTIVITIES?

Non-Discrimination and Equal Access Rules

Fair Housing and Equal Opportunity – Yes, must affirmatively further Fair Housing. Particular attention should be paid to signs of discrimination in leasing practices.

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

Affirmative Marketing – Yes, must have affirmative marketing requirements and procedures.

Regulatory Citations & References:
- 92.351

Handicapped Accessibility – Yes.

Regulatory Citations & References:
- Section 504 of the Rehabilitation Act of 1973 (implemented at 24 CFR Part 8)
- For multi-family buildings only, 24 CFR 100.205 (implements Fair Housing Act)

Employment and Contracting Rules

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

Regulatory Citations & References:
- Executive Order 11246 (implemented at 41 CFR Part 60)

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

Regulatory Citations & References:
- Section 3 of the Housing and Urban Development Act of 1968 (implemented at 24 CFR Part 135)

Minority/Women Employment – Yes

Regulatory Citations & References:
- Executive Orders 11625, 12432 and 12138
- 2 CFR 200.321
**Davis-Bacon** – Yes, if construction contract includes 12 or more units that are HOME-assisted.

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

**Conflict of Interest** – Yes

Regulatory Citations & References:
- 92.356
- 2 CFR 200 §§ .112; .318 and .319

**Debarred Contractors** – Yes, check HUD's list of debarred contractors.

Regulatory Citations & References:
- 24 CFR Part 5 (SAM)

**Other Federal Requirements**

**Environmental Reviews** – Yes

Regulatory Citations & References:
- 92.352
- 24 CFR Part 58.35 b(5)
- National Environmental Policy Act (NEPA) of 1969

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

Regulatory Citations & References:
- Section 202 of the Flood Disaster Protection Act of 1973 (42 U. S. C. 4106)

**Site and Neighborhood Standards** – Yes, for new construction only.

Regulatory Citations & References:
- 24 CFR 893.6(b)
**Lead-Based Paint – Yes**, for 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.

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

**Relocation – Yes.** 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.

Regulatory Citations & References:
- 92.353
- 49 CFR Part 24
- 24 CFR Part 42 (subpart B)
- Section 104(d) "Barney Frank Amendments"
§92.351 Affirmative marketing; minority outreach program.

(a) Affirmative marketing. (1) Each participating jurisdiction must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME- funded programs, including, but not limited to, tenant-based rental assistance and downpayment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If participating jurisdiction's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with §92.253(d)(3), the participating jurisdiction must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

(2) The affirmative marketing requirements and procedures adopted must include:

(i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(ii) Requirements and practices each subrecipient and owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the participating jurisdiction and by subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions; and

(v) A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(3) A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.
(b) *Minority outreach.* A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. 2 CFR Part 200.321 describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.
CHAPTER 6 – HOME CONTRACT

This section of the HOME Manual provides guidance on the steps that must be fulfilled before a funded project is implemented, and an overview of the requirements that a grantee must fulfill as a result of signing a HOME Contract.

Caution:
1. Before seeking any professional services or contractors, a grantee must understand and follow the procurement processes required of HOME-funded projects. See Chapter 8 - Procurement.
2. Before contracting for non-general administrative services, a grantee must receive a Notice of Release of Funds from the Department.

Notice of Approval Letter
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. A grantee 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, grantees may procure and contract for administrative services to assist in the implementation of the grant.

The award letter cautions the grantee 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 grantee. Grantees should understand the budget in the HOME Contract, including the line item to be used for administrative costs.

Grantees 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.
**HOME Contract**

The grantee will receive two copies of the HOME Contract after receiving the Notice of Approval. This is the contract between the Department and the grantee. The grantee 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 or public housing agency 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 grantee should have passed a resolution authorizing the Chief Elected Official to sign such documents. Non-profit and public housing agencies should provide the Department with documentation as to whom the organization has designated as the Authorized Official to execute grant documents.

The grantee has one month to sign both copies of the HOME Contract and send both copies to the following address:

HOME  
Nebraska Department of Economic Development  
P.O. Box 94666  
301 Centennial Mall South  
Lincoln, NE  68509-4666

**Terms**

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

**Special Conditions for Release of Funds**

Recipients 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 Recipient 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.

**Project costs cannot be obligated or incurred prior to the Department issuing a written Notice of Release of Fund to the grantee.**
Typical Special Conditions for Release of Funds

HOME Program Grantee Information Sheet
This form must be completed by the grantee and returned to the Department.

HOME Authorization to Request Funds
This form must be completed by the grantee and returned to the Department.

Environmental Review
Documentation is required by the Department evidencing the grantee’s completion of its responsibilities for environmental review and decision making pertaining to the HOME Project, and its compliance with the National Environmental Policy Act of 1969 (NEPA), and other provisions of Federal law as specified in 24 C.F.R. Part 58, which furthers the purposes of NEPA. (See Chapter 7 – Environmental Review)

Procurement Standards
Documentation is required evidencing adoption of appropriate procurement standards.

Excessive Force Certification
Required if the grantee is a unit of general local government. Documentation that the grantee has adopted a policy to prohibit the use of excessive force by law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

Fair Housing
Documentation that the grantee has specifically provided a description of the actions it will take during the course of the HOME Project to fulfill the requirements to affirmatively further fair housing. (See later in this chapter for more guidance on fair housing)

Implementation Schedule
Completion and submission to the Department of this form.

Additional Special Conditions, as applicable
Program Guidelines
Program Income Reuse Plan
Rehabilitation Procedures

Disclaimer: The above list represents a list of typical standard special conditions, however all HOME Contracts are tailored to a specific project with unique standard 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 from the Department’s website.
Affordability Requirements
The time of performance of a HOME project, as stated in the contract, is generally one, two or three years. However, all HOME grants, with the exception of awards strictly funding organizational capacity, must comply with the requirements of 24 CFR Part 92 regarding periods of affordability. These periods vary by the type of activity and amount of assistance provided. Please read the chapters on homeowner, homebuyer and rental for more details on compliance with periods of affordability.

Affordability periods range up to twenty years. It is not until full compliance is met by the grantee 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 grantee to actions by the Department including possible repayment.

Uniform Administrative Requirements
The grantee 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 (including CHDOs undertaking non CHDO set-aside projects) – CHDOs acting as owners, sponsors or developers on a CHDO set-aside project –

2 CFR 200 supersedes the requirements formerly set out in 24 CFR §§84 and 85. A summary and cross reference of those requirements can be found in Attachment 2 of this document.

Federal and State Requirements
In PART V: SPECIAL REQUIREMENTS AND ASSURANCES the grantee agrees to comply with the requirements of the HOME Program and 24 CFR Part 92. The grantee will also comply with other laws and regulations, both federal and state, as they are applicable to the Project, including but not limited to, the following (and then the contract lists a number of items).

The grantee 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 grantees.

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, recipients and subrecipients are defined more broadly than under the HOME program. Section 504 recipients and subrecipients include any entity that receives federal funding (for example, a subrecipient or CHDO). The specific requirements under Section 504 are summarized in Attachment 1.

- For any recipient 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.
- Contractors and vendors are subject to Section 504 requirements only in the work they do on behalf of a recipient or subrecipient.
- The ultimate beneficiary of the federal assistance is not subject to Section 504 requirements.
- Under Section 504, recipients and subrecipients are not required to take actions that create undue financial and administrative burdens or alter the fundamental nature of the program.

**Architectural Barriers Act of 1968**

**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 grantee to the general public.

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 grantee, and subcontractors, will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The grantee, 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 grantee 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 recipients 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.

**FAIR HOUSING STANDARDS AND PROVISIONS**

**Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**
See Chapter 10 – URA for more information on compliance with this act.

**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 grantee 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 grantee 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.

**ENVIRONMENTAL STANDARDS AND PROVISIONS**
(For more information on environmental requirements see Chapter 7 – Environmental)
Historic Preservation

   a. 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,

   b. 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 and regulations at 24 C.F.R. Part 35
This law 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 grantee 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.

LABOR STANDARDS AND PROVISIONS
(For more information on labor standards requirements see Chapter 10 – 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.

Section 2 of the June 13, 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**
Under this regulation, 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, under the provisions of 24 C.F.R. Part 24.

**Affirmatively Furthering Fair Housing**
Grantees 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 grantee, 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.

Grantees as a Special Conditions requirement must inform the Department of actions they will undertake to further fair housing. Some suggested actions are:

- Adopt a fair housing ordinance with means of enforcement.
- Undertake a review of existing fair housing ordinances, zoning and land use practices for discriminatory policies or practices.
- Support and participate in educational programs coordinated with local realtors, home builders, and mortgage lenders designed to provide information on fair housing rights.
- Provide housing referral and counseling services, which assist minorities, women, and the handicapped seeking housing within the grantee’s jurisdiction. Encourage local employers to cooperate in efforts to find housing for their employees and to promote equal housing choices within the community.
• 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.
• 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 grantee is an active supporter of fair housing laws.
• Host a Fair Housing Month (April) event.

**Release of Funds**
Upon receiving the “Notice of Release of Funds” letter, the grantee may obligate non-general administrative costs, set-up activities 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 for non-general administrative uses, a grantee 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 grantee for that activity (address). More information on set-ups is available in Chapter 13 - Financial.

**Requesting HOME Funds**
The grantee 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. HOME funds will be disbursed electronically to the grantee’s bank. The grantee has only 15 working days to spend HOME funds following receipt. More information on requesting funds is available in Chapter 13 - Financial.

**Amendments/Extensions**
Grantees 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:
(a) The effect the amendment will have on the points earned in the selection process.
(b) Grantee’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 at the Department’s website.

Request requirements for the four changes are:
1. Changes to the budget

- Original Contract Budget Approved
- Proposed Budget After Amendment

Attachment 1: Letter from the Chief Elected Official or the Authorized Official including:
1. Certification that the governing body has approved the budget amendment;
2. Identification and reasons for the proposed budget amendment; including
   a. Changes to the nature of the project requiring the amendment
   b. Steps being taken to avoid any future amendment requests for the same reasons
3. If additional local matching funds are required as a result of this amendment, certification that such funds are available.
4. If the amendment includes a new activity, certification that the activity meets the national objective

Attachment 2: Minutes from the public hearing (for local governments) or board meeting (for non-profits and local housing authorities) held on the proposed amendment.

Attachment 3: If the budget amendment will affect major milestones, a revised implementation schedule showing when major milestones will be completed for each activity.

Attachment 4: Certification of re-evaluation of the environmental assessment (this form is included in Chapter 7 – Environmental Review)

2. Extensions of the contract end date

- Original Contract End Date
- Current Contract End Date including any previously approved extensions
- Proposed Contract End Date

Attachment 1: A letter from the Chief Elected Official or the Authorized Official stating the following
1. Certification that the governing body has approved the extension;
2. Identification and reasons for the proposed amendment; including
   a. Changes to the nature of the project requiring the amendment;
   b. Steps being taken to avoid any future amendment requests for the same reasons
3. If additional local matching funds are required as a result of this extension, certification that such funds are available.

Attachment 2: A revised implementation schedule showing when major milestones will be completed for each activity

3. Decreases in proposed accomplishments

- Original Proposed Accomplishments
- Current Proposed Accomplishments
Attachment 1: A letter from the Chief Elected Official or the Authorized Official stating the following

1. Certification that the governing body has approved the decrease in proposed accomplishments;
2. Identification and reasons for the proposed amendment; including
   a. Changes to the nature of the project requiring the amendment;
   b. Steps being taken to avoid any future amendment requests for the same reasons
3. If additional local matching funds are required as a result of this decrease, certification that such funds are available.

Attachment 2: A revised implementation schedule showing when major milestones will be completed for each activity

4. Amendments to housing program guidelines

Attachment 1: Letter from the Chief Elected Official or the Authorized Official stating the following:

1. Certification that the governing body has approved the amendment to the housing program guidelines;
2. Identification and reasons for the proposed amendment;
3. If additional local matching funds are required as a result of this amendment, certification that such funds are available.

Attachment 2: If the housing program guidelines amendment will affect major milestones, a revised implementation schedule showing when major milestones will be completed for each activity

Attachment 3: A complete copy of the proposed revised housing program guidelines
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 or subrecipients have 15 or more employees, they must:
  ▪ designate a Section 504 Coordinator, and
  ▪ notify program participants and employees of non-discrimination policies.

• All recipients and subrecipients must conduct self-evaluations of compliance with Section 504.
Title, Use and Disposition of Property, Supplies and Equipment; Insurance.

The Recipient 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, Recipient agrees to, at a minimum, provide insurance coverage for real property acquired or improved with HOME Funds that is equivalent to the insurance Recipient provides for Recipient’s other property (or, ensure that such insurance coverage is provided by the owner of the real property).

Uniform Administrative Requirements.

The Recipient is required, pursuant to 2 C.F.R. Part 200, 24 C.F.R. §92.505, and §92.506, as now in effect, and as such law may be amended during the term of this contract, to comply with various uniform federal administrative requirements concerning: financial management standards including cost principles; procurement standards and property management standards; and audit requirements.

In particular, Recipient agrees to establish internal controls in order to have reasonable assurance that Recipient is carrying out the Project in compliance with federal statutes, regulations, and terms and conditions of this 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 this contract. Recipient 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.

Recipient is responsible for the efficient and effective administration of the HOME Funds provided to Recipient under this contract. Recipient agrees to administer the HOME Funds in a manner consistent with this 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 this 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 this contract. Generally Accepted Government Auditing Standards (GAGAS) must be followed.

Recipient 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 this 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 Recipient on the basis of a later audit or other review. In other words, the obligation of the Recipient to return any funds due as a result of an audit is not affected by closeout of this Project.

**Accounting for HOME Funds.**

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 Recipient 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 this contract; and will be supported by contracts, invoices, brochures, and other data, as appropriate, evidencing the necessity for such expenditures.

Requirements regarding disbursements from the Department to the Recipient are addressed in §1.01 of this contract.

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Cross References from 24 CFR §§84 and 85 to 2 CFR §200

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
CHAPTER 7 – ENVIRONMENTAL REVIEW

A. Introduction

Environmental Review is the examination of a project relative to the National Environmental Policy Act of 1969 (NEPA) and its related laws. NEPA was established to ensure environmental protection for federally funded projects.

HOME funded projects are subject to the provisions of NEPA [24 USC 432-14347] and the HUD regulations implementing NEPA [24 CFR Part 58]. Recipients of HOME funds are required to complete an environmental review prior to receiving environmental clearance from the Nebraska Department of Economic Development. The type of project a recipient is completing will determine the level of environmental review and the necessary documentation that will be required.

For every environmental review, three basic steps must be followed in order to correctly complete the review. These steps include:

1) Project Aggregation
2) Determination of Level of Review
3) Documentation

**Project Aggregation**—The recipient should evaluate the entire scope of the project and include all funding sources that may be used in conjunction with the project. Defining the project should include determining all integrally related activities designed to accomplish a specific objective. For housing projects this could include down payment and closing cost assistance, land acquisition, rehabilitation, new construction, infrastructure development, demolition, and any other appropriate activity that would be necessary to complete the HOME funded project.

**Determination of Level of Review**—The recipient must determine which level of environmental review is appropriate for the project in order to correctly complete the necessary documentation for the project. A Determination of Level of Review Form must be completed which provides a complete description of the project and the level of environmental review that will be completed.

**Documentation**—The recipient must complete the appropriate DED approved Environmental Review Packet and provide any other necessary information that is required to fully document the environmental review. This information is referred to as the Environmental Review Record (ERR). The ERR will vary in size. The project aggregation and the determination of level of review will help determine the appropriate ERR documentation.

Table 1 describes the environmental review process for HOME funded non-profit recipients. A more detailed discussion of the complete environmental review steps will be discussed later in this chapter.
ENVIRONMENTAL REVIEW PROCESS
HOME PROJECTS

Project Aggregation [58.32]
(Combine activities for review)

Determination of Level of Review

Exempt [58.34]
Finding of Exempt Activity Form
58.6 Checklist Requirements

Categorical Exclusion
NOT Subject To 58.5
(CENST) [58.35(b)]
Finding of CENST Activity Form
58.6 Checklist Requirements

Categorical Exclusion
Subject To 58.5
(CEST) [58.35(a)]
Statutory Checklist [58.5]
58.6 Checklist Requirements

Environmental Assessment (EA)
[58.36]
Perform EA, Including Statutory Checklist,
Environmental Assessment Checklist, & 58.6 Requirements

Finding of Exempt Activity Form
No Further 58.5 Compliance - Convert to Exempt

7-Day Public Notice: NOI-RROF
Submission of RROF/Certification Form to DED [58.71]
DED Submission of RROF/Certification Form to HUD [58.71]
HUD’s 15-Day Objection Period [58.73]
HUD provides Authority to Use Grant Funds (AUGF)

15-Day Public Notice: Combined FONSI & NOI-RROF
Submission of RROF/Certification Form to DED [58.71]
DED Submission of RROF/Certification Form to HUD [58.71]
HUD’s 15-Day Objection Period [58.73]
HUD provides Authority to Use Grant Funds (AUGF)

Environmental Clearance Obtained
As Table 1 demonstrates, the environmental review process is comprehensive and detailed. The amount of information needed to complete the review depends on the type of project the recipient is completing.

There are a number of key terms that a recipient must familiarize themselves with in order to understand environmental review and the Table 1 Environmental Review Process Flow Chart. A few main terms are noted below.

**Project**—An activity or group of activities regardless of funding source.

**Environmental Review**—NEPA Review of a project.

**Recipient**—The entity receiving assistance from HUD.

**Environmental Review Record (ERR)**—A well organized written record of review, decision making, and action as required by 24 CFR 58.38. This includes the DED required forms and other required documentation.

**Responsible Entity (RE)**—State, Indian Tribe, or Unit of General Local Government. A Non-Profit Recipient is not the RE for HOME funded projects. DED is the RE for HOME funded projects.

**Certifying Officer**—The RE Agency official responsible for completing the ERR.

**24 CFR 58**—The Code of Federal Regulations Section that details the HUD regulations for the environmental review process.

**Exempt**—A project that is defined under 24 CFR 58.34

**CENST**—Categorical Exclusion Not Subject to the requirements of 24 CFR 58.5 as defined under 24 CFR 58.35(b)

**CEST**—Categorical Exclusion Subject to the requirements of 24 CFR 58.5 as defined under 24 CFR 58.35(a)

**Statutory Checklist**—The DED form and other necessary documentation that must be completed for a project that requires a CEST level of environmental review.

**Environmental Assessment**—The DED form and other necessary documentation that must be completed for a project that is not considered Exempt, CENST, or CEST as noted on the Determination of Level of Review.

**58.6 Checklist**—The DED form that must be completed for all environmental review projects.
NOI-RROF—Notice of Intent to Request Release of Funds—A public notice that is completed for projects that require a CEST or EA review.

RROF/Certification—Request for Release of Funds/Certification Form that is completed for projects that require a CEST or EA review. Also referred to as HUD Form 7015.15.

FONSI—Finding of No Significant Impact is a determination that must be made by the Responsible Entity for projects that require an EA review.

AUGF—Authority to Use Grant Funds Form that is completed by HUD for projects that require a CEST or EA review. Also referred to as HUD Form 7015.16. The AUGF is completed after proper public notice and after the submission of the RROF/Certification and supporting documentation. The AUGF provides the recipient with environmental clearance. This Form is sent to DED for HOME projects only.

B. The Process

The basic environmental review process is described below and divided into steps. Follow the steps and refer to the Table 1 Environmental Review Process Flow Chart for further information.

Note that processes are different for projects where the local government is the grant recipient (i.e. CDBG) or for those projects that are funded through the Nebraska Affordable Housing Trust Fund (NAHTF). Refer to the CDBG or NAHTF Manuals for further information on projects that are not assisted with HOME funds.

Step 1—Project Aggregation

The recipient should evaluate the entire scope of the project and include all funding sources that may be used in conjunction with the project. Defining the project should include determining all integrally related activities designed to accomplish a specific objective.

For housing projects this could include down payment and closing cost assistance, land acquisition, rehabilitation, new construction, infrastructure development, demolition, and any other appropriate activity that would be necessary to complete the HOME funded project. Some examples include a down payment assistance project funded with HOME funds that also includes rehabilitation using USDA funds or infrastructure development using other funding for a new construction project using HOME funds.
Step 2—Identifying Environmental Review Responsibilities

Entities eligible to receive HOME funds from the State are local governments, non-profit organizations and public housing agencies. However, only government entities can assume the role of Responsible Entity (RE) with respect to environmental reviews.

For HOME awards to non-profits, public housing agencies, and other non-governmental recipients, the State must assume the role of environmental “certifying officer”. Non-governmental recipients, however, assist the State by supplying all relevant information needed to perform an environmental review and carrying out all mitigating measures required.

Recipients that are not units of local government (cities, villages or counties) are conducting the review for DED. As the RE for HOME awards to non-governmental recipients, the Department requires the ERR be sent to the Department as soon as the agency completes it so that the RE Certifying Officer can sign the necessary forms and certify the environmental record.

For HOME awards to local governments, the chief elected official assumes the role of environmental “certifying officer” and accepts full responsibility for the completeness and accuracy of the reviews. The chief elected official must sign all certifications and findings. This environmental duty may not be delegated, although local staff, consultants, and/or State resources may provide technical assistance to support local efforts. For further information on the process for local governments, see the CDBG Manual for the environmental process.

Step 3—Determination of Level of Review

The recipient must determine which level of environmental review is appropriate for the project in order to correctly complete the necessary documentation for the project. The recipient must review the HUD regulations to determine which category of review the project should be classified under in order to determine which Environmental Review Packet must be completed.

Each level of environmental review is defined within the HUD regulations found at 24 CFR 58. The four main levels of review that HOME recipients will need to consider include:

- Exempt [Those projects classified under 24 CFR 58.34],
- CENST [Those projects classified under 24 CFR 58.35(b)],
- CEST [Those projects classified under 24 CFR 58.35(a)], or
- EA [All other projects that are not classified under 24 CFR 58.34, 58.35(b), or 58.35(a) and that do not require an Environmental Impact Statement (EIS)].
In addition to the four classifications, there is also an Environmental Impact Statement (EIS). This comprehensive review is for those projects that are larger in scope and will have a significant environmental impact. These projects are beyond the scope of those completed by recipients working in conjunction with DED.

Overall, review the HUD regulations to determine the most appropriate level of environmental review for a project. Every HOME project will be classified under one of the four levels of review. If a project cannot be classified as Exempt, CENST, or CEST, then recipient will be required to complete an EA.

See the attached Code of Federal Regulations (Attachment 9) to make this determination.

**Step 4—Environmental Review Packet Completion (Special Conditions for Release of Funds Forms)**

Once a recipient has determined the scope of a project through project aggregation and determined the appropriate level of review, the recipient must complete the appropriate Environmental Review Packet for every project. The Packet that is completed will be a portion of the ERR for a project. There are four separate Environmental Review Packets and one for each different level of review.

These include:

- Exempt Project Packet
- CENST Project Packet
- CEST Project Packet
- EA Project Packet

**Exempt Project Packet**—Projects that have been categorized under 24 CFR 58.34 must complete a packet that includes a Cover Sheet, a Determination of Level of Review Form, a Finding of Exempt Activity Form, and a 58.6 Checklist.

**CENST Project Packet**—Projects that have been categorized under 24 CFR 58.35(b) must complete a packet that includes a Cover Sheet, a Determination of Level of Review Form, a Finding of Categorical Exclusion Not Subject To Form, and a 58.6 Checklist.

**CEST Project Packet**—Projects that have been categorized under 24 CFR 58.35(a) must complete a packet that includes a Cover Sheet, a Determination of Level of Review Form, a Statutory Checklist Form, and a 58.6 Checklist. In addition, appropriate source documentation must be included in the Packet which provides maps, shows that the appropriate websites have been reviewed, and that the appropriate agencies have been consulted including letters to and from agencies.

**EA Project Packet**—Projects that cannot be categorized as Exempt, CENST, or CEST must complete a packet that includes a Cover Sheet, a Determination of Level of Review Form, and an Environmental Assessment Form. In addition, appropriate source
documentation must be included in the Packet which provides maps, shows that the appropriate websites have been reviewed, and that the appropriate agencies have been consulted including letters to and from agencies.

See also Attachment 1 an outline of the environmental review record items needed for each Environmental Review Packet.

**Step 5—Publication/Posting**

Only those projects that require a CEST or EA review will be required to provide a NOI/RROF public notice which needs to be completed through either publication or posting. Projects that are Exempt, CENST, or those CEST projects that convert to Exempt do not require any publication or posting.

Projects that require a CEST review will have a 7 or 10 day public comment period.

Projects that require an EA review will have a 15 or 18 day public comment period.

See also section titled Publication, RROF/Certification Form, & HUD Objection Period for more information.

**Step 6—Completion of RROF/Certification Form and Affidavit of Publication**

Only those projects that require a CEST or EA review will be required to complete a RROF/Certification Form. The most current HUD 7015.15 Form must be used.

It is available on the HUD website at:


The RROF/Certification must be completed, an original affidavit of publication, and a copy of the publication must be sent to DED after the ERR is completed and sent no earlier than the day after the publication period has ended.

A failure to complete RROF/Certification Form correctly will result in DED requesting that the Form be revised and resubmitted. Until the RROF/Certification Form is accurate, it will not be submitted to the CRD Director for signature, and it will not be submitted to the HUD office to begin the HUD 15 day objection period.

See also Attachment 4 for instructions and a copy of the RROF/Certification Form.

**Step 7—HUD 15 Day Objection Period**

Once the RROF/Certification Form, the affidavit of publication, and the press release are received (no earlier than the day after the publication period has ended), the RROF/Certification is given to the CRD Director for his/her signature. Once signed, the
RROF and all supporting documentation are faxed and mailed to the HUD Office. The 15 day objection period begins the day after HUD receives the RROF and correct supporting documentation.

**Step 8—Obtaining Environmental Clearance**

After the end of the HUD 15 day comment period, HUD will send DED an AUGF Form (7015.16). Once this Form is received by DED, the project will have environmental clearance. This AUGF Form is only sent by HUD for projects that are sent to the HUD office and is not completed by DED for other projects (i.e. CDBG, NAHTF). DED provides a Release of Funds letter to the recipient which provides environmental clearance and clearance to use grant funds.

**C. Comprehensive Overview of Environmental Projects**

**Exempt Projects**

A project that has been classified under 24 CFR 58.34 is considered Exempt and requires a limited environmental review.

An Exempt project is a project that can be classified under one of the following categories:

1. Environmental and other studies, resource identification and the development of plans and strategies;
2. Information and financial services;
3. Administrative and management activities;
4. 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 recreational needs;
5. Inspections and testing of properties for hazards or defects;
6. Purchase of insurance;
7. Purchase of tools;
8. Engineering or design costs;
9. Technical assistance and training;
(10) 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 threats to public safety including those resulting from physical deterioration;

(11) Payment of principal and interest on loans made or obligations guaranteed by HUD;

(12) Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5. [CEST Projects that converts to Exempt]

If a project cannot be classified under any of the above mentioned categories, then the project is not Exempt and a higher level of environmental review will need to be completed.

The ERR for an Exempt project must include the completion of the following items:

- Cover Sheet
- Determination of Level of Review
- Finding of Exempt Activity Form
- 58.6 Checklist

A Recipient does not have to publish a NOI/RROF, does not have to submit an RROF/Certification Form, and does not have to require a 15 day HUD Comment Period for Exempt Projects.

**CENST Projects**

A project that has been classified under 24 CFR 58.35(b) is considered a Categorical Exclusion Not Subject to the requirements of 24 CFR 58.5 and requires a limited environmental review.

A CENST project is a project that can be classified under one of the following categories:

- (1) Tenant-based rental assistance;

- (2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title.

(6) Affordable housing pre-development costs including 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.

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47.

If a project cannot be classified under any of the above mentioned categories, then the project is not CENST and a higher level of environmental review will need to be completed.

The ERR for a CENST project must include the completion of the following items:

- Cover Sheet
- Determination of Level of Review
- Finding of Categorical Exclusion Not Subject To Form
- 58.6 Checklist

A Recipient does not have to publish a NOI/RROF, does not have to submit an RROF/Certification Form, and does not have to require a 15 day HUD Comment Period for CENST Projects.

**CEST Projects**

A project that has been classified under 24 CFR 58.35(a) is considered a Categorical Exclusion Subject to the requirements of 24 CFR 58.5 and requires the completion of a Statutory Checklist which evaluates 14 separate environmental laws.
A CEST project is a project that can be classified under one of the following categories:

(1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

(3) Rehabilitation of buildings and improvements when the following conditions are met:

   (i) In the case of a building for residential use (with one to four units), the 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 in a wetland;

   (ii) In the case of multifamily residential buildings:

       (A) Unit density is not changed more than 20 percent;

       (B) The project does not involve changes in land use from residential to non-residential; and

       (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

   (iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

       (A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

       (B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or
(ii) An individual action on a project of 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 housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

(5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

(6) Combinations of the above activities.

If a project cannot be classified under any of the above mentioned categories, then the project is not CEST and an EA will need to be completed.

The ERR for a CEST project must include the completion of the following items:

- Cover Sheet
- Determination of Level of Review
- Statutory Checklist
- 58.6 Checklist
- Source Documentation [including, but not limited to, a FIRM Map, an aerial map, letters sent to any agencies, agency websites consulted, agency responses, and any other relevant information that provides support for your findings within the Statutory Checklist]
- NOI/RROF Publication
- Affidavit of Publication or Proof of Posting
- RROF/Certification Form

A Recipient does have to publish a NOI/RROF, does have to submit an RROF/Certification Form, and does have to require a 15 day HUD Comment Period for CEST Projects unless the project converts to Exempt.

**CEST Project Converting to Exempt**

In some instances a CEST Project may convert to an Exempt Project. This may occur if the recipient has completed the Statutory Checklist and has marked all authorities as Status “A”.
If Box “A” has been selected within the Determination Section of the Statutory Checklist, the recipient would be confirming that the project does not require any further compliance measure (e.g. consultation, mitigation, permit, approval, or any other additional measure) with respect to any law or authority cited at 24 CFR 58.5.

When a project converts to Exempt, it will be necessary for the recipient to have completed the Determination of Level of Review, the Statutory Checklist, and the 58.6 Checklist, and provided the necessary source documentation for the project. After this information has been included in the ERR, the recipient then must complete a Finding of Exempt Activity Form and note that the project is converting to Exempt according to 24 CFR 58.34(a)(12). The Finding of Exempt Activity Form should be incorporated into the ERR and sent to DED.

A NOI/RROF Publication, RROF/Certification, and 15 day HUD Comment Period are not required for CEST projects that have converted to Exempt.

**EA Projects**

A project that cannot be classified as Exempt, CENST, CEST, but is classified under 24 CFR 58.36 requires the completion of an Environmental Assessment (EA). An EA includes a FONSI Determination, a Statutory Checklist, an Environmental Assessment Checklist, a 58.6 Checklist, and all other required information as noted in the EA Project Packet.

The ERR for an EA project must include the completion of the following items:

- Cover Sheet
- Determination of Level of Review
- Environmental Assessment (EA) Form
- Source Documentation [including, but not limited to, a FIRM Map, an aerial map, letters sent to any agencies, agency websites consulted, agency responses, and any other relevant information that provides support for your findings within the Statutory Checklist]
- NOI/RROF Publication
- FONSI Publication
- Affidavit of Publication or Proof of Posting
- RROF/Certification Form

See also information below titled Completing the Statutory Checklist, Completing the Environmental Assessment Checklist, Completing the 58.6 Checklist, and the HUD Guide for further information.

See also the Source Documentation Section for further information.
A Recipient does have to publish a FONSI & NOI/RROF, does have to submit an RROF/Certification Form, and does have to require a 15 day HUD Objection Period for EA Projects.

D. Publication, RROF/Certification Form, & HUD Objection Period

The HUD regulations at 24 CFR 58 define the publication requirements for HOME and CDBG projects and the process for receiving environmental clearance after the recipient’s environmental review packet has been completed for CEST or EA Projects and has been signed by the RE Certifying Officer.

This process includes a public comment period publication (Notice of Intent to Request Release of Funds, NOI-RROF), a FONSI publication for EA Projects only, the completion of a RROF/Certification Form with documentation, and a HUD Objection period. This process must be completed in the correct order or republishing may be necessary.

24 CFR 58.21 defines time periods in regard to determining when a publication or objection period begins. Time Periods are defined as:

“All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.”

24 CFR 58.43 further notes that the RE must consider the comments and make modifications, if appropriate, in response to the comments from the publication before completing the RROF/Certification Form.

Publication Requirements for CEST Projects

For CEST Projects the recipient is required to:

- Provide a public comment period (NOI-RROF),
- Complete a RROF/Certification Form with documentation, and
- Complete the HUD Objection Period.

The NOI-RROF cannot be published until after the RE Certifying Officer has signed the ERR. For HOME projects, this means that the ERR must be sent to DED for the CRD Director’s signature before publication. Once the RE Certifying Officer (CRD Director) signs the ERR the recipient will be notified by email that it is proper to publish/post the NOI-RROF.

The NOI-RROF Notice is published or posted for a period of time defined at 24 CFR 58.45 [7 days when published or, if no publication, 10 days when mailing and posting].
A FONSI Notice is not required for CEST Projects. Only a NOI-RROF Notice is required. See Sample NOI-RROF Publication for the language that must be provided in the notice.

No earlier than the day after the public comment period has ended, the recipient completes the RROF/Certification Form and sends it to DED along with the appropriate documentation. This documentation includes an affidavit of publication (or posting) and a copy of the publication notice.

An example of this process is noted on the following table.

<table>
<thead>
<tr>
<th>CEST Publication and Counting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunday</td>
</tr>
<tr>
<td>Finalize ERR</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>RROF/CERTIFICATION FORM SIGNED BY RE</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>12</td>
</tr>
</tbody>
</table>

As the table demonstrates, HOME projects require a longer time frame for completion of the publication and comment process since DED must sign the RROF/Certification Form as the RE Certifying Officer and this information must be provided to HUD.

An additional example of computing time requirements for CEST Projects is as follows:

Date of Notice and Date of Newspaper Publication: May 19
| Time Period for Receipt of Public Comments: | May 20  
|                                          | [Begins: 12:01 am]  
|                                          | May 26  
|                                          | [Ends: 12:00 pm (midnight)] |
| Deadline Date for Receipt of Public Comments Stated in Notice: | May 26 |
| Earliest Date for Recipient’s Submittal of RROF/Cert Form and documentation to DED | May 27  
| (may be faxed, emailed, then mailed) | |
| Earliest Date for RROF/Cert Form signed by RE Certifying Officer at DED | May 27 |
| Earliest Date for RROF/Cert Form and documentation sent to HUD | May 27 |
| Earliest Date of Receipt by HUD of Recipient’s RROF/Cert | May 27 |
| Statutory 15-Day Period for Submission of Objections to HUD | May 28  
| [Begins: 12:01 am] |  
| June 11 | [Ends: 12:00 pm (midnight)] |
| Deadline Date for Receipt by HUD of Objections to Recipient’s Request and Certification | June 11 |
| Earliest Possible Date for HUD approval of Authority to Use Grant Funds (AUGF)—Environmental Clearance | June 12 |

Total Number of Days, May 19 through June 12—25 Days

As the example demonstrates, it will take at least 25 days in order to complete the publication process for CEST Projects. Additional time may be necessary to account for weekends and holidays when staff is not available and to account for additional time for the RE Certifying Officer to sign the required documentation and have the documentation sent to HUD.

**Publication Requirements for EA Projects**

For EA Projects the recipient is required to:

- Publish a FONSI Notice
- Provide a public comment period (NOI-RROF),
- Complete a RROF/Certification Form with documentation, and
- Complete the HUD Objection Period.
The FONSI notice and NOI-RROF publication process can be completed concurrently using a Combined FONSI/NOI-RROF Publication. See Sample Combined FONSI/NOI-RROF Publication for the language that must be provided in the notice.

The Combined FONSI/NOI-RROF cannot be published until after the RE Certifying Officer has signed the ERR. For HOME projects, this means that the ERR must be sent to DED for the CRD Director’s signature before publication. Once the RE Certifying Officer (CRD Director) signs the ERR the recipient will be notified by email that it is proper to publish/post the NOI-RROF.

The NOI-RROF Notice is published or posted for a period of time defined at 24 CFR 58.45 [7 days when published or, if no publication, 10 days when mailing and posting].

The FONSI Notice is published or posted for a period of time defined at 24 CFR 58.45 [15 days when published or, if no publication, 18 days when mailing and posting].

The NOI-RROF Notice and the FONSI Notice may be published concurrently as a Combined Notice for a period of time defined at 24 CFR 58.45 [15 days when published or, if no publication, 18 days when mailing and posting].

No earlier than the day after the public comment period has ended, the recipient completes the RROF/Certification Form and sends it to DED along with the appropriate documentation. Appropriate documentation includes:

- an affidavit of publication (or posting), and
- a copy of the publication notice.

An example of this process is noted on the following table.

<table>
<thead>
<tr>
<th>EA Publication and Counting</th>
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<tr>
<td><strong>Sunday</strong></td>
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<tr>
<td>Finalize ERR</td>
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<tr>
<td>3</td>
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<tr>
<td>10</td>
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<tr>
<td>RROF/Cert Form sent to DED for RE Signature</td>
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</table>
As the table demonstrates, HOME projects require a longer time frame for completion of the publication and comment process since DED must sign the ERR and the RROF/Certification Form as the RE Certifying Officer and this information must be provided to HUD.

An additional example of computing time requirements for EA Projects is as follows:

| Date of Notice and Date of Newspaper Publication: | May 19 |
| Time Period for Receipt of Public Comments: | May 20 [Begins: 12:01 am] June 3 [Ends: 12:00 pm (midnight)] |
| Deadline Date for Receipt of Public Comments Stated in Notice: | June 3 |
| Earliest Date for Recipient’s Submittal of RROF/Cert Form and documentation to DED: | June 4 (may be faxed, emailed, then mailed) |
| Earliest Date for RROF/Cert Form signed by RE Certifying Officer at DED | June 4 |
| Earliest Date for RROF/Cert Form and documentation sent to HUD | June 4 |
| Earliest Date of Receipt by HUD of Recipient’s RROF/Cert | June 4 |
| Statutory 15-Day Period for Submission of Objections to HUD | June 5 [Begins: 12:01 am] June 19 [Ends: 12:00 pm (midnight)] |
| Deadline Date for Receipt by HUD of Objections to Recipient’s Request and Certification | June 19 |
| Earliest Possible Date for HUD approval of Authority to Use Grant Funds (AUGF)—Environmental Clearance | June 20 |
As the example demonstrates, it will take at least 33 days in order to complete the publication process for CEST Projects. Additional time may be necessary to account for weekends and holidays when staff is not available and to account for additional time for the RE Certifying Officer to sign the required documentation and have the documentation sent to HUD. Failure to provide the necessary documentation including an affidavit of publication (or posting) and a copy of the publication notice, will add additional days to the process.

### E. Source Documentation

Source Documentation is used to supplement the ERR and provide justification for the information that has been detailed in the Compliance Documentation Section of the Statutory Checklist, the Environmental Assessment Checklist, and any other section of the ERR. The ERR must be a stand alone document that will provide a complete picture of the environmental impacts of the project for a reviewer.

Some examples of Source Documentation that must be included in CEST and EA Project reviews include:

- Aerial map of site (when sites have been identified)
- FIRM map (when sites have been identified and mapped)
- Agency websites reviewed
- Letters to Agencies
- Responses from Agencies

The RE may use an environmental review from another agency to help supplement the ERR for DED. A copy of the review should be incorporated into the ERR and referenced in the Compliance Documentation Section of the Statutory Checklist or the Source Documentation Section of the Environmental Assessment Checklist.

In addition, any Engineering Reports, Phase I Reports, Phase II Reports, and any other relevant information should be included in the ERR.

### F. Completing the Statutory Checklist

**Introduction**

The Statutory Checklist must be completed for CEST and EA Projects. The Statutory Checklist is a separate form for CEST projects and is part of the Environmental Review
Packet completion. For EA projects the Statutory Checklist is incorporated into the Environmental Assessment and must be completed.

The Statutory Checklist evaluates 14 separate environmental issues and impacts. Each of these 14 items must be evaluated for every project. Within the Statutory Checklist, the recipient must follow instructions detailed in the Checklist and select either Status A or Status B for each and every of the 14 items.

By selecting Status A, the recipient is documenting that the project is in compliance either because 1) the nature of the project does not implicate the authority under consideration or 2) supporting information documents that the project compliance has been achieved. If Status A is marked, the recipient is noting that no further compliance is needed, and no further consultation, permitting, or additional evaluation are needed in regard to the Item evaluated.

By selecting Status B, the recipient is documenting that the project requires additional compliance. This includes an additional compliance step or action, including but not limited to, consultation with or approval from an oversight agency, performance of a study or analysis, completion of remediation or mitigation measures, or obtaining a license or permit.

Selecting Status B is also appropriate when a project site has not been identified as a tiered review will be required and further compliance is necessary.

Note that leaving any Compliance Documentation Section blank or providing a “not applicable” response to any of the 14 items is not acceptable. A failure to review all 14 items will result in the recipient having to correct the Statutory Checklist and resubmit the information to DED.

**Statutory Checklist Process**

A recipient should consult the appropriate statutes, authorities, executive orders, regulations, or policies as noted in each of the 14 items. 24 CFR 58.5 provides more information on the Related Federal laws and authorities that must be reviewed.

In addition, utilizing the [HUD Guide to Environmental Compliance (HUD Guide)](https://www.hud.gov) can also be used as a tool to assist the recipient with the completion of the Statutory Checklist. If used correctly the HUD Guide can provide guidance on how to appropriately provide Compliance Documentation. Review the Applicable Activities, Threshold for Action, Source Documentation, and Action Required Sections as a whole in order to assist the recipient.

For example, in providing a proper evaluation for Item 3 Coastal Zone Management, the recipient could note within the Compliance Documentation Section of the Statutory Checklist, that a project in Nebraska is not located in a state having a Coastal Zone...
Management (CZM) Program as provided by the National Oceanic & Atmospheric Administration at web site: http://coastalmanagement.noaa.gov/mystate/welcome.html. Providing this information, along with a copy of the website would provide sufficient source documentation for this item.

The goal of the evaluation is to obtain environmental compliance with each of the 14 items. Compliance can be obtained in some instances by the Recipient providing an appropriate narrative and source documentation within the Compliance Documentation section of the Statutory Checklist. In other instances it is necessary to provide additional source documentation, including referencing agency website information, letters sent to agencies, agency responses, and any other relevant information.

The RE must retain all documentation (letters, maps, notes on comments of authorities contacted, etc.) to support the Compliance Documentation in the ERR. The recipient should use the best available information in order to achieve compliance.

Federal or State Agency consultation may be necessary to provide a proper environmental evaluation. Agency responses may concur with a recipient’s findings and result in no need for further action, may place conditions on the project prior to environmental clearance, or may halt the project until mitigating measures are identified and steps have been taken to achieve compliance.

If permits are required, a listing of the specific permits needed and the procedures by which they will be obtained should be attached to the ERR. If mitigating actions are required, the RE should fully describe the actions the recipient will take to assure compliance.

The Statutory Checklist must be prepared and signed by the Preparer prior to being signed by the RE Certifying Officer. A failure to have the Preparer sign the Statutory Checklist before the RE Certifying Officer will result in the recipient having to correct the Statutory Checklist and resubmit the information to DED.

For more information review 24 CFR 58.5 (Attachment 9) and the HUD Guide (Attachment 8).

For more information see also list of Agency Contacts (Attachment 7).

G. Completing the Environmental Assessment Checklist

The Environmental Assessment Checklist must be completed for EA Projects. This Checklist is incorporated into the Environmental Assessment and must be completed.

The Environmental Checklist evaluates several impact categories to evaluate the significance of the effects of the proposal on the character, features, and resources of the project area. This evaluation includes the area surrounding the project site and the
reference of the site to other resources in the community. Each of the impact categories must be evaluated for every project.

Note that leaving any Compliance Documentation Section blank or providing a “not applicable” response to any of the items is not acceptable. A failure to review all items will result in the recipient having to correct the Environmental Assessment Checklist and resubmit the information to DED.

An example for providing a proper evaluation for the impact category Community Facilities and Services in relation to Public Safety and Fire, a recipient may provide information on the location and distance of the nearest fire station in relation to the project site. If the station is near the site then it may be appropriate to note that the anticipated or potential impact was Beneficial to the project.

For further information see the Source Documentation section.

**H. Completing the 58.6 Checklist**

The 58.6 Checklist must be completed for every project. For Exempt, CENST, or CEST projects the 58.6 Checklist is a separate form that must be completed. For EA projects the 58.6 Checklist is incorporated into the Environmental Assessment and must be completed.

There are three main sections of the 58.6 Checklist that have to be reviewed. These include:

1. **Airport Runway Clear Zones and Clear Zone Notification** [24 CFR Part 51.303(a)(3)]

2. **Coastal Barrier Resources Act** [Coastal Barrier Improvement Act of 1990 (16 USC 3501)]

3. **Flood Disaster Protection Act** [Flood Disaster Protection Act of 1973, as amended (42 USC 4001-4128)]

The 58.6 Checklist provides a set of “yes” or “no” questions that have to be answered and must be supplemented with proper source documentation. Source Documentation may include an aerial map, FIRM map, Agency website information, and any other relevant information that would substantiate the information provided in the 58.6 Checklist.

For the Flood Disaster Section, if “No” is answered for the first question, then it is not appropriate to answer the remaining questions.
In addition, for Section 3 pertaining to the Flood Disaster Protection Act it may be necessary to attach an applicable FIRM Map when it is necessary to provide evidence that a project is not being locating within a Special Flood Hazard Area (SFHA). If a FIRM map is attached then it would be necessary to cite the appropriate year and panel number of the FIRM map. (See FEMA.gov for more information on FIRM maps).

If a project site is not mapped, then the best available information should be used to ascertain whether or not a project is located within a SFHA. In this instance it may be necessary to contact the Department of Natural Resources for this information.

I. 8 Step Process for Flood Plains/Wetlands

If a project has been determined to be located within a Special Flood Hazard Area (SFHA) as indicated on a Flood Insurance Rate Map (FIRM) or located in a wetland as determined by consultation with the Natural Resources Conservation Service and/or U. S. Army Corps of Engineers, then it will be necessary for the recipient to complete the 8 Step Process as required by 24 CFR 55.20. This process must be completed prior to finalizing the Statutory Checklist for CEST projects and prior to a FONSI for EA projects.

Complete the 8 Step Process Form and instructions. Complete the required publications including the Notice for Early Public Review and the Notice and Public Explanation.

For further information on the requirements of the 8 Step Process review 24 CFR 55.20 at the Electronic Code of Federal Regulations website [http://ecfr.gpoaccess.gov].

The 8 Step Process Form and instructions are found at Attachment 5. See also Sample Floodplain/Wetland notices at Attachment 5. Use the language as provided in the notices.

J. Tiered Review

A tiered review is a process in which the recipient completes a CEST or EA Project review, but has not identified any or all the sites where the project activities will be completed.

Within this two step process the recipient first completes their CEST or EA Project Packet by identifying and evaluating those issues that can be reviewed without having sites identified. For those issues that cannot be evaluated without having a site identified, then it would be proper to note that a Tier II evaluation will be conducted as sites are identified.
The second step would be for the recipient to complete a Site-Specific Tier II environmental review once sites are identified. The recipient would identify and evaluate those issues that were noted in the Statutory Checklist, the Environmental Assessment Checklist, and 58.6 Checklist that required further evaluation once a site had been identified.

For housing projects, this may include, but is not limited to, Air Quality, Contamination and Toxic Substances, Floodplain Management, Historic Preservation, Noise Control, and Flood Disaster Protection.

The Tier II review should follow the recommended format and will be part of the ERR that is retained in the recipient’s project files at a recipient’s office. This Tier II review must reference the CEST or EA Project packet that was completed previously and the ERR that was completed and received environmental clearance should be retained in a separate, master file, for the project.

The Tier II review should supplement the previous review.

Discussing the tiered review is most appropriate in the description of the project in the Determination of Level of Review Form, the Statutory Checklist, the Environmental Assessment Checklist, and 58.6 Checklist.

Many housing activities require the completion of a tiered review including purchase, rehabilitation, resale and owner occupied rehabilitation. In addition, if down payment assistance is provided, and the project also provides rehabilitation for the home that are assisted, then it would also be appropriate to complete a tiered review as the project would be considered CEST.

An additional public comment period (NOI-RROF), FONSI, RROF/Certification, or HUD Objection Period is not required for a site specific review after the recipient has already received environmental clearance.

For a Tier II review format example see Attachment 2.

For more information refer to 24 CFR 58.15 (Attachment 9).

K. Changes to the Original Project or Additional Funding (24 CFR 58.47)

In some instances the recipient may make changes to the activities in a project, change the project area, or receive additional funds for a project that has previously received environmental clearance.

In these instances it is necessary for the RE to re-evaluate its environmental findings.
The RE should re-evaluate its environmental findings when:

The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project; or,

There are new circumstances and environmental conditions that may affect the project or the environment, such as concealed or unexpected conditions discovered during implementation.

The purpose of the re-evaluation is to determine if the new circumstances still justify and support the environmental finding originally issued. If the original finding is still valid, the RE must affirm the original findings by completing the Certification of Continued Environmental Compliance Form and update its ERR. Under these circumstances, if a FONSI notice has already been published, no additional FONSI notice is required.

However, if the re-evaluation is the result of a change in the scope, scale, nature, magnitude and/or location of a project, or additional funds are being added to a project with previous environmental clearance, then the RE must submit a Certification of Continued Environmental Compliance (Attachment 6) with its request to the Department for amendment approval.

If the RE determines that the original finding is no longer valid, it must re-initiate an additional CEST or EA review process if its evaluation indicates potentially significant impacts.

Provide a description of all project activities including those activities funded by all sources. In addition, if additional funds are being received for a project that has previously received environmental clearance describe why the project can be classified as supplemental assistance as defined at 24 CFR 58.35(b)(7).

When a recipient is only completing a contract amendment in which no new activities are anticipated or no additional funds are being added to total amount of grant funds received, it is not necessary to complete the Certification of Continued Environmental Compliance.

See Attachment 6 to obtain an example of the Certification of Continued Environmental Compliance Form. Use the DED website to access the most current form.
Outline of Environmental Review Record (ERR) Items

The following items will be needed in a recipient’s ERR depending on the type of project the recipient is completing. Complete the appropriate Environmental Review Project Packet using one of the four packets contained in this Attachment.

Exempt Activities [24 CFR 58.34]

- Cover Sheet
- Determination of Level of Review
- Finding of Exempt Activity
- 58.6 Checklist

Categorical Exclusion Not Subject To (CENST) Activities [24 CFR 58.35(b)]

- Cover Sheet
- Determination of Level of Review
- Finding of CENST Activity
- 58.6 Checklist
- Supporting Documentation (if necessary)

Categorical Exclusion Subject To (CEST) Activities [24 CFR 58.35(a)]

- Cover Sheet
- Determination of Level of Review
- Statutory Checklist
- 58.6 Checklist
- Supporting Documentation
- 7-Day Public Notice NOI/RROF Publication
- RROF/Certification
- 8 Step Process (if necessary)

Environmental Assessment [24 CFR 58.36]

- Cover Sheet
- Determination of Level of Review
- HUD Environmental Assessment
- Supporting Documentation
- 15-Day Public Notice FONSI & NOI/RROF Publication
- RROF/Certification
- Supporting Documentation
- Phase I (if necessary)
- Phase II (if necessary)
- 8 Step Process (if necessary)
EXEMPT
PROJECT
PACKET
[24 CFR 58.34]
ENVIRONMENTAL REVIEW RECORD

GRANT NUMBER:___________________

PROJECT NAME:___________________
DETERMINATION OF LEVEL OF REVIEW

ERR GRANT#__________________________

Project Name:____________________________________ Program Year:____

Project Location:___________________________________

Project Description (Attach additional descriptive information, as appropriate to the project, including narrative, maps, photographs, site plans, budgets and other information.):

____________________________________________________________________

____________________________________________________________________

The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities,” and the following determination with respect to the project is made:

☐ Exempt from NEPA review requirements per 24 CFR 58.34(a)(____)

☐ Categorically Excluded NOT Subject to §58.5 authorities per 24 CFR 58.35(b)(____)

☐ Categorically Excluded SUBJECT to §58.5 authorities per 24 CFR 58.35(a)(____)
   (A Statutory Checklist for the §58.5 authorities is attached.)

☐ An Environmental Assessment (EA) is required to be performed. (An Environmental Assessment performed in accordance with subpart E of 24 CFR Part 58 is attached.)

☐ An Environmental Impact Statement (EIS) is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

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# FINDING OF EXEMPT ACTIVITY [24 CFR 58.34(a)]

**GRANTEE:** ________________________________  **GRANT #** __________________________

**DIRECTIONS:** Certain CDBG, HOME, and NAHTF funded activities, which do not have a physical impact, require a grantee, as defined at 24 CFR Part 58.2, to determine whether the proposed activity is Exempt from the National Environmental Policy Act of 1969 (NEPA), as amended, and not subject to the environmentally-related statutory authorities listed at 24 CFR Parts 58.5. This form provides a grantee with a format to make this determination. A description of the activity (or project) should be attached to this form and the documentation maintained in the Environmental Review Record (24 CFR Part 58.38). Note that the 24 CFR 58.6 requirements will also need to be completed. Consult HUD’s environmental regulation (24 CFR Part 58) as necessary.

**Check a single box** that best describes or fits the proposed activity. Submit the completed form to your Responsible Entity Certifying Officer for review.

- [ ] Environmental and other studies, resource identification and the development of plans and strategies [58.34(a)(1)].
- [ ] Information and financial services [58.34(a)(2)].
- [ ] Administrative and management activities [58.34(a)(3)].
- [ ] 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 recreational needs [58.34(a)(4)].
- [ ] Inspections and testing of properties for hazards or defects [58.34(a)(5)].
- [ ] Purchase of insurance [58.34(a)(6)].
- [ ] Purchase of tools [58.34(a)(7)].
- [ ] Engineering or design costs [58.34(a)(8)].
- [ ] Technical assistance and training [58.34(a)(9)].
- [ ] 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 threats to public safety including those resulting from physical deterioration [58.34(a)(10)].
- [ ] Payment of principal or interest on loans made or obligations guaranteed by HUD [58.34(a)(11)].
- [ ] Any of the categorical exclusions listed in §58.35(a) provided there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5 [58.34(a)(12)].

**PROJECT DESCRIPTION:** Provide a description of all project activities including those activities funded by sources other than CDBG, HOME, or NAHTF: (Attach additional pages as necessary.)

In accordance with the provisions of 24 CFR 58.34(a), the grantee has determined that the subject CDBG, HOME, or NAHTF-assisted activity (or program) explained above is Exempt from the National Environmental Policy Act of 1969 (NEPA), as amended.

**DETERMINATION BY (PREPARER)**

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**RESPONSIBLE ENTITY CERTIFYING OFFICER**

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# 24 CFR §58.6 – OTHER REQUIREMENTS

**Use this worksheet for projects that are EXEMPT, CATEGORICALLY EXCLUDED SUBJECT TO (CEST), and CATEGORICALLY EXCLUDED NOT SUBJECT TO (CENST) Related Federal Statutes and Authorities.**

This 58.6 Form is a component of the Environmental Review Record (ERR) [§58.38]. Supplement the ERR, as appropriate, with photographs, site plans, maps, narrative and other information that describe the project.

## 1. AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES NOTIFICATION [24 CFR Part 51.303(a)(3)]

Does the project involve the sale or acquisition of property located within a Civil Airport Runway Clear Zone or a Military Airfield Clear Zone?

- [ ] No. Cite or attach Source Documentation: ____________________________________________________________ [Project complies with 24 CFR 51.303(a)(3).]

- [ ] Yes. Notice must be provided to the buyer. The notice must advise the buyer that the property is in a Runway Clear Zone or Clear Zone, what the implications of such a location are, 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, and a copy of the signed notice must be maintained in the ERR.

## 2. COASTAL BARRIERS RESOURCES ACT [Coastal Barrier Improvement Act of 1990 (16 USC 3501)]

Is the project located in a coastal barrier resource area?

- [x] No. Cite or attach Source Documentation: No CBRA’s in Nebraska according to http://www.fema.gov/nfip/cobra.shtml [Proceed with project.]

- [ ] Yes. Federal assistance may not be used in such an area.

## 3. FLOOD DISASTER PROTECTION ACT [Flood Disaster Protection Act of 1973, as amended (42 USC 4001-4128)]

Does the project involve acquisition, construction, or rehabilitation of structures located in a FEMA-identified Special Flood Hazard Area (SFHA)?

- [ ] No. Cite or attach Source Documentation: ____________________________________________________________ [Proceed with project.]

- [ ] Yes. Cite or attach Source Documentation: ____________________________________________________________ [Proceed with project.]

Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

- [ ] Yes. **Flood Insurance under the National Flood Insurance Program must be obtained.** If HUD assistance is provided as a grant, insurance must be maintained for the economic life of the project and in the amount of the total project cost (or up to the maximum allowable coverage, whichever is less). If HUD assistance is provided as a loan, insurance must be maintained for the term of the loan and in the amount of the loan (or up to the maximum allowable coverage, whichever is less). A copy of the flood insurance policy declaration must be kept on file in the ERR.

- [ ] No. Federal assistance may not be used in the Special Flood Hazard Area.

---

**Preparer Name**  
**Preparer Signature**  
**Date**

**RE Certifying Officer Name**  
**RE Certifying Officer Signature**  
**Date**

---

**HOME Administration Manual**  
**Page 31 of 108**  
**January 2016**
CENST
PROJECT
PACKET

[24 CFR 58.35(b)]
ENVIRONMENTAL REVIEW RECORD

GRANT NUMBER:___________________

PROJECT NAME:___________________
DETERMINATION OF LEVEL OF REVIEW

ERR GRANT# ____________________________

Project Name: ____________________________ Program Year: ______

Project Location: ____________________________

Project Description (Attach additional descriptive information, as appropriate to the project, including narrative, maps, photographs, site plans, budgets and other information.):

________________________________________________________________________

________________________________________________________________________

The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities,” and the following determination with respect to the project is made:

☐ Exempt from NEPA review requirements per 24 CFR 58.34(a)(____)

☐ Categorically Excluded NOT Subject to §58.5 authorities per 24 CFR 58.35(b)(____)

☐ Categorically Excluded SUBJECT to §58.5 authorities per 24 CFR 58.35(a)(____)

(A Statutory Checklist for the §58.5 authorities is attached.)

☐ An Environmental Assessment (EA) is required to be performed. (An Environmental Assessment performed in accordance with subpart E of 24 CFR Part 58 is attached.)

☐ An Environmental Impact Statement (EIS) is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

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# FINDING OF CATEGORICAL EXCLUSION, NOT SUBJECT TO RELATED Federal Statutes and AUTHORITIES [24 CFR 58.35(B)]

**GRANTEE:** __________________________________________  **GRANT #** __________________________

**DIRECTIONS:** Certain CDBG, HOME, and NAHTF funded activities, which do not have a physical impact, require a grantee, as defined at 24 CFR Part 58.2, to determine whether the proposed activity is Categorically Excluded from the National Environmental Policy Act of 1969 (NEPA), as amended, and not subject to the environmentally-related statutory authorities listed at 24 CFR Parts 58.5. This form provides a grantee with a format to make this determination. A description of the activity (or project) should be attached to this form and the documentation maintained in the Environmental Review Record (24 CFR Part 58.38). Note that the 24 CFR 58.6 requirements will also need to be completed. Consult HUD’s environmental regulation (24 CFR Part 58) as necessary.

**Check a single box** that best describes or fits the proposed activity. Submit the completed form to your Responsible Entity Certifying Officer for review.

- [ ] Tenant-based rental assistance [58.35(b)(1)].
- [ ] Supportive services [58.35(b)(2)], including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, and short-term payments for rent/mortgage/utility costs.
- [ ] Operating costs [58.35(b)(3)], including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs.
- [ ] Economic development activities [58.35(b)(4)], including, but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations.
- [ ] Activities to assist homeownership of existing or new dwelling units not assisted with Federal funds [58.35(b)(5)], including closing costs and down payment assistance to home buyers, interest buy-downs, and similar activities that result in the transfer of title to a property.
- [ ] Affordable housing predevelopment costs [58.35(b)(6)], including 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.
- [ ] Approval of supplemental assistance [58.35(b)(7)], (including insurance or guarantee) to a project previously approved by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47.

**PROJECT DESCRIPTION:** Provide a description of all project activities including those activities funded by sources other than CDBG, HOME, or NAHTF: (Attach additional pages as necessary.)

In accordance with the provisions of 24 CFR 58.35(b), the grantee has determined that the subject CDBG, HOME, or NAHTF-assisted activity (or program) explained above is Categorically Excluded from the National Environmental Policy Act of 1969 (NEPA), as amended, and Not Subject to the Related Part 58.5 Statutory Authorities.

**DETERMINATION BY (PREPARER)**

<table>
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<tr>
<th>PRINT NAME</th>
<th>SIGNATURE</th>
<th>DATE</th>
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</table>

**RESPONSIBLE ENTITY CERTIFYING OFFICER**

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<tr>
<th>PRINT NAME</th>
<th>SIGNATURE</th>
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</table>
### 24 CFR §58.6 – OTHER REQUIREMENTS

Use this worksheet for projects that are EXEMPT, CATEGORICALLY EXCLUDED SUBJECT TO (CEST), and CATEGORICALLY EXCLUDED NOT SUBJECT TO (CENST) Related Federal Statutes and Authorities.

This 58.6 Form is a component of the Environmental Review Record (ERR) [§58.38]. Supplement the ERR, as appropriate, with photographs, site plans, maps, narrative and other information that describe the project.

#### 1. AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES NOTIFICATION [24 CFR Part 51.303(a)(3)]

Does the project involve the sale or acquisition of property located within a Civil Airport Runway Clear Zone or a Military Airfield Clear Zone?

- [ ] No. Cite or attach Source Documentation:

- [ ] Yes. Notice must be provided to the buyer. The notice must advise the buyer that the property is in a Runway Clear Zone or Clear Zone, what the implications of such a location are, 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, and a copy of the signed notice must be maintained in the ERR.

#### 2. COASTAL BARRIERS RESOURCES ACT [Coastal Barrier Improvement Act of 1990 (16 USC 3501)]

Is the project located in a coastal barrier resource area?

- [x] No. Cite or attach Source Documentation: No CBRA’s in Nebraska according to http://www.fema.gov/nfip/cobra.shtm

- [ ] Yes. Federal assistance may not be used in such an area.

#### 3. FLOOD DISASTER PROTECTION ACT [Flood Disaster Protection Act of 1973, as amended (42 USC 4001-4128)]

Does the project involve acquisition, construction, or rehabilitation of structures located in a FEMA-identified Special Flood Hazard Area (SFHA)?

- [ ] No. Cite or attach Source Documentation:

- [ ] Yes. Cite or attach Source Documentation: Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

- [ ] Yes. Flood insurance under the National Flood Insurance Program must be obtained. If HUD assistance is provided as a grant, insurance must be maintained for the economic life of the project and in the amount of the total project cost (or up to the maximum allowable coverage, whichever is less). If HUD assistance is provided as a loan, insurance must be maintained for the term of the loan and in the amount of the loan (or up to the maximum allowable coverage, whichever is less). A copy of the flood insurance policy declaration must be kept on file in the ERR.

- [ ] No. Federal assistance may not be used in the Special Flood Hazard Area.

---

**Preparer Name**

**Preparer Signature**

**Date**

**RE Certifying Officer Name**

**RE Certifying Officer Signature**

**Date**

HOME Administration Manual

Page 36 of 108

January 2016
CEST

PROJECT

PACKET

[24 CFR 58.35(a)]
ENVIRONMENTAL REVIEW RECORD

GRANT NUMBER:___________________

PROJECT NAME:___________________
DETERMINATION OF LEVEL OF REVIEW

ERR GRANT# ____________________________

Project Name: ________________________________ Program Year: _____

Project Location: ____________________________________________

Project Description (Attach additional descriptive information, as appropriate to the project, including narrative, maps, photographs, site plans, budgets and other information.):

________________________________________________________________________

________________________________________________________________________

The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities,” and the following determination with respect to the project is made:

☐ Exempt from NEPA review requirements per 24 CFR 58.34(a)(___)

☐ Categorically Excluded NOT Subject to §58.5 authorities per 24 CFR 58.35(b)(___)

☐ Categorically Excluded SUBJECT to §58.5 authorities per 24 CFR 58.35(a)(___)
(A Statutory Checklist for the §58.5 authorities is attached.)

☐ An Environmental Assessment (EA) is required to be performed. (An Environmental Assessment performed in accordance with subpart E of 24 CFR Part 58 is attached.)

☐ An Environmental Impact Statement (EIS) is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

<table>
<thead>
<tr>
<th>Preparer Name</th>
<th>Signature</th>
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<tbody>
<tr>
<td>Title</td>
<td>Date</td>
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<tr>
<th>Responsible Entity Certifying Officer</th>
<th>Signature</th>
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<tbody>
<tr>
<td>Title</td>
<td>Date</td>
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</tbody>
</table>
STATUTORY CHECKLIST
Use this worksheet only for projects that are CATEGORICALLY EXCLUDED SUBJECT TO (CEST) Related Federal Statutes and Authorities [24 CFR §58.35(a)]

GRANTEE: ______________________________  GRANT# ______________________________

A “Determination of Level of Review” form should be provided as a cover to this checklist.

This checklist is a component of the Environmental Review Record (ERR) [§58.38]. In addition the “Requirements listed at 24 CFR §58.6” form must also be completed. Supplement the ERR, as appropriate, with photographs, site plans, maps, narrative and other information that describe the project.

24 CFR §58.5 – NEPA-Related Federal Statutes and Authorities

DIRECTIONS – For each authority, check either Box “A” or “B” under “Status.”

“A box” The project is in compliance, either because: (1) the nature of the project does not implicate the authority under consideration, or (2) supporting information documents that project compliance has been achieved. In either case, information must be provided as to WHY the authority is not implicated, or HOW compliance is met; OR

“B box” The project requires an additional compliance step or action, including, but not limited to, consultation with or approval from an oversight agency, performance of a study or analysis, completion of remediation or mitigation measure, or obtaining of license or permit.

IMPORTANT: Compliance documentation consists of verifiable source documents and/or relevant base data. Appropriate documentation must be provided for each law or authority. Documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and studies that are not otherwise generally available for public review shall be included in the ERR. Refer to HUD guidance for more information.

<table>
<thead>
<tr>
<th>Statute, Authority, Executive Order, Regulation, or Policy cited at 24 CFR §58.5</th>
<th>STATUS A</th>
<th>B</th>
<th>Compliance Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Air Quality [Clean Air Act sections 176(c) &amp; (d), and 40 CFR 6, 51, 93]</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>2. Airport Hazards (Clear Zones and Accident Potential Zones) [24 CFR 51D]</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>3. Coastal Zone Management [Coastal Zone Management Act sections 307(c) &amp; (d)]</td>
<td>☑</td>
<td>☐</td>
<td>The project in Nebraska is not located in a state having a Coastal Zone Management (CZM) Program as provided by the National Oceanic &amp; Atmospheric Administration. (<a href="http://coastalmanagement.noaa.gov/mystate/welcome.html">http://coastalmanagement.noaa.gov/mystate/welcome.html</a>.)</td>
</tr>
<tr>
<td>4. Contamination and Toxic Substances</td>
<td>☐</td>
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<td>-----------------------------------------</td>
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<td></td>
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<tr>
<td>[24 CFR 58.5(i)(2)]</td>
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<table>
<thead>
<tr>
<th>5. Endangered Species</th>
<th>☐</th>
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<tbody>
<tr>
<td>[50 CFR 402]</td>
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<tr>
<th>6. Environmental Justice</th>
<th>☐</th>
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<tr>
<td>[Executive Order 12898]</td>
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<tr>
<th>7. Explosive and Flammable Operations</th>
<th>☐</th>
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<tbody>
<tr>
<td>[24 CFR 51C]</td>
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<tr>
<th>8. Farmland Protection</th>
<th>☐</th>
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<tbody>
<tr>
<td>[7 CFR 658]</td>
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<tr>
<th>9. Floodplain Management</th>
<th>☐</th>
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<tbody>
<tr>
<td>[24 CFR 55, Executive Order 11988]</td>
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<tr>
<th>10. Historic Preservation</th>
<th>☐</th>
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<tr>
<td>[36 CFR 800]</td>
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<tr>
<th>11. Noise Control</th>
<th>☐</th>
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<tbody>
<tr>
<td>[24 CFR 51B]</td>
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<tr>
<th>12. Water Quality (Sole Source Acquifers)</th>
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<tbody>
<tr>
<td>[40 CFR 149]</td>
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<tr>
<th>13. Wetland Protection</th>
<th>☐</th>
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<tbody>
<tr>
<td>[24 CFR 55, Executive Order 11990]</td>
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<tr>
<th>14. Wild and Scenic Rivers</th>
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<tbody>
<tr>
<td>[36 CFR 297]</td>
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**DETERMINATION:**

☐ **Box “A” has been checked for all authorities.** The project can convert to Exempt, per §58.34(a)(12), since the project does not require any further compliance measure (e.g. consultation, mitigation, permit, or approval) with respect to any law or authority cited at §58.5. Complete Finding of Exempt Activity and document in writing per §58.34(a)(12) & (b); OR

☐ **Box “B” has been checked for one or more authorities.** The project cannot convert to Exempt since one or more authorities require compliance, including but not limited to consultation with or approval from an oversight agency, performance of a study or analysis, completion of remediation or mitigation measure, or obtaining of license or permit. Complete pertinent compliance requirement(s), publish NOI/RROF, request release of funds (HUD-7015.15), and obtain HUD’s Authority to Use Grant Funds (HUD-7015.16) per §§58.70 & 58.71 before committing funds: OR

☐ **The unusual circumstances of this project may result in a significant environmental impact.** The project requires preparation of an Environmental Assessment (EA). Prepare the EA according to 24 CFR Part 58 Subpart E.

---

Preparer Name ___________________________ Preparer Signature ___________________________ Date ___________________________

---

RE Certifying Officer Name ___________________________ RE Certifying Officer Signature ___________________________ Date ___________________________
24 CFR §58.6 – OTHER REQUIREMENTS

Use this worksheet for projects that are EXEMPT, CATEGORICALLY EXCLUDED SUBJECT TO (CEST), and CATEGORICALLY EXCLUDED NOT SUBJECT TO (CENST) Related Federal Statutes and Authorities.

This 58.6 Form is a component of the Environmental Review Record (ERR) [§58.38]. Supplement the ERR, as appropriate, with photographs, site plans, maps, narrative and other information that describe the project.

1. AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES NOTIFICATION [24 CFR Part 51.303(a)(3)]
Does the project involve the sale or acquisition of property located within a Civil Airport Runway Clear Zone or a Military Airfield Clear Zone?

☐ No. Cite or attach Source Documentation:________________________________________________________  [Project complies with 24 CFR 51.303(a)(3).]

☐ Yes. Notice must be provided to the buyer. The notice must advise the buyer that the property is in a Runway Clear Zone or Clear Zone, what the implications of such a location are, 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, and a copy of the signed notice must be maintained in the ERR.

2. COASTAL BARRIERS RESOURCES ACT [Coastal Barrier Improvement Act of 1990 (16 USC 3501)]
Is the project located in a coastal barrier resource area?

☒ No. Cite or attach Source Documentation: No CBRA’s in Nebraska according to http://www.fema.gov/nfip/cobra.shtm __________________________________________ [Proceed with project.]

☐ Yes. Federal assistance may not be used in such an area.

3. FLOOD DISASTER PROTECTION ACT [Flood Disaster Protection Act of 1973, as amended (42 USC 4001-4128)]
Does the project involve acquisition, construction, or rehabilitation of structures located in a FEMA-identified Special Flood Hazard Area (SFHA)?

☐ No. Cite or attach Source Documentation:________________________________________________________ [Proceed with project.]

☐ Yes. Cite or attach Source Documentation:________________________________________________________ [Proceed with project.]

Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

☐ Yes. Flood Insurance under the National Flood Insurance Program must be obtained. If HUD assistance is provided as a grant, insurance must be maintained for the economic life of the project and in the amount of the total project cost (or up to the maximum allowable coverage, whichever is less). If HUD assistance is provided as a loan, insurance must be maintained for the term of the loan and in the amount of the loan (or up to the maximum allowable coverage, whichever is less). A copy of the flood insurance policy declaration must be kept on file in the ERR.

☐ No. Federal assistance may not be used in the Special Flood Hazard Area.

Preparer Name _________________________________ Preparer Signature _________________________________ Date _________________________________

RE Certifying Officer Name _________________________________ RE Certifying Officer Signature _________________________________ Date _________________________________

ENVIRONMENTAL ASSESSMENT (EA)

PROJECT PACKET

[24 CFR 58.36]
ENVIRONMENTAL REVIEW RECORD

GRANT NUMBER:___________________

PROJECT NAME:___________________
DETERMINATION OF LEVEL OF REVIEW

ERR GRANT#:____________________________________________________

Project Name:____________________________________________________ Program Year:_____

Project Location:________________________________________________________________________

Project Description (Attach additional descriptive information, as appropriate to the project, including narrative, maps, photographs, site plans, budgets and other information.):

____________________________________________________________________________________

The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities,” and the following determination with respect to the project is made:

☐ Exempt from NEPA review requirements per 24 CFR 58.34(a)(____)

☐ Categorically Excluded NOT Subject to §58.5 authorities per 24 CFR 58.35(b)(____)

☐ Categorically Excluded SUBJECT to §58.5 authorities per 24 CFR 58.35(a)(____)

(A Statutory Checklist for the §58.5 authorities is attached.)

☐ An Environmental Assessment (EA) is required to be performed. (An Environmental Assessment performed in accordance with subpart E of 24 CFR Part 58 is attached.)

☐ An Environmental Impact Statement (EIS) is required to be performed.

The ERR (see §58.38) must contain all the environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project. Include additional information including checklists, studies, analyses and documentation as appropriate.

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<tr>
<th>Preparer Name</th>
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ENVIRONMENTAL ASSESSMENT
for HUD-funded Projects

[HUD recommended format per 24 CFR 58.40]

Project Name:______________________________________________________________

Responsible Entity:___________________________________________________________

Certifying Officer Name & Title:__________________________________________________

Environmental Review Record (ERR) File #:_________________________________________
ENVIRONMENTAL ASSESSMENT

Project Location:__________________________________________________________

Estimated Total Project Cost (all sources):____________________________________

Amount of HUD Assistance:______________________ HUD Grant Program:__________

Grant Recipient (if different from Responsible Entity):___________________________
[24 CFR 58.2(a)(5)]

Recipient Address & Phone:__________________________________________________

RE Project Contact Name & Phone:___________________________________________

Conditions for Approval: (List all mitigation and project modification measures adopted by the Responsible Entity to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts and other relevant documents as required.) [24 CFR 58.40(d), 40 CFR 1505.2(c)]

FINDING: [24 CFR 58.40(g)]

☐ Finding of No Significant Impact (FONSI)
   (The project will not result in a significant impact on the quality of the human environment.)

☐ Finding of Significant impact
   (The project may significantly affect the quality of the human environment.)

PREPARER SIGNATURE:_______________________________________________________ DATE:___________

PREPARER NAME & TITLE:____________________________________________________

PREPARER’S AGENCY (If Different from RE):_____________________________________

RE CERTIFYING OFFICER SIGNATURE:_______________________________________ DATE:___________
**Purpose of the Project:** [“Statement of Purpose and Need for the Proposal” -40 CFR 1508.9(b)]

**Description of the Project:** Include all contemplated actions that are logically either geographically or functionally a composite part of the project, regardless of the source of funding. [24 CFR 58.32, 40 CFR 1508.25] As appropriate, attach maps, site plans, renderings, photographs, budgets, and other descriptive information.

**Existing Conditions and Trends:** Describe the existing conditions of the project area and its surroundings, and the trends likely to continue in the absence of the project. [24 CFR 58.40(a)]

---

**PART I: STATUTORY CHECKLIST** [24 CFR 58.5]

**DIRECTIONS** – For each authority, check either Box “A” or “B” under “Status.”

**“A box”** The project is in compliance, either because: (1) the nature of the project does not implicate the authority under consideration, or (2) supporting information documents that project compliance has been achieved. In either case, information must be provided as to WHY the authority is not implicated, or HOW compliance is met; OR

**“B box”** The project requires an additional compliance step or action, including, but not limited to, consultation with or approval from an oversight agency, performance of a study or analysis, completion of remediation or mitigation measure, or obtaining of license or permit.

**IMPORTANT:** Compliance documentation consists of verifiable source documents and/or relevant base data. Appropriate documentation must be provided for each law or authority. Documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and studies that are not otherwise generally available for public review shall be included in the ERR. Refer to HUD guidance for more information.

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<thead>
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<th>STATUS</th>
<th>Compliance Documentation</th>
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<tbody>
<tr>
<td><strong>1. Air Quality</strong> [Clean Air Act sections 176(c) &amp; (d), and 40 CFR 6, 51, 93]</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
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<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3. Coastal Zone Management [Coastal Zone Management Act sections 307(c) &amp; (d)]</td>
<td>☒</td>
<td>No coastal zone management programs exist in the States of HUD Region VII, as established by Nat’l Oceanic &amp; Atmospheric Administration, Office of Ocean and Coastal Resource Management. (<a href="http://www.ocrm.nos.noaa.gov/czm/czmsitelist.html">http://www.ocrm.nos.noaa.gov/czm/czmsitelist.html</a>)</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>4. Contamination and Toxic Substances [24 CFR 58.5(i)(2)]</td>
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<td>☐</td>
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<tr>
<td>5. Endangered Species [50 CFR 402]</td>
<td>☐</td>
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<td>8. Farmland Protection [7 CFR 658]</td>
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<td>12. Water Quality (Sole Source Aquifers) [40 CFR 149]</td>
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<td>☐</td>
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<tr>
<td>14. Wild and Scenic Rivers [36 CFR 297]</td>
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</tbody>
</table>
PART II: ENVIRONMENTAL ASSESSMENT CHECKLIST
[Environmental Review Guide HUD CPD-782, 24 CFR 58.40; 40 CFR 1508.8 & 1508.27]

For each impact category, evaluate the significance of the effects of the proposal on the character, features, and resources of the project area. Enter relevant base data and credible, verifiable source documentation to support the finding. Note names, dates of contact, telephone numbers, and page references. Then enter the appropriate determination of impact: None Anticipated, Potentially Adverse, or Potentially Beneficial. Attach additional material as appropriate. Note conditions or mitigation measures required.

<table>
<thead>
<tr>
<th>Impact Categories</th>
<th>Anticipated or Potential Impact</th>
<th>Source Documentation and Mitigation or Modification Required</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Adverse</td>
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<tr>
<td></td>
<td>Beneficial</td>
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<tr>
<td></td>
<td>No Impact</td>
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</table>

**Land Development**

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<tr>
<th>Impact Categories</th>
<th>Anticipated or Potential Impact</th>
<th>Source Documentation and Mitigation or Modification Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conformance with Comprehensive and Neighborhood Plans</td>
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<tr>
<td>Land Use Compatibility and Conformance with Zoning</td>
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<tr>
<td>Urban Design-Visual Quality and Scale</td>
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<tr>
<td>Slope</td>
<td></td>
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<tr>
<td>Erosion</td>
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<tr>
<td>Soil Suitability</td>
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<tr>
<td>Hazards and Nuisances, Including Site Safety</td>
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<tr>
<td><strong>Noise-Effects of Ambient Noise on Project &amp; Contribution to Community Noise Levels</strong></td>
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<tr>
<td><strong>Air Quality-Effects of Ambient Air Quality on Project &amp; Contribution to Community Pollution Levels</strong></td>
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<tr>
<td><strong>Energy Conservation</strong></td>
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</table>

| **Socioeconomic Factors** |  |
| **Demographic Character Changes** |  |
| **Displacement** |  |
| **Employment and Income Patterns** |  |

<p>| <strong>Community Facilities and Services</strong> |  |
| <strong>Educational Facilities</strong> |  |
| <strong>Commercial Facilities</strong> |  |
| <strong>Health Care</strong> |  |
| <strong>Social Services</strong> |  |
| <strong>Solid Waste</strong> |  |
| <strong>Waste Water</strong> |  |
| <strong>Storm Water</strong> |  |</p>
<table>
<thead>
<tr>
<th>Water Supply</th>
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<tbody>
<tr>
<td>Public Safety</td>
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<td>• Police</td>
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<td>• Fire</td>
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<td>• Emergency Medical</td>
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<tr>
<td>Open Space &amp; Recreation</td>
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<td>• Open Space</td>
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<td>• Recreation</td>
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<td>• Cultural Facilities</td>
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<tr>
<td>Transportation</td>
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</tbody>
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**Natural Features**

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<tr>
<th>Water Resources</th>
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</thead>
<tbody>
<tr>
<td>Surface Water</td>
<td></td>
<td></td>
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<tr>
<td>Unique Natural Features &amp; Agricultural Lands</td>
<td></td>
<td></td>
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<tr>
<td>Vegetation and Wildlife</td>
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</tr>
</tbody>
</table>
PART III: 58.6 CHECKLIST

1. AIRPORT RUNWAY CLEAR ZONES AND CLEAR ZONES NOTIFICATION [24 CFR Part 51.303(a)(3)]

Does the project involve the sale or acquisition of property located within a Civil Airport Runway Clear Zone or a Military Airfield Clear Zone?

☐ No. Cite or attach Source Documentation:_________________________________________________________ [Project complies with 24 CFR 51.303(a)(3).]

☐ Yes. Notice must be provided to the buyer. The notice must advise the buyer that the property is in a Runway Clear Zone or Clear Zone, what the implications of such a location are, 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, and a copy of the signed notice must be maintained in the ERR.

2. COASTAL BARRIERS RESOURCES ACT [Coastal Barrier Improvement Act of 1990 (16 USC 3501)]

Is the project located in a coastal barrier resource area?

☒ No. Cite or attach Source Documentation: No CBRA's in Nebraska according to http://www.fema.gov/nfip/cobra.shtm_________________________________________________________ [Proceed with project.]

☐ Yes. Federal assistance may not be used in such an area.

3. FLOOD DISASTER PROTECTION ACT [Flood Disaster Protection Act of 1973, as amended (42 USC 4001-4128)]

Does the project involve acquisition, construction, or rehabilitation of structures located in a FEMA-identified Special Flood Hazard Area (SFHA)?

☐ No. Cite or attach Source Documentation:_________________________________________________________ [Proceed with project.]

☐ Yes. Cite or attach Source Documentation:_________________________________________________________ [Proceed with project.]

Is the community participating in the National Insurance Program (or has less than one year passed since FEMA notification of Special Flood Hazards)?

☐ Yes. Flood Insurance under the National Flood Insurance Program must be obtained. If HUD assistance is provided as a grant, insurance must be maintained for the economic life of the project and in the amount of the total project cost (or up to the maximum allowable coverage, whichever is less). If HUD assistance is provided as a loan, insurance must be maintained for the term of the loan and in the amount of the loan (or up to the maximum allowable coverage, whichever is less). A copy of the flood insurance policy declaration must be kept on file in the ERR.

☐ No. Federal assistance may not be used in the Special Flood Hazard Area.

Summary of Findings and Conclusions
**Project Alternatives Considered:** [24 CFR 58.40(e), 40 CFR 1508.9] (As appropriate, identify other reasonable courses of action that were considered and not selected, such as other sites, design modifications, or other uses of the subject site. Describe the benefits and adverse impacts to the human environment for each alternative and the reasons for rejecting it. Include consideration of the No Action Alternative, that is, not implementing the preferred alternative.)

**Mitigation and Project Modification Measures Recommended:** [24 CFR 58.40(d), 40 CFR 1508.20] (Recommend feasible ways in which the proposal or its external factors should be modified in order to minimize adverse environmental impacts and restore or enhance environmental quality.)

**Additional Studies Performed:** (List the reports, studies, or analyses performed for this assessment, and attach studies or summaries.)

**List of Agencies and Persons Consulted:** [40 CFR 1508.9(b)] (List agencies and persons consulted for this assessment.)
Tier II Review

The following information is an example of the recommended format that should be used for a project that requires a tiered review. A tiered review is appropriate for CEST or EA projects where the location of all activities being completed in the project have not been identified.

The Tier II review serves to supplement an ERR for a CEST or EA environmental review that has been previously completed. A separate Tier II review should be completed for each newly identified project site and must be retained by the recipient in separate site-specific project files for the purposes of future monitoring by DED.

Only the items that have been previously identified in the Statutory Checklist, Environmental Review Checklist, or 58.6 Checklist that were noted to require further evaluation or consultation should be discussed in the Tier II review.

TIER II Format Example

The following is an example of a Tier II review for an owner occupied housing rehabilitation project. Projects that are not owner occupied housing rehabilitation may require the evaluation of different items than those discussed in the example. The recipient should review the ERR for the project to determine which items need to be evaluated in the Tier II review.

Site Specific Environmental Review (Tier II)

**DIRECTIONS** – Evaluate each authority that was marked as Status “B” on the Statutory Checklist, marked as requiring further evaluation on the Environmental Checklist of an EA, or requiring further consultation as noted in the 58.6 Checklist.

The following items require an additional compliance step or action, including, but not limited to, consultation with or approval from an oversight agency, performance of a study or analysis, completion of remediation or mitigation measure, or obtaining of license or permit.

**IMPORTANT:** Compliance documentation consists of verifiable source documents and/or relevant base data. Appropriate documentation must be provided for each law or authority. Documentation should include aerial maps, FIRM maps, letters sent to agencies, responses to agencies, agency websites referenced, and any other appropriate documentation.

Documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and studies that are not otherwise generally available for public review shall be included in the ERR. Refer to HUD guidance for more information.
### Description of Activities:
The project is rehabilitation of a __________________________. Scope of work includes:______________________________. The total estimated rehab cost is projected at $________________________. An aerial map is attached showing the property's parcel, building footprint, and surrounding land uses and features.

### Compliance Documentation—Part 58.5 Laws and Authorities

<table>
<thead>
<tr>
<th>Compliance Documentation</th>
<th>Historic Preservation [36 CFR 800]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The house was built in______________. A photo of the house along with an aerial map of the residence was sent to the SHPO. SHPO noted____________________.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Compliance Documentation</th>
<th>Floodplain Management [24 CFR 55]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rehab work does not exceed 50% of the pre-rehab value of the house, therefore, the floodplain management regulation does not apply.</td>
</tr>
<tr>
<td></td>
<td>Or</td>
</tr>
<tr>
<td></td>
<td>Rehabilitation work exceeds 50% of the pre-rehab value of the house, therefore the floodplain management regulation applies. However, as evidenced by FEMA FIRM map ___________ [Map #, Panel #] or other source documentation, site is not located in a Special Flood Hazard Area (SFHA). A FIRM is attached showing project site marked on the map.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Compliance Documentation</th>
<th>Asbestos [40 CFR 61, Subpart M, Section 61.145]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The house is a single family residential with four or fewer dwelling units and is therefore excluded from the requirements of 40 CFR 61.145. However, because it is anticipated that asbestos containing material could be present, the following actions will be taken to mitigate any impact of the rehabilitation. These include:________________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Compliance Documentation</th>
<th>Lead Based Paint</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The lead based paint activities that will be completed include:________________. The appropriate attenuation or mitigation found applicable to this project will be applied.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Compliance Documentation</th>
<th>Contamination and Toxic Substances [24 CFR 58.5(i)]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Site review and review of surroundings conducted on <em><strong><strong><strong><strong><strong><strong><strong>. Reviewer found</strong></strong></strong></strong></strong></strong></strong></em>__________. Site photographs attached and letter to and from [appropriate authority] is attached. Property is located within an established residential neighborhood, well away from commercial or industrial properties. [Appropriate Authority] was contact on ________________ and there findings included:_________________________.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Compliance Documentation</th>
<th>Noise Control [24 CFR 51]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The house is located within ______ feet of a major roadway, ______ feet of a railway, and ______ feet of an airport. The rehab project will provide a comprehensive scope of weatherization improvements including:_________________________.</td>
</tr>
</tbody>
</table>

### Compliance Documentation—Part 58.6 Checklist Requirements

<table>
<thead>
<tr>
<th>Compliance Documentation</th>
<th>Flood Insurance [24 CFR 58.6]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As noted above under the Floodplain Management section, the project is not located in a SFHA, per [FIRM Map or other source documentation], therefore flood insurance is not required.</td>
</tr>
</tbody>
</table>

A site specific environmental review has been performed at the above location in compliance with HUD environmental review regulations (24 CFR 58) and related laws, authorities, and requirements. The review has been performed prior to the commitment of HUD or non-HUD funds, as required by 24 CFR 58.22(a) and (c).

This review shall be retained as a component of the project's ERR. Consult the Tier I Review listed above for further information as to compliance with other laws and authorities for this HUD-assisted or NAHTF-assisted project or program.

Preparer's Signature __________________________ Date __________

Preparer’s Name/Title ____________________________________________________________
SAMPLE NOI/RROF

The language below is HUD’s recommended wording of the Notice of Intent to Request a Release of Funds. This Notice is used to request environmental clearance for a project that is classified as a CEST (Categorical Exclusion Subject To) 24 CFR 58.5 as defined at 24 CFR Part 58.35(a) or for projects for which a Notice of Finding of No Significant Impact (FONSI) was previously issued. Words in **bold type** are required language. Words in *italics* are to be replaced by language appropriate to the particular project and Responsible Entity.

---

**NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS**

**Date of Publication:** (date published)

**Name of Responsible Entity (RE):** (municipality, county or DED)

**Address:**

City, State, Zip Code:

**Contact:** (Name and Phone Number of RE Certifying Officer)

On or after at least one day after the end of the comment period the name of the RE will submit a request to the Nebraska Department of Economic Development (DED) or Department of Housing and Urban Development (HUD) for the release of HOME Investment Partnership funds under **Title II** of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, or Community Development Block Grant funds under **Title I** of the Housing and Community Development Act of 1974, as amended, to undertake the following project:

- **Project Title:** *project name*
- **Purpose:** *nature/scope of project*
- **Location:** *project location*
- **Estimated Cost:** *both estimated HUD funding & total project cost, as applicable*

The activities proposed alternative #1: are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act (NEPA) requirements or alternative #2: comprise a project for which a Finding of No Significant Impact on the environment was [published/posted] on [date of Finding publication/posting]. An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review and may be examined or copied weekdays __A.M to __P.M.

**PUBLIC COMMENTS**

Any individual, group, or agency may submit written comments on the ERR to the RE designated office responsible for receiving and responding to comments. All comments received by if notice is published: notice date plus seven days; if notice is mailed and posted: posting date plus ten days will be considered by the name of RE prior to submission of a request for release of funds.
RELEASE OF FUNDS

The name of RE certifies to DED or HUD that name of Certifying Officer in his/her capacity as CRD Director or Official Title for Communities consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. DED or HUD’s approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the name of grant recipient to use HUD program funds.

OBJECTIONS TO RELEASE OF FUNDS

DED or HUD will accept objections to its release of fund and the Name of the RE’s certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the name of RE; (b) the RE has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR part 58; (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by DED or HUD; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to DED or HUD administration office at Nebraska Department of Economic Development, Community and Rural Development Division, PO Box 94666, Lincoln, NE 68509-4666 or US Department of Housing and Urban Development, Zorinsky Federal Building, 1616 Capitol Ave, Suite 329, Omaha, NE 68102-4908. Potential objectors should contact DED or HUD to verify the actual last day of the objection period.

Typed Name and Title of RE Certifying Officer

NOTE: The seven or ten-day public comment periods are the minimum time periods required by regulation prior to the submission of a RROF/Certification Form. The RE may choose to allow a longer comment period. The fifteen -day objection period is a statutory requirement. The objection period follows the submission date specified in the Notice or the actual date of receipt by DED/HUD, whichever is later.

A copy of the Public Notice (NOI/RROF), an affidavit of publication, and the RROF/Certification Form may be emailed or faxed to DED in order to start the 15 day HUD Objection Period, but the original signed documents must be received by DED/HUD before environmental clearance will be issued.

See the Publication, RROF/Certification Form, & HUD Objection Period Section for more information.
SAMPLE COMBINED FONSI & NOI/RROF

The language below is HUD’s recommended wording of the combined Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds. This Notice is used for projects requiring an Environmental Assessment (24 CFR Part 58, Section 58.36). Words in **bold type** are required language. Words in *italics* are to be replaced by language appropriate to the particular project and Responsible Entity.

**NOTICE OF FINDING OF NO SIGNIFICANT IMPACT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS**

*Date of Publication:* [date published]

**Name of Responsible Entity (RE)**

**Address (e.g., Street No. or P.O. Box)**

City, State, Zip Code

**Telephone Number of RE**

These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the name of RE or grant recipient.

**REQUEST FOR RELEASE OF FUNDS**

*On or after* at least one day after the end of the comment period the name of RE will if the RE is not also the grant recipient, insert the following language here: “authorize the [name of grant recipient] to” **submit a request to the HUD/State administering agency for the release of HOME Investment Partnership funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, or Community Development Block Grant funds under Title I of the Housing and Community Development Act of 1974, as amended, to undertake the following project:**

**Project Title:** project name

**Purpose:** nature/scope of project [Describe the project fully]

**Location:** project location

**Estimated Cost:** both estimated HUD funding & total project cost, as applicable

**FINDING OF NO SIGNIFICANT IMPACT**

The name of RE has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review and may be examined or copied weekdays __A.M to __P.M.
PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the RE designated office responsible for receiving and responding to comments. All comments received by if notice is published: publication date plus fifteen days; if notice is mailed and posted: mailing and posting date plus eighteen days will be considered by the name of RE prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.

RELEASE OF FUNDS

The name of RE certifies to HUD/State that name of Certifying Officer in his/her capacity as Official Title consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD’s State’s approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the name of grant recipient to use HUD program funds.

OBJECTIONS TO RELEASE OF FUNDS

HUD/State will accept objections to its release of fund and the name of the RE’s certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the name of RE; (b) the RE has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR part 58; (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by HUD/State; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to DED or HUD administration office at Nebraska Department of Economic Development, Community and Rural Development Division, PO Box 94666, Lincoln, NE 68509-4666 or US Department of Housing and Urban Development, Zorinsky Federal Building, 1616 Capitol Ave, Suite 329, Omaha, NE 68102-4908. Potential objectors should contact HUD/State to verify the actual last day of the objection period.

Name and Title of RE Certifying Officer

NOTE: The fifteen or eighteen-day comment periods are the minimum time periods required by regulation prior to submission of a Request for Release of funds and Certification (form HUD-7015.15) to DED/HUD. The Responsible Entity may choose to allow a longer comment period. 24 CFR Part 58 requires, at Section 58.46, “Time delays for exceptional circumstances,” a 30-day comment period for controversial or unique projects or those similar to projects normally requiring preparation of an Environmental Impact Statement. The fifteen-day objection period is a statutory requirement. The objection period follows the submission date specified in the Notice or the actual date of receipt by HUD/State, whichever is later.

See the Publication, RROF/Certification Form, & HUD Objection Period Section for more information.
Completing the RROF/Certification Form (HUD 7015.15)

The RROF/Certification Form that must be completed for CEST or EA projects no earlier than the day after the public comment has ended.

The most current, official HUD Form must be used. Use the following link to obtain the most current HUD 7015.15 Form at:


Instructions for HOME Projects:

Part I:

1. **Program Title:** Enter “HOME Program”

2. **HUD/State Identification Number:** For HOME projects, when the non-governmental entity is the recipient of DED funds, enter “M-09-SG-31-0100” for 2009 funded projects. For HOME projects in subsequent years enter “M-##-SG-31-0100” with the ## being replaced with the corresponding grant funding year.

3. **Recipient Identification Number:** For HOME projects enter the DED grant number designated for your project.

4. **OMB Catalog Number:** For HOME projects enter “CFDA 14.239”.

5. **Name and address of Responsible Entity:** For HOME projects, when the non-governmental entity is the recipient of DED funds, enter “Nebraska Department of Economic Development, PO Box 94666, Lincoln, NE 68509-4666”.

6. **For Information about this request:** Enter the name and telephone number of the person to contact concerning this form HUD-7015.15 and the environmental review(s) for the activities/project listed on this form if further information or clarification is needed.

7. **Name and Address of Recipient (if different than responsible entity):** Enter the name and address of non-governmental entity receiving grant funds from DED.

8. **HUD or State Agency to receive request:** For HOME projects to non-governmental entities, enter “US Dept of HUD, Zorinsky Federal Bldg, 1616 Capitol Ave, Suite 329, Omaha, NE 68102-4908”.

9. **Program Activity/Project Name:** enter the activities/project name(s) for which this form is submitted.

10. **Location:** enter the location(s) of the activity/project. Include the Street address, City, County, and State.

11. **Program Activity/Project Description:** Provide a complete description of the project similar to the one provided in the Determination of Level of Review. Include all activities within the project, regardless of funding source. This could include any infrastructure that is being developed in conjunction with a DED funded activity.

Part 2: Environmental Certification, Item 3: Check either “did” or “did not” require an EIS.

**Signature of Certifying Officer:** For HOME projects, the signature must be blank because the Certifying Officer RE is the DED CRD Director who must sign this RROF/Cert Form. Provide this Director’s name and title in the “Title of Certifying Officer Section” and the Address of the Certifying Officer “Nebraska Dept of Economic Development, PO Boxes 94666, Lincoln, NE 68509”.

Part 3: Do not complete this section.

Instructions for CDBG Projects

Part I:

1. Program Title: Enter “CDBG Program”

2. HUD/State Identification Number: Enter the DED grant number designated for your project.

3. Recipient Identification Number: Leave this section blank.

4. OMB Catalog Number: Enter “CFDA 14.228”.

5. Name and address of Responsible Entity: Enter the address of the Responsible Entity (RE).

6. For Information about this request: Enter the name and telephone number of the person to contact concerning this form and the environmental review for the activities/project listed on this form if further information or clarification is needed.

7. Name and Address of Recipient (if different than responsible entity): Leave this section blank.

8. HUD or State Agency to receive request: Enter “Nebraska Department of Economic Development, P O Box 94666, Lincoln, NE 68509”.

9. Program Activity/Project Name: Enter the activity(ies)/project name(s) for which this form is submitted.

10. Location: Enter the location(s) of the activity/project. Include the Street address, City, County, and State.

11. Program Activity/Project Description: Provide a complete description of the project similar to the one provided in the Determination of Level of Review. Include all activities within the project, regardless of funding source. This could include any infrastructure that is being developed in conjunction with a DED funded activity.

Part 2: Environmental Certification, Item 3: Check either “did” or “did not” require an EIS.

Signature of Certifying Officer: For CDBG projects, have the RE Certifying Officer sign the document, provide the RE’s Title and address.

Part 3: Do not complete this section.
Request for Release of Funds and Certification

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 36 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Part 1. Program Description and Request for Release of Funds
(to be completed by Responsible Entity)

1. Program Title(s)
2. HUD/State Identification Number
3. Request/Identification Number
4. OMB Catalog Number(s)
5. Name and title of person
   responsible for the information
6. For information about this request, contact (name & phone number)
7. Name and title of recipient (if different than responsible entity)
8. HUD or State Agency and office unit to receive request
9. Program Activity(es)/Project Name(s)
10. Location (Street address, city, county, State)

Previous editions are obsolete

form HUD-7015.15 (1/99)
Part 2. Environmental Certification (to be completed by responsible entity)

With reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that:

1. The responsible entity has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project(s) named above.

2. The responsible entity has assumed responsibility for and complied with and will continue to comply with, the National Environmental Policy Act of 1969, as amended, and the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.3; and also agrees to comply with the authorities in 24 CFR 58.6 and applicable State and local laws.

3. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the proposal __ did __ did not require the preparation and dissemination of an environmental impact statement.

4. The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 and 58.56 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or evidence of posting and mailing procedure.

5. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.

6. In accordance with 24 CFR 58.71(b), the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.

As the duly designated certifying official of the responsible entity, I also certify that:

7. I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities, to the degree that these laws apply to the HUD responsibilities for environmental review, decision-making and action, and have been authorized by the responsible entity.

8. I am authorized to and do accept, on behalf of the recipient personally, the obligation of the responsible entity for the enforcement of all these responsibilities, in my capacity as certifying officer of the responsible entity.

Signature of Certifying Officer of the Responsible Entity

Title of Certifying Officer

X

Address of Certifying Officer

Part 3. To be completed when the Recipient of the Responsible Entity

The recipient requests the release of funds for the programs and activities identified in Part 1 and agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in special conditions in accordance with 24 CFR 58.71(b).

Signature of Authorized Officer of Recipient

Title of Authorized Officer

Date signed

X

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Previous editions are obsolete

form HUD-7015.15 (1/99)
## 8 STEP PROCESS
### FOR COMPLIANCE WITH FLOODPLAIN MANAGEMENT

**[24 CFR 55, Executive Order 11988]**

1. Floodplain Management applies to projects involving ANY of the following-Check all that apply:
   - [ ] Acquisition of land or buildings
   - [ ] New Construction
   - [ ] Substantial Rehabilitation (i.e. modifications and improvements to buildings where rehabilitation costs exceed 50% of the pre-rehab value of the building or where residential density increases more than 20%)
   - [ ] Expanding the footprint of buildings or structures
   - [ ] Infrastructure Improvements—Water, Sewer, Drainage, Roads, and Ditches
   - [ ] Other activities affecting land use

2. Is the project located in a 100-year floodplain, designated floodway, or wetland?  
   - [ ] Yes  
   - [ ] No

   [Note: Review the FIRM (Flood Insurance Rate Map) for your project area, or when the project area is not mapped, use other best available information (i.e. Dept. of Natural Resources response letter).]

   If YES, skip to #4
   If NO, go on to #3

3. You have determined that the project is NOT located in a floodplain or wetland. Document the determination by completing the following:

   Source Documentation: Attach a FEMA Flood Insurance Rate Map (FIRM) and indentify the site and project location on the map. Community Name/Number:________________________________________________________

   FIRM Map Panel and Date of Map Panel:________________________________________________________

   If the area has not been mapped, obtain the best available information from one or more of the following qualified resources: (Check all sources used and attach all documentation received.)
   - [ ] Nebraska Department of Natural Resources
   - [ ] Natural Resources Conservation Service (Wetlands Determination Only)
   - [ ] US Army Corps of Engineers (Wetlands Determination Only)
   - [ ] Other________________________________________________________

4. You have determined that your project is located in a floodplain/wetland. The HUD 8 Step Process is required. Complete and attach the following 8-Step Decision Making Form and all supporting documentation.

   (Refer to the Preliminary Engineering/Architectural Report and/or consult with the engineer/architect for assistance. Consultation with environmental professionals may be appropriate.)
### HUD 8 STEP PROCESS
**DECISION MAKING PROCESS UNDER 24 CFR 55.20 AND EXECUTIVE ORDER 11988**

**STEP 1**—Determine if the proposed action/project is located in a 100-year floodplain/wetland.

Attach the FEMA Flood Insurance Rate Map (FIRM) and complete the following:

<table>
<thead>
<tr>
<th>Community Name/Number:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Map Panel and Date of Map Panel:</td>
<td></td>
</tr>
<tr>
<td>Flood Zone for Proposed Project Site:</td>
<td></td>
</tr>
</tbody>
</table>

Executive Order 11988 requires the project sponsor to evaluate all available options prior to deciding to put federally funded assets into an at-risk flood zone. If the proposed project is located in a regulated floodplain area, provide the necessary documentation which shows that development in a floodplain is the only viable option.

(Continue to Step 2 if the area has been mapped and the information above has been provided)

If the area has not been mapped, obtain the best available information from one or more of the following qualified resources: (Check all sources used and attach all documentation received.)

- [ ] Nebraska Department of Natural Resources
- [ ] Natural Resources Conservation Service (Wetlands Determination Only)
- [ ] US Army Corps of Engineers (Wetlands Determination Only)
- [ ] Other ____________________________

If the area not been mapped, but is participating in the National Flood Insurance Program, the local floodplain coordinator should request a base flood elevation (BFE) request for the site from a community on-staff or on-retainer professional engineer and submit a letter with the request to the Nebraska Department of Natural Resources (NDNR). All correspondence from the NDNR is required to be with the local floodplain administrator. Attach all documentation received.

If the area has not been mapped, and not participating in the National Flood Insurance Program, a community on-staff or on-retainer professional engineer must include a letter, with the additional 8 Step Review documentation, stating that in his/her professional opinion, the project site is or is not flood prone. If the project site is flood prone, then the engineer must state how the flood risk will be mitigated to the project (Attach all documentation received).
### STEP 2—Involve the public in the decision-making process.

**Publish the Early Public Notice**

The Early Public Notice is a notice of the proposal to consider an action in a floodplain/wetland. The notice must be published in a newspaper of widest circulation. A required minimum 15-day comment period begins the day after publication. Indicate if any comments were received. If the RE receives any written comments, the RE must respond in writing, resolve any issues, and provide copies to DED.

Attach a copy of the notice and affidavit of publication to this form.

<table>
<thead>
<tr>
<th>Name of Newspaper:</th>
<th>____________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Publication:</td>
<td>____________________________</td>
</tr>
<tr>
<td>Were any comments received in writing?</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td>(If Yes, attach all correspondence.)</td>
<td></td>
</tr>
</tbody>
</table>

### STEP 3—Evaluate alternatives to locating the proposed action in a floodplain.

**Explain in detail each of the following to determine if the floodplain and/or wetland can be avoided:**

(Attach additional pages as necessary.)

<p>| a. Identify and explain if alternative sites suitable for the project exist outside the floodplain/wetland: |</p>
<table>
<thead>
<tr>
<th>(Refer to the engineer/architect, or engineering/architectural report for alternatives. Include other sites and/or buildings and the No Action Alternative.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>b. Identify and explain if feasible alternative actions/methods may be used to fulfill the identical project objective: Can different or modified actions with less chance for impact be used to fulfill the same project?</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>c. Identify and explain if threats to lives and property and/or adverse impacts to the floodplain/wetland outweigh the benefits of the proposed project:</td>
</tr>
<tr>
<td>(Explain if impacts are too severe to human and natural environments to complete the project.)</td>
</tr>
</tbody>
</table>

### STEP 4—Identify indirect and direct impacts associated with occupying or modifying the floodplain/wetland.

If the RE determines the practicable alternative for the project/action is occupying or modifying the floodplain/wetland, then impacts to lives and properties and impacts to floodplains and/or wetlands must be identified.

If the RE determines an alternative site for the project exists out of the floodplain/wetland, project activities may still have an impact on the nearby floodplain/wetland and must also be identified to determine ways to minimize harm.

**Explain in detail how the project/activity will affect the floodplain/wetland regarding the following types of impacts:**

<p>| a. Positive or beneficial impacts to the floodplain/wetland, both direct and indirect: |</p>
<table>
<thead>
<tr>
<th>(List and describe)</th>
</tr>
</thead>
<tbody>
<tr>
<td>b. Negative or harmful impacts to the floodplain/wetland, both direct and indirect:</td>
</tr>
<tr>
<td>(List and describe)</td>
</tr>
</tbody>
</table>
c. Concentrated impacts at or near the floodplain/wetland:
   (List and describe)

d. Dispersed or remote impacts occurring distant from the floodplain/wetland:
   (List and describe)

e. Short-term impacts to the floodplain/wetland (temporary impacts occurring immediately after an action lasting a short while):
   (List and describe)

f. Long-term impacts to the floodplain/wetland (impacts occurring during or after an action that persist for considerable time or indefinitely):
   (List and describe)

g. Explain if the project encourages development in the floodplain wetland:
   (Describe)

**STEP 5—Identify mitigation measures to minimize impacts to and preserve benefits of the floodplain/wetland.**
(Consult with the project engineer/architect and/or engineering/architectural report.)
a. Explain how actions will be designed and/or modified to minimize harm to, or within, the floodplain/wetland:

b. Explain how actions will be designed and/or modified to restore and/or preserve as much of the natural and beneficial floodplain/wetland values as possible:

**STEP 6—Re-evaluate alternatives identified in Step 3. Take into account all identified impacts and mitigation measures.**
a. Explain whether it is possible to modify or relocate the project activity and why:

b. If there are no alternatives, explain why the project/activity should occur. Consider impacts determined in Step 4 and minimization efforts identified in Step 5.

**STEP 7—If re-evaluation results in no practicable alternative to relocate the project out of the floodplain/wetland, the decision must be made public.**

Publish the Notice of Explanation
The Notice of Explanation must include the reasons for locating the project/activity in the floodplain/wetland, all alternatives considered (including the no action alternative), and all mitigation measures planned.
The notice must be published in a newspaper of widest circulation. A required minimum 7-day comment period begins the day after publication. Indicate if any comments were received. If the RE receives any written comments, the RE must respond in writing, resolve any issues, and provide copies to DED.
This notice must not be published concurrently with the Combined Notice.
Attach a copy of the notice and affidavit of publication to this form.
Name of Newspaper: __________________________________________
Date of Publication: _________________________________________
Were any comments received in writing?  □ Yes  □ No
(If Yes, attach all correspondence.)
### STEP 8—Implement the Project.

Project implementation can only proceed provided compliance has been demonstrated with respect to all of the prior steps and provided the project has been approved by the State in accordance with HUD regulation 24 CFR 58.

The RE has a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented. Mitigation measures must be incorporated, as appropriate, in project contracts and all related agreement documents.

Additional Information/Explanations:

Attachments:
Notice for Early Public Review of a Proposal to Support Activity in the 100-Year Floodplain or Wetland

To: All Interested Agencies, Groups, and Individuals

This is to give notice that (Name of Grantee) is proposing to expend federal funds in a 100-Year Floodplain (or wetland, if applicable). The subject funds are (Community Development Block Grant or HOME Investment Partnership administered by the Nebraska Department of Economic Development) [mention other federal funds involved, if applicable]).

This notice is required by Section 2(a)(4) of Executive Order 11988 for Floodplain Management, and by Section 2(b) of Executive Order 11990 for the Protection of Wetlands, and is implemented by HUD Regulations found at 24 CFR 55.20(b) for the HUD action that is within and/or affects a floodplain or wetland.

The (Name of Grantee) is proposing to undertake the following activities in the area.

Describe the project, being specific as to location of proposed activities, and total number of acres of floodplain/wetland involved.

The purpose of this notice is to give an early opportunity for interested agencies, persons or groups to comment on the proposed action(s). The (Name of Grantee) will consider any feasible alternatives or adjustments to the anticipated project which might minimize any potential adverse effects upon the floodplain/wetland as a result of the project.

This notice with a request for comment was mailed to: (Name of agencies, and other organizations notice sent to)

Additional information concerning this project is available for public review and copying, upon request, at: (location). Any comments relative to this proposed expenditure of federal funds in an area identified as a flood hazard/wetland area should be submitted in writing to (name and address) on or before (month, day, year) [allow minimum of 15 calendar days after publication date, not counting day of publication as required by 24 CFR 55.20(b)(2)].
Notice and Public Explanation of a Proposed Activity in the 100-Year Floodplain and Wetland

To: All interested Agencies, Groups and Individuals

This is to give notice that the (Name of Grantee) has conducted an evaluation as required by Executive Order (11988 or 11990) in accordance with HUD regulations at 24 CFR 55.20 to determine the potential affect that its activity in the (floodplain or wetland) will have on the environment. The proposed project (Description of project and project activities).

The (Name of Grantee) has determined that it has no practicable alternative other than locating the proposed (Community Development Block Grant or HOME Investment Partnership) project in a (floodplain/wetland). This activity will have no significant impact on the environment for the following reasons:

(List and describe the reasons why the activity will have no significant impact and state reason(s) why the project must be located in the floodplain; including other alternatives that were considered and mitigation measures to be taken to minimize adverse effects)

Written comments must be received by (Name of Grantee) at the following address on or before (month, day, year) [§ 55.20(g)(2) allows 7 days at a minimum]: (Address of Grantee)
CERTIFICATION OF CONTINUED ENVIRONMENTAL COMPLIANCE
Nebraska Department of Economic Development
CDBG, HOME, & NAHTF Projects

Grantee Name:                          Grant Number:

Original Level of Finding:

Date of Determination:

Date Notice of Intent (NOI-RROF) Published:

Date Request for Release Funds Submitted to DED:

Date of Environmental Clearance:

Description of Project:

In accordance with the provisions of 24 C.F.R. Part 58.47, it is the finding of the Certifying Officer of the above referenced grantee that [check one of the following]:

1. ☐ The scope, scale, nature, magnitude and location of the project are substantially unchanged from that as originally reviewed and approved; further, no new circumstances or environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions, have been discovered; and the selection of an alternative not in the original finding is not proposed, Re-evaluation of the project under §58.47 is therefore not required. The same conditions that previously applied to the project remain unchanged and are summarized on the next page.

OR

2. ☐ The scope, scale, nature, magnitude and/or location of the project have substantially changed from that as originally reviewed and approved; or, new circumstances or environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions, have been discovered; or, the selection of an alternative not in the original finding is now proposed. Re-evaluation of the project under §58.47 is required; the findings in the ERR have been updated per §58.47(b) and are described on the next page.

I certify that the above statements accurately reflect the revisions to the project scope of work and that such revisions do not alter the basis under which the project received its original environmental status determination.

Signature of RE Certifying Officer:    Address:

Title:                                   

Date:

Page 1                                      July 2009
**Potential Agency Contact and Distribution List**

<table>
<thead>
<tr>
<th>Regulatory Agencies</th>
<th>Potential Assistance on:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nebraska Department of Aeronautics</td>
<td>Airport Hazards</td>
</tr>
<tr>
<td>Planning &amp; Engineering Division</td>
<td></td>
</tr>
<tr>
<td>P. O. Box 82088</td>
<td></td>
</tr>
<tr>
<td>Lincoln, NE 68501-2088</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Nebraska Department of Environmental Quality</td>
<td>Air Quality, Hazardous Sites,</td>
</tr>
<tr>
<td>Small Business &amp; Public Assistance Coordinator</td>
<td>Solid and Hazardous Waste,</td>
</tr>
<tr>
<td>P O Box 98922</td>
<td>Water Quality (Surface</td>
</tr>
<tr>
<td>Lincoln, NE 68509-8922</td>
<td>Water, Ground Water &amp;</td>
</tr>
<tr>
<td></td>
<td>Effluent Discharge</td>
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<tr>
<td></td>
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<tr>
<td>Nebraska Game and Parks Commission</td>
<td>State Parks &amp; Recreation</td>
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<tr>
<td>Realty &amp; Environmental Services Division</td>
<td>Areas, Fisheries &amp; Wildlife</td>
</tr>
<tr>
<td>2200 N 33rd Street</td>
<td>Management Areas</td>
</tr>
<tr>
<td>P. O. Box 30370</td>
<td></td>
</tr>
<tr>
<td>Lincoln, NE 68503-0370</td>
<td></td>
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<td></td>
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<tr>
<td>Nebraska Game and Parks Commission</td>
<td>Threatened &amp; Endangered</td>
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<tr>
<td>Heritage Division</td>
<td>Species</td>
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<tr>
<td>2200 N 33rd Street</td>
<td></td>
</tr>
<tr>
<td>P. O. Box 30370</td>
<td></td>
</tr>
<tr>
<td>Lincoln, NE 68503-0370</td>
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<tr>
<td>Nebraska Health and Human Services System</td>
<td>Water Quality</td>
</tr>
<tr>
<td>Regulation and Licensure</td>
<td></td>
</tr>
<tr>
<td>P O Box 95007</td>
<td></td>
</tr>
<tr>
<td>Lincoln, NE 68509-5007</td>
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<tr>
<td>Nebraska State Fire Marshall</td>
<td>Thermal/Explosive Hazards,</td>
</tr>
<tr>
<td>246 South 14th Street</td>
<td>Storage Tanks</td>
</tr>
<tr>
<td>Lincoln, NE 68508</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Nebraska State Historical Society</td>
<td>Historic Preservation</td>
</tr>
<tr>
<td>State Historic Preservation Officer</td>
<td></td>
</tr>
<tr>
<td>1500 R Street</td>
<td></td>
</tr>
<tr>
<td>Lincoln, NE 68501-2554</td>
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<tr>
<td>Nebraska Department of Natural Resources</td>
<td>Livestock Waste Lagoons,</td>
</tr>
<tr>
<td>P O Box 94676</td>
<td>New Well Construction,</td>
</tr>
<tr>
<td>Lincoln, NE 68509-4676</td>
<td>Ground Water Transfers,</td>
</tr>
<tr>
<td></td>
<td>Floodplain Management</td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td>U. S. Fish and Wildlife Service</td>
<td>Endangered &amp; Migrant</td>
</tr>
<tr>
<td>Ecological Service Office</td>
<td>Species, Fish &amp; Wildlife</td>
</tr>
<tr>
<td>203 West Second Street</td>
<td></td>
</tr>
<tr>
<td>Grand Island, NE 68801-5907</td>
<td></td>
</tr>
<tr>
<td>National Park Service</td>
<td>Wild &amp; Scenic Rivers,</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>Midwest Regional Office</td>
<td>National Landmarks</td>
</tr>
<tr>
<td>1709 Jackson Street</td>
<td></td>
</tr>
<tr>
<td>Omaha, NE 68102</td>
<td></td>
</tr>
<tr>
<td>Or</td>
<td></td>
</tr>
<tr>
<td>510 W. Wisconsin Ave., Room 100E</td>
<td></td>
</tr>
<tr>
<td>Milwaukee, WI 53205</td>
<td></td>
</tr>
<tr>
<td>Or</td>
<td></td>
</tr>
<tr>
<td><a href="www.nps.gov/rivers/wildriverslist.html">link</a></td>
<td></td>
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</tbody>
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<table>
<thead>
<tr>
<th>Natural Resources Conservation Service</th>
<th>Prime Farmlands,</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Conservationist</td>
<td>Forests, Rangeland,</td>
</tr>
<tr>
<td>Federal Building, Room 152</td>
<td>Wetlands Identification on agricultural property</td>
</tr>
<tr>
<td>100 Centennial Mall North</td>
<td></td>
</tr>
<tr>
<td>Lincoln, NE 68508-3866</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>U. S. Army Corps of Engineers</th>
<th>Wetlands Identification and Wetland Construction Permits for waters of the U.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td>8901 South 154th Street</td>
<td></td>
</tr>
<tr>
<td>Omaha, NE 68138-3621</td>
<td></td>
</tr>
<tr>
<td>Or</td>
<td></td>
</tr>
<tr>
<td><a href="http://www.nwo.usace.army.mil/html/op-r/district.htm">link</a></td>
<td></td>
</tr>
<tr>
<td>Or</td>
<td></td>
</tr>
<tr>
<td>U. S. Army Corps of Engineers</td>
<td></td>
</tr>
<tr>
<td>Kearney Field Office</td>
<td></td>
</tr>
<tr>
<td>1430 Central Avenue</td>
<td></td>
</tr>
<tr>
<td>Kearney, NE 68847</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Native American Consultation Database</th>
<th>Tribal Government</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="www.cast.uark.edu/other/nps/nacd">link</a></td>
<td>Contacts</td>
</tr>
</tbody>
</table>
## HUD Guide to Environmental Compliance: NEPA-Related Statutes, Authorities and Requirements

### 24 CFR Part 58.5 – NEPA-Related Federal laws and authorities

**Important:** (1) Information contained herein is for general guidance only. Applicable authorities and regulations take precedence over guidance material and should be consulted as necessary to achieve full compliance. (2) HUD cannot attest to the accuracy of information provided by web sites external to HUD, and access to these sites does not constitute an endorsement by HUD, or any of its employees, of the sponsors of the site or the products presented on the site. (3) Contact the HUD Environmental Officer in your area [www.hud.gov/offices/cpd/environment/contact/localcontacts/index.cfm](http://www.hud.gov/offices/cpd/environment/contact/localcontacts/index.cfm) for information or assistance related to compliance with HUD environmental requirements.

<table>
<thead>
<tr>
<th>Environment Issue/Impact (Statute, Authority &amp;/or Regulation)</th>
<th>Applicable Activities</th>
<th>Threshold for Action (Analysis/Evaluation/Consultation)</th>
<th>Source Documentation (Map/On-line Listing/Agency Contacts)</th>
<th>Action Required</th>
<th>Further Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Air Quality</strong> Clean Air Act of 1970, as amended (42 U.S.C. 7401 et seq.), particularly 7506 (c) &amp; (d). 40 CFR parts 6, 51, and 93 (EPA) CAA of 1990, Sec. 112; 40 CFR Part 61 (NESHAP)</td>
<td>• Acquisition of undeveloped land  • Change of land use  • Demolition  • Major rehabilitation  • New construction</td>
<td>Project is located in an EPA-designated non-attainment area or maintenance area for one or more of six “criteria pollutants,” called National Ambient Air Quality Standards (NAAQS). Criteria pollutants (NAAQS): <a href="http://www.epa.gov/air/criteria.html">http://www.epa.gov/air/criteria.html</a></td>
<td>Designated non-attainment and maintenance areas are listed on EPA web site: <a href="http://www.epa.gov/oar/oarps/greenbk/">http://www.epa.gov/oar/oarps/greenbk/</a> County-level air quality data: <a href="http://www.epa.gov/oar/oarps/greenbk/multipol.html">http://www.epa.gov/oar/oarps/greenbk/multipol.html</a> Maps of non-attainment areas: <a href="http://www.epa.gov/oar/data/">http://www.epa.gov/oar/data/</a></td>
<td>A determination of conformity with the State Implementation Plan (SIP) is required with respect to the proposed activity and the specific pollutant for which the area was designated a non-attainment or maintenance area. Document that the activity does/does not require SIP compliance. Contact the MPO or EPA to determine if the proposed activity is one that requires a permit under the SIP. If yes, obtain letter of consistency showing that the project is consistent with the SIP.</td>
<td>Conformity to SIP is made by:  • Regional or Metropolitan Planning Organization (MPO); or  • EPA Regional Office. Status of non-attainment areas and EPA policy questions are addressed by EPA Regional Office. EPA Region 7 SIPs: <a href="http://www.epa.gov/region07/programs/artd/air/rules/fedaprv.htm">http://www.epa.gov/region07/programs/artd/air/rules/fedaprv.htm</a> State and local AQ contacts: <a href="http://www.epa.gov/region7/programs/artd/air/st_local/st_local.htm">http://www.epa.gov/region7/programs/artd/air/st_local/st_local.htm</a> HUD Q&amp;A: <a href="http://www.hud.gov/offices/cpd/environment/review/qa/airpollution.cfm">http://www.hud.gov/offices/cpd/environment/review/qa/airpollution.cfm</a></td>
</tr>
<tr>
<td><strong>2. Airport Hazards (Clear Zones)</strong></td>
<td>• Acquisition for construction  • Change in land use</td>
<td>Project is located within 2,500 feet of the end of a civil airport runway or</td>
<td>Airport clear zone and accident potential zone (APZ) maps are available</td>
<td>RCZ/CZ: New construction, major rehabilitation, and activities that significantly</td>
<td>Contact airport operator or nearest FAA District office.</td>
</tr>
<tr>
<td>&amp; APZ)</td>
<td>24 CFR Part 51-D “Siting of HUD-Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields” (HUD)</td>
<td></td>
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</tbody>
</table>
| - Increase in density  
- Major (‘substantial’) rehabilitation  
- New construction | 15,000 feet of the end of a military airfield runway. |
| Where airport is:  
- Civil airport designated in Nat’l Plan of Integrated Airport System (NPIAS): | HUD policy is to promote compatible land uses in RCZ/CZ/APZ. |
| - All military air installations |  
- Civil airport: The Airport Layout Plan shows the Runway Clear Zone (RCZ), [a.k.a. Runway Protection Zone]. |
| (Note: See also Clear Zone notification requirement, page 11.) |  
- Military airfield: The AICUZ Study shows the CZ and APZ. |
|  | prolong physical or economic life of the property are prohibited. |
| APZ: HUD assistance in APZ is discouraged, and project must be compatible with DOD land use guidelines for APZs. |
|  |  
- Airport locations:  
  Civil NPIAS  
  http://www.faa.gov/airports_airtraffic/airports/planning_capacity/npias/reports/  
  and  
  http://www.airnav.com/airports/  
  Military Bases:  
  http://www.globalsecurity.org/military/facility/conus.htm  
  and  
  http://www.globemaster.de/bases.html |
| HUD Q&A: | http://www.hud.gov/offices/cpd/environment/review/qa/airport.cfm |

| 3. Coastal Zone Management |  
| Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et. seq., particularly section 1424(e)). |  
| - Acquisition of undeveloped land  
- Change of land use  
- Major rehabilitation  
- New construction | Project is located in a state having a Coastal Zone Management (CZM) Program. |
| CZM maps are on NOAA (Nat’l Oceanic & Atmospheric Administration) web site:  
http://coastalmanagement.noaa.gov/welcome.html | Documentation may consist of Phase I environmental site assessment* (ASTM standard E1527-05, as amended) and, if applicable, Phase II assessment. |
| State CZM agency (or its approved local designee) must concur with a finding (or issue permit) in evidence that project is consistent with approved State CZM plan. | Due diligence must be exercised to ascertain the presence of contamination. In many cases, a Phase I environmental site assessment (ASTM standard E1527-05) is required. |
| NOAA: http://coastalmanagement.noaa.gov/welcome.html | EPA Envirofacts Data:  
http://www.epa.gov/enviro/ |
| HUD Q&A: | EPA Toxic Release Inventory (TRI):  

| 4. Contamination and Toxic Substances |  
| 24 CFR Part 58.5 (l) (2) |  
| - Acquisition  
- Conversion from non-residential to residential.  
- Demolition  
- Leasing  
- New construction | Project is located on or near site that contains hazardous materials or contaminants that could affect the health and safety of occupants or that conflict with the intended |
| Documentation may consist of Phase I environmental site assessment* (ASTM standard E1527-05, as amended) and, if applicable, Phase II assessment. | Due diligence must be exercised to ascertain the presence of contamination. In many cases, a Phase I environmental site assessment (ASTM standard E1527-05) is required. |
| EPA Envirofacts Data:  
http://www.epa.gov/enviro/ |
| EPA Toxic Release Inventory (TRI):  
(HUD).  

- Rehabilitation

utilization of the property.  

Particular attention to be given to any site located on or in general proximity to landfills, dumps, industrial sites, gas stations or other locations that contain hazardous wastes or materials.

HUD policy is to ensure that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

Additional/alternative documentation may include:

- Site inspection(s) by knowledgeable professional(s).
- Search of EPA and other databases for sites and facilities posing real or potential contamination concerns (including NPL (Superfund), TRI, RCRA sites and facilities).
- Analysis of past uses of the site and adjacent properties as documented by Sanborn Fire Insurance Rate Maps (or equivalent historic maps).

ASTM Phase I and Phase II protocols are available at:


Current ASTM Phase I standard (E1527-05):


NOTE: A person may purchase property with the knowledge that the property is contaminated without being held potentially liable for the cleanup of the contamination. Conducting “all appropriate inquiries” (AAI) into the previous ownership and uses of a property is one of the requirements for claiming CERCLA liability protection.

E1527-05, as amended) must be performed.* If the Phase I assessment identifies recognized environmental conditions or if the results are inconclusive, a Phase II environmental site assessment will be required.

Based upon the Phase II results, remediation, mitigation and monitoring measures may be required.

Such measures must be consistent with Federal, State and local laws and regulations, and must be implemented by qualified professionals.

Specific forms of remediation are not prescribed by HUD and may vary depending on the nature of the hazard.

EPA Maps:
http://www.epa.gov/enviro/html/em/

HUD Maps (select "Map Your Community"):  
http://egis.hud.gov/egis/

EPA CERCLIS/NPL database
Text -  
http://www.epa.gov/superfund/sites/query/basic.htm Map -  
http://www.epa.gov/superfund/sites/npl/npl.htm

ATSDR “ToxFAQs” summaries about hazardous substances:  
http://www.atrsd.cdc.gov/toxfaq.html

Right-To-Know Network:

- EPA databases, including TRI (Toxic Release Inventory);
- NPL & CERCLIS; RCRA:  
http://www.scorecard.org

Scorecard.Org:
- Releases of toxic chemicals
- Cancer risks from hazardous air pollutants
- Superfund sites
- Facilities emitting criteria air pollutants  
http://www.scorecard.org/community/ej-index.tcl

State voluntary cleanup programs:

- Kansas Dept. Health & Environ’t (KDHE)  
http://www.kdheks.gov/remedial/index.html

- Missouri Dept. Natural Resources (DNR)  
http://www.dnr.mo.gov/env/
<table>
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<tr>
<th>5. Endangered Species</th>
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<tr>
<td><strong>50 CFR Part 402 “Endangered Species Act” (DOI &amp; Commerce)</strong></td>
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<tr>
<th>Project is likely to affect, or may affect, any Federally listed endangered or threatened species or habitat.</th>
<th>If a listed species or habitat is present, consultation is required under Section 7 of the Endangered Species Act to determine if the proposed activity will adversely affect the subject species or habitat.</th>
</tr>
</thead>
</table>

- The federal (USEPA) standard for performing AAI was effective 11/01/06. The AAI final rule is found at 40 CFR 312. [http://www.epa.gov/swerosp/bf/regneg.htm](http://www.epa.gov/swerosp/bf/regneg.htm)

- The ASTM E1527-05 Phase I standard is consistent and complaint with EPA’s final rule for AAI and may be used to comply with the provisions of AAI.

- Project is likely to affect, or may affect, any Federally listed endangered or threatened species or habitat.

- Contact the US Fish and Wildlife Service (USFWS) to determine if a listed species or habitat is present in the project action area or may be affected by the project.

- General information on listed species and habitats: [http://endangered.fws.gov/wildlife.html#Species](http://endangered.fws.gov/wildlife.html#Species)

- USFWS Critical Habitat online mapper: [http://crithab.fws.gov/](http://crithab.fws.gov/)


- Missouri listed species: [http://mdcgis.mdc.mo.gov/heritage/](http://mdcgis.mdc.mo.gov/heritage/) (USFWS & state Natural Heritage Database)


- U.S. Fish & Wildlife Ecological Services Field offices:
  - Kansas
    - 315 Houston St, Rm E; Manhattan, KS 66502-6172 (785-539-3474)
  - Missouri
    - 101 Park DeVille Dr. Suite A Columbia, MO 65203-0057 (573-234-2132)
  - Nebraska
    - 203 West 2nd St. Second Floor Grand Island, NE 68801 (308-382-6468)
  - Iowa
    - 4469 48th Ave Court Rock Island, IL 61201 (309-793-5800)
### and Flammable Operations

**Housing and Community Development Act of 1974, as amended.**

24 CFR Part 51 Subpart C "Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature" (HUD)

- **New construction**
- **Rehabilitation, where unit density increased**
- **Conversion of land use from non-residential to residential use**
- **Vacant building made habitable**
- **Any project for industrial, commercial, institutional, or recreational use when the activity is:**
  - **New construction**
  - **Conversion of land use**

<table>
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<tr>
<th><strong>sight of or in proximity to a stationary hazardous facility that stores, handles or processes chemicals or petrochemicals of an explosive or flammable nature, such as liquid propane, gasoline or other above-ground storage tanks.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mobile tanks, (including railroad cars), buried tanks, residential tanks for 1-4 unit housing, and tanks with less than 100-gallon capacity and having common fuels are excluded.</strong></td>
</tr>
</tbody>
</table>

#### analysis and/or contact local fire protection or emergency management agencies as to presence of hazardous industrial operations in vicinity of project.

- **Contact local operator of such facility to determine the type and volume of fuels and chemicals of an explosive or flammable nature.**

- **separation distance (ASD)** per guidebook HUD-1060-CFD (1996), "Siting of HUD-Assisted Projects Near Hazardous Facilities," and apply appropriate mitigation measures or reject the site.

#### Environmental Officer for tanks having over 1 million-gallon capacity.

**HUD explosive/ flammable hazard guidebook:**


**HUP Q&A:**

- [http://www.hud.gov/offices/cpd/environment/review/explosive.cfm](http://www.hud.gov/offices/cpd/environment/review/explosive.cfm)

- [http://www.hud.gov/offices/cpd/environment/review/qa/hazardfacilities.cfm](http://www.hud.gov/offices/cpd/environment/review/qa/hazardfacilities.cfm)

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### 8. Farmland Protection

**Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.), particularly sections 1504(b) & 1541**

7 CFR Part 658, “Farmland Protection Policy” (USDA)

- **Acquisition of undeveloped land**
- **Conversion of undeveloped land**
- **New construction**
- **Site clearance**

| **Project is located in area that includes prime farmland, unique farmland, or land of statewide or local importance. Can include forest land, pastureland or cropland, but not water or urbanized land. Urban land is exempt if the land is “already in” or “committed” to urban development per 7 CFR 685.2(a).** |
| **NRCS soil maps (95% of nation’s counties): [http://websoilsurvey.nrcs.usda.gov/app/](http://websoilsurvey.nrcs.usda.gov/app/)** |

Alternatively, contact local Natural Resources Conservation Service (NRCS) office to determine the potential presence of protected farmland.

- **Site assessment by NRCS is required to determine impact of the farmland conversion. Form #AD-1006 rates 12 criteria. Sponsor must submit form to NRCS, which has 45 days to make a determination.**


**County offices for Natural Resources Conservation Services (NRCS) listed at:**

- [http://offices.sc.egov.usda.gov/locator/app](http://offices.sc.egov.usda.gov/locator/app)

**NRCS and FPPA:**


- **HUP Q&A:**


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### 9. Floodplain Management

**E.O. 11988, “Floodplain Management”,**

- **Acquisition for construction or for existing bldg >4 units**
- **Disposition >4 units**
- **Financing >4 units**

| **Project is located within a Special Flood Hazard Area (100-year floodplain), or, if a critical action (e.g., nursing home; hospital; fire station) is located in a FEMA Flood Insurance Rate Maps (FiRM) or Flood Hazard Boundary Map (FHBM).** |
| **FIRMETTE maps, which** |

- **Avoid direct or indirect support of floodplain development wherever there is a practicable alternative.**

- **Approval of project requires**

**FEMA:**


**State Floodplain Managers:**

- [http://www.floods.org/StatePO](http://www.floods.org/StatePO)
<table>
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<tr>
<th>10. Historic Preservation</th>
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<tr>
<td>36 CFR Part 800 “Protection of Historic Properties” (ACHP)</td>
</tr>
</tbody>
</table>

Any undertaking having the potential to cause effect, such as:
- Acquisition
- Demolition
- Disposition
- Ground disturbance
- New construction
- Rehabilitation

Project’s area of potential effects [see §800.16(d)] contains:
- A property listed in, or eligible for listing in, the National Register of Historic Places; or,
- An historic district listed in, or eligible for listing in, the National Register of Historic Places; or,
- Compelling evidence of the high probability of archeological resources eligible for listing in the National Register of Historic Places.

National Register Eligibility Criteria: [http://www.achp.gov/nrcriteria.html](http://www.achp.gov/nrcriteria.html)

Information on historic resources available from National, State, Tribal and local registers/sources:
- National Register [http://www.nr.nps.gov/](http://www.nr.nps.gov/)
- State Historic Preservation Office (SHPO) [http://ncshpo.org](http://ncshpo.org)
- Tribal Historic Preservation Office (THPO) [http://www.nathpo.org](http://www.nathpo.org)
- Certified Local Government (CLG) preservation staff.

A Memorandum of Agreement (MOA) stipulates how adverse effects will be resolved. Guidance on writing MOAs: [http://www.npi.org/tools.html](http://www.npi.org/tools.html)


| ex.cfm | HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/historic_properties.cfm |
### 11. Noise Abatement & Control

Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978.

24 CFR Part 51 Subpart B "Noise Abatement and Control" (HUD)

| Residential and other noise-sensitive developments (e.g., hospitals, nursing homes, day care, community center, etc.) |
| Required: |
| ▪ Acquisition for residential or noise-sensitive use |
| ▪ Conversion of land use from non-residential to residential |
| ▪ New construction |

| Project is located within: |
| ▪ 1,000 feet of major/busy road, |
| ▪ 3,000 feet of railway, |
| ▪ 15 miles of airport (civil or military), |
| ▪ HUD interior noise goal is 45 decibels (DNL) or lower. |
| ▪ HUD exterior noise goal is 55 decibels (DNL) or lower, although 65 DNL is considered acceptable. |

| Noise assessment data sources include: local or state highway departments; local or regional planning departments; public works departments; railroad dispatch offices; and airport operators. |
| Airport noise contour maps are shown on Airport Layout Plan (civil airport) or AICUZ Study (military airfield). |

Perform noise assessment in accordance with the Noise Assessment Guidelines (NAG) in guidebook HUD-953-CPD(1). For airports, use the airport's noise contour maps to determine noise levels (the contour lines are expressed in DNL noise levels).


Projected noise levels:
- 65-75 DNL – “Normally Unacceptable;” requires mitigation or attenuation.
- >75 DNL “Unacceptable;” requires rejection in most cases.

**12. Water Quality (Sole Source)**

| Acquisition of undeveloped land |
| Change of land use |

| Project is located within area of an EPA-designated sole source |

| Designated sole source aquifers are listed on EPA web site: |

| Review of project by Regional EPA Office of Ground Water is required if activity is of a |

**Traffic volumes - Road:**

**Iowa**


**Kansas**


**Missouri**

[http://www.modot.mo.gov/safety/trafficvolumemaps.htm](http://www.modot.mo.gov/safety/trafficvolumemaps.htm)

**Nebraska**

[http://www.nebraskatransportation.org/maps/#traffvol](http://www.nebraskatransportation.org/maps/#traffvol)

**Rail information:**

**Iowa**


**Kansas**


**Missouri**

N/A

**Nebraska**

[http://www.nebraskatransportation.org/rpt/rail.htm](http://www.nebraskatransportation.org/rpt/rail.htm)

**Barrier guidance (FHWA):**


**HUD noise guidebook:**

### Aquifers

Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349), particularly section 1424(e)

40 CFR Part 149 “Sole Source Aquifers” (EPA)

- **New construction**
  - aquifer, unless project utilizes municipal water and sewer and has appropriate local drainage.


  - type and size specified in an agreement between EPA and HUD.
  - Project may require memorandum of understanding (MOU) with EPA describing compliance to be followed.


  HUD Q&A: [http://www.hud.gov/offices/cpd/environment/review/qa/aquifer.cfm](http://www.hud.gov/offices/cpd/environment/review/qa/aquifer.cfm)

### 13. Wetland Protection


- **Acquisition of undeveloped land**
- **Change of land use**
- **New construction**
- **Expansion of bldg footprint**
  - Project is located within, or has impact upon, a wetland.

  National Wetlands Inventory maps are listed on FWS site: [http://www.fws.gov/wetlands/data/index.html](http://www.fws.gov/wetlands/data/index.html)

  NWI maps are useful as a preliminary screen. Where site inspection or other information indicates potential for a wetland, delineation of a wetland by a qualified professional should occur.

  For wetlands delineations, contact USACOE, USFWS, USDA- NRCS, USEPA and/or private consultants.

  Avoid adverse impacts upon wetlands and direct or indirect support of new construction in wetlands wherever there is practicable alternative.

  Approval of project requires compliance with the decision-making provisions of §55.20, i.e., the “eight-step” process. Project may be approved only if there is no practicable alternative outside the wetland.


  HUD Q&A: [http://www.hud.gov/offices/cpd/environment/review/floodplain.cfm](http://www.hud.gov/offices/cpd/environment/review/floodplain.cfm)

### 14. Wild & Scenic Rivers

Wild and Scenic Rivers Act of 1968 (16)

- **Acquisition of undeveloped land**
- **Change of land use**
- **Major rehabilitation**
- **New construction**
  - Project is located within one (1) mile of a designated Wild & Scenic River, or river being studied as a potential component of the Wild & Scenic rivers are listed on the National Park Service: [http://www.rivers.gov/wildriverslist.html](http://www.rivers.gov/wildriverslist.html)

  For a Designated River or Study River, determination from the National Park Service (NPS) must be obtained, with finding that the project will not have a direct

  National Park Service: [http://www.nps.gov/rivers/](http://www.nps.gov/rivers/)

  and [http://www.nps.gov/ncrc/programs/rca/nri/auth.html](http://www.nps.gov/ncrc/programs/rca/nri/auth.html)
<table>
<thead>
<tr>
<th>U.S.C. 1271 et seq., particularly sections 5(d), 7(a), 7(b) &amp; (c).</th>
<th>36 CFR Part 297 “Wild and Scenic Rivers” (USDA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenic River system. Project is located upstream, downstream, or on a tributary of river that is designated, studied or has potential for listing on the system. Protected rivers are designated, study and NRI rivers.</td>
<td>GIS shape files (maps) can also be downloaded from this site. Study Rivers (potential wild and scenic rivers): <a href="http://www.rivers.gov/study.html">http://www.rivers.gov/study.html</a> National River Inventory (NRI) listed rivers: <a href="http://www.nps.gov/ncrc/programs/rtca/nri/">http://www.nps.gov/ncrc/programs/rtca/nri/</a> and adverse effect on the river nor invade or diminish values associated with such rivers. For NRI rivers, consultation with NPS is recommended to identify and eliminate direct and adverse effects.</td>
</tr>
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### 24 CFR Part 58.6 – Other Requirements

<table>
<thead>
<tr>
<th>1. <strong>Airport Clear Zones</strong></th>
</tr>
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<tbody>
<tr>
<td>24 CFR Part 51 Subpart D “Siting of HUD-Assisted Projects in Clear Zones and Accident Potential Zones” (HUD)</td>
</tr>
<tr>
<td><strong>Purchase or sale of real property</strong></td>
</tr>
<tr>
<td>Project is located within 2,500 feet of the end of a civil airport runway or 15,000 feet of the end of a military airfield runway.</td>
</tr>
<tr>
<td>Airport clear zone maps available from airport operations authority.</td>
</tr>
<tr>
<td>Purchase or sale of a property in a CZ requires notification to buyer per 24 CFR Part 58.6(d). The notice informs the prospective buyer of potential hazards from airplane accidents and the potential by airport or airfield operators who may wish to purchase the property at some point in the future.</td>
</tr>
<tr>
<td>Contact airport operator or nearest FAA District office. Sample notice and HUD Q&amp;A: <a href="http://www.hud.gov/offices/cpd/environment/review/qa/airport.cfm">http://www.hud.gov/offices/cpd/environment/review/qa/airport.cfm</a></td>
</tr>
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<tr>
<th>2. <strong>Coastal Barriers</strong></th>
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<tr>
<td>Coastal Barrier Resources Act, as amended (16 U.S.C. 3501)</td>
</tr>
<tr>
<td><strong>All activities having a physical impact</strong></td>
</tr>
<tr>
<td>Project is located in a community listed in the Coastal Barrier Resources System (CBRS). CBRS maps on FEMA website: <a href="http://coastalmanagement.noaa.gov/mystate/welcome.html">http://coastalmanagement.noaa.gov/mystate/welcome.html</a> Coastal barriers also displayed on FEMA Flood Insurance Rate Maps (FIRM).</td>
</tr>
<tr>
<td>Federal funding is prohibited for projects located within a designated coastal barrier.</td>
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<tr>
<th>3. <strong>Flood Insurance</strong></th>
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<tr>
<td>Federal Disaster</td>
</tr>
<tr>
<td><strong>All HUD programs that provide assistance to buildings. Exceptions:</strong></td>
</tr>
<tr>
<td>Project is located within Special Flood Hazard Area (SFHA is the 100-year floodplain). FEMA Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBMS).</td>
</tr>
<tr>
<td>Property owner must purchase and maintain flood insurance protection. Coverage is limited to the FEMA “Mandatory Purchase of Flood Insurance” Guidelines: <a href="http://www.fema.gov/library/viewRecord.do?id=2954">http://www.fema.gov/library/viewRecord.do?id=2954</a></td>
</tr>
</tbody>
</table>

| Protection Act of 1973, as amended. National Flood Insurance Reform Act of 1994 (42 U.S.C. sec 4001f) 44 CFR Parts 59-77 "Regulations of the National Flood Insurance Program" (FEMA) | Leasing without rehab, acquisition or improvements  Loans < $5,000 repaid within 1 year  Maintenance  State-administered formula grants (i.e., CDBG, HOME & ESG programs) | FIRMETTE maps, which cover small areas (approx. 1 sq. mile), can be obtained at no charge on-line: http://www.store.msc.fema.gov  building and improvements only. No coverage is available for land.  Coverage requirements:  Grants – Term is for life of the building, regardless of transfer of ownership; and coverage amount is equal to total project cost (up to maximum coverage limit).  Loans – Term equal to that of the loan; coverage amount equal to that of the loan (up to maximum coverage limit). | FIRMETTE maps, which cover small areas (approx. 1 sq. mile), can be obtained at no charge on-line: http://www.store.msc.fema.gov  building and improvements only. No coverage is available for land.  Coverage requirements:  Grants – Term is for life of the building, regardless of transfer of ownership; and coverage amount is equal to total project cost (up to maximum coverage limit).  Loans – Term equal to that of the loan; coverage amount equal to that of the loan (up to maximum coverage limit). | Inapplicable:  Improvements or repairs costing less than the deductible of a standard flood insurance policy on a building (current FEMA deductible is $500).  Grants – Term is for life of the building, regardless of transfer of ownership; and coverage amount is equal to total project cost (up to maximum coverage limit).  Loans – Term equal to that of the loan; coverage amount equal to that of the loan (up to maximum coverage limit).  Community status of participation in National Flood Insurance Program: www.fema.gov/fema/csb.shtm  HUD Q&A: http://www.hud.gov/offices/cpd/environment/review/qa/floodinsurance.cfm |
Note: The most current electronic version of these regulations is available at: [http://ecfr.gpoaccess.gov] Consult this website to ensure the most up to date version of the regulations are being used.

Title 24: Housing and Urban Development

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

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§ 58.2 Terms, abbreviations and definitions.
§ 58.4 Assumption authority.
§ 58.5 Related Federal laws and authorities.
§ 58.6 Other requirements.

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§ 58.12 Technical and administrative capacity.
§ 58.13 Responsibilities of the certifying officer.
§ 58.14 Interaction with State, Federal and non-Federal entities.
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§ 58.32 Project aggregation.
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§ 58.45 Public comment periods.
§ 58.46 Time delays for exceptional circumstances.
§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

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§ 58.56 Scoping process.
§ 58.57 Lead agency designation.
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§ 58.60 Preparation and filing of environmental impact statements.

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§ 58.71 Request for release of funds and certification.
§ 58.72 HUD or State actions on RROFs and certifications.
§ 58.73 Objections to release of funds.
§ 58.74 Time for objecting.
§ 58.75 Permissible bases for objections.
§ 58.76 Procedure for objections.
§ 58.77 Effect of approval of certification.


Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

§ 58.1 Purpose and applicability.

(a) Purpose. This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

(b) Applicability. This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:

(1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) [Reserved]

(3)(i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);
(ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading “Annual Contributions for Assisted Housing” in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);

(8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9) (12 U.S.C. 1707 note);


(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:

(i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and

(ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z–13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.
§ 58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) **Activity** means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) **Certifying Officer** means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of §58.13.

(3) **Extraordinary Circumstances** means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

(i) Actions that are unique or without precedent;

(ii) Actions that are substantially similar to those that normally require an EIS;

(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or

(iv) Actions 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.

(4) **Project** means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

(5) **Recipient** means any of the following entities, when they are eligible recipients or grantees under a program listed in §58.1(b):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) With respect to Public Housing Programs under §58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under §58.1(b)(6)(ii) or Section 8 assistance under §58.1(b)(6)(iii), a public housing agency;

(vi) Any direct grantee of HUD for a special project under §58.1(b)(7);

(vii) With respect to the FHA Multifamily Housing Finance Agency Program under 58.1(b)(8), a qualified housing finance agency;

(viii) With respect to the Self-Help Homeownership Opportunity Program under §58.1(b)(9), any direct grantee of HUD.

(ix)(A) With respect to NAHASDA assistance under §58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and

(B) With respect to the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), the Indian tribe.

(x) With respect to the Shelter Plus Care and Supportive Housing Programs under §58.1(b)(3)(ii), nonprofit organizations and other entities.

(6) **Release of funds.** In the case of the FHA Multifamily Housing Finance Agency Program under §58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), Release of Funds...
(7) Responsible Entity. Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in §58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in §58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) listed in §58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in §58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(8) Unit Density refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

(9) Tiering means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

(10) Vacant Building means a habitable structure that has been vacant for more than one year.

(b) The following abbreviations are used throughout this part:

(1) CDBG—Community Development Block Grant;

(2) CEQ—Council on Environmental Quality;

(3) EA—Environmental Assessment;

(4) EIS—Environmental Impact Statement;

(5) EPA—Environmental Protection Agency;

(6) ERR—Environmental Review Record;

(7) FONSI—Finding of No Significant Impact;

(8) HUD—Department of Housing and Urban Development;

(9) NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990;

(10) NEPA—National Environmental Policy Act of 1969, as amended;

(11) NOI/EIS—Notice of Intent to Prepare an EIS;
(12) NOI/RROF—Notice of Intent to Request Release of Funds;

(13) ROD—Record of Decision;

(14) ROF—Release of Funds; and

(15) RROF—Request for Release of Funds.


§ 58.4 Assumption authority.

(a) Assumption authority for responsible entities: General. Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in §58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) Particular responsibilities of the States. (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State’s activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

(2) States must exercise HUD’s responsibilities in accordance with §58.18, with respect to approval of a unit of local government’s environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government’s certification and RROF satisfies the Secretary’s responsibilities under NEPA and the related laws cited in §58.5.

(c) Particular responsibilities of Indian tribes. An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.


§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in §58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.


(3) Federal historic preservation regulations as follows:

(i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and

(ii) 36 CFR part 801 with respect to UDAG.

(b) **Floodplain management and wetland protection.** (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A.)


(c) **Coastal Zone Management.** The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) **Sole source aquifers.** (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424(e)(2) U.S.C. 300h–3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency—40 CFR part 149).


(f) **Wild and scenic rivers.** The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) **Air quality.** (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).

(h) **Farmlands protection.** (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture—7 CFR part 658).

(i) **HUD environmental standards.** (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in §51.303(a)(3).

(2) (i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.


§ 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in §58.5 for assumption by the responsible entity under the laws cited in §58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under §58.34(a)(12) and/or
the applicability of §58.35(b). However, the responsible entity remains responsible for addressing the following requirements, where applicable, regardless of whether the activity is exempt under §58.34 or categorically excluded under §58.35(a) or (b).

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:

(1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(2) The person failed to obtain and maintain flood insurance.

(c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, 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.


Subpart B—General Policy: Responsibilities of Responsible Entities

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in §58.1(b), except as otherwise provided in §58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in §58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

[68 FR 56128, Sept. 29, 2003]

§ 58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.
(b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with §58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.


§ 58.12   Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

§ 58.13   Responsibilities of the certifying officer.

Under the terms of the certification required by §58.71, a responsible entity's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in §58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in §58.5. The Certifying Officer must also:

(a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and

(b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

§ 58.14   Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in §58.5 and §58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

[63 FR 15271, Mar 30, 1998]

§ 58.15   Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.
§ 58.17 [Reserved]

§ 58.18 Responsibilities of States assuming HUD environmental responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

(a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(2) Receive public notices, RROFs, and certifications from recipients pursuant to §§58.70 and 58.71; accept objections from the public and from other agencies (§58.73); and perform other related responsibilities regarding releases of funds.

(b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

[68 FR 56129, Sept. 29, 2003]

Subpart C—General Policy: Environmental Review Procedures

§ 58.21 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

§ 58.22 Limitations on activities pending clearance.

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in §58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in §58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

(b) If a project or activity is exempt under §58.34, or is categorically excluded (except in extraordinary circumstances) under §58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in §58.34(b) and §58.35(d), but the recipient must comply with applicable requirements under §58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(e) Self-Help Homeownership Opportunity Program (SHOP). In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.
(f) Relocation. Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

[68 FR 56129, Sept. 29, 2003]

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in §58.5 and §58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental review process.

(a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with §58.32.

(b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

§ 58.32 Project aggregation.

(a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

(b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: functional aggregation when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; geographic aggregation when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or a combination of aggregation approaches, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

(d) Multi-year project aggregation —(1) Release of funds. When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

(2) When one or more of the conditions described in §58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

§ 58.33 Emergencies.

(a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.
(b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.


§ 58.34 Exempt activities.

(a) Except for the applicable requirements of §58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in §58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

(1) Environmental and other studies, resource identification and the development of plans and strategies;

(2) Information and financial services;

(3) Administrative and management activities;

(4) 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 recreational needs;

(5) Inspections and testing of properties for hazards or defects;

(6) Purchase of insurance;

(7) Purchase of tools;

(8) Engineering or design costs;

(9) Technical assistance and training;

(10) 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 threats to public safety including those resulting from physical deterioration;

(11) Payment of principal and interest on loans made or obligations guaranteed by HUD;

(12) Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.


§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see §58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in §58.5 is required for any categorical exclusion listed in paragraph (a) of this section.
(a) **Categorical exclusions subject to §58.5.** The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in §58.5:

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

3. Rehabilitation of buildings and improvements when the following conditions are met:
   
   (i) In the case of a building for residential use (with one to four units), the 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 in a wetland;
   
   (ii) In the case of multifamily residential buildings:

   (A) Unit density is not changed more than 20 percent;
   
   (B) The project does not involve changes in land use from residential to non-residential; and
   
   (C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
   
   (iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

   (A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
   
   (B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

4. (i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

   (ii) An individual action on a project of 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 housing units on any one site.

   (iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

5. Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

6. Combinations of the above activities.

(b) **Categorical exclusions not subject to §58.5.** The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in §58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under §58.6.

1. Tenant-based rental assistance;

2. Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.

(6) Affordable housing pre-development costs including 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.

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47.

(c) Circumstances requiring NEPA review. If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.


§ 58.36  Environmental assessments.

If a project is not exempt or categorically excluded under §§58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under §58.37, the responsible entity should proceed directly to an EIS.

§ 58.37  Environmental impact statement determinations.

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

(1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.

(2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under §58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

(3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.

(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where §58.53 is applicable.
(e) **Recommended EIS Format.** The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

§ 58.38  Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the “Environmental Review Record” (ERR), and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

(a) **ERR Documents.** The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

(1) Describe the project and the activities that the recipient has determined to be part of the project;

(2) Evaluate the effects of the project or the activities on the human environment;

(3) Document compliance with applicable statutes and authorities, in particular those cited in §58.5 and 58.6; and

(4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

(b) **Other documents and information.** The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

Subpart E—Environmental Review Process: Environmental Assessments (EA’s)

§ 58.40  Preparing the environmental assessment.

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a particular project, the responsible entity must:

(a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

(b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in §58.5 and §58.6.

(d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

(e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§58.5 and 58.6.

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to §58.43.
(2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.

§ 58.43 Dissemination and/or publication of the findings of no significant impact.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by §58.70. If the notices are released as a combined notice, the combined notice shall:

(1) Clearly indicate that it is intended to meet two separate procedural requirements; and

(2) Advise the public to specify in their comments which "notice" their comments address.

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

§ 58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with §58.21:

| Notice of Finding of No Significant Impact (FONSI) | 15 days when published or, if no publication, 18 days when mailing and posting |
| Notice of Intent to Request Release of Funds (NOI-RROF) | 7 days when published or, if no publication, 10 days when mailing and posting |
| Concurrent or combined notices | 15 days when published or, if no publication, 18 days when mailing and posting |

[68 FR 56130, Sept. 29, 2003]

§ 58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

(a) There is a considerable interest or controversy concerning the project;

(b) The proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) The project is unique and without precedent.

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;
(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient proposes the selection of an alternative not in the original finding.

(b)(1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.

(2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.

(3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.


Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies’ EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in §58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

§ 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the Federal Register for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

(a) The ERR contains a decision based on a finding pursuant to §58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

(1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

(2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

(3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

(4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(b) The prior final EIS has been filed within five (5) years, and updated as follows:

(1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;
(2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

(c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.


§ 58.55 Notice of intent to prepare an EIS.

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

§ 58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under §58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

§ 58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

§ 58.59 Public hearings and meetings.

(a) Factors to consider. In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

(2) The degree of interest in or controversy concerning the project.

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.

(4) The extent to which public involvement has been achieved through other means.

(b) Procedure. All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:

(1) State the date, time, place, and purpose of the hearing or meeting.

(2) Describe the project, its estimated costs, and the project area.

(3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

(4) State the responsible entity’s name and address and the name and address of its Certifying Officer.

(5) State what documents are available, where they can be obtained, and any charges that may apply.
§ 58.60 Preparation and filing of environmental impact statements.

(a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

(b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

(1) Five copies to EPA Headquarters;

(2) Five copies to EPA Regional Office;

(3) Copies made available in the responsible entity's and the recipient's office;

(4) Copies or summaries made available to persons who request them; and

(5) FEIS only—one copy to State, HUD Field Office, and HUD Headquarters library.

(c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.

(d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.

(e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.


Subpart H—Release of Funds for Particular Projects

§ 58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by §58.43 and §58.45 before the certification is signed by the responsible entity.

§ 58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in §58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in §58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

§ 58.72 HUD or State actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:
(a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.

(b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in §58.75, or that the RROF and certification are inaccurate.

(c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated §58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.


§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to §58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in §58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

§ 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

§ 58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

(a) The certification was not in fact executed by the responsible entity's Certifying Officer.

(b) The responsible entity has failed to make one of the two findings pursuant to §58.40 or to make the written determination required by §§58.35, 58.47 or 58.53 for the project, as applicable.

(c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.

(d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

(e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).

(f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.


§ 58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

(a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.
(b) Be dated when signed.

(c) Describe the basis for objection and the facts or legal authority supporting the objection.

(d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

§ 58.77 Effect of approval of certification.

(a) Responsibilities of HUD and States. HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at §58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in §58.1(b).

(b) Public and agency redress. Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

(c) Implementation of environmental review decisions. Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

(d) Responsibility for monitoring and training. (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under §58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.
CHAPTER 8 – PROCUREMENT

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Introduction
The purpose of this chapter is to provide information about the federal requirements for procurement of supplies, equipment, and services.

Grantee Responsibilities
The Department requires all grantees to adopt written Procurement Procedures prior to obtaining Release of Funds for a HOME grant. A grantee must use procurement procedures that are in conformance with State, Federal and local laws and regulations.

Warning: The grantee must not execute any contract for goods or services prior to the Department issuing the grantee a written Notice of Release of Funds with the exception of contracts for general administration services.

Appropriate Procurement Procedures
The following are the principal sources of procurement requirements specified for HOME grantees.

2 CFR 200 §§.318 thru .326 Procurement Standards, (which have been adopted by HUD through 2 CFR Part 2400), supersedes the requirements formerly set out in 24 CFR §§84 and 85 for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

2 CFR 200 contains rules governing the contents of bid specifications, especially the required federal provisions. It also addresses the methods of procurement and all the rules governing the utilization of the methods.

All grantees must not award contracts to contractors that have been debarred from work on federal projects. (SAM)

It is recommended that non-profits also review this information as guidance for establishing procurement procedures.
General Provisions
The standards and procedures for procurement are intended to ensure that supplies, equipment, construction, and other services are both:

- Obtained as efficiently and economically as possible
- Procured in a manner that provides, to the maximum extent practical, open and free competition.

Solicitations must explain all the requirements that the bidder/offeror has to meet for his or her bid/offer to be evaluated by the grantee. Solicitations for goods and services must be based on a clear and accurate description of the material, product, or service to be procured, and cannot contain features which unduly restrict competition.

Some of the situations considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable qualifying requirements on firms.
- Requiring unnecessary experience and excessive bonding.
- Specifying only “brand name” products instead of allowing “an equal” product.
- Non-competitive pricing practices between firms or affiliated companies.
- Non-competitive awards to consultants on retainer contracts.

Awards are to be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee, price and other factors considered. Any and all bids may be rejected when it is in the grantee’s interest to do so.

The grantee must ensure that the award is made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration should be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Summary of Federal Requirements
Records and Files
According to 2 CFR 200.318(i), the grantee must maintain records to detail the significant history of a procurement. The grantee must maintain files on the rationale for selecting the methods of procurement used, selection of contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract.

Pre-Qualified Lists of Vendors/Contractors
The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period. 24 CFR 200.319(d)

Unfair Competitive Advantage
To eliminate unfair competitive advantage, if the grantee has used a contractor to develop or draft
specifications, requirements, statements of work, invitations for bids, and/or requests for proposals, the grantee should exclude that contractor from the competition for such. 2 CFR 200.319(a)

Debarred/Ineligible Contractors
The grantee must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 12689, “Debarment and Suspension” (2 CFR 200 Appendix II (H)).

Written Procedures for Contractor Selection
The grantee must have written selection procedures for procurement transactions to ensure that:

- The purchase of unnecessary or duplicate items is avoided. Where appropriate, an analysis should be made of lease vs. purchase alternatives (2 CFR 200.318 (d);
- Whenever possible, use of federal excess and surplus property, or of intergovernmental agreements for procurement or use of common goods and services should be considered as a way to foster greater economy and efficiency (2 CFR 200.318 (e) and (f)).
- All purchase orders (and contracts) are signed by the grantee’s authorized official(s);
- Items delivered and paid for are consistent with the purchase order and/or contract for the goods or services.
- Timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized.
- A cost or price analysis is performed for every procurement action, including contract modifications, and documentation to that effect is maintained in the grantee’s files. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the grantee must make independent estimates before receiving bids or proposals (2 CFR 200.323 (a).
- Profit or fee is negotiated separately from price where competition is lacking or a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of past performance, and industry rates for the area (2 CFR 200.323 (b))

Contract Pricing
The grantee must not use “cost plus a percentage of cost” pricing for contracts (2 CFR 200.323 (d)); in addition, the grantee should use “time and material” type contracts only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk (2 CFR 200.318 (j)(1)).

Protest Procedures
The grantee must have protest procedures in place to handle and resolve disputes relating to procurement (2 CFR 200.318 (k))

Documenting Contractor Performance
The grantee must have a documented system of contract administration for determining the adequacy of contractor performance (2 CFR 200.319 (a)).
Code of Conduct
The grantee must have a written code of conduct governing employees, officers, or agents engaged in the award or administration of contracts (2 CFR 200.318 (c)(1)).

Bonding and Insurance
For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (2 CFR 200.88), the grantee must ensure that its procurement meets the minimum federal requirements (2 CFR 200.325) for bid guarantees, performance bonds, and payment bonds. These include:

1. A bid guarantee from each bidder equivalent to 5% of the bid price. The bid guarantee must be a firm commitment in the form of a bid bond, certified check or other negotiable instrument as assurance that the bidder is prepared to execute a contract within the time specified for the bid amount;

2. A performance bond from the contractor for 100% of the contract price to secure the contractor’s fulfillment of all obligations under the contract; and

3. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Use of Local, Small, Minority and/or Women-Owned Businesses
Federal regulations make it very clear that grantees should make every effort to use local business firms and contract with small, minority-owned, and women-owned businesses in the procurement process. Specifically, the grantee must take affirmative steps to use small firms, minority-owned firms, women-owned firms, or labor surplus area firms (2 CFR 200.231).

Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

In conformance with the requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible, the grantee must award contracts for work to be performed to eligible business concerns located in or owned by residents of the target area to ensure that the employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing (see 24 CFR 570.607(b)).

*Note: The desire to award contracts to local firms is not a legitimate excuse for avoiding an open and competitive procurement process.*

**Procurement Methods**

Note about the procurement methods: Among the procurement approaches described below, the competitive sealed bid resulting in a firm, fixed price contract is the preferred procurement approach when there are numerous available and qualified providers, when the requirements and specifications are thoroughly detailed and are unlikely to change, and where the grantee has the opportunity to make the provider assume a large share of the risk for non-performance.

**Micro-Purchases (2 CFR 200.320 (a))**

Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of $3000 (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

**Small Purchase (2 CFR 200.320 (b))**

Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold which is currently $150,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Grantees may follow either their local small purchase procurement policy or the federal policy. If the local policy is used, it must be at least as stringent as the federal policy.

The small purchase method may be used for procurement of $150,000 or less in the aggregate, per 2 CFR 200.88. A procurement of more than $150,000 may not be inappropriately broken up into smaller components solely to qualify for the small purchase approach.
**Competitive Sealed Bid (2 CFR 200.320 (c))**

The Department considers this method of procurement best suited to obtaining contractors for construction projects and for large quantities of goods or materials (See Chapter 10 – Construction and Labor Standards for more on construction contracting).

Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions stated below apply.

1. In order for sealed bidding to be feasible, the following conditions should be present:
   
   a. A complete, adequate, and realistic specification or purchase description is available;
   
   b. Two or more responsible bidders are willing and able to compete effectively for the business; and
   
   c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

2. If sealed bids are used, the following requirements apply:

   a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publically advertised;
   
   b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
   
   c. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
   
   d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
   
   e. Any or all bids may be rejected if there is a sound documented reason.

**Competitive Proposals (2 CFR 200.320 (d))**

The Department considers this procurement method best suited to obtaining professional services. This is normally conducted with more than one source submitting an offer, and either a fixed-price or not-to-exceed type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. This method has two sub-parts—the Request for Proposal and the Request for Qualifications.
Request for Proposals:

1. The Request for Proposals (RFP) must clearly and accurately state the technical requirements for the goods and services required.

2. The grantee must publicize the RFP, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete.

3. Proposals must be solicited from an adequate number of qualified sources, consistent with the nature and requirements of the procurement.

4. The grantee must conduct a technical evaluation of the submitted proposals to identify the responsible offerors.

5. As necessary, the grantee must conduct negotiations with those offerors who are deemed responsive and responsible and fall within a competitive price range, based on the grantee’s evaluation of the bidders’ pricing and technical proposals. After negotiations, these bidders may be given the opportunity to submit a “best and final” offer.

6. The grantee must award the contract to the most responsive and responsible offeror after price and other factors are considered through scoring the proposals or “best and final” offers according to predetermined evaluation criteria. The successful proposal/offeror must clearly be the most advantageous source of the goods and services.

Request for Qualifications

For procurement involving architecture or engineering services, the grantee may use the Request for Qualifications (RFQ) competitive proposal procedure whereby competitors’ qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. In these instances, price is not used as a selection factor.

Once the most-qualified firm is identified, only that firm is asked for a price proposal, which is subject to negotiation of a fair and reasonable price. If negotiations with the selected firm are unsuccessful, this process is repeated with the next highest-ranked firm, until a fair and reasonably priced contract can be awarded.

The grantee must take care to document the basis for its determination of the most qualified competitor and the reasonableness of the contract price. This qualifications-based approach to the competitive proposals method may not be used to purchase other than architectural and engineering services (2 CFR 200.320 (d)(5)).

For applicants’ information, the above-cited federal rule relating to the procurement of architectural and engineering (A/E) services is quoted verbatim:

The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors’ qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential
source to perform the proposed effort.

This means that:

- Qualifications-based procurement can be used only for A/E services.
- A Request for Qualifications may be issued.
- The competitors’ qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
- An RFQ cannot be used to purchase other types of services, even though A/E firms are potential sources to perform other types of services.

In addition, the federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bids or proposals except where mandated by federal statutes, due to the restrictions on open competition, which result. However, in procuring architectural and engineering services, geographic location is permitted as a selection criteria provided this criterion leaves an appropriate number of qualified firms (2 CFR 200.319 (b)).

Non-Competitive Proposals/Sole Source (2 CFR 200.320 (f))

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply and with Department approval:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
4. After solicitation of a number of sources, competition is determined inadequate.

Labor Standards

Chapter 10 – Construction & Labor Standards contains crucial information for grantees contemplating awarding contracts for construction or rehabilitation of 12 or more HOME-assisted units.

Designating Grant Administration to Another Governmental Entity

A local government grantee may conduct the activities of grant administration for itself, without a procurement process. This statement seems self-evident, but it is included here because the capacity to do one's own grant administration activities forms the foundation for also allowing the grantee to designate (delegate) grant administration activities to some other governmental entities without a procurement process.
The Department looks to Nebraska state law to determine what types of other governmental entities are considered extensions of the grantee such that those other governmental entities will be allowed to be designated by a grantee to do grant administration without a procurement process.

Development regions, and subsequently formed development districts based on those regions, are recognized and statutorily authorized in Sections 13-1901 to 13-1907, Nebraska Revised Statutes (Reissue 1997). Development districts formed pursuant to, and meeting the requirements of, those development district statutes are considered to be an extension of the grantee (assuming the grantee is a member of the development district), and grant administration may be delegated to such districts without a procurement process.

The Interlocal Cooperation Act, Sections 13-801 to 13-827, Nebraska Revised Statutes, (Reissue 1997 and Cumulative Supplement 2002) allows local governmental entities to enter into agreements for their mutual benefit.

If such an interlocal agreement were entered into by a grantee and other governmental entities (whether one or more), and such agreement addressed the issue of CDBG grant administration, and authorized one of the agreeing governmental entities to do such grant administration work on behalf of other agreeing governmental entities, this arrangement would be recognized by the Department as not requiring a procurement process.

Similarly, the Joint Public Agency Act, Sections 13-2501 to 13-2550, Nebraska Revised Statutes (Cumulative Supplement 2002) is another authorizing vehicle for interlocal agreements which would be recognized by the Department.

Nonprofit organizations and CHDOs receiving HOME funds must follow the same procurement procedures and standards as outlined above.
CHAPTER 9 – INCOME & PROCEEDS

Chapter Overview
Home Program Income
Program Income Reuse Plan
CHDO Proceeds
CHDO Proceeds Reuse Plan
Recaptured Funds
Common Questions Concerning Program Income

Home Program Income
Program income is the income received by a grantee directly generated from the use of HOME funds. 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;
- Income from the use or rental of real property owned by grantee that was acquired, rehabilitated or constructed with HOME funds, minus the costs incidental to generating that income;
- Payments of principal and interest on loans made with HOME;
- Proceeds from the sale of loans or obligations secured by loans made with HOME;
- Interest on program income; and
- Any other interest or return on the investment of HOME.

Note: Income generated by a project which is funded with program income, is also program income.

Program income is not:

- Tenant payments for renting housing units in a HOME-assisted rental property.
- Proceeds generated from a Community Housing Development Organization (CHDO) project (income generated from a project designated by the Department as a CHDO set-aside project is called CHDO proceeds).
- Funds recaptured as a result of a homebuyer property being sold within the HUD-imposed affordability period.

All HOME program income must be used in accordance with the HOME program rules. Program income never loses its identity as federal funds regardless of the number of times it is reinvested in projects.

HOME program income must be expended by the grantee before drawing down additional HOME funds.

All HOME program income must be returned to the Department, unless:
• The Department offers the option to the grantee to retain program income (HOME Contract).
• The grantee submits and the Department approves a program income reuse plan prior to release of funds.

Program Income Reuse Plan
A grantee’s program income reuse plan must:
• Be approved by the Department prior to release of funds.
• Detail the specific uses and service area of program income (all uses must be HOME-eligible).
• Contain provisions that require the Department to approve all amendments to the plan.

In addition, grantees must submit Program Income Reports to the Department twice a year. See Chapter 14 – Reporting Requirements.

CHDO (Community Housing Development Organization) Proceeds
CHDO proceeds are the proceeds resulting from a CHDO set-aside project including:
• The permanent financing of a CHDO project which is used to pay off a CHDO financed construction loan.
• The sale of CHDO sponsored rental housing to a second non-profit.
• The sale of CHDO developed homeownership housing.
• The principal and interest from a loan to a buyer of CHDO developed homeownership housing.

CHDO proceeds are not:
• HOME funds recouped by a CHDO when HOME assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full HUD-imposed affordability period.

Note: Rental income, which is generated from a CHDO-owned project, does not constitute project proceeds.

All CHDO proceeds must be returned to the Department, unless:
• The Department offers the option to the CHDO to retain CHDO proceeds (HOME Contract).
• The grantee submits and the Department approves a CHDO proceeds reuse plan detailing use and service area prior to release of funds.

CHDO Proceeds Reuse Plan
A CHDO proceeds reuse plan must:
• Be approved by the Department prior to release of funds.
• Detail the specific uses of CHDO proceeds (all uses must be HOME-eligible or are housing activities that benefit low-income persons).
• Contain provisions that require the Department to approve all amendments to the plan.

Recaptured Funds
Recaptured funds are HOME funds recouped by a grantee when HOME assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full HUD-imposed affordability period. The amount of the recapture is determined by the grantee’s recapture requirements contained in their Department approved program guidelines.

All recaptured funds must be used in accordance with the HOME program rules.

Recaptured funds must be expended by the grantee before drawing down additional HOME funds.

All recaptured funds must be returned to the Department, unless:
• The Department offers the option to the grantee to retain recaptured funds along with program income (HOME Contract).
• The grantee submits and the Department approves a program income reuse plan that includes the reuse of recaptured funds.

A Plan for Recaptured Funds
A grantee’s program income reuse plan must:
• Be approved by the Department prior to release of funds.
• Detail the specific uses and service area of recaptured funds (all uses must be HOME-eligible).
• Contain provisions that require the Department to approve all amendments to the plan.

In addition, grantees must track and report program income and recaptured funds separately. Recaptured funds can be used like program income with the exception that they may not be used for any administrative costs since they represent a return of the original HOME investment.
This chart shows differences between program income, CHDO proceeds and recaptured funds.

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<th>Program Income</th>
<th>CHDO Proceeds</th>
<th>Recaptured Funds</th>
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<td>The income received by a grantee directly generated from the use of HOME funds. (See list of examples earlier in chapter)</td>
<td>Proceeds resulting from a CHDO set-aside project. (See list of examples earlier in chapter)</td>
<td>HOME funds recouped by a grantee when HOME assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full HUD-imposed affordability period.</td>
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<th>Rules Governing Use</th>
<th>Grantee must have program income reuse plan approved by the Department.</th>
<th>The CHDO must have a plan approved by the Department to use CHDO proceeds.</th>
<th>Grantee must have a program income reuse plan including use of recaptured funds approved by the Department to use recaptured funds.</th>
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<td>CHDO proceeds must be used for HOME-eligible or other housing to benefit low-income families (The Department approves the eligible uses in the plan by the CHDO).</td>
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<td>CHDO proceeds are not required to meet HOME rules (The Department may impose certain rules on the CHDO)</td>
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| Administration Costs | The Department may allow grantees to use up to 10% of the program income for administrative costs. | HUD does not restrict the use of CHDO proceeds for administrative costs, however the Department may. | Recaptured funds must not be used for administrative costs. |

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Common Questions Concerning Program Income

Can a recipient that received Nebraska Affordable Housing Trust Funds (NAHTF) in the past use NAHTF program income on families at 80% to 100% AMI while using their new HOME award for 80% and below?

Yes, the program guidelines for both must specify how the programs will work together. See next question.

Does program income a recipient received from CDBG, HOME or NAHTF housing activities always have to be used prior to drawing money from a new CDBG, HOME or NAHTF housing award?

No. Spending program income first only applies to the same funding source with income generated from housing activities. If CDBG award, spend CDBG program income. If HOME award, spend HOME program income. If NAHTF award, spend NAHTF program income.

What if a community is receiving program income from a previous award as a solo applicant but are now involved in a regional or 3 community award; can they keep their program income separate from the new award?

It depends on the reuse plan and if the community is the recipient on both awards. See previous question and answer.

How do you report program income on the draw form from the current award as well as from past awards?

Program income from current award is reported on Part 1 line 2 and is reflected as disbursed on Part 1 line 4 and Part II line 3. Program income generated from other awards spent as a part of current award program is reported as local funds applied on Part II line 2.
CHAPTER 10 - CONSTRUCTION & LABOR STANDARDS

Statutory and Regulatory Provisions
Federal (Davis-Bacon) wage requirements are made applicable to the HOME program by Section 286 of the National Affordable Housing Act of 1990 which provides, in part as follows:

Any contract for the construction of affordable housing with **12 or more HOME-assisted units** with funds made available under this subtitle shall contain a provision requiring that not less than wages prevailing in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act…, shall be paid to all laborers and mechanics employed in the development of affordable housing involved… .

HUD regulations (24 CFR 92.354) paraphrase the statutory provision and clarify that the contract for construction must contain these wage provisions if HOME funds are used for any project costs, including construction or non-construction costs, for housing with **12 or more HOME-assisted units**.
The regulations further explain that a construction contract that includes a total of **12 or more HOME-assisted units** is covered by Davis-Bacon requirements even if the contract covers more than one HOME “project” and prohibits arranging multiple construction contracts within a single project for the purpose of avoiding Davis-Bacon coverage. Once triggered, the wage provisions apply to the construction of the entire project – HOME-assisted and non-assisted portions, alike.

**Unit Threshold**

The Davis-Bacon “trigger” relates to the number of **HOME-assisted units** contained in a construction contract. It is important to recognize that the two factors are:

- The number of HOME units – there may be units that are not HOME-assisted in the contract
- The scope of the construction contract – not the “project.”

**The Labor Laws**

Every construction (rehabilitation or new) contract with **12 or more HOME-assisted units** is required to comply with the following federal labor standards (note that construction projects with **less than 12 HOME-assisted Units** are still subject to the Fair Labor Standards Act):

- **Davis-Bacon Act (40 U.S.C. 276(A)-(A)-5)**
  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.

- **Contract Work Hours and Safety Standards Act (40 U.S.C. 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 liquidated damages where violations occur. This act also addresses safe and healthy working conditions.

- **Copeland Act (Anti-Kickback Act) (40 U.S.C. 276c)**
  The Copeland Act makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment.

- **Fair Labor Standards Act of 1938, as Amended, (29 U.S.C. 102, et. seq.)**
  This Act provides for minimum wages for construction workers, overtime pay (forty-hour week), recordkeeping and child labor standards.

**Labor Standards Procedures Overview**

Grantees must develop a compliance and enforcement program that ensures all applicable labor standards requirements are met. In many instances the grantee, the grant administrator, and the engineer may work together to ensure compliance with Davis-Bacon and Related Acts.

The grantee must designate someone as the labor standards compliance officer with the overall responsibility to coordinate and ensure compliance with all appropriate labor standards.
regulations and maintenance of an accurate filing system. The final responsibility for compliance rests with the grantee.

The grantee must secure applicable wage rate decisions, include all applicable wage rate and labor standards provisions in the bid specifications and contract documents, and monitor contractor compliance. Major activities are summarized in Tasks 3 through 6 in the most typical sequence of occurrence.

To properly organize construction and labor standards documents, the grantee should establish a filing system that contains the following (as they become available):
1. Preliminary design and cost estimates.
2. Final design and cost estimates.
3. Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids.
4. Wage decision(s) for project.
5. Construction bid package.
6. Approval of bid documents by authorities having jurisdiction over the project.
7. Proof of publication advertising bids. This file may also include any letters utilized to specifically solicit for minority/women contractor participation.
8. Bid opening minutes, bid tabulations.
9. Wage decision verification **ten days prior** to bid opening.
10. Verification of contractor eligibility.
11. Written recommendation for award of contract.
12. Executed construction contract(s).
13. Pre-construction conference minutes or evidence of meeting with contractor.
14. Notification to the Department of contract award.
15. Contractor/subcontractor weekly payrolls and evidence of review, (a copy of the first two (2) payrolls must be submitted to the Department).
16. Employee interview forms and evidence of review.
17. Verification of job site posting.
18. Other related correspondence.

**Secure Wage Decision**

The grantee may obtain the wage decision online at www.wdol.gov. When you visit the website you will need to click on “Selecting DBA WDs.” You will then need to enter your state, county and construction type – Building, Residential (most HOME projects fall in this category), Highway, or Heavy.

The grantee will need to download the “Construction Packet” from [http://www.neded.org/files/crd/cdbg/construction/Construction_Compliance_Packet_After_Award.pdf](http://www.neded.org/files/crd/cdbg/construction/Construction_Compliance_Packet_After_Award.pdf) to find items that should be included in the Bid Document.

Items which are included in the Construction Packet include: “Contractors Guide to Davis-Bacon Wage Requirements and Certified Payroll Reports,” Contract Work Hours and Safety Act (CWHSSA), Payroll form (WH-347), Employee Interview Form (HUD-11), eleven (11) posters (listed in the Construction Packet) that must be displayed with the wage decision for the
duration of the project in a conspicuous place accessible to all the workers, and LSE-7 – Notice of Contract Award.
The packet further details the documents that must be sent to the Department for review and record keeping purposes.

The grantee will need to check weekly through the bid opening date to verify the area wage decision is current. If modifications are published prior to bid opening and/or award the grantee must secure modifications and send them as an addendum to all contractors who received the original bid package.

The area wage decision is in effect for the life of the project unless a contract is not awarded within 90 days of the bid open. In that case, a new decision is required.

**Federal Provisions for Bid Package**
The grantee must develop procedures for securing contractors and monitoring compliance with various Federal Equal Opportunity requirements. The grantee must include all applicable Equal Opportunity language, other related HOME and local terms, conditions, and procedures in the bid specifications and contract documents, obtain required documentation, and monitor compliance. These activities are to be incorporated into the contracting flow summarized below. These terms and conditions are included in the contract & consulting attachments. These conditions must be incorporated into the bid package and awarded contract.

Bonding and Insurance Requirements Clause: Federal bonding requirements apply to contracts in excess of $150,000. Smaller contracts must comply only with local bonding requirements.

- Flood Insurance, if applicable.
- Bonding and Insurance. ([Attachment 1](#))
- Title VI of the Civil Rights Act of 1964 Clause. ([Attachment 3](#))
- Age Discrimination Act of 1975, as Amended Clause. ([Attachment 3](#))
- Section 504 of the Rehabilitation Act of 1973, as Amended Clause. ([Attachment 3](#))
- Section 3 of the HUD Act of 1968, as amended Clause. ([Attachment 3](#))
- Section 109 of Title I of the Housing and Community Development Act of 1974, as Amended Clause ([Attachment 3](#))
- Federal Executive Order 11246. ([Attachment 4](#))
- Clean Air/Water Clause. ([Attachment 6](#))
- Access to and Maintenance of Records Clause. ([Attachment 5](#))
- Conflict of Interest Clause. ([Attachment 5](#))
- Applicable Wage Decision(s).
- Federal Labor Clauses ([Attachment 12](#)).
Attorney Review
The Department recommends the bid package be reviewed in its entirety by the grantees’s attorney to insure compliance with applicable state and local law.

Verification of Wage Decision
Ten days prior to bid opening date, the grantee must check online at www.wdol.gov to determine if there have been any modifications or replacement of the area wage decision previously issued. The grantee must make a note in the file that includes the wage decision number, modification number, date of the decision, date checked, and the name of the person checking decision. If the wage decision has changed, print out, include the new wage decision in the Bid Packet, and file the current wage decision. This is important because if the wage decision has changed and the grantee has not checked for updates and notified prospective bidders (if applicable), the grantee is liable for any difference in increased wages for the project.

Bid Amendments
If bid documents are amended during the advertisement period, addenda must be sent to all bidders who have received bid documents. The grantee must include the wage decision in the bid document. If modifications are published prior to bid opening, the grantee must secure modifications and send them as an addendum to all contractors who received the original bid package.

Verifying Contractor
Prior to award of the contract, the grantee must check to make sure the proposed prime contractor is not on federal lists of debarred, suspended or ineligible contractors. The grantee must go https://www.sam.gov/portal/SAM/#1 to verify the contractor is not on federal lists of debarred, suspended or ineligible contractors. The grantee must print the result of the search and retain the printout in the grantee files.

Contract Award Procedures
The Notice of Contract Award (Form LSE 7) must be sent to the Department within 10 days of award. The Notice of Contract Award includes the project name and location, the applicable wage decision, including verification date and date of the wage determination, the name and address of the business awarded the contract, the contract amount, and the name of the person identified by the municipality as responsible for labor standards compliance. If there are multiple contracts with the grantee, LSE 7 should be submitted for each contractor.

Meet with Contractor
Prior to the start of construction, the grantee should meet with the principal contractor and all available subcontractors to instruct them on their responsibilities under the Labor Standards provisions (including submission of weekly payrolls) as well as the grantees role in monitoring compliance (including employee interviews); to obtain any outstanding documentation; and to provide the contractor with posters for the site (see Construction Packet for list of posters required) and a copy of the wage decision for posting.
This meeting can take place at a pre-construction conference or any other convenient time. Pertinent information as to the items discussed and attendees should be documented and kept in the grantees files. Attachment 10 is an example of the items to be discussed at this meeting.

**Additional Wage Decision Classifications**

The pre-construction conference or similar meeting is an opportune time to review the wage decision to see if any additional classifications will be required. If any class of laborer or mechanic that is not listed in the wage decision is to be employed, you must submit an additional request to the Department after contract award that such laborer or mechanic be conformed to the wage decision.

Attachment 11 is an example of the information to be submitted to DED if a wage determination lacks a classification of worker to be employed.

Your request must include:
1. A letter from the awarded contractor stating what is paid hourly (wages and itemized bona-fide fringe benefits) to the employees in the needed classifications (this work cannot be performed in any classification in the wage determination).

2. A description of the work to be performed for each wage classification

3. A statement on whether they are union or non-union employees.

4. Documentation that the interested parties, including the employees or authorized representatives and the contractors, agree on the proposed classification and wage rate. Attachment 11 and HUD’s Form 4230a should both be submitted to the Department.

Upon receiving the letter from the awarded contractor, the Department will issue a temporary wage. Once the Department receives confirmation from the DOL on the wage rate, the Department will contact the grantee with DOL’s decision.

**Wage Rate Exceptions**

Apprentices and trainees may work at less than prevailing wage rates only if they are registered in a bona fide apprenticeship program, which has been approved by the United States Department of Labor (DOL).

**Notice to Proceed**

Following execution of the contract documents and completion of the pre-construction conference, the grantee will issue a Notice to Proceed to each prime contractor to begin the work. The Notice to Proceed must establish the construction start date, the scheduled completion date, and provide the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with these sections of the contract documents.

**Payroll Verification**
Once construction is underway, the grantee must obtain copies of all general contractor and subcontractor weekly payrolls, accompanied by the Statement of Compliance (form WH-348), and check them against the wage decision. The contractor should submit these within seven working days of the end date on the payroll form.

The payrolls should be examined upon receipt so that any necessary corrective action can be initiated before the problem multiplies. Payrolls should be initialed for verification of review.

Items for review include:


2. A comparison between the classification and the wage decision to determine whether the rate of pay is at least equal to the rate required by the decision.

3. A review to ensure that work by an employee in excess of 40 hours per week is being compensated at rates not less than one and one-half times the basic rate of pay; a review of deductions for any non-permissible deductions; and that the statement of compliance has been signed by the owner or an officer of the construction firm.

Payroll Verification Submitted to DED
The grantee must submit a copy of the first 2 (two) payrolls, from each contractor to the Department. Any discrepancies must be reported to the contractor and the Department along with steps taken or being taken to resolve discrepancies.

On-Site Visit/Interviews
Site visits should be made to confirm that posters and the correct wage decision are posted at the construction site in clear view of all employees throughout the duration of the construction project. The required posters should all have been downloaded and on display.

The grantee must also conduct on-site interviews of construction workers using form HUD-11, Record of Employee Interview (the link to this form is located in the appendix). Grantees may choose to target on-site interviews to projects, contracts, and/or employers where violations are suspected and the interview data can be most useful.

Targeting may mean that no interviews are conducted on certain contracts where remote monitoring (such a payroll reviews) indicates full compliance so that more interviews may be conducted where problems are indicated. However, conducting a minimum of 3 visits and interviews throughout each project, regardless of any concerns, is encouraged. For more information about Record of Employee Interview please view the information at http://www.hud.gov/offices/olr/streamline.cfm.

All information received from the on-site interviews must be compared to the information contained in the applicable contractor’s payrolls and correction of any discrepancies undertaken immediately. The reviewer must sign and date the interview form for proper verification of
review. At completion of the project, the grantee must also prepare and submit to the Department a Final Wage Compliance Report (LSE 9).

Construction Management
During construction, the grantee is also responsible for construction management. This may be done by the architect/engineer, and if so, should be included in the scope of services identified in the professional services contract. Construction management must include inspection and general supervision of construction to check the contractor’s work for compliance with the drawings and specifications and quantity and quality control. Written inspection reports must accompany the contractor’s requests for partial payment.

- General Supervision must include monitoring construction to alert the grantee as to need for adjustments in design as dictated by actual field conditions and the preparation of contract amendments affecting alignment, detail or dimensions shown on drawings must include revised drawings.
- Quality Control must include quality tests as necessary to verify conformance with technical specifications concerning minimum quality requirements.
- Quantity Control must include verification of in-place quantities and other records reflecting the as-built facility.
- Certification of Pay Estimates - Inspection reports, copies of field measurement notes, and test results used to verify contractor’s periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.
- General construction management may include other responsibilities, include but not limited to providing horizontal and vertical control in the form of benchmarks and base lines to be used by the contractor in staking the construction, review and approval of shop drawings, and project coordination.

Payment Procedures
Upon completion of agreed upon quantities of work, the contractor may submit to the grantee requests for partial or progress payments. Written inspection reports must accompany the contractor’s requests for partial payment. Inspection reports, copies of field measurement notes, and test results used to verify contractor’s periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.

Upon receipt of Certificates for Partial Payment and necessary documentation, the grantee must check Equal Opportunity and Labor Standards compliance files to insure that all payrolls have been received and checked and any necessary restitution paid and that Employee Interviews (form HUD-11) have been conducted and all discrepancies corrected. The grantee may then pay the contractor the amount requested or up to 90% of the amount requested, depending on contract (the 10% would be retained until final completion and acceptance of the work).

Change Orders
Change orders must be prepared by the construction inspector and/or architect/engineer. Change orders are generally permissible under state law. The cumulative cost of all such orders
should not exceed 25 percent of the original contract price and these changes are not to constitute a major alteration of the original scope of work.

Each change order must be accompanied by a supporting statement which describes why the change is necessary, cost estimates, and any needed plans and specifications. The grantee must approve and authorize change orders before they are given to the contractor. Change orders should be kept to an absolute minimum.

Acceptance of Work

Before final payment approval, the contractor must complete the conditions in the bid contracts. The contractor may request an acceptance of work from the Grantee that indicates the work has been completed according to contract. The grantee must place the acceptance of work form in the contract file. Change orders and receipts for project payment must be filed. The files must be reviewed by the grantee for completeness before the acceptance of work form is approved. The contractor must file an as-built plan with the grantee to receive project approval. The grantee can then issue an acceptance of work and final payment less any funds retained after the contractor has completed the project and files are complete.

The contractor should file the acceptance of work form from the grantee at the designated location. The grantee should require the contractor to submit lien waivers from all subcontractors, if any. The lien waivers must be submitted from the materials and labor subcontractors to the contractor prior to filing an acceptance of work form.

The subcontractor lien waivers must be placed in the grantee’s contract files after the filing of the acceptance and upon submission of a clean lien certificate by the contractor, the grantee may release the funds retained to the contractor. If any claims or liens remain, the grantee must take appropriate action for disposition of funds retained and all claims against the bonds in accordance with state law.
Index of Hyperlinks

HUD Forms
HUD Labor Relations
HUD 4010-Federal Labor Standards Provisions (Needs to be in Construction Contract)
HUD 11-Record of Employee Interview (English/Spanish)
HUD 4230-A-Report of Additional Classification & Wage Rates
WH-347-Payroll Report

DOL Forms
DOL Forms by Form Number  http://webapps.dol.gov/libraryforms/formsbvnnum.asp
WH-347-Payroll Report

DOL/HUD Documentation

Posters
Equal Employment Opportunity (EEO) is The Law  http://www1.eeoc.gov/employers/poster.cfm
EEO (English)
EEO (Instructions)
EEO (Spanish)
EEO (Spanish Instructions)

You Have a Right to a Safe and Healthful Workplace  https://www.osha.gov/Publications/poster.html
OSHA 3165 (English)
OSHA 3165 (Instructions)
OSHA 3165 (Spanish)
OSHA 3165 (Spanish Instructions)

Notice To All Employees
WH-1321

NDOL Posters
https://dol.nebraska.gov/LaborStandards/RequiredPosters
BONDING AND INSURANCE REQUIREMENTS

CODE OF FEDERAL REGULATIONS 2CFR 200.325

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold*, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

*The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is $150,000, but this threshold is periodically adjusted for inflation.
CIVIL RIGHTS AND EQUAL OPPORTUNITY PROVISIONS


The law provides that, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101, Et, seq.).

The law provides that, “no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. “


“Section 504 provides that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”


The law provides that, “to the greatest extent feasible, that recipients of HUD funds (and their contractors and subcontractors) provide jobs and other economic opportunities to low-income persons, particularly public housing residents. Section 3 helps create employment for low-income persons and provides contracting opportunities for businesses that are owned by low-income people or that provide employment to low-income people.”

Section 109 of Title I of the Community and Housing Development Act of 1974 (24 CFR Part 6

“Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.”
CERTIFICATION OF BIDDER REGARDING SECTION 3 AND SEGREGATED FACILITIES

Name of Prime Contractor ___________________________  Project Name and Number ___________________________

The undersigned hereby certifies that:

(a) Section 3 provisions are included in the Contract.

(b) A written Section 3 plan was prepared and submitted as part of the bidding proceedings (if bid equals or exceeds $100,000).

(c) No segregated facilities will be maintained.

Name & Title of Signer (Print or Type) ___________________________

Signature ___________________________  Date ___________________________
CONTRACTOR

Section 3 Plan

A. agrees to implement the following specific affirmative action steps directed at increasing the utilization of lowest income residents and businesses within the Village/City/County of .

B. To ascertain from the locality’s HOME program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.

C. To attempt to recruit from within the city the necessary number of lower income residents through: Local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.

D. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.

E. *To insert this Section 3 plan in all bid documents, and to require all bidders and subcontracts to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.

F. *To insure that subcontracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.

G. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.

H. To insure that all appropriated project area business concerns are notified of pending subcontractual opportunities.

I. To maintain records, including copies of correspondence, memoranda, etc., which document that all the above affirmative action steps have been taken.

J. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 plan.

*Loans, grants, contracts and subsidies for less than $100,000 will be exempt.
SPECIAL EQUAL OPPORTUNITY PROVISIONS

A. Activities and Contracts Not Subject to Executive Order 11246, As Amended

(Applicable to Federally assisted construction contracts and related subcontracts $10,000 and under)

During the performance of this contract, the contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees and treated during employment without regard to their race, color, religion, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of the nondiscrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) Contractors shall incorporate foregoing requirements in all subcontracts.

B. Executive Order 11246 (Contract/subcontracts above $10,000)

1. SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor 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. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the [Contract Compliance Officer], advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the [Department] and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the [Department and the] Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction [by the Department], the contractor may request the United States to enter into such litigation to protect the interests of the United States [italics added]."
ACCESS TO AND MAINTENANCE OF RECORDS

The Consultant/Contractor agrees to maintain such records and follow such procedures as may be required under HUD CPD subpart J, 570.502 (paragraph a. 16.) and 2 CFR 200.333 (paragraphs (b) and (c)) and any such procedures that DED may prescribe. In general such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Consultant/Contractor or Grantee for a period of three years after the final audit of the Grantee’s CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Grantee shall request a longer period for record retention.

The Grantee, DED and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records and books of the Consultant/Contractor involving transaction to this local program and contract.

Conflict of Interest

From 2 CFR 200.318, no officer, employee or agent of the Grantee who will participate in the selection, the award, or the administration of this grant, may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this Contract. Upon written request, exceptions may be granted upon a case by case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient’s program or project. These exceptions are granted by the Department.
CLEAN AIR AND WATER ACTS – REQUIRED CLAUSES

This clause is required in all third party contracts involving projects subject to the Clean Air Act (42 U.S.C. s/s 7401 et seq. (1970)), the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.), and the regulation of the Environmental Protection Agency with respect to 40 CFR32 as amended. It should also be mentioned in the bid document.

During the performance of this contract, the CONTRACTOR agrees as follows:

(1) The CONTRACTOR will certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency pursuant to 48 CFR 9.40 and 40CFR32.20.

(2) The CONTRACTOR agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 7414) and Section 308 of the Clean Water Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

(3) The CONTRACTOR agrees that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(4) The CONTRACTOR agrees that it will include or cause to be included the criteria and requirements in Paragraph (1) through (4) of this section in every nonexempt subcontract and require every subcontractor to take such action as the Government may direct as a means of enforcing such provisions.
Preconstruction Conference

Labor Standards Regulations Information

Project Name:

Project Location:

CDBG Grant Number:

Date:

The following Labor Standards requirements were discussed and reviewed with representing who will undertake this project.

♦ Prevailing wages as set forth in the Davis-Bacon Act must be paid on this project. Required wage rates are contained in Wage Determination ____________ Mod# ______ Date ________

♦ Overtime provisions as listed in the Contract Work Hours and Safety Standards Act must be followed. Time and a half must be paid to any worker employed in excess of 40 hours in one week.

♦ The Wage Determination and Wage Poster must be prominently displayed on the job site for the duration of the construction.

♦ Employees must be paid on a weekly basis.

♦ Payrolls covering all workers on the project must be submitted to ________________ on a weekly basis, from the time the work begins until it is completed, and no later than seven days following completion of the workweek. No payroll is needed if no work is performed, but payrolls must be numbered with the last one marked “Final”.

♦ To ensure cooperation, employees are to be informed that onsite interviews will be conducted by the Labor Standards Compliance Officer, __________________________.

♦ Proper certification from the U.S. Department of Labor, Bureau of Apprenticeship and Training, will be required whenever apprentices are employed.

♦ Withholding of payments may occur if all applicable provisions are not followed.

♦ Underpaid workers must be paid proper wages through restitution.

♦ Liquidated damages $10/day may be assessed for each violation of the Contract Work Hours and Safety Standards Act.
Federal Labor Standards provisions apply to the general contractor and to all subcontractors on the project. The prime contractor is responsible for payment of employees of the subcontractors in compliance with labor standards provisions.

Wage restitution may be due to employees for failure to observe the proper ratio of journeymen to apprentices, underpayment of employees, or for allowing apprentices to work alone.

A listing of contractors to be utilized on this project must be provided to ________________. Any debarred, suspended or ineligible contractors may not be used.

The Labor Standards Compliance Officer must be informed of the start and end of construction dates on the project.

Only trades indicated in the Waged determination can be utilized on the project. Additional classifications will be needed for any non-listed trades.

Davis-Bacon language (HUD form 4010) must be included in all project contracts, lower tier contracts included.

The Labor Standards Compliance Officer needs to review the prime contract for inclusion of Labor Standards Provisions.

The following material was provided to the Developer/General Contractor on this project:

- Wage Determination # NE ___________ Mod# _____ Dated ___________
- Posters to be posed at the job site
- Payroll form
- Federal Labor Standards Provisions HUD form 4010
- Sample Payrolls

It is acknowledged that the Labor Standards Regulations information mentioned above was discussed and the related documents were transmitted to ________ of ___________________.

Pre-Award Official

Developer/Contractor

Title ________________
Request Additional Wage Determination Classification Example

Please type or print in all areas except the signatures.

Information to include

<table>
<thead>
<tr>
<th>CDBG Project No.</th>
<th>Name of Grantee (Village/City/County)</th>
<th>Location of Project (City, County and State)</th>
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<th>Contract Award Date</th>
<th>Wage Determination No.</th>
<th>Wage Modification No.</th>
<th>Wage Determination Date</th>
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<tr>
<th>Sub-contractor Name</th>
<th>Sub-contractor Address</th>
<th>Sub-contractor City, State, Zip</th>
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<th>Primary Contractor Name</th>
<th>Primary Contractor Address</th>
<th>Primary Contractor City, State, Zip</th>
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Parts (1) through (3) of information requested.

I am currently paying \( \text{per hour} \) to  to

\( \text{Name of Contractor} \)
\( \text{(Wage Rate)} \)
\( \text{(Employee(s) Name)} \)

in the following  

\( \text{(Wage Classification)} \)

In addition I am paying \( \text{in bona-fide} \) 

\( \text{(Amount)} \)

fringe benefits (per hour). These fringe benefits include

\( \text{(Amount/Fringe Per Hour), (Amount/Fringe Per Hour), etc.} \)

\( \text{(Non/Union)} \)

\( \text{does} \)

\( \text{(Employee Name)} \)

\( \text{(Description Of Work Performed)} \)

This employee is a(n) 

\( \text{(Employee Name)} \)

\( \text{(Description Of Work Performed)} \)

\( \text{member.} \)

Part (4) of requested information.

I, \( \text{Employee Name} \)

\( \text{(Wage Classification)} \)

\( \text{at the wage rate of} \)

\( \text{(Wage Rate)} \)

the following bona fide benefits per hour

\( \text{(Amount/Fringe Per Hour), (Amount/Fringe Per Hour), etc.} \)

\( \text{Employee Signature} \)

\( \text{Date} \)

\( \text{Contractor Signature} \)

\( \text{Date} \)
1. FROM (name and address of requesting agency)
Rebecca Schademann
Nebraska Department of Economic Development
PO Box 94666
Lincoln, NE 68509-4666

2. PROJECT NAME AND NUMBER

3. LOCATION OF PROJECT (City, County and State)

4. BRIEF DESCRIPTION OF PROJECT

5. CHARACTER OF CONSTRUCTION
   - Building
   - Residential
   - Heavy
   - Other (specify)
   - Highway

6. WAGE DECISION NO. (include modification number, if any)

7. WAGE DECISION EFFECTIVE DATE

8. WORK CLASSIFICATION(S) | HOURLY WAGE RATES
   | BASIC WAGE | FRINGE BENEFIT(S) (if any)

9. PRIME CONTRACTOR (name, address)

10. SUBCONTRACTOR/EMPLOYER, IF APPLICABLE (name, address)

Check All That Apply:
- The work to be performed by the additional classification(s) is not performed by a classification in the applicable wage decision.
- The proposed classification is utilized in the area by the construction industry.
- The proposed wage rate(s), including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage decision.
- The interested parties, including the employees or their authorized representatives, agree on the classification(s) and wage rate(s).
- Supporting documentation attached, including applicable wage decision.

Check One:
- Approved, meets all criteria. DOL confirmation requested.
- One or more classifications fail to meet all criteria as explained in agency referral. DOL decision requested.

Rebecca Schademann
Agency Representative
(Typed name and signature)

Date
(402) 471-3172
Phone Number

FOR HUD USE ONLY
LR2000:
Log in:
Log out:
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The information is considered non-sensitive and does not require special protection. This information is required to obtain benefits. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Employers engaged on HUD-assisted construction projects subject to Davis-Bacon wage requirements must pay no less than the wages determined to be prevailing by the Secretary of Labor to all laborers and mechanics engaged on the construction work. On occasion, the applicable Davis-Bacon wage decision does not contain all of the work classifications and wage rates needed to complete the construction work. This information collection facilitates the addition of needed work classifications and wage rates for the construction work involved. This form is used by HUD and local agencies administering HUD programs to report employer request(s) for additional classification and wage rates so that an appropriate wage rate can be approved by the Department of Labor for the construction work. This information collection is required by Department of Labor regulations at 29 CFR 5.5. While no assurances of confidentiality are pledged to respondents, HUD generally discloses these data only in response to a Freedom of Information request.

Instructions

General:

Contractors/Employers: Do not need to complete this form. Submit a written, signed request to the responsible contracting agency naming the work classifications and the wage rates, including any fringe benefits, that are proposed.

Local Agency Staff: Complete items 2 through 10. Submit one copy of this form to the responsible HUD Labor Relations Office with a copy of the applicable Davis-Bacon wage decision and the written request from the employer naming the work classifications and wage rates that are proposed. (The employer’s request must be made in writing and must be signed.)

For HUD or State CDBG Office use. Enter the name and address of HUD Office (or State CDBG office) submitting the report and to which the DOL reply should be sent.

Enter the name and number of the project or contract involved.

Enter the location of the project involved: city, county and state.

Describe the construction involved, e.g., new construction or rehabilitation, number and type of buildings, number of stories, number of units (as applicable). For example, New construction: 3 – 4-story buildings; 120 units.

Enter the character of construction as defined by DOL for Davis-Bacon prevailing wage rate purposes.

Enter the number of the Davis-Bacon wage decision applicable to the construction work. Include the number of wage decision modifications (if any) applicable to the work.
Enter the effective date of the wage decision for the project. (See DOL regulations at 29 CFR 1.6.)

Enter the work classifications and corresponding hourly basic wage rates and fringe benefit rates (if any) requested.

Self-explanatory.

If the requesting employer is not the prime contractor, enter the name and address of the subcontractor/employer making the request.

**Remainder of Form:** HUD Labor Relations/State CDBG use.

HUD Labor Relations/State CDBG Staff: Evaluate the employer’s request against the criteria for approval (see DOL Regulations, 29 CFR Part 5, and related contract labor standards provisions). The criteria are reflected in “checklist” form to ensure that each factor is considered and to ensure that supporting documentation, including a copy of the applicable wage decision, is attached. Check the box next to each criterion that is met; do not check the box next to any criterion that is not met.

If the request meets all criteria, check the appropriate box, enter the name and telephone number of the HUD/State CDBG agency representative, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision and the written request from the employer involved.

If the request fails to pass all criteria, check the appropriate box, enter agency contact information, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision, the written request from the employer involved, *and* a cover letter explaining how the employer’s request failed to meet one or more of the criteria.

**Submission of Report**

Completed forms shall be sent to: Branch of Construction Wage Determinations, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-3014, Washington, DC 20210.
FEDERAL LABOR CLAUSES

The Davis-Bacon Act (DBA)

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government and District of Columbia construction projects in excess of $2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works. Section 109 of the Housing and Community Development Act of 1974, As Amended.

The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty ($10/day per violation). Intentional violations of CWHSSA standards can be considered for Federal criminal prosecution.

The Copeland Act (Anti-Kickback Act)

The Copeland Act makes it a Federal crime for anyone to require any laborer or mechanic (employed on a Federal or Federally assisted project) to kickback (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs) and regulates permissible payroll deductions.

The Fair Labor Standards Act (FLSA)

The FLSA contains Federal minimum wage rates, overtime (O/T), and child labor requirements. These requirements generally apply to any labor performed. The DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.
NOTICE OF CONTRACT AWARD

Please submit this completed notice within 10 days after contract award to:

Rebecca Schademann, Labor Standards Specialist
Nebraska Department of Economic Development
Community and Rural Development Division
PO Box 94666
Lincoln, Nebraska 68509-4666

Telephone: (402) 471-6280 or (800) 426-6505
Fax: (402) 471-3778
email: rebecca.schademann@nebraska.gov

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>CDBG Grant No:</td>
</tr>
<tr>
<td>2.</td>
<td>City/Village:</td>
</tr>
<tr>
<td>3.</td>
<td>Federal Wage Determination Number:</td>
</tr>
<tr>
<td>4.</td>
<td>Verification Date/Date of Federal Wage Determination (publication date):</td>
</tr>
<tr>
<td>5.</td>
<td>Bid Opening Date:</td>
</tr>
<tr>
<td>6.</td>
<td>Contract Award Date:</td>
</tr>
<tr>
<td>7.</td>
<td>Estimated Construction Start Date:</td>
</tr>
<tr>
<td>8.</td>
<td>Contract Amount:</td>
</tr>
<tr>
<td>9.</td>
<td>Name, Address, City, State, and Zip of General Contractor:</td>
</tr>
<tr>
<td>10.</td>
<td>Description of Work:</td>
</tr>
<tr>
<td>11.</td>
<td>Labor Standards Designee</td>
</tr>
</tbody>
</table>

TELEPHONE NUMBER:

ADDRESS:

EMAIL:

(SIGNATURE)   DATE:

Individuals who are hearing and/or speech impaired and have a TDD, may contact the department through the Statewide Relay System by calling 711 (in-state), (800) 833-7352 (TDD), or (800) 833-0902 (voice). The relay operator should be asked to call DED at (800) 426-6505, or (402) 471-3111.
FINAL WAGE COMPLIANCE REPORT

Community Development Block Grant (CDBG)
Nebraska Department of Economic Development

Grantee: ___________________________  Project Completion Date: ______________________

CDBG Grant: ________________  U.S. DOL Wage Rate Determination No: ________________

Program Rep: ___________________________

1 While you or your representative were reviewing the contractor’s weekly payrolls, were any laborers or mechanics paid less than the minimum wage rate plus fringe benefits as specified in the Secretary of Labor’s Wage Determination No. ________________ that applied to this project?  __ No  __ Yes

2 If yes, provide the following information:
   a. Total Amount of Restitution Paid (difference between what was first paid and what was required to be paid): $ ________________

   b. Method of Restitution: _____________ Paid by Contractor

                                                                 _____________ Paid by City with Funds Withheld From Payment to Contractor

   c. Contractor or Subcontractor Name ____________  Name of Affected Employees ____________  Amount of Restitution Paid to Employee ____________  Nature of Violation Leading to Restitution ____________

Signed ___________________________  Title ___________________________  Date ___________________________
ACQUISITION, RELOCATION AND ONE-FOR-ONE REPLACEMENT

OVERVIEW

HOME-funded projects are subject to relocation requirements contained in the Uniform Relocation Act (URA), Section 104(d) (also known as the "Barney Frank Amendments").

URA relocation requirements are triggered whenever displacement occurs as a direct result of rehabilitation, demolition or acquisition for a HOME-assisted project.

Section 104(4) requirements may be triggered by "demolition" or "conversion" of units. Acquisition only activities do not trigger Section 104(d).

Not all units and tenants in HOME projects will be treated in the same manner.

> Some low-income residents will be covered only by URA.

> Other low-income residents will be covered by both URA and Section 104(d).

> Residents with incomes above the Low Income limit are covered only by URA.

More information is available in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition; Handbook 1374, Tenant Assistance, Relocation and Real Property Acquisition -- HUD CPD Staff Responsibilities; and the CRS All the Right Moves course book.

GENERAL REQUIREMENTS

Minimizing Displacement

As a general philosophy (as well as a specific program requirement in some instances), HUD requires program administrators to take all reasonable steps to minimize displacement as a result of a HUD-assisted program.

This means:

1. Considering whether or not displacement will occur as part of funding decisions and project feasibility determinations.

2. Assuring, whenever possible, that residential occupants of buildings to be rehabilitated are offered an opportunity to return.

3. Planning rehabilitation projects to include "staging" where this would minimize displacement.

4. Following notification and advisory services procedures carefully to assure that families do not leave because they are not informed about plans for the project or their rights. This can be a costly mistake.
ACQUISITION, RELOCATION AND ONE-FOR-ONE REPLACEMENT

Administrative Requirements

Plan: Each grantee/recipient must adopt and make public its Residential Antidisplacement and Relocation Assistance Plan to implement Uniform Relocation Act and Section 104(4) requirements. A guideform plan was issued by HUD in September, 1988 (CPD Notice 88-33). Plans based upon this guideform must be updated to comply with the final regulations. HUD intends to issue a revised guide form.

e Certifications: Grantees must certify that they will follow a Plan as part of their Consolidated Plan submission.

Who Is A Displaced Person?

Displacement occurs when a "person" (or their property) is displaced as a DIRECT RESULT OF federally assisted acquisition, demolition or rehabilitation.

Section 104(d) protection covers displacement as a result of demolition or conversion of permanent housing units. The definition of conversion includes a unit which no longer rents at or below the FMR as a result of HOME assistance.

A person is displaced if THEY MOVE because the person is:

- required to move by the owner, developer or agency; or

- not offered a decent, safe, sanitary and affordable unit in the project; or

- treated "unreasonably" as part of a permanent or temporary move;

A person may also be considered a displaced person if the necessary notices are not given or provided in a timely manner and the person moves for any reason.

Who Is Not Displaced?

Persons not displaced include those who:

- Were evicted for cause, BUT not if the eviction is taken to evade paying relocation assistance.

- Have no legal right to occupy the property (e.g. squatters), but a formal lease is not required to have a legal right.

- Occupied the property for the purpose of obtaining relocation benefits.

- Before leasing and occupying the property, receive written notice of the possibility that displacement or an increase in rent may occur and that relocation assistance will not be provided.

- Retain the right of use and occupancy of the property after acquisition (life estates).
After being fully informed of their rights, waive them.

The grantee decides (and HUD agrees in writing) were not displaced as a direct result of the project. When in doubt, ask the HUD Field Office for a determination.

**Timing for Relocation Assistance: Eligibility**

In general, it is impossible to establish a hard and fast cut-off date for eligibility. However, most HUD program regulations establish an assumed cut-off date that is considered to be the beginning point for eligibility. This date is identified as the "initiation of negotiations."

Even though the "initiation of negotiations" generally marks the date when families become eligible for relocation assistance, relocation concerns must be addressed much earlier.

A project that does not proceed to execution of the agreement does not trigger eligibility for relocation assistance.

But, once a project reaches this point, residents may be eligible for relocation assistance because the owner or grantee failed to take appropriate steps before execution of the agreement.

For example, the "initiation of negotiations" for a rehabilitation project is the execution of the funding agreement between the grantee and the owner. Up until that moment eligibility for relocation assistance has not been triggered.

**How Displacement Is Triggered in Rehabilitation Projects**

Before application: Generally, before application, eligibility for relocation assistance is triggered by a tenant's permanent move ONLY IF the grantee or HUD determines that the displacement was a direct result of the project activity.

For example, the grantee could determine that an owner displaced tenants in order to propose a vacant building for HUD assistance.

**After application:** Displacement is triggered when a tenant moves permanently from the property because:

- The tenant is required by the owner to move permanently. (This includes the owner’s refusal to renew a lease.); or
- The grantee or owner fails to provide timely required notices to the tenant; or
- The owner fails to pay the actual, reasonable out-of-pocket expenses for a temporary move or because the conditions of the temporary move are unreasonable.

After execution of agreement: Displacement is triggered if a tenant moves permanently from the project because the tenant is not provided the opportunity to lease a suitable, affordable unit in the project.
Who Needs a Notice?

Virtually EVERYONE needs a notice of some kind. All occupants are entitled to timely notice explaining whether or not they will be displaced.

> Occupants to be displaced must be informed of their eligibility for relocation assistance and the nature of the assistance.

> Occupants not to be displaced must be informed of the terms and conditions under which they may occupy the property upon completion of the project.

Different notices serve different purposes and must be tailored both to the specific project circumstances, and the individual circumstances of the residents.

Failure to provide correct and timely notices can be one of the most expensive mistakes that a relocation specialist can make.

What Notices Are Required?

There are several different types of notices that may be required by the relocation process.

- **General Information Notice (GIN):** Informs occupants of a possible project and of their rights under URA and/or Section 104(d). It stresses that the household should not move at this time. (Always needed.)

- **Move-in Notice:** Informs households moving into potential projects after the application that they may be displaced and that they will not be entitled to assistance. (Grantees can also elect not to give this notice; move ins are then eligible for assistance if displaced.)

- **Notice of Non-Displacement:** Informs households who will remain in the project after completion of the assisted activity of their rights and of the terms and conditions of their remaining at the property. (Given to tenants who will stay in same unit or another suitable unit in the building or complex.)

- **Temporary Relocation Notice:** Informs households who will be temporarily relocated of their rights and of the conditions of their temporary move.

- **Notice of Eligibility:** Informs households to be displaced of their rights and levels of assistance provided by the URA and/or Section 104(d).

- **30-Day Notices:** Informs displaced households of the day by which they must vacate the property. Displaced households may not normally be given less than 90 days to vacate their residence. If a specific date is not given with the 90-day notice, a 30-day notice can provide the specific day.
Notices for Involuntary Acquisitions and Displaced Businesses

Tenants: Similar notices and comparable assistance must be given to displaced tenant businesses.

Owners: When residential or commercial properties are acquired involuntarily, notices must discuss the specific benefits available to the owners.

HUD Handbook 1378 provides detailed guidance on these requirements.

Notices to Sellers and Tenants

Notice to Sellers. Before a binding sales contract is executed, owners who are voluntarily selling a property must receive notice:

that the property is being purchased with federal assistance;
> that the property will not be taken by eminent domain;
> of the estimated fair market value of the property.

*Note: This notice is required even if the property was already listed for sale. If the notice is not given, the Grantee may be vulnerable to a claim that the acquisition was “involuntary” and therefore covered by relocation requirements.*

Notice to Tenants. Even though the sale by the owner is considered a voluntary acquisition, a tenant who is displaced as a result of the property's purchase by an Assisted Homebuyer is eligible for benefits as a displaced person.

When and How are Notices Served?

Notices may be issued by either the grantee or the owner. However, the grantee is ultimately responsible and must assure that timely and correct notices are given. HUD recommends that grantees issue the notices.

Notices must be personally served or sent by certified or registered first-class mail, return receipt requested. (Certified mail is less costly.)

Notices should be issued as soon as feasible. Although HUD Handbook 1378 defines the point of "initiation of negotiations" for HUD programs, the date of "application" is less clear. To avoid relocation problems grantees should establish policies defining when an application is received.

RELOCATION ASSISTANCE FOR RESIDENTS WHO ARE DISPLACED

When URA Rules Apply

Everyone who meets the URA definition of a "displaced person" is eligible to receive relocation assistance.
ACQUISITION, RELOCATION AND ONE-FOR-ONE REPLACEMENT

**When Section 104(d) Tenant Assistance Rules Apply**

A lower income person is eligible for Section 104(4) assistance if:

- The unit it occupies is demolished with HOME funds.

> The person is displaced as a result of a HOME-funded conversion. Conversion means:

  > The unit previously rented (rent and utilities) below the Section 8 Fair Market Rent (FMR) and after the HOME-funded activity it rents above the FMR.

  > Because of the HOME-funded activity the unit is no longer a permanent housing unit.

A lower income person remains in a project converted with HOME funds, Section 104(4) economic displacement rules apply.

**Tenants Can Be Covered By Both Programs**

Any displaced low-income person who qualifies for Section 104(d) assistance is also covered by URA.

Non-low income residents of a HOME-funded project who are displaced (physically or economically) are not eligible for Section 104(4) assistance but are eligible for URA assistance.

Assistance may need to be calculated using both URA and Section 104(4) rules to determine which is more beneficial to the tenant.

**Not All Tenants in a Project Are Treated the Same**

*Example: A four-unit apartment complex with two and three bedroom units is being rehabilitated. Two of the four completed units will be HOME-assisted.*

<table>
<thead>
<tr>
<th>UNITS</th>
<th>BEFORE REHABILITATION</th>
<th>AFTER REHABILITATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit 101</td>
<td>Rented below the FMR</td>
<td>HOME-assisted; Rents below the FMR</td>
</tr>
<tr>
<td>Two bedroom unit; Low Income Tenant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit 102</td>
<td>Rented below the FMR</td>
<td>HOME-assisted; rents below the FMR</td>
</tr>
<tr>
<td>Three bedroom unit; Tenant Above Low Income</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit 103</td>
<td>Rented below the FMR</td>
<td>NOT HOME-assisted; rents above the FMR</td>
</tr>
<tr>
<td>Two bedroom unit; Low income tenant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit 104</td>
<td>Rented below the FMR</td>
<td>NOT HOME-assisted; rents above the FMR</td>
</tr>
<tr>
<td>Three bedroom unit; Tenant Above Low Income</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Tenant in Units 101 and 102 are not eligible for Section 104(d) assistance because neither unit was demolished or converted.
The tenant in Unit 103 is eligible for Section 104(4) assistance because (1) the unit was converted and (2) the tenant is low income.

The tenant in Unit 104 is not eligible for Section 104(4) assistance because, although the unit was converted, this is not a low income household. This household would be eligible for URA protection.

**Assistance for Displaced Households**

**Advisory services:** Advisory services include timely notices, information booklets and explanation of assistance. Information and counseling should also include:

- Referrals to other available assistance and human services (e.g., health services, public assistance, child care)
- Information about federal, state and local housing programs and how to apply for them.
- Information about the households rights under the Fair Housing Act.
- For those who are displaced: information, to the extent possible, about replacement housing opportunities that may promote fair housing and moves to neighborhoods outside areas of racial concentration.

Replacement housing assistance: Replacement Housing Assistance is available to both renters and homeowners.

> Assistance is provided in the form of either rental assistance or purchase assistance.

- Rental Assistance may be in the form of a Replacement Housing Payment (discussed below) or, for eligible households, tenant-based rental assistance under Section 8 or HOME if it is available.

Moving and related expenses: The displaced person has the option of:

> A payment for actual reasonable moving and related expenses; or

- A moving expense and dislocation allowance based on a Department of Transportation (DOT) schedule that is published periodically.

**URA Replacement Housing Payments**

Under the URA the amount of the Replacement Housing Payment a displaced tenant receives varies depending upon whether the family was in occupancy more or less than 90 days prior to the date of execution of the agreement. (See the chart on the following page for the two formulas.)

The URA Replacement Housing Payment is intended to provide affordable housing for a 42-month period. Although the URA regulations mention a $5,250 limitation on payments, it also requires that persons receive the calculated payment. Therefore, families are entitled to the full 42 months of assistance even though the amount may exceed $5,250.
The payment to which the family is entitled is calculated using the lower of the cost of the family's actual new unit (including estimated utilities) or a **comparable replacement dwelling**.

### URA Replacement Housing Payment Calculation

<table>
<thead>
<tr>
<th>ASSISTANCE FOR TENANTS IN OCCUPANCY MORE THAN 90 DAYS</th>
<th>ASSISTANCE FOR TENANTS IN OCCUPANCY LESS THAN 90 DAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Replacement Housing Payment makes up (for a 42 month period) the <strong>difference between</strong>:</td>
<td>Replacement Housing Payment makes up (for a 42 month period) the <strong>difference between</strong>:</td>
</tr>
<tr>
<td>the lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and</td>
<td>+ the lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and</td>
</tr>
<tr>
<td>the <strong>lesser</strong> of:</td>
<td>* 30% of the tenant's average monthly gross income</td>
</tr>
<tr>
<td>&gt; of the tenant's average monthly gross income, or</td>
<td></td>
</tr>
<tr>
<td>&gt; the monthly rent and estimated average utility costs of the displacement dwelling</td>
<td></td>
</tr>
<tr>
<td>&gt; the welfare rent (in as-paid welfare localities only)</td>
<td></td>
</tr>
</tbody>
</table>

**EXAMPLE: URA Replacement Housing Payment - Tenant**
(Tenant in occupancy more than 90 days)

- $600 Rent and utilities at actual replacement dwelling
- $500 Rent and utilities at comparable replacement dwelling  
  *Choose the lesser: $500*
- $400 Rent and utilities at the displacement dwelling
- $300 30% of gross monthly income  
  *Choose the lesser: $300*

Replacement Housing Payment is $500 - $300 = $200 x 42 months = $8,400

### Section 104(d) Replacement Housing Payments

The Section 104(4) Replacement Housing Payment is available **only to lower income households** who are displaced because their unit has been demolished or converted (as described previously). Displaced tenants with incomes above the Section 8 Lower Income limit receive assistance under the URA.

The Section 104(d) Replacement Housing Payment is intended to provide affordable housing for a 60-month period. There is no cap on the Section 104(4) Replacement Housing Payment.

As with URA the payment is calculated using the lower of the cost of the tenant's replacement dwelling (including utilities) or a comparable replacement dwelling.
ASSISTANCE FOR LOW INCOME TENANTS UNDER Section 104(d)

Replacement Housing Payment makes up the (for a 60-month period) difference between:

the lesser of rent and estimated utility costs for the replacement dwelling or comparable unit; and

the TTP, calculated as the greater of:

> 30% of adjusted income
> 10% of gross income
> Welfare Rent (in as-paid states)

EXAMPLE: SECTION 104(d) REPLACEMENT CALCULATION

<table>
<thead>
<tr>
<th></th>
<th>Replacement Unit Rent</th>
<th>Annual Income</th>
<th>Replacement Unit Gross Rent</th>
<th>Adjusted Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>$500</td>
<td></td>
<td>$20,000</td>
<td>$550</td>
<td>$18,560</td>
</tr>
<tr>
<td>50 Estimated Average Utilities</td>
<td>1,440</td>
<td></td>
<td>12 months x 0.10 = $167</td>
<td></td>
</tr>
<tr>
<td>$490</td>
<td></td>
<td>$20,000</td>
<td>$540</td>
<td>NA</td>
</tr>
<tr>
<td>50 Estimated Average Utilities</td>
<td></td>
<td></td>
<td>12 months x 0.30 = $464</td>
<td></td>
</tr>
<tr>
<td>$540</td>
<td></td>
<td>$18,560</td>
<td>$464</td>
<td>TTP = $464</td>
</tr>
</tbody>
</table>

Replacement Housing Payment:

- $540 Comparable Unit Gross Rent
- 464 Total Tenant Payment (TTP)
- $76 Monthly Difference
- 60 Months
- $4,560 Replacement Housing Payment

Payments

Cash rental assistance must be provided in installments, unless the tenants wishes to purchase a home.

> If the displaced tenant wishes to purchase a home, the payment must be provided in a lump sum so that the funds can be used for a downpayment, including incidental expenses.

> All of the payment must be used for the home purchase.

> Under Section 104(4), lump sum cash assistance can only be used for the purchase of a cooperative unit or for mutual housing. If the displaced tenant wishes to purchase other than a cooperative unit or mutual housing unit, replacement housing benefits may calculated using URA formula and paid in one lump sum.
ACQUISITION, RELOCATION AND ONE-FOR-ONE REPLACEMENT

Section 8 Assistance

While not a requirement, grantees may work with the local housing authorities to offer eligible displaced tenants a Section 8 Certificate or Housing Voucher assistance as an alternative to cash rental assistance.

Under URA a displaced person must be informed of his or her option to choose cash or, if offered, Section 8 assistance.

Unlike URA, under the Section 104(d) requirements, the grantee, not the tenant, decides whether tenant-based rental assistance or a replacement housing payment will be made.

However, if the family wants a cash payment and therefore rejects an offer of tenant based assistance under Section 104(4), the family retains its right to a cash payment (42 months) under URA.

Since Section 8 assistance is adjusted periodically for increased market rents and because it is unlikely to cease at the end of 42 months under URA and 60 months under Section 104(4), this will be a more valuable option than cash for a substantial number of lower-income tenants.

Granters also benefit when Section 8 assistance is used in place of a replacement housing payment.

In the unusual case where the displacement dwelling rent/utility cost is less than the TTP, the tenant is eligible for cash to cover the gap. In the case of a Section 8 Voucher, if the rent/utility cost of the replacement dwelling (actual or comparable, whichever is less) exceeds the payment standard, the tenant will qualify for cash to cover the gap.

Replacement Housing Assistance for Displaced Homeowners

Homeowners in occupancy 90-179 days: Same as displaced tenant described above, except cannot get more than a 180-day homeowner. Seldom encountered.

180-day homeowner: The payment is the difference between cost of a replacement dwelling (lesser of the comparable and actual) and the acquisition price of the displacement unit. The payment also includes any additional mortgage financing costs plus reasonable expenses incidental to the purchase.

EXAMPLE: Relocation Payment -180-Day Homeowner

| Price of actual replacement dwelling | $60,000 |
| Price of comparable replacement dwelling | $55,000 |
| Lesser | $55,000 |
| Acquisition price of displacement dwelling | $25,000 |
| Difference: $55,000 - $25,000 | $30,000 |
| Plus increased financing costs and expenses | $2,000 |
| Replacement Housing Payment | $32,000 |
RIGHTS OF RESIDENTS WHO REMAIN IN THE PROJECT

Displacement by Rehabilitation

Tenants who are intended to remain in the project must receive a notice of non-displacement and the offer of a "suitable" unit which can be rented at an "affordable" price.

Tenants who move permanently after execution of the agreement because they did not receive such an offer are considered displaced.

Rent Increases

If there is no increase in rent, the unit is considered affordable and the tenant is not considered "rent burdened" -- even if the percentage of income that the family is paying is quite high.

Under HOME, if the rent is increased for a low-income tenant, as a result of federal assistance, it may not exceed the Total Tenant Payment (30 percent of the monthly adjusted household income). This applies for those protected under Section 104(4).

For tenants who are not low-income, 30 percent of gross monthly income is used as the affordability test. A family whose increased rent exceeds this threshold is "rent burdened."

If any family moves permanently from the project as a result of being rent burdened, it is considered displaced.

"Rent" for this purpose means gross rent -- the rent paid to the owner plus an estimate for utilities paid by the tenant. [$550 (Rent Paid to Owner) plus 65 (Estimated cost of tenant-paid utilities) equals $615 (Gross rent)].

To Avoid Economic Displacement

To avoid displacement, eligible lower income tenants may be offered tenant-based rental assistance to make units affordable.

Tenant-based rental assistance includes Section 8 Rental Certificates or Rental Vouchers. HOME TBRA may also be used if there is an expectation that assistance will be renewed after the initial two-year period.

Rent burdened families offered such assistance before they move may use the assistance in the project or move, BUT they are not considered displaced.

Tenant-based rental assistance can be provided only if the affected family is eligible under program rules. In general, to be eligible the family's income must not exceed the Section 8 Lower Income limit.
TENANT IS DISPLACED BY REHABILITATION

<table>
<thead>
<tr>
<th>$400</th>
<th>Pre-Rehabilitation Unit Rent</th>
<th>$20,000</th>
<th>Gross Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>Estimated Average Utilities</td>
<td>$1,440 Adjustments ($480 x 3)'</td>
<td></td>
</tr>
<tr>
<td>$450</td>
<td>Pre-Rehabilitation Gross Rent</td>
<td>$18,560</td>
<td>Adjusted Income</td>
</tr>
<tr>
<td>$500</td>
<td>Post Rehabilitation Rent</td>
<td>$20,000 / 12 months x 0.10 = $167</td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>Estimated Average Utilities</td>
<td>$18,560 / 12 months x 0.30 = $464</td>
<td></td>
</tr>
<tr>
<td>$550</td>
<td>Post-Rehabilitation Gross Rent</td>
<td>Welfare Rent NA</td>
<td></td>
</tr>
</tbody>
</table>

TTP = $464

Family is rent burdened. The rent increases and new rent plus utilities ($550) exceeds the Total Tenant Payment ($464).

When calculating TTP, $480 is subtracted for each dependent

' The adjustment is for three dependents.

OTHER RIGHTS OF TENANTS WHO WILL REMAIN IN THE PROJECT

TemDorarv Relocation

Residents who will remain in the project after rehabilitation may be required to move temporarily during rehabilitation.

The temporary dwelling must be suitable and decent, safe and sanitary -- but not necessarily comparable. All other conditions of the move must be "reasonable".

In addition to the Notice of Nondisplacement discussed earlier, the resident must, as a minimum, receive:

- Reasonable advance written notice of the date and approximate duration of the planned temporary move.

- Information about the terms and conditions under which the tenant will be returning to the unit when the project is completed.

- Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary move including any increase in monthly rent/utility costs. (No claim form has been developed by HUD, but adequate documentation for reimbursements should be retained in grantee files.).
Permanent Moves Within the Project

Tenants may be allowed to remain in a project after rehabilitation, but not necessarily in the same unit.

Permanent moves within the same project must be to suitable, decent, safe and sanitary -- but not necessarily comparable -- units.

In addition to the Notice of Nondisplacement discussed above, the resident must, as a minimum receive:

> Reasonable advance written notice of the date of the planned move to an alternate unit.
> Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

The rent plus utilities of the permanent new unit within the project must not exceed the greater of the tenants old rent plus utilities or a specified portion of income depending upon the HUD-assisted program (usually TTP or 30% of gross income).

OPTIONAL RELOCATION ASSISTANCE

Grantees may use HOME funds to provide relocation assistance to persons displaced by a project assisted with HOME funds where the displacement is not subject to relocation requirements.

The Grantee may also provide relocation assistance to persons covered by the regulations beyond that required. If the additional assistance is not required by state or local law, the Grantee must adopt a written policy describing the optional relocation assistance and provide for equal relocation assistance within each class of displaced persons.

SECTION 104(d) ONE-FOR-ONE REPLACEMENT REQUIREMENTS

Overview

Grantees may not use HOME dollars to reduce the supply of "low/moderate dwelling units."

Section 104(d) requires that each applicable unit that is "lost" be replaced by another affordable unit.

This is a bricks and mortar requirement. It is not related to the circumstances of the family who lives in the unit, nor whether the unit is currently owned or rented.

Terms Used in Section 104(d)

Low/moderate dwelling unit: Unit where the market rent, including utilities, does not exceed the Fair Market Rent (FMR) for the Section 8 Rental Certificate Program.

Market rent: Rent charged for an unsubsidized comparable unit. Generally, this is what a tenant pays. A reduced rent charged to a relative or on-site manager is not market rent. For owner-occupied units, the market rent is the rent the unit could command if it were rented.
ACQUISITION, RELOCATION AND ONE-FOR-ONE REPLACEMENT

Vacant occupiable dwelling unit:

A dwelling unit in standard condition (regardless of how long it has been vacant); or

A vacant unit in substandard condition that is suitable for rehabilitation (regardless of how long it has been vacant); or

A dilapidated unit, not suitable for rehabilitation which has been occupied (except by squatters) within three months from before the date of agreement.

Triggers for Replacement

Grantees MUST replace a unit if:

> It meets the definition of low/moderate dwelling unit; and

> It is occupied or is a vacant occupiable dwelling unit; and

> It is to be demolished or converted to a unit with market rents above the FMR or to a use that is no longer for permanent housing

A unit DOES NOT need to be replaced if:

> It does not meet all of the triggering criteria.

> It is a substandard unit not suitable for rehabilitation (as defined by Consolidated Plan or HAP) that has been vacant for three months.

Income of the current resident is not relevant when evaluating triggers for replacement.

Replacement Units

Replacement units must be:

within the grantee’s jurisdiction and, if possible and consistent with other statutory priorities, in the same neighborhood;

in standard condition; and

designed to remain affordable to low income families for 10 years.

The number of bedrooms replaced must equal the number of bedrooms removed (but not necessarily in the same unit configurations).

Example: Two one-bedroom units could be replaced with one two-bedroom unit.

Larger units may not be replaced with smaller units unless the grantee demonstrates that the market has an ample larger unit.
CHAPTER 12 – RELOCATION

Chapter Overview
Review Laws and Regulations and Process Flow Chart
Identify Households or Businesses to be Displaced, Establish a File for Each, and Issue a
   General Information Notice
Provide Notice of Relocation Eligibility and Informational Brochure to Each Displaced
   Household
Contact Displacees to Provide Information and Determine Replacement Housing and Social
   Service Needs
Identify Replacement Housing and Social Services Resources, Make Referrals
Secure Replacement Housing for Displacees
Determine Moving and Related Expenses
Process Claims and Make Payments
Attachments 1-8

Review Laws and Regulations and Process Flow Chart
Laws and Regulations
  ● Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of
    1970, as amended (42 USC 4601 et. seq.).
  ● Title 49 of the Code of Federal Regulations Part 24, as amended
  ● Section 104(d) HCD Act of 1974, as amended.
  ● Relocation Assistance Act (LB 254, March 27, 1989) RRS of Nebraska.

This Chapter summarizes the tasks associated with carrying out residential or nonresidential
relocation that is the result of acquiring real property for a HOME assisted project. The
Relocation File Checklist, which outlines the documents to be maintained in the grantee’s
relocation files, is Attachment 1. A summary of the changes enacted by the URA is found in
Attachment 3.

Definition
Become thoroughly familiar with the relocation process and the benefits and assistance available
to displacees under the Uniform Act and Section 104(d) of the HCD Act.

Procedures
The URA implementing regulations stipulate that persons displaced from their residences or
businesses as a result of acquiring real property for a federally assisted project or as a result of
the demolition or conversion of a residential unit are entitled to relocation and moving costs
payments and other assistance such as counseling, housing referrals and referrals to social
service agencies.
Section 104(d) regulations apply only to low-to-moderate income (LMI) persons who must move permanently as a direct result of the conversion of a LMI dwelling unit or the demolition of a LMI unit. Conversion occurs when unit is rehabilitated and the rents exceed Fair Market Rents after the rehabilitation or the unit is no longer available for housing.

The regulations define a displaced person as any person who moves from the real property or moves personal property from the real property as a direct result of:

- A written notice of intent to acquire, the initiation of negotiations for, or the acquisition of such real property in whole or in part for a HUD assisted project.
- Rehabilitation or demolition for a HUD assisted project; or
- A written notice of intent to acquire or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a HUD assisted project.
- Persons not displaced would include, but are not limited to:
  - Persons who move before initiations or negotiations; or,
  - Persons who initially enter into occupancy of the property after the date of its acquisition for the project: or,
  - Persons who agree to move as a result of the acquisition (which meets the definition of voluntary) or the rehabilitation or demolition of the real property which they own and occupy; tenant-occupants displaced as the result of a voluntary acquisition are covered by the URA, or
  - Owner voluntarily applying for rehab assistance.

Supporting Materials
- Relocation Process Flow Chart (Attachment 2)
- HUD Handbook 1378 (request from the Department)

Identify Households or Businesses to be Displaced, Establish a File for Each, and Issue a General Information Notice

Definition
Maintain documentation that relocations are being carried out in conformance with the regulations.

Procedures
As early as feasible in the acquisition/relocation process, the grantee should identify individuals or businesses to be relocated. A person scheduled to be displaced is to be furnished with a written general description of the relocation program. The notice must at least inform the individual of the potential of displacement and describe the eligibility and payment procedures. It also must specify that the individual cannot be required to move without a 90-day’s advance written notice. Other items should also be included.
The grantee must maintain a separate case file on each displaced family or business for three years after project completion or after receipt of final relocation payment, whichever is later. All documents pertaining to displacement must be retained in the case files. The Relocation File Checklist (Attachment 1) identifies all documents to be maintained.

Common Deficiencies
- Incomplete records.
- Failure to maintain for three years.

Supporting Materials
- Relocation File Checklist (Attachment 1)
- Check with the Department for additional information for business relocation.

Provide Notice of Relocation Eligibility and Informational Brochure to Each Displaced Household

Definition
The grantee must deliver or send a Notice of Relocation Eligibility (Attachments 4 and 4a) to all owner-occupants or tenants in occupancy promptly after the Initiation of Negotiations, defined as the date that the grantee makes an offer to purchase. This notice establishes eligibility for relocation payments and assistance.

The notice must:
1. Identify the project and inform the person of his eligibility for relocation payments and other assistance and the effective date of that eligibility.
2. Generally describe the relocation payment(s) for which he/she may be eligible and indicate the estimated amount or range of such payment(s), the basis of the estimate for any replacement housing payment, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
3. Inform him/her that he/she will be given other help (e.g. housing referrals) to facilitate the move.
4. State a specific date as the earliest date the occupant may be required to move or indicate a 30-day advance notice of the date to vacate.

Displacement Not a Notice to Vacate
In the Notice of Relocation Eligibility it is important for the grantee to emphasize that the notice is not a notice to vacate. The notice should indicate that no one will be forced to move until and unless they have been referred to at least one decent, safe and sanitary comparable house and that the occupants will have a minimum of 90 days notice to vacate after comparable housing has been located and referred. The notice should also contain a grievance procedure which outlines the appeals process including the grounds for filing an appeal, to whom appeals should be filed in the city, appropriate time limits and the right of appeal to the Department (Attachment 5).

This notice and all other notices to displacees must be written in plain, understandable language. They may be either hand delivered, or sent by certified mail. Notices must also contain the name
and phone number of a person who may be contacted for answers to questions or other needed assistance.

Keep in mind that mailed notices are appropriate for recipients able to read and understand. If there is any reason to believe the person is functionally illiterate or senile, hand delivery is far more preferable. If a displacee does not speak or read English, notices must be available in appropriate translations. Copies of all notices and evidence of their delivery should be retained in the relocation case files.

Common Deficiencies
- Inadequate Notice of Relocation Eligibility.
- Grievance procedure not provided to displacees.
- Translations not provided when appropriate.

Supporting Materials
- Sample Notice of Displacement—180-Day Homeowners (Attachment 4).
- Sample Notice of Displacement—Tenants (Attachment 4a).
- Sample Grievance Procedure (Attachment 5).

Contact Displacees to Provide Information and Determine Replacement Housing and Social Service Needs

Definition
Determine the housing or business replacement and social services needs of relocatees.

Procedures for Surveys
As soon as the initial notice is delivered or sent out, the grantee must interview each displacee to determine her/his need for assistance. A sample interview format is provided to show the type of information that is required. This survey format generally forms the basis of the Site Occupant Record.

The Site Occupant Record includes data identifying the parcel and dwelling; number of individuals and family units; family composition (including age, sex, location of employment, source and amount of income); veterans status of family members; description of current dwelling (number and type of rooms); length of time of occupancy; amount of housing payment or rent; replacement housing preferences regarding type of tenure, location and willingness to increase monthly payments; and other important characteristics (health/disability problems, special needs such as furniture, public assistance, etc.).

The people conducting these surveys and having personal contact with the individuals to be relocated should be very patient, capable of understanding the distress of the relocatees and of dealing with them in a non-threatening, helpful manner.

Some displacees may be elderly with a huge emotional investment in their present home. In the grantee’s view, it may be a substandard dwelling unit; to the owner, it is a home which contains a lifetime’s memories and mementos. Many will not want to relocate. The counseling and assistance required to serve these people adequately is substantial.
Depending upon the size and experience of the relocation staff, it may be appropriate to provide some counseling and assistance themselves while other social service needs will be best met through referral to public or private agencies. A single family may require a number of social service contacts. Physical and psychological problems may range from alcoholism to nervous breakdown, from unemployment to child abuse.

For this reason, the assigned staff must be aware of the kinds of services available. Staff should also develop the ability to distinguish serious problems which require outside professional assistance. Kinds of services and counseling commonly provided during the relocation process include the following:

**Counseling Relocation Services**
- Mortgage counseling and Fair Housing Laws.
- Help in completing or understanding forms or documents such as a purchase contract.
- Housekeeping and home maintenance practices.
- Budgeting and money management guidance.
- Recommendations concerning packing and moving.
- Family and personal counseling.
- Assistance in obtaining medical care.
- Help in obtaining clothing, food, furniture or appliances.
- Advice concerning social security, food stamps, welfare or veterans benefits.
- Transportation assistance.
- Assistance with child care or school adjustment.
- Employment counseling and job training.
- Senior citizen assistance.
- Family planning.
- Legal aid.
- Financial assistance.

In many cases, especially with regard to the elderly, it may be useful to ask if there are any relatives living in the surrounding area. If permission to contact these relatives can be obtained, these contacts can assist in developing appropriate relocation plans for the person. Some relatives will contribute money to the purchase of a dwelling; others will have special skills (e.g., lawyer, realtor) which can facilitate rehousing transactions. Sometimes, relatives can also encourage cooperation in the disclosure of information necessary to complete claim forms.

At the same time the interviewer is conducting the family survey, he/she should review the relocation process with the relocatees and insure they understand the process.

Special attention must be given to:
1. The assistance to be provided by the grantee.
2. The benefits available.
3. The fact that replacement housing payments cannot be made unless the household relocates into a standard unit.
4. The importance of keeping in touch with the grantee.
5. The need to notify the grantee before they move.

Common Deficiencies
- Family surveys not conducted.
- Counseling services not provided.
- Translations/bilingual assistance not provided when appropriate.

Identify Replacement Housing and Social Services Resources, Make Referrals

Definition
Inventory available resources and assist relocatees in finding suitable replacement housing, assist self relocatees.

Procedures
The primary purpose of the family survey is to provide the data needed to determine replacement housing needs. All replacement housing must be decent, safe and sanitary. The regulations define this to mean that the replacement unit must meet local housing or occupancy codes. The only times that local housing or occupancy codes do not define decent, safe and sanitary are when such codes do not exist or when the replacement unit is Section 8 assisted. In the latter instance, Section 8 Existing Housing Quality Standards define decent, safe and sanitary. The unit should also be free of lead-based paint hazards and of architectural barriers, if serving a handicapped person.

Comparable Replacement
In addition to being decent, safe and sanitary, the replacement unit must also be “functionally similar” to the acquired unit with respect to the number of rooms and living space unless additional or larger rooms are needed to meet safe, sanitary and decent criteria (i.e., one person per room; age/sex of children sharing bedrooms and the like). This means that a family of six living in a two-bedroom unit may require a four-bedroom replacement unit to meet local codes or Section 8 standards, if applicable.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms than the displacement dwelling. Such may be the case when a replacement dwelling is “adequate to accommodate” the displaced person and is found to be functionally similar to a larger but very rundown substandard displacement dwelling. They may choose a smaller unit, but the grantee must provide reasonable choices of comparable replacement units.

Further, the referral units must be within the financial means of the displaced persons. This is determined by the “make whole” financial means test, as follows:
180-Day Homeowner. The test is met if a person receives the price differential, increased mortgage interest cost and all reasonable incidental expenses, not to exceed $22,500.

90-Day Tenant and 90-179 Day Homeowner. The test is met if a person receives assistance equal to 42 times the increase in rent and utility costs that he or she is required to pay because of the displacement. For 104(d) the tenant receives up to 60 times the increase.

**Last Resort Replacement**
If the grantee finds it cannot identify comparable affordable replacement housing using these standards, and that the inability to relocate site occupants will jeopardize the project, it must use other means of assisting displacees under the “Last Resort Replacement Housing” provisions of the regulations.

Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of normal limits; construction of new units; relocation of a replacement dwelling; and removal of barriers to the handicapped in a replacement dwelling.

**Inventory Housing**
Having identified the replacement housing needs, the grantee must begin taking an inventory of available housing resources. In doing this, the grantee must be aware of affirmative action criteria that must be met when relocating low-income and minority persons.

The regulations require that the grantee make comparable replacement housing available to low-income or minority relocatees in areas that do not have concentrations of either low-income or minority households if such opportunities are available.

This means that if there are vacant, standard, affordable units available in middle/upper income areas or predominantly white areas of your community, low-income or minority relocatees must be given replacement housing choices in those areas before the grantee can give such relocatees a go-day notice to vacate. Furthermore, the regulations require that the grantee make available to low-income and minority families special counseling and related services, e.g., transportation and escort services.

In inventorying available resources, the grantee will be contacting landlords, realtors, and movers. It will read classified ads and tour neighborhoods looking for “For Rent” and “For Sale” signs. Eligible displacees may refuse to apply for public housing, either because they simply do not want to live in it or because they resent the investigation necessary to qualify them (the investigation of their incomes, in particular).

The process of finding suitable housing will involve continuous contact with displacees to solicit information, establish rapport, provide referrals to housing resources, accompany displacees to inspect possible dwellings and the like. Up-to-date information on the availability, prices, and rentals of comparable sales and rental housing must be provided. All units must be inspected and certified as being decent, safe and sanitary before being placed on a referral list.

**Relocatees Risk Compensation**
Some relocatees will not wait for the grantee to locate suitable units. They will search for their own units and relocate themselves. Occupants who relocate themselves risk not receiving the compensation to which they are entitled.

1. This can happen because:
2. The occupants do not know they are entitled to it and fail to apply.
3. The grantee is unable to trace them to their new quarters.
4. The new quarters are substandard (in which case the relocatees still receive moving expenses). Self-relocatees who do not inform the grantee of their plans forego a pre-move inspection of their new quarters.

An inspection after the move is made usually proves to be ineffective with regard to procuring needed repairs.

**Replacement Units Meet Standards**

If an individual locates or moves into a replacement unit that is not standard, the grantee must make every effort to upgrade the unit to decent, safe and sanitary standards in order to entitle the relocatee to benefits. This can include making a rehabilitation grant or loan, emergency repairs and the like with HOME funds or securing comparable assistance from other sources.

In the event remedial action to bring the unit to code is not available, the grantee must inform such relocatees that if they remain in or move to a substandard unit they will be eligible only for moving expenses and not for replacement housing payments (Attachment 6).

The grantee must also inform them that if they move into standard housing within a year from the date they received payment for their acquired dwelling or from the date they moved from the acquired dwelling, whichever is later, and file a claim within 18 months, they will be eligible for a replacement housing payment.

**Common Deficiencies**

- Failure to provide assistance in locating suitable housing.
- Failure to provide replacement housing opportunities outside areas of low-income and/or minority concentration.
- Failure to provide counseling and assistance to relocatees moving into substandard units.

**Supporting Materials**

- Sample Letter to Relocatee in Substandard Unit (Attachment 6).

**Secure Replacement Housing for Displacees**

**Definition**

Complete displacement and the move into replacement housing.

**Procedures**

The grantee has made a reasonable choice of suitable replacement housing opportunities available to the relocatee. At this point, the grantee may issue the 90-Day Notice to Vacate
This notice should not be issued before reasonable replacement housing has been made available.

The notice shall either state the earliest date by which the property must be vacated, or state that a second notice will be issued at least 30 days in advance of the date the property must be vacated. The date on which the property must be vacated cannot be less than 90 days after the grantee has made a comparable replacement unit available.

Prior to and following the 90 day notice, the grantee continues to work with the relocatees – inspecting units, certifying they meet decent, safe and sanitary standards; assisting or preparing mortgage applications, sales agreements, or leases as appropriate; assisting or preparing claim forms; processing and verifying claims; documenting claims and making payments.

Common Deficiencies
- Timing and language of 90-Day Notice incorrect

Supporting Materials
- Sample 90 Day Notice/30 Day Notice (Attachment 7)

**Determine Moving and Related Expenses**
Displacees are eligible for two types of relocation payments: moving costs and replacement housing payments.

**Moving Costs (Residential)**
Moving Costs: All displaced persons as defined by the regulations, are eligible for moving costs. The displaced person can choose to receive either actual moving and related expenses, supported by bills and other documentation, of costs for:
- Transportation up to 50 miles of displacee, family and personal property.
- Packing and unpacking personal property.
- Disconnecting, dismantling, reassembling and reinstalling relocated household appliances and other personal property.
- Storage.
- Insurance in connection with move and storage.
- Other costs related to move if approved by grantee as reasonable.

OR

- A fixed moving expense and dislocation allowance based on the rooms of furniture, where occupant provides furniture; or where occupant does not provide furniture.

**MOVING COSTS (Non-Residential)**
- Transportation up to 50 miles for personal property.
• Packing and unpacking the personal property.
• Disconnecting, dismantling, removing, reassembly and installing relocated and substitute machinery, equipment and other personal property, including connection to utilities available nearly.
• Storage (not to exceed 12 months) if necessary.
• Insurance in connection with moving and storage.
• License, permit, or certification required by the displacee for re-establishment at the replacement location.
• Professional service charges necessary to planning the move, the moving, and the reinstalling of the personal property.
• Re-lettering signs and replacement stationery if made obsolete by the move.
• Actual direct loss of tangible property.
• Substitute personal property which is used as part of a business, farm operation or nonprofit organization provided that the original property is not moved and that any proceeds from the sale or trade-in of the replaced item is subtracted from the cost of the substitute item.
• Searching for a replacement location (amount not to exceed $1,000).
• Other moving-related expenses if approved by the grantee as reasonable.
• “No-documented self moves” based on the lowest of two acceptable bids or estimates obtained by the grantee.

OR

• A fixed moving expense allowance computed on the average net earnings for the two-taxable years prior to the date of displacement. The amount is to be not less than $1,000 nor more than $20,000 for a business or farm operation. The payment is to be $2,500 for a nonprofit organization. To qualify for a fixed payment in lieu of actual moving cost it must be determined that a business or a nonprofit organization cannot be relocated without a substantial loss of existing patronage or net income and it is not a part of a commercial enterprise having other establishments engaged in the same or similar activity.

Non-residential moving costs are calculated using the form Claim for Actual Moving Costs and Related Expenses (Attachment 7) or Claim for Fixed Payment in Lieu of Actual Moving and Related Expenses.

Re-Establishment Expenses (Non-Residential)
In addition to moving costs, a business may be eligible to receive a payment, not to exceed $10,000, for expenses actually incurred in relocation and reestablishing at a replacement site. These expenses must be reasonable and necessary and include:

• Improvements made to the new site as required by law.
• Modifications to the new site to accommodate the business.
• Costs for construction of new exterior signage.
• Costs of utilities from right-of-way.
• Redecoration/replacement’ of worn services.
• Licenses, fees and permits when not included in moving expenses.
• Estimated increased operation costs for two years.
• Advertisement of new site.
• Professional services and feasibility studies relating to the new site.

Replacement Housing Payments
These payments are available to owner-occupants and tenants who meet the following criteria:

Owner-Occupants who have:
• Owned and occupied the acquired dwellings for at least 180 days prior to initiation of negotiations.
• Purchased and occupied decent safe and sanitary comparable units within one year of completing acquisition or date of move from property.
• Filed a claim within 18 months of the time the move is completed.

Tenants and 90-179 day owners who have:
• Occupied the acquired units 90 days prior to initiation of negotiations.
• Relocated into decent, safe and sanitary comparable units.
• Filed a claim within 18 months of the time move is completed.

The relocation benefit is based on the difference between what units comparable to the acquired unit are being sold or rented for, and not on the cost of the unit into which the displacee wants to move.

It should be clearly understood by everyone involved in the acquisition/relocation process that the benefits under the URA are “rights” to which the displacee is entitled and that the grantee’s job is to ensure that all displacees receive the maximum amount of benefit to which they are entitled. There are no income or need criteria for benefits. Certain benefits may be prorated for unrelated individuals living together.

In addition to financial assistance, displacees are also entitled to receive housing referrals, counseling and referrals to social service agencies.

Common Deficiencies
• Unfamiliarity with the relocation process and the benefits and assistance required for displacees under the URA.

Process Claims and Make Payments
Definition
Assist or prepare claim forms: process and verify claims; document claims and make payments.
Procedures
Relocation claims may be filed up to 18 months following the completion of a move. This means that claims can be filed months, after the conclusion of the grant. Therefore, if there are unsettled relocation cases at the time of close out of the grant, the grantee should show maximum payments for each potential claimant as unpaid costs on the closeout documents otherwise, the Department may cancel the funds remaining in the grant and the grantee would be financially liable for relocation costs. This also highlights the need to try and expedite relocation.

Relocation Claim Forms
- Claim for Moving Costs and Related Expenses-Families and Individuals; and
- Claim for Replacement Housing Payment for 180-Day Homeowner; or
- Claim for Rental Assistance Payment; or
- Claim for Downpayment Assistance.

Payment Responsibility
The grantee is responsible for ensuring that all payments are made in a timely fashion. Payments should be issued within 30 days following submission of sufficient documentation to support the claim.

The regulations further state that advance payments must be made where they would avoid or reduce a hardship. When advance payments are made, the grantee must document that the payment was used for the purpose intended. The grantee should have the recipient sign a letter acknowledging receipt of relocation payments and services (Attachment 8).

Downpayment Payment
Payments for downpayment assistance must be applied to the purchase price of a replacement dwelling and related incidental expenses. Payments for rental assistance to owners or renters need not be applied to housing costs. The rental assistance payment may be made in a lump sum or in installments. The grantee has no right to question the uses to which that payment is put; it need not be accounted for beyond receipt by the claimant.

Denied Claim for Payment
If a person makes a claim for payment and must be denied because the unit is substandard, the grantee must inform the claimant why the claim is being denied, indicate the assistance available for bringing the current unit up to decent, safe and sanitary standards, and the on-going opportunity to qualify for assistance by moving to a standard unit, providing the move is completed within 12 months of the date of removal from the acquired dwelling or receipt of final payment (if owner-occupant), whichever is later; and that the claim is submitted within 18 months of the completion of the move.

Documentation of Non-Payment
In any instance in which payments are not made, the grantee must be able to fully document its efforts to provide payments, the reasons payments were not made, and signed waivers of payment if possible. The regulations mandate that any claim for payment be submitted to the
locality within a period of 18 months after displacement. The grantee should strictly adhere to this limitation and fully document its initial notification of this requirement and all subsequent reminders.

Waiver of Relocation
In a voluntary acquisition, owner-occupants may be required to waive their relocation benefit rights as a condition of sale. The grantee should have them sign a form indicating they understand what their relocation rights and benefits are and indicating that they are voluntarily waiving these rights. A waiver of relocation benefits does not apply for tenants.

If relocation has not been completed within 6 months of the date of issuance of the Notice of Relocation Eligibility, the grantee must provide in its files a written explanation of delay and plan for timely completion.

Common Deficiencies
- Failure to document claim.
- Inaccurate computation of relocation payments.
- Rental assistance payment not made in a lump sum.

Supporting Materials
- Sample Letter of Acknowledgement of Services Rendered and Payments Received (Attachment 8).
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ATTACHMENT 1

RELOCATION FILE CHECKLIST

DOCUMENTS TO BE MAINTAINED IN RELOCATION FILES. A SEPARATE FILE SHOULD BE ESTABLISHED FOR EACH HOUSEHOLD OR BUSINESS DISPLACED.

☐ 1. Fully Completed Case Record Form.
☐ 2. Copy of Notice of Relocation Eligibility.
☐ 3. Evidence of Referrals to Suitable Replacement Housing or Business Locations.
☐ 5. Copy of 30-Day Notice and Evidence of Receipt, if applicable.
☐ 6. Record of Inspection of Replacement Dwelling and Referral Units.
☐ 7. Copy of each Relocation Claim Form and Supporting Documentation.
☐ 8. Evidence of Verification of Claim and Receipt of Payment.
☐ 9. Appeal, if filed, and disposition.
☐ 10. Copies of Correspondence.
☐ 11. Other Data:
   Specify: ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________

☐ 12. If Relocation is not completed within six months following acquisition of property, explanation of delay and plan for timely completion.
Tenant Assistance/Relocation Process (Private-Owner Rental Rehabilitation Under HUD-Assisted Program)

1. GRANTEE* DEVELOPS PROGRAM
   - Prepare program description, including policies for minimizing displacement.
   - Hold public hearings (if applicable).
   - Prepare memorandum of understanding with Housing Agency (if applicable).
   - Submit information to HUD/State (if applicable).
   - Notify property owners of fund availability and distribute application forms.
   - Establish management control system and procedures for coordinating temporary and permanent relocation with rehab work.
   - Establish record-keeping procedures (Chapter 8).**

2. OWNER PROPOSES PROJECT
   - Owner estimates project costs, including relocation costs. (Consults with grantee as necessary.)
   - Owner prepares application.
   - Grantee or owner sends General Information Notice to tenants cautioning tenants not to move (Para. 2-3a).
   - Owner submits application (including list of occupants in property) to grantee.
   - Owner informs future tenants about project proposal and its impact on them (e.g., displacement without assistance).

3. GRANTEE REVIEWS APPLICATION
   - Determine tenant needs and preferences. Complete site occupant records (Para. 2-5b).
   - Identify available resources (e.g., comparable replacement dwellings, Section 8 assistance and HOME TBRA).
   - Determine project costs, including relocation costs.
   - Prepare contract agreement between grantee and owner.
   - Prepare notices to be issued to tenants upon execution of agreement.

4. GRANTEE INFORMS AND WORKS WITH TENANTS NOT TO BE DISPLACED (See Para. 2-4a)
   - Issue Notices of Nondisplacement at time of execution of agreement between grantee and owner (Para. 2-3b(1)).
   - Explain assistance to be provided (e.g., Section 8 or Home TBRA) (Para. 2-4a).
   - Explain temporary relocation policies (if applicable). (Para. 2-4b).

5. TEMPORARY RELOCATION (Para. 2-4b)
   - Ensure temporary housing is decent, safe and sanitary housing and there is no increase in out-of-pocket housing expenses.
   - Reimburse tenant for out-of-pocket moving costs incurred in move to and move from temporary housing.
   - Ensure all other conditions are reasonable (e.g., location and duration of temporary housing).

6. TEMPORARY REPLACEMENT PROPERTY AND MOVES
   - Inspect replacement housing before move to ensure it is decent, safe and sanitary (Para. 3-7a).
   - Upon notification of business move: Inspect personal property at displacement site. Inspect personal property at replacement site to ensure it was moved (Para. 4-2b(3)).
   - Issue advance payment when needed (Para. 2-7c).
   - Assist tenant in preparing claims (Para. 2-7a).

7. GRANTEE FOLLOW-UP
   - Deal with complaints quickly and equitably. Assist in preparation of appeal, as appropriate (Para. 1-33).
   - Evaluate program success (include follow-up contacts with affected persons).
   - Improve procedures for future.
   - Maintain records to demonstrate compliance with regulations (Chapter 6).

---

* Term “grantee” includes CDBG Entitlement Communities, State CDBG recipients, HOME Participating Jurisdictions and recipients of State Home funds.

** References are to HUD Handbook 1378
<table>
<thead>
<tr>
<th>URA SECTION AMENDED</th>
<th>CHANGE</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>101(6)(A)</td>
<td>Extends URA coverage to persons as a direct result of rehabilitation, demolition or acquisition by a private entity.</td>
<td></td>
</tr>
<tr>
<td>101(11)</td>
<td>Defines “displacing agency” to include person without power of eminent domain carrying out a program or project with Federal financial assistance that results in displacement.</td>
<td></td>
</tr>
<tr>
<td>202(a)(4)</td>
<td>Adds new payment up to $10,000 for expenses to “re-establish a business” as component of payment for actual reasonable documented moving expenses.</td>
<td>Some expenses to re-establish business mandated by current regulations;</td>
</tr>
<tr>
<td>203(a)</td>
<td>Raises ceiling on replacement housing payment for 180-day homeowner-occupant from $15,000 to $22,500.</td>
<td>Under present regulations containing “make whole” financial means test, the payment ceiling has no effect.</td>
</tr>
<tr>
<td>204(a)</td>
<td>Reduces period covered by rental assistance payment from 48 to 42 months.</td>
<td></td>
</tr>
<tr>
<td>204(b)</td>
<td>Raises ceiling on total rental assistance payment from $4,000 to $5,250.</td>
<td>Under present regulations containing “make whole” financial means test, the payment ceiling has no effect.</td>
</tr>
<tr>
<td>205(c)(3)</td>
<td>Revises (relaxes) law to require referral to comparable replacement housing before person is ordered to move.</td>
<td>Significant change. It would permit URA rules that make payment caps under Sections 203 and 204 meaningful.</td>
</tr>
<tr>
<td>301(2)</td>
<td>Permits establishment of procedures for waiving appraisal of low-value property.</td>
<td></td>
</tr>
</tbody>
</table>
NOTICE OF RELOCATION ELIGIBILITY - 180-DAY HOMEOWNERS

Dear ______________________

On (date), the (acquiring agency) gave you a written offer to buy the building which you own at (address). The building is the site of (identify project).

This is a NOTICE OF RELOCATION ELIGIBILITY. In order to carry out our plans to develop the (identify project), it will be necessary for you to move sometime in the future. However, YOU DO NOT NEED TO MOVE NOW. And when you do move, you will be entitled to relocation payments and other assistance in accordance with regulations of the Federal Department of Housing and Urban Development (HUD). The effective date of this notice is (date of initiation of negotiations).

As the owner-occupant of the property, you are eligible to receive either (1) a payment for actual reasonable moving expenses, or (2) if you prefer, a fixed moving expense payment based on the number of rooms with furniture plus a $200 dislocation allowance.

Also, you may be eligible for a replacement housing payment to help you buy or rent a home. Based on a recent review of the offering prices of available decent, safe and sanitary houses that are comparable to yours, we estimate that you should be able to buy a comparable house for approximately $______________. If you owned and occupied your home for a least 180 days prior to (date of initiation of negotiations) and you buy a decent safe and sanitary replacement house, you may receive a replacement housing payment to cover the following three costs:

1. The difference between the amount you were offered for your present home ($____________) and the cost of a decent, and sanitary replacement home. Based on our estimate of the cost of a comparable, decent, safe and sanitary home, you may be eligible for an amount up to $____________ for this purpose.

2. Payment of any costs incidental to the settlement on your new home.

3. The increased cost of interest on the mortgage(s), if any, on your present home.

However, your total replacement housing payment is limited to $22,500, if you buy a replacement home. Should you wish to rent (rather than buy) a comparable house, our best estimate at this time is that you could qualify for a one-time replacement housing payment of $____________ covering rental assistance needs.

I am enclosing a brochure titled, “Relocation Assistance to Displaced Homeowners.” Please read the brochure carefully. It explains your rights and some things you must do to obtain a payment. (For example, to obtain a replacement housing payment you must move to a decent, safe, and sanitary home within one year after you vacate your present home.)

I want to make it clear that you will receive assistance to help you relocate. In addition to payments and housing referrals, counseling and other services are available to you.

A member of this office will soon contact you to determine your needs and preferences and to help you find and relocate to suitable replacement housing. He/She will explain your rights and help you to obtain the relocation payments and other assistance which are rightfully yours.

In the meantime, if you have any questions, please call (name), (title). He/She can be reached at (phone) or (address). We are sure that Mr./Ms. (name) can answer your questions.

Sincerely,
NOTICE OF RELOCATION-RESIDENTIAL TENANTS ONLY

(Date)

Dear ______________________

On (date), the (acquiring agency) submitted a written offer to buy the building at (address). The building is the site of (identify project).

This is a NOTICE OF RELOCATION ELIGIBILITY. Our records indicate that you are occupying this building. In order that we can carry out our plans to develop the (identify project) it will be necessary for you to move sometime in the future. However, YOU DO NOT NEED TO MOVE NOW. And when you do move, you will be entitled to relocation payment and other assistance in accordance with regulations of the Federal Department of Housing and Urban Development (HUD). The effective date of this Notice is (date of initiation of negotiations).

As an occupant of the property, you are eligible to receive either (1) a payment for actual reasonable moving expenses, or (2) if you prefer, a fixed moving expense payment based on the number of rooms with furniture plus a $200, dislocation allowance.

Also, if you occupied your apartment for at least 90 days prior to (date of initiation of negotiations), you may be eligible for a replacement housing payment to help you rent or purchase a home. Based on a recent review of rental costs in the area, it appears that the cost of rent, including utility charges, for available decent, safe, and sanitary apartments similar to yours is presently about $________ per month. If you must pay that amount to rent another apartment you may receive a one-time rental assistance payment of $________. Should you choose to buy a home, we estimate that you could qualify for a downpayment assistance payment up to $________. (Our staff will explain the procedures for computing a payment).

I am enclosing a brochure titled, “Relocation Assistance to Displaced Tenants”. Please read the brochure carefully. It explains your rights and some things you must do to obtain a payment. (For example, to obtain a replacement housing payment, you must move to a decent, safe, and sanitary home within one year after you vacate your present apartment.)

I want to make it clear that you will receive assistance to help you relocate. In addition to payments and housing referrals, counseling and other services are available to you.

A member of this office will soon contact you to determine your needs and preferences and to help you find and relocate to suitable replacement housing. He/She will explain your rights and help you obtain the relocation payments and other assistance which are rightfully yours.

In the meantime, if you have any questions, please call (name), (title). He/She can be reached at (phone) or (address). We are sure that Mr./Ms. (name) can answer your questions.

Sincerely,
GRIEVANCE PROCEDURES

All written appeals, regardless of form, shall be promptly reviewed in accordance with the requirements of applicable law and HUD’s Uniform Act implementing regulations (49 CFR Part 24, Subpart A-G).

**Actions Which May be Appealed**

You have the right to appeal any action of the (agency) on the following grounds:

- failure to properly determine eligibility for, or the amount of, a relocation or other incidental expenses due under the Uniform Act.

Your acceptance of the amount offered you by this agency does not limit your right to appeal that determination and seek a larger payment.

**Time Limits for Initiating an Appeal**

The reasonable time limit of _____* days has been locally established for a person to file an appeal. (*NOTE: time limit shall not be less than 60 days after the notification of determination of the amount of claim to be paid has been received by the claimant).

**Right to Representation**

You have the right to be represented by anyone of your choice. There is no cost reimbursement for such representation.

**Review of Files**

You are permitted to inspect and copy all materials pertinent to your appeal, except those classified by this agency as confidential.

**Scope of Review**

All pertinent justification and other material submitted by you shall be considered in the appeal in order to ensure a fair and full review of the case.

**Determination and Notification**

Upon receipt of all information submitted by a claimant, a prompt review will be made. A written copy of the determination on the appeal, including explanation of the basis on which the decision was made, will be furnished. Additional information shall be provided on the right to seek judicial review if the claim is not fully granted.

**Reviewing Official**

The review of appeals shall be made by (name of official). This person was not involved in any of the actions which are being appealed, but has knowledge of the Uniform Act procedures. Additionally, you have the right to appeal the decision on your claim with the Nebraska Department of Economic Development Division of Community and Rural Development, P.O. Box 94666, Lincoln, NE 68509.
LETTER TO RELOCATEE IN A SUBSTANDARD UNIT

Date

Dear ________________________:

Relocation regulations established by the Department of Housing and Urban Development will not permit this organization to make a rental assistance payment to you until you move into an apartment or house that meets their definition of “safe, sanitary and decent” replacement unit. Your new apartment does not meet this definition because:

1. The wiring does not meet the City electrical code.

2. A two-bedroom apartment is too small for a family of five (2 adults, 1 16-year-old son, 1 14-year-old daughter and an 11-year-old son).

In order to be eligible for a replacement housing allowance you must move into an apartment or house that meets all these requirements within one year from the date you moved from your old apartment on 4th Street. You have to move into a qualified apartment or house by _______________________ to be eligible. Ms. Ellen Smith keeps a list of eligible houses and apartments and will help you find one and will arrange inspections of any apartments or houses you find on your own. Her phone number is 444-5441.

If you moved into a “safe, sanitary and decent house or apartment” by _______________________, you would be eligible to receive a rental assistance up to a maximum of $5,250 to cover the difference in the month cost between your old apartment and a new apartment for 42 months, or the difference between your new rent and 25% of your gross monthly income, whichever is less. This payment will be made in a lump sum if you file a claim for benefits within 18 months after the date you move into a safe, sanitary and decent apartment.

In order to receive these benefits, you must relocate into a standard unit. Please contact Ellen Smith and she will help you find and move into a standard unit. She is also available to talk with you about any questions you might have.

Sincerely,
90-DAY NOTICE TO VACATE

Date

Dear
As you know, the city is purchasing your home (apartment). The purchase will be completed on (date, must be no later than 60 days after date of this letter). We have been in contact with you since (date) to help you locate and move into suitable replacement housing. We have referred you to (number) such units.

The house (apartment) you are now living in must be vacated in 90 days by (date, must be at least 60 days after date on this letter). We will send you a second notice 30 days before you must vacate.

If you have any questions or need additional assistance in completing your move, please call Ms. Ellen Smith at 441-4533.

Sincerely,

Mary Simmons
City Secretary

SAMPLE

30-DAY NOTICE TO VACATE

Date

Dear ________________________________:

This letter is to inform you that you must vacate this house (apartment) within 30 days, on (date, must be 30 days after date of this letter, and 30 days after City has title).

If you have any questions or need additional assistance to complete your move, please call Ms. Ellen Smith at 441-4533.

Sincerely,

Mary Simmons
City Secretary
Department of Community Development  
City of West Linn  
City Hall  
West Linn, Lillian 00153

To: __________________________________, Relocation Officer

This is to certify that the Relocation Assistance, Services and Payments rendered by the Department of Community Development at the time of my displacement from ________________ to ________________ were done to my satisfaction.

I further certify that I have received reimbursement of my moving expense and/or Relocation Payment by the Department of Community Development checked below.

MOVING EXPENSE:

_______ Fixed payment of $_____________.

_______ Reimbursement of paid receipt from a Mover or Direct Payment to a Mover of $_____________.

ADDITIONAL RELOCATION PAYMENTS (Tenants and Certain Others)

_______ Downpayment Assistance of a lump sum of $_____________.

_______ Rental Assistance Payment of $_____________ in a lump sum.

REPLACEMENT HOUSING PAYMENT (Owner-Occupants)

Replacement Housing Payment in a lump sum of $_____________.

________________________________________________________

DATE CLAIMANT

________________________________________________________

BY

ATTACHMENT 8
SAMPLE
LETTER OF ACKNOWLEDGMENT
SERVICES AND PAYMENTS RENDRED
CHAPTER 13 – FINANCIAL

Chapter Overview
Financial Management System
The Department’s Requirements
Accounting Records
Source Documents
Receipt Procedures
Electronic Funds Transfer
Bank Accounts
Payment Procedures
Administrative Costs
Matching Funds
Indirect Costs
Requesting HOME Funds
Setting-up HOME Funds
Drawing Funds
Contract Records

Financial Management System
Grantees should take the following steps to prepare a financial management system for implementation of a HOME grant:

- Appoint person to be responsible for Financial Management.
- Establish accounting records.
- Set up bank accounts and establish receipting procedures.
- Establish payment schedules and approval procedures.

The financial management system required for grantees and the use and accounting for HOME funds is governed by the following: 2 CFR 200.

§200.104 Supersession.
As described in §200.110 Effective/applicability date, this part supersedes the following OMB guidance documents and regulations under Title 2 of the Code of Federal Regulations:

- (a) A-21, “Cost Principles for Educational Institutions” (2 CFR part 220);
- (b) A-87, “Cost Principles for State, Local and Indian Tribal Governments” (2 CFR part 225) and also FEDERAL REGISTER notice 51 FR 552 (January 6, 1986);
- (c) A-89, “Federal Domestic Assistance Program Information”;
- (d) A-102, “Grant Awards and Cooperative Agreements with State and Local Governments”;
(e) A-110, “Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations” (codified at 2 CFR 215);

(f) A-122, “Cost Principles for Non-Profit Organizations” (2 CFR part 230);

(g) A-133, “Audits of States, Local Governments and Non-Profit Organizations ”; and

(h) Those sections of A-50 related to audits performed under Subpart F—Audit Requirements of this part.


The financial management system requirements previously identified in 24 CFR Part 85.20 and 84.21 have been superseded by 2 CFR Part 200.300 - 200.309. The language has changed, but the requirements remain substantially the same. Contact the Department for clarification of any of these standards.

(1) **Financial reporting.** Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) **Accounting records** Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) **Internal control.** Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) **Budget control.** Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) **Allowable cost.** Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) **Source documentation.** Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
(7) **Cash management.** Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

*Note: An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.*

**The Department’s Requirements**

The Department identifies three basic functions that must be served by the financial management system:

1. The financial management system must have an identified procedure for recording all financial transactions.
2. All expenditures should be related to activities proposed in the grant application approved by the Department.
3. All expenditures of HOME funds should be in accordance with applicable laws, rules, and regulations.

**Accounting Records**

Each grantee should determine the accounting records that will assist in providing accurate and complete financial information. The HOME accounting records may be fully integrated into the grantee’s existing accounting system or may be partially integrated into the existing system with subsidiary ledgers developed as needed to provide the required grant accounting.

At a minimum, the grant accounting system must:

1. Clearly identify all receipt and expenditure transactions of the grant.
2. Provide for budgetary control by tracking expenditures and accrued obligations by approved HOME activities.
3. Accounting methods should be in accordance with Generally Accepted Accounting Principles.

Department staff or the grantee’s auditors should be able to readily trace HOME transactions through the accounting system. Also, all amounts shown on HOME reports should reconcile to the grantee’s accounting records.

Grantees must be able to report HOME expenditures by approved activity and budgeted line item. Budget balances must be maintained for each approved activity that account for HOME expenses accrued or obligations incurred (e.g. contracted amounts) which have not yet been paid.
Source Documents
Source documents provide information to be transferred to the accounting records. A source document may be a check, invoice, purchase order, time sheet, or contract. All source documents that pertain to the HOME project should be identified through a code or by using the HOME grant number, activity number and budget line item code. This will assure that the charges against the project are properly recorded in the HOME accounting records.

Purchase orders should be used when requesting supplies and materials for the project. The purchase order is prepared in the same manner as all other purchase orders for the grantee and should include a reference to HOME.

Contracts should be kept in a separate file. The signed contract represents an obligation of HOME funds. When payments are made on the contract, these should be recorded in the contract file on a contract control card. If there are several contracts, a contract register should be used as a management tool.

An invoice or statement for services rendered is typically submitted by a contract seeking payment. The accuracy of the invoice should be verified against purchase orders or contracts.

Time sheets are another important source document. If staff time is charged to the project, time sheets must support the number of hours worked.

Cancelled checks, bank deposit slips, receipts, and other miscellaneous documents represent important source documents which are used in accounting for program expenditures or program income.

Receipt Procedures
In addition to HOME payments from the Department, cash receipts may also include program income and project funds received from other outside sources.

The Grantee must be certain that project receipts are adequately safeguarded. This includes providing for proper bonding in accordance with state law of those individuals that handle program funds, if required.

All HOME project receipts should be promptly deposited to the proper bank account and recorded as a receipt in the accounting system. HOME funds are to be drawn down only as required to pay immediate obligations or preferably to reimburse the grantee for payments already made for HOME-eligible expenses.

The Department will consider the grantee in violation of the requirement to minimize the elapse of time between receipt and expenditure of HOME funds, if more than fifteen working days elapses between receipt and expenditure.

Electronic Funds Transfer
All HOME payments to grantees are by Electronic Funds Transfer (EFT) to a designated local bank account. These payments are made through the Nebraska Information System (NIS); the
state accounting system for all federal and state grant payments to local governments and other organizations.

All local governments in Nebraska – cities, villages, counties – have an “electronic address” established by the State Treasurer’s Office which corresponds to a designated local bank account for receipt of funds from the State of Nebraska.

This electronic address and corresponding bank account will be used for HOME grant payments with no additional action required by the local government grantee except to transfer HOME funds when received to a non-interest bearing account in accordance with HOME program requirements.

If a non-profit grantee needs to establish a bank account for receipt of state funds or if a local government grantee wishes to have HOME funds deposited directly into a designated local non-interest bearing bank account, the grantee should complete and submit the State Treasurer ACH Enrollment Form.

This form may be downloaded from the State Treasurer website at http://das.nebraska.gov/accounting/forms/ACH_W9_Fillable.pdf and mailed to the Department upon completion. The Department will review the completed form and forward to State Accounting for action and State Treasurer for information. The State Treasurer is the designated “automated clearinghouse” or ACH for the State of Nebraska.

It is not required that the ACH enrollment form be submitted to receive HOME funds, unless the grantee has not ever established an account with the State Treasurer. If no action is taken by the grantee, the electronic address previously established will apply for the receipt of HOME funds.

If a HOME-designated account (or Department-designated account) has been previously established through submission and processing of an ACH enrollment form, it is not necessary to submit this form for each new HOME grant; however, it is necessary to submit this form as a change action whenever a bank account in which HOME funds are currently being deposited has been changed (financial institution or account number).

If the local government or non-profit grantee wishes to direct HOME funds to a designated account, a completed State Treasurer ACH Enrollment Form must be sent to the Department. The form must be checked NEW (no bank account designated for HOME or Department funds currently exists) or CHANGE (making change to financial institution or account number).

In the VENDOR INFORMATION section, “Name” refers to the local government or non-profit organization, i.e. City of Seward, Village of Otoe, Gage County, Wayne Housing Development Corporation, etc. “Address” is the Mailing Address (normally a PO Box Number). “Federal Tax ID #” is the local governments or non-profits federal identification number.

In the area below “FAX #” enter: DED PAYMENTS ONLY (if this account may be used for CDBG, HOME/NAHTF grant payments, or other Department payments of any type) or HOME PAYMENTS ONLY (if to be used for HOME grant payments only). The Department will not
forward an ACH Enrollment Form to State Accounting for a specific HOME grant, as these accounts tend to be transitory, subject to closure when account activity ceases, and frequently create confusion when multiple accounts are established.

The local bank completes the FINANCIAL INSTITUTION INFORMATION section. The service agreement portion of the form should be completed by both parties as to notification procedures on receipt of funds via EFT. Make sure both parties sign the form and that all other entries are completed and accurate. Mail the completed form to:

Nebraska Department of Economic Development
HOME Financial Administrator
PO BOX 94666
Lincoln, NE 68509-4666

It may be up to 4 weeks or longer before the locally designated HOME or Department account has been assigned an electronic address by state government or an account number for an existing electronic address has been revised. Grantees should confirm with the Department that action has been completed before submitting an applicable request for HOME funds.

**Bank Accounts**
Grantees are not required to maintain separate bank accounts for the deposit of HOME funds. However, grantees must be able to reconcile HOME balances in the depository account.

Since interest may not be earned on the deposit of HOME funds, grantees must make every effort to not earn interest on HOME funds or to draw down HOME funds on a reimbursement basis. Under this system, the grantee pays all project costs (both the HOME share and the local share) and reimburses the account for the HOME share. In this way there are never unexpended HOME funds on deposit that would accrue interest earnings.

Bank accounts must be secured by F.D.I.C. insurance or bank pledged collateral for the full amount of HOME funds held in the account. Reconciliation of bank statements should be performed promptly.

Program income and CHDO proceeds may and should be deposited in interest bearing accounts. See Chapter 9 – Income & Proceeds for information on program income, recaptured funds and CHDO proceeds.

**Payment Procedures**
A grantee must establish a system to review and approve all billings presented for payment under the grant. All invoices should be reviewed to determine that the costs are accurate, reasonable and allowable under HOME regulations. The governing body of the grantee should review and approve all payments.

The grantee should determine when HOME disbursements will be made--weekly, bi-weekly, monthly, quarterly. Identifying a cut-off time when all invoices and vouchers must be submitted will assist in the planning for the request for funds. This timeline should be communicated to contractors and vendors.
The Department payment process is not designed to be used as the initial payment for an activity, such as a loan closing, contractor payment, or administration payment. If grantees choose to use HOME funds in that manner, they do so at their own risk. There is no guaranteed HOME payment process timeline. It is considered a good idea to have access to other funds to make payment of HOME-eligible costs and use HOME funds to reimburse the grantee.

Contractors’ invoices should be paid after verification has been made of work completed. A list of disbursements to be made should be prepared and the total federal cash requirements submitted to the Department on the appropriate forms.

All payments for expenditures must be supported by source documentation, i.e., invoices or vouchers and kept on file. Source documentation must be attached to submitted Request for HOME Funds forms before the Department will issue payment of HOME funds for rental projects.

**Administrative Costs**

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 grantee. Grantees should understand the budget in the HOME Contract, including the line item to be used for administrative costs.

Grantees 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.

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. General administration and housing management are typically the administrative line items in the budget in the HOME Contract. Housing management (code 0580) funds are set-up and drawn on an address (activity) by address (activity) basis.

*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. OMB Circular A-87 (local governments) and OMB Circular A-122 (non-profits) provide guidelines for determining allowable costs.

Employees paid in whole or in part from HOME funds should prepare timesheets indicating the hours worked for each pay period. Based on these timesheets and the hourly payroll costs for each employee, a voucher statement indicating the amount of time attributed to working on the HOME project and a brief description of the activities should be prepared and placed in the appropriate files.
Matching 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.

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. Grantees 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.

Although grantees are not required to show proportional match on each draw, the Department may elect to not process request for funds if satisfactory progress of match contribution is not demonstrated in Quarterly Results Assessment Forms.

Indirect Costs
Grantees who will charge indirect costs to the grant must submit an indirect cost allocation plan to the Department and receive approval prior to the Notice of Release of Funds.

Requesting HOME Funds
The request by the grantee for HOME funds is made using the Request for HOME Funds form. This form can be downloaded from the Department’s website. If a grantee is unable to download the form, it may be requested from the Department. The website includes complete instructions for properly completing the form to request funds.

Warning: prior to drawing down HOME funds, a grantee must:

- Receive a Notice of Release of Funds;
- Incur HOME-eligible costs

AND

- To draw down HOME funds for an address (activity), an Activity Set-up Report must be submitted to the Department and an activity number must be returned to the grantee.

Setting-up HOME Funds
An Activity Set-up Report (the form is available on the Department’s website) must be submitted to the Department for each address, such as 126 Marigold Circle (called an activity in HOME) that will be assisted with HOME funds. A separate report must be completed for each address (rental projects may generally use one set-up report to “set-up” all the units in the project).

The information on the report allows the Department to “set-up” HOME funds for use by the grantee for a particular address (activity). After the Department “sets up” the HOME funds for
the address, the Department will provide the grantee with an “activity number” to be used for drawing down HOME funds for that address.

An activity (address) may require HOME funds from a “hard cost” line item in the HOME Contract budget, such as code 0542 new construction homebuyer and HOME funds from the code 0580 project soft cost line item.

In order to draw funds for budgeted line items in the HOME Contract, activities (addresses) must be set-up using the Activity Set-up Reports indicating the amount of HOME funds needed for that activity (address) broken down by hard costs and soft costs. Amounts on Activity Set-up Reports must be in whole dollars.

Grantees should “set-up” sufficient HOME funds to cover the estimated costs of an activity (address). Revisions to Activity Set-up Reports may be made at any time and must be made when any item on the report changes.

Grantees that remain diligent in revising set-ups, especially revising set-ups decreasing the amount of HOME funds for activities (addresses) that have not needed the entire amount of HOME funds set-up for the activity (address), are able to re-allocate HOME funds to additional activities (addresses) in a timely manner. Keep in mind; the maximum amount of HOME funds that can be set-up for all activities in a project is capped by the amount of HOME funds in the budget in the HOME Contract.

The timeline of events associated with the HOME Activity Set-up Report:

1. Notice of Release of Funds
   Grantees must receive a notice of release of funds prior to submitting any HOME Activity Set-up Reports.

2. HOME Activity Set-Up Report
   Grantees should send this report to the Department each time an address is identified and estimated costs are known for the address. Note that all addresses in a project do not need to be set-up at the same time.

3. Activity Number
   The Department will provide grantees a unique number for each address “set-up”. The activity number is needed by the grantee to request HOME funds.

4. Request for Receipt of HOME Funds
   Grantees may submit a request for HOME funds using the activity number assigned to each address (the Request for Receipt of HOME Funds allows funds to be requested for more than one address). Funds may not be drawn before costs are incurred.

The only budgeted line items that do not need to be “set-up” and tied to an address are codes 0181 general administration and 0505 organizational operating. Grantees may draw general administration and organizational operating funds using the Request for HOME Funds form (using 0181 or 0505 as applicable in the activity code description) following release of funds and incurring eligible costs.
**Drawing Funds**

The Request for HOME Funds Form must be used to draw down HOME funds. The form with instructions is available on the Department’s website.

Please take special note of the following concerning the request, receipt and expenditure of HOME funds:

- A request for funds may not be submitted until the grantee has received a Notice of Release of Funds and activity numbers (activity numbers are not needed for general administration and organizational operating funds).
- Double and triple check the completed Request for HOME Funds form before sending it to the Department, as any errors will cause considerable delay in payment.
- Request only the amount of funds needed to pay immediate obligations.
- Funds may be requested at any time and in any frequency; however, the minimum request is $1500 except for the final request on a grant.
- Program income must be disbursed prior to requesting additional funds.
- Federal funds on hand must be disbursed prior to requesting additional funds.
- Grantees may not earn interest on the deposit of federal funds pending disbursement.
- If excessive amounts of cash (over $5,000) are on hand for an extended period of time (over fifteen working days), the grantee must return the excess to the Department.
- The request for payment must be in accordance with the approved budget for the grant contained in the Sources & Uses Of Funds section of the HOME Contract and the approved Activity Set-up Reports.
- The request for funds should show the status of all approved activities even if no funds are requested for one or more activities in a specific request.
- Amounts must be requested in whole dollar amounts only.
- For rental projects, source documentation (i.e. invoices, etc.) must accompany the request for funds.

One copy of the completed Request for HOME Funds form must be mailed to the Department for processing. The signatures on the form must be original and correspond to those signatures on the current Authorization to Request HOME Funds form (initially required for Release of Funds) the Department has on file. Grantees must send in a new Authorization to Request HOME Funds form whenever the individuals authorized to sign Requests for HOME Funds change.

Grantees must contact their program representative if budget amendments, extensions of contract completion dates, match waivers, or other actions are needed in connection with requesting HOME funds. The Department’s website has a HOME Contract Amendment Request form for use by the grantee in requesting changes to the contract.
All HOME payments to grantees are by Electronic Funds Transfer (EFT) to a designated local bank account. These payments are made through the Nebraska Information System (NIS) based on the “electronic address” established by the Nebraska State Treasurer.

**Contract Records**
Grantees will enter into contracts that will require record keeping and reporting consistent with the HOME financial management requirements.

A proper system of management should include:
- A contract file for each signed contract.
- Enter the contract in a contracts register.
- Establish a control card for each contract that tracks invoices and payments.

The file for each contract must contain the following:
- A signed contract and amendments.
- A schedule of payments supported by copies of time sheets; copies of checks or transfer notifications; copies of approved authorization/payment forms; and copies of invoices.
- All related correspondence.
- Property records (where appropriate).
- Any notice of cancellation, termination or suspension of the contract.
- Final inspection reports.

A contracts register should be used to record all contracts signed. This register will be the summary record for all contracts. The register also indicates which contracts require compliance with other federal requirements.

In conjunction with the contract register a contract card should be established for each contract. This card is used to record all payments on the contract and the percent of the work that has been completed.
CHAPTER 14 – REPORTING REQUIREMENTS

Chapter Outline
HOME Activity Set-Up Report
Homeowner Activity Completion Report
Rental Housing Activity Completion Report
Rental Housing Project Compliance Report
HOME Performance Report
Program Income Reports
Notification of Annual Audit
Final Reports

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

Grantees should use the most current form for a particular report they are submitting. Current forms are available at the Department’s website near the online version of this manual in an area called “Forms”. The grant’s program representative will provide assistance, if needed, with locating and/or sending to the grantee a copy of the current online form.

HOME Activity Set-Up Report
This report must be submitted to the Department for each address (called an activity in HOME) that will be assisted with HOME funds. A separate report must be completed for each address (rental projects may use one set-up report to “set-up” all the units in the project).

The information on the report allows the Department to “set-up” HOME funds for use by the grantee for a particular address (activity). After the Department “sets up” the HOME funds for the address, the Department will provide the grantee with an “activity number” to be used for drawing down HOME funds for that address.

The timeline of events associated with the HOME Activity Set-up Report:

1. Notice of Release of Funds
   Grantees must receive a Notice of Release of Funds prior to submitting any HOME Activity Set-up Reports.

2. HOME Activity Set-Up Report
   Grantees should send this report to the Department each time an address is identified and estimated costs are known for the address. Note that all addresses in a project do not need to be set-up at the same time.

3. Activity Number
   The Department will provide grantees a unique number for each address “set-up”. The activity number is needed by the grantee to request HOME funds.
4. Request for HOME Funds
Grantees may submit a Request for HOME funds using the activity number assigned to each address (the Request for HOME Funds allows funds to be requested for more than one address). Funds may not be drawn before costs are incurred.

More guidance on drawing HOME funds is available in Chapter 13 – Financial.

Homeowner Activity Completion Report
Grantees doing homeowner and/or homebuyer projects must submit this report to the Department for each activity (address) “set-up”. Reports are submitted by the grantee within 120 days of the final disbursement for the activity (address).

Rental Housing Activity Completion Report
Grantees doing rental projects must submit this report to the Department for each activity (address) “set-up”. Reports are submitted by the grantee within 120 days of the final disbursement for the activity (address).

Rental Housing Project Compliance Report
Grantees doing rental projects must submit this report for each rental project to the Department annually throughout the affordability period of the project. The report is due January 31.

HOME Performance Report
The Department requires all grantees to submit this report twice a year. Grantees must report on all contracts executed during the reporting period for contractors and subcontractors. There are two reporting periods, January 1 – June 30 and July 1 – December 31. Grantees must submit reports by July 26 and January 31.

Program Income Reports
The Department requires grantees to report on program income earned from HOME projects on a semi-annual basis. The reports are due July 15th for the preceding period January 1 through June 30, and January 15th for the preceding period July 1 through December 31. Grantees are required to submit Program Income Reports for as long as they are earning HOME program income.

More guidance on program income is available in Chapter 9 – Income & Proceeds.

Notification of Annual Audit
Each recipient of a grant from the Department is required to submit a Notification of Annual Audit for each year HOME funds are expended. The form is due 30 days after the end of the entity’s fiscal year end.

More information on audit requirements is available in Chapter 16 – Audit & Closeout.
Final Reports
The Department requires the submission of a Final Performance and Final Financial report for every project within three months of the last drawdown. Some projects also require the submittal of a Final Wage Compliance Report.

More information on closeout and final reports is available in Chapter 16 – Audit & Closeout.
CHAPTER 15 – MONITORING

Chapter Overview
Goal
Objectives
Conducting On-Site Monitoring Visits
In-Office Review

The Department's monitoring plan for HOME includes the following:

Goal
Ensure the success of HOME-funded activities designed to increase the availability of decent and safe housing affordable to low-income families in Nebraska.

Objectives

- Track and evaluate program/project performance
- Ensure timely completion
- Document compliance with program rules
- Prevent fraud and abuse
- Identify technical assistance needs
- Identify innovative program designs and approaches

Homeowner Rehabilitation Programs
Resources: Chapter 3 of the Nebraska HOME Manual, Chapter 4 of the Building HOME Manual and Chapters 4 and 8 of the Monitoring HOME Program Performance Manual.

Checklists: 4-A,B,C,D and 8-A,B,C,D,E,F,G,H,I and the Nebraska HOME Program Property Standards Certification

Homebuyer Programs
Resources: Chapter 4 of the Nebraska HOME Manual, Chapter 5 of the Building HOME Manual and Chapters 5 and 8 of the Monitoring HOME Program Performance Manual.

Checklists: 5-A,B,C,D and 8- A,B,C,D,E,F,G,H,I and the Nebraska HOME Program Property Standards Certification

FEES Charged by State Recipients and Subrecipients:

Administrative fees are not allowable. §92.214 (b)(1) is revised to clarify that PJs and other program participants cannot charge fees to cover their administrative costs, especially fees charged directly to low-income program beneficiaries. Prohibited fees include loan servicing, origination, or other fees related to the cost of administering the HOME program. This paragraph also requires PJs to extend the prohibition to State recipients, subrecipients, and CHDOs. See related changes at §92.206(d)(6) and §92.207(b). See exceptions at 92.214 (b)
<table>
<thead>
<tr>
<th>TYPE</th>
<th>FREQUENCY</th>
<th>AREAS OF REVIEW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homebuyer and Homeownership Rehabilitation</td>
<td>At least one on-site visit prior to project closeout</td>
<td>Fair Housing, Affirmative Marketing, Labor Standards, Environmental Reviews, Lead-based Paint, Relocation, Program Review, Client-file Review, Property Standards, Financial Management, Eligible Costs, Contractor Selection, Construction Management, Loan Processing and Servicing, Income Verification, On-site Inspection</td>
</tr>
</tbody>
</table>

**Rental Housing Projects**

First Visit Resources: Chapter 5 of the Nebraska HOME Manual, Chapter 6 of the Building HOME Manual, Chapter 6 and Chapter 8 of the Monitoring Home Program Performance Manual.


<table>
<thead>
<tr>
<th>TYPE</th>
<th>FREQUENCY</th>
<th>AREAS OF REVIEW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rental – First Visit</td>
<td>At least one on-site visit prior to project closeout</td>
<td>Fair Housing, Affirmative Marketing, Labor Standards, Environmental Reviews, Lead-based Paint, Relocation, Property Standards, Fair Housing Design Standards, Financial Management, Eligible Costs, Contractor Selection, Construction Management, On-site Inspection, Rent Requirements, Occupancy Requirements, Tenant Eligibility and Leases</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TYPE</th>
<th>FREQUENCY</th>
<th>AREAS OF REVIEW</th>
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</thead>
<tbody>
<tr>
<td>Rental – Ongoing</td>
<td>During the length of a project’s affordability period on-site reviews are done every year for 25+ unit projects; every two years for 5 to 25 unit projects; and every three years for less than 5 unit projects</td>
<td>Property Standards, Fair Housing Design Standards, On-site Inspection, Rent Requirements, Occupancy Requirements, Tenant Eligibility and Leases</td>
</tr>
</tbody>
</table>
### Rental Affordability Periods

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>HOME INVESTMENT PER UNIT</th>
<th>AFFORDABILITY PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rehabilitation or acquisition of existing structures</td>
<td>&lt; $15,000</td>
<td>5 years</td>
</tr>
<tr>
<td>Rehabilitation or acquisition of existing structures</td>
<td>$15,000 - $40,000</td>
<td>10 years</td>
</tr>
<tr>
<td>Rehabilitation or Acquisition of Existing Structures</td>
<td>&gt; $40,000</td>
<td>15 years</td>
</tr>
<tr>
<td>Refinance of Rehabilitation Project</td>
<td>Any Amount</td>
<td>15 years</td>
</tr>
<tr>
<td>New Construction, including Acquisition of New Units</td>
<td>Any Amount</td>
<td>20 years</td>
</tr>
</tbody>
</table>

### Conducting On-Site Monitoring Visits

On-site monitoring is a structured review conducted at the locations where project activities are being carried out or project records are being maintained.

The Department or its monitoring contractor will:
1. Call the HOME grantee to schedule a site-visit at least three weeks prior to visit.
2. Send a letter at least two weeks prior to visit confirming date and time, the checklists that will be used, and the people and files needed during the visit.
3. Conduct site-visit, review files, inspect property, complete checklists and write report.
4. Submit monitoring report to the grantee within 60 days of visit.
5. Review any follow-up documentation sent by the grantee addressing issues contained in the monitoring report.
6. Work with the grantee until monitoring has been cleared.

### File Preparation

The Department expects the grantee to have all documents needed for review to be available at the site of the visit. All grant records must be maintained and under the control of the grantee.

The records must be readily accessible by the Department. Furthermore, all documentation should be well organized for easy review. The Department recommends basing the organization of grantee files on the monitoring checklists attached to this chapter.

### Monitoring Report

The monitoring report issued to the grantee following a review contains the following as applicable:
1. Compliance areas reviewed, files reviewed, who conducted the review and the date it occurred;
2. A brief description of the specific statute, regulation or requirement examined;
3. The conclusion (i.e. Satisfactory Performance, Concern, Finding) and basis for the conclusion reached.
a. A Satisfactory Performance determination is a conclusion that the grantee is meeting its statutory and regulatory responsibilities.
b. A Concern raises an issue that does not involve a statute, regulation or requirement, but may involve a management suggestion or program improvement.
c. A Finding is a clear, specific and identifiable violation of a statute, regulation or requirement about which there is no question. The action normally requested is for the grantee to explain, within a 30-day period, what steps it will take to remedy and/or prevent a recurrence of the violation.

**In-Office Review**
The Department’s program representatives along with the Functional Area Specialists are always on the lookout for red flags throughout the project from time of award to closeout and through the affordability periods. Additional on-site visits will be conducted if deemed necessary by the Department.

Rental projects are required to submit a Rental Housing Project Compliance Report by January 31st of each year during the affordability period documenting rents charged and income of occupants.

Program income reports are required twice a year for as long as a grantee is earning program income.

**File Retention**
**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 after project completion.
- Resale/Recapture records must be kept five years after the affordability period ends.

**Monitoring Checklists**
The checklists provide guidance to grantees on the areas of HOME projects the Department reviews through the monitoring process.

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1. This does not apply to HOME assisted units but total number of housing units in the project.
2. A change in this inspection schedule had been included in the HOME Final Rule Aug 2013, but to date has not been implemented. The new schedule would provide for an initial inspection, and follow-up inspections every 3 years regardless of the number of units.
CHAPTER 16 – AUDIT & CLOSEOUT

Chapter Overview
Project Closeout
Audit Requirements
Notification of Annual Audit
The Audit
Auditor Selection
Single Audit Costs
Certificate of Completion
File Retention

Project Closeout
Closeout is the process by which the Department determines the grantee has completed the project according to the HOME Contract. However, closeout does not end grantees obligations regarding fulfillment of any affordability periods and record keeping requirements.

The Department continues monitoring the grantees’s performance through all affordability periods, especially for rental project. Beyond the affordability period, the grantee must still complete and submit program income reports, if applicable.

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 (grantee must submit within 3 months of the project’s last drawdown).
- The Final Performance Report (grantee must submit within 3 months of the project’s last drawdown).
- The Final Wage Compliance Report, if applicable (grantee must submit within 3 months of the project’s last drawdown projects requiring adherence to labor standards, see Chapter 10 – Construction & Labor Standards).
- The Department has completed the initial compliance review of the project and monitoring clearance is achieved (note that the Department is required to monitor rental projects throughout the affordability period).
- The grantee has fulfilled all audit requirements satisfactorily.

The final reporting forms with instructions are available from the Department’s website.

- The Final Financial Report – summarizes actions taken by the grantee in implementing the project.
- The Final Performance Report – details costs for the activities completed under the grant accounting for federal and non-federal funds.
- The Final Wage Compliance Report – measures compliance with labor standards on the project.
Audit Requirements

The Department requires all HOME grantees, regardless of the entity type, to comply with 24 CFR 200: Single audit. A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 24 CFR Part 200 Subpart F Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

The Department does recommend that entities conduct an audit annually, regardless of the amount of expenditures.

Notification of Annual Audit

A Notification of Annual Audit form must be completed and returned to the Department within 30 days of the entity’s fiscal year-end. A memorandum will be sent to all grantees with open grants along with a copy of the Notification of Annual Audit form. The form is also available from the Department’s website. The form, however, CANNOT be submitted before the end of the entity’s fiscal year.

The instructions for completing the form:
1. Include the date of the entity’s fiscal year end.
2. List the sources of all federal expenditures received by the entity, include grant numbers for grants received from the Department.
3. Indicate if the entity must perform an audit.
   a. If an audit is required, note whether the audit to be performed will be a Single Audit or a Program-specific Audit. (Program-specific Audits must be pre-approved by the Department)
   b. The audit must be conducted in accordance with the Single Audit Act, OMB Circular A-133 and Generally Accepted Government Auditing Standards.
4. Include the name of the contact person responsible for audit arrangement.
5. The form must by certified by the Chief Official of the entity.

The Audit

Completed audits must be received by the Department the earlier of 30 days after the entity receives the auditor’s report or nine months after the end of the audit period. For example, an entity with a September 30 fiscal year-end date would be required to submit the audit 30 days from when the audit is received, but no later than nine months after the entity’s year-end or June 30 of the following year. If an audit is not received by the appropriate date, the Department will consider sanctions such as suspending payments until the audit is conducted.

Audits must be conducted in accordance with Generally Accepted Government Auditing Standards and 24 CFR 200.501. The auditor’s responsibilities are described in Subpart E. Program-specific audit requirements are found in 24 CFR 200.501(c).

The appropriate CFDA number must be used in the Schedule of Expenditures of Federal Awards, 14.239 for HOME. The HOME grant number and amount must also be identified in this schedule. Local expenditures (matching funds, etc.) should not be included in this schedule.
The entity is responsible for follow-up and corrective action on all audit findings. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor’s report. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date.

Upon completion of the audit each entity must:
1. Submit a copy of the single audit to the Department; or
2. If there were no single audit findings or questioned costs, the entity may provide written notification to the Department that an audit was conducted in accordance with A-133 (including the period covered by the audit, the name, amount and CDFA number of awards from the Department). A statement must be included stating that there were no current or continuing prior year findings or questioned costs.
3. Submit to the Federal Clearinghouse identified in A-133, one copy of a signed data collection form (SF-SAC), and one copy of the reporting package for the clearinghouse to retain as an archival copy, and one copy for each federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to federal awards that the federal awarding agency provided directly to the entity. (Awards from the Department come to the entity as pass-through awards, not directly from the United States Department of Housing and Urban Development).

Auditor Selection
Grantees that are required to have a single audit must follow federal procurement procedures in selecting an auditor to perform the audit.

The use of a Request for Proposal is generally the most appropriate method of procurement since auditor qualifications are critical to having a proper audit performed. Criteria for selection of an auditor may include previous experience with audits of HOME or other federal programs and single audits. Additional information should be obtained to assure that the auditor is a CPA or licensed public accountant. Verification of the completion and timeliness of previous audits should be made and an assurance that the auditor is independent.

Single Audit Costs
If a grantee is required to have a single audit, they may charge each open federal grant a portion of the audit costs for the fiscal year audited. The allowable portion of audit costs to be charged to each grant is determined by dividing the expenditures of a federal grant in a fiscal year by the total expenditures of the local government in that year. The resulting percentage is then multiplied by the total audit cost to determine the allowable audit cost for that grant.
If the grantee feels that the allowable audit cost determined using the calculation method discussed above does not reasonable reflect a HOME grant’s share of the audit cost, the grantee may request that the Department grant a waiver of this provision and approval of a greater share of the audit cost to be charged to that grant. The request must include information from the auditor as to why the calculated audit cost is not representative of the actual audit costs incurred.

Audit costs may only be charged to the grantee’s general administration activity under the approved HOME budget. If a grantee’s budget does not contain general administration as a use for HOME funds, the budget may be amended to move HOME funds from another use to general administration if requested by the grantee and approved by the Department.

**Certificate of Completion**

The Certificate of Completion Letter will specify any follow-up actions required by state or federal regulations; however, this letter constitutes a certificate of satisfactory completion of project requirements.

- The Department continues to monitor rental projects throughout the affordability periods.
- The grantee is required to submit reports beyond the Certificate of Completion, such as program income reports and rental housing compliance reports.
- The grantee must maintain appropriate records beyond the Certificate of Completion.

**File Retention**

**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 after project completion.
- Resale/Recapture records must be kept five years after the affordability period ends.