

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

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

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

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

14.3.4 Other Federal Requirements

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

14.4 Implementation Guidance

14.4.1 Program Guidelines

Homebuyer Program Guidelines must contain the following information:

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

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

14.4.2 Beneficiary Selection

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

Fair Housing

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

Conflict of Interest

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

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

Applicant Selection

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

Complaint Procedures

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

14.4.3 Property

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

Homebuyer Responsibilities

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

Maintenance

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

Distribution of Funds

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

Reuse of Funds

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

Attachment 1. Key Homebuyer Rules & Documentation

Eligible Participants

	Key HOME Requirement	Documentation
Owner Income	Gross income \leq 80 percent of median income based on the upcoming 12 months. Gross income is defined by 24 CFR Part 5.	Completed application in the client file. Source documentation (wage statements, interest statements) in the client file.
Owner Occupancy	Applicant must purchase property and maintain it as his/her principal residence.	Client must sign a clause on the application form certifying that the property is the principal residence.
Ownership of Property	Applicant must obtain ownership of the property through: <ul style="list-style-type: none"> ● Fee simple title, ● 99-year leasehold interest, or ● Other form approved by the Department (see page 4-11) 	Title insurance documentation in client file. Title search/check/review documentation in project file to: <ol style="list-style-type: none"> 1. Establish proof of ownership [chain of title] 2. Determine defects to title/ownership [if any] 3. Identify outstanding mortgages and other liens 4. Disclose any recorded covenants, conditions, restrictions, easements, condemnations, etc. Copy of deed or other approved ownership document in the client file.

Eligible Property

	Key HOME Requirement	Documentation
Property Type	Eligible property types include: <ul style="list-style-type: none"> ● One-to-four-unit property; 	If two-to-four units, indicate status of non-owner-occupied units the application.

	<ul style="list-style-type: none"> ● Condominium unit; or ● Manufactured or mobile home 	
Property Location	Property must be located in program area as designated in approved program guidelines.	Client application must contain address.
HOME Minimum & Maximum Subsidy	<p>A minimum of \$1,000 in HOME funds must be invested in each assisted unit.</p> <p>Assistance must not exceed HOME subsidy limit on a unit by unit basis.</p>	Maintain records demonstrating that each unit assisted received at least \$1,000 in HOME assistance but not more than the maximum HOME subsidy allowed.
Property Value See page 4-5	<p>Sales price must not exceed 95% median sales price limit as determined by HUD.</p> <p>If rehabilitating property, after rehabilitation value must not exceed 95% median sales price limit as determined by HUD.</p>	<p>Document method for determining value in file.</p> <p>Copy of sales price or value estimate in file.</p>
Property Standards See Attachment 5 page 4-29	<p>If acquisition only, property must meet the Department’s Rehabilitation Standards.</p> <p>If rehabilitation, property must be free of safety and health hazards prior to occupancy or within 6 months of property transfer, whichever is sooner.</p> <p>Also, if rehabilitation, property must meet Department’s Rehabilitation Standards and applicable codes (local codes/standards or one of 3 nationally accepted codes) within 6 months of transfer.</p> <p>New construction must meet or exceed local codes/</p>	<p>Document local code or model code used.</p> <p>Maintain written rehab standards in program files.</p> <p>Include inspection report or certification by inspector in client file.</p> <p>Keep inspection checklist and work write-up in client file.</p> <p>Checklist indicating compliance with the most recent version of the International Energy Conservation Code requirements for new construction projects.</p>

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

Long Term Affordability

	Key HOME Requirement	Documentation
Affordability Period Recapture/Resale See Attachment	<p>Property must be subject to either resale or recapture provisions for the period of affordability.</p> <ul style="list-style-type: none"> ● Resale: future sale of property must be to and affordable to low-income buyer. ● Recapture: portion or all of assistance to buyer must be recaptured at time of sale. 	<p>Resale: mortgage and/or note and deed restriction or covenant restricting future sales.</p> <p>Recapture: mortgage or note showing formula by which funds will be recaptured.</p>

Attachment 2. Subsidy Approaches Advantages & Disadvantages

SUBSIDY	PROS	CONS
Grants	<ul style="list-style-type: none"> ● Simple to administer ● Easy to explain ● Often necessary, especially to reach very-low-income 	<ul style="list-style-type: none"> ● 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	<ul style="list-style-type: none"> ● 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 	<ul style="list-style-type: none"> ● 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	<ul style="list-style-type: none"> ● Provides immediate repayment 	<ul style="list-style-type: none"> ● Time-consuming and staff-intensive to process loan requests ● Requires underwriting expertise ● Loans must be serviced after origination

Attachment 3. Enforcing Recapture or Resale Restrictions

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

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

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Attachment 4. Other Federal Requirements for Homebuyer

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 awardee must have affirmative marketing requirements and procedures.

Regulatory Citations & References:

- ❑ 92.351

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

Regulatory Citations & References:

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

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))

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

Using the above-mentioned formula of:

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

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

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