

16. RENTAL HOUSING DEVELOPMENT ACTIVITIES

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, Application Guidelines and the HOME Program Contract. Applicants and awardees must adhere to the requirements imposed on HOME funds for the particular program year and specific award.

16.1 Eligible Activities

HOME funds may be used for acquisition, new construction or rehabilitation of affordable rental housing.

16.1.1 Eligible Developers/Owners

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.

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.

16.1.2 Eligible Property Types

HOME funds may assist transitional or permanent rental housing for low income households.

- 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.)
- 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).

16.1.3 Ineligible Property Types

The following rental property types may not be assisted with HOME funds.

- 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.

16.1.4 Forms of Assistance

The Department provides assistance to rental projects as hard or soft 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.

16.1.5 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
- Recordation 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. See Attachment 4 for further details regarding Affirmative Marketing
- 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

Initial Operating Deficit or Rent Up Reserve

- 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.

16.2 Project Requirements

16.2.1 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. <https://opportunity.nebraska.gov/grow-your-community/data-for-applicants-and-grantees/>

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.*

16.2.2 HOME-Assisted Units

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 or mixed-use 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 and mix of HOME-assisted units in project will be specified in the HOME Contract, based on cost allocation described below.
- Some projects may consist of only HOME-assisted units.

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 cannot 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 shortage of such units. Therefore, these units are fixed HOME-assisted units.

Allocating Costs to HOME-Assisted Units

HOME funds can be invested in mixed-income and mixed-use projects, but HOME funds may only be provided for HOME-assisted units. Consequently, if less than 100% of the units and space are going to be low-income HOME-assisted units, HUD requires Participating Jurisdictions to conduct cost allocation to determine the minimum number of HOME units or the maximum amount of HOME assistance that can be provided to the units that will be HOME-assisted.

Cost allocation is required when a HOME project has units that are not going to be HOME-assisted and/or non-residential space that is not eligible to be funded with HOME funds. Stating it another way, cost allocation must be done for projects that are:

- mixed-income with units that are not HOME-eligible or HOME-assisted;
- mixed-use such as commercial or public use spaces;
- mixed tenure such as an owner-occupied 2-4-unit project; OR
- mixed financing where HOME cannot be used in units with certain financing sources, such as Public Housing.

Cost allocation must take into account three factors:

- Eligible costs of assisted units;
- The Maximum per unit Subsidy Limit as noted above; and
- The underwriting determination of the amount of assistance necessary to make the project financially viable for at least the period of affordability.

The Department will conduct this cost allocation analysis as part of underwriting. 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. The Department may also choose to require a higher number of HOME-assisted units in a project.

Note that costs must be allocated across unit types, and that cost allocation will determine not only the number, but also the types of units that are required to be HOME-assisted, and whether the units are to be fixed or can float within comparable units and unit types. 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 will likely be fixed.

Example #1: 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.

Example #2: 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.

HUD Notice CPD 16-15 provides further guidance on allocating costs in projects with HOME and non-HOME units.

16.2.3 Property Standards

As with all HOME-assisted properties, rental properties must meet certain written standards. The HOME property standards requirements were reorganized and updated by HUD in 2013. The Rule now specifies requirements for projects involving each of the following:

- New construction [§92.251(a)]
- Rehabilitation [§92.251(b)]
- Acquisition of standard housing [§92.251(c)]
- Manufactured housing [§92.251(e)]

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.

All codes and standards must be met at the time of occupancy, except for occupied properties that are funded for rehabilitation.

All HOME assisted housing must meet all applicable State and local codes and housing quality standards, as applicable.

- **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 most recent version of the International Energy Conservation Code.

New construction of rental housing must also meet site and neighborhood standards at 24 CFR 893.6(b) as summarized below in Section 16.2.4.

- **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.

Existing rental housing must have major systems with a remaining useful life at least as long as the period of affordability and/or replacement reserves sufficient to replace systems as needed. The major systems of rental projects of 26 or more units must be determined through a capital needs assessment.

HUD requires written rehabilitation standards. The Department's Rehabilitation Standards can be found at: <https://opportunity.nebraska.gov/program/home/#forms>

- **Acquisition Only.** Existing rental housing acquired with HOME funds must meet any applicable State and local housing quality standards.
 - o Rental housing that was newly constructed or rehabilitated less than 12 months before the date of commitment of HOME funds, must meet the new construction standards of §92.251(a).
 - o All other existing rental housing that is acquired with HOME assistance must meet the rehabilitation property standards of §92.251(b).

- **Manufactured Housing.** Newly constructed manufactured housing for rental 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. Awardees 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. Installation of replacement manufactured homes must meet the foundation requirements of 24 CFR 203.43f(c)(i).

Manufactured housing that is rehabilitated with HOME funds must meet the written rehabilitation standards of the Department, and the foundation and anchoring requirements of 24 CFR Part 3285.

In addition, other federal requirements may apply, including accessibility standards, lead-based paint standards of 24 CFR part 35 for pre 1978 properties, and broadband infrastructure for new or rehabilitated properties.

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

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

16.2.4 Site & Neighborhood Standards

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

- 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.
- 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.
- 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.

16.2.5 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 adaptation 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.

16.2.6 Other Federal Requirements

The requirements of Part II apply to rental housing. See Attachment #3 for further details.

- The threshold for Davis-Bacon is 12 or more HOME-assisted units in a construction contract.

16.3 Using HOME with Other Funds

16.3.1 Combining Low Income Housing Tax Credits with HOME

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.

Summary of Requirements when Combining HOME with Tax Credits

	Tax Credit Program Rules	Combining Tax Credits with HOME
Occupancy Requirements	At least 20 percent of assisted units must be reserved for households with incomes at or below 50 percent of area median; OR	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

	40 percent of the units must be reserved for households with incomes at or below 60 percent of area median income.	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).
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.
Establishing Tenant Eligibility	<i>Documentation</i> --Tenants must provide acceptable documentation of income from a third-party source. All sources of income are verified. <i>Definitions</i> --The tax credit program defines income using the Section 8 definition of annual (gross) income. <i>Asset Income</i> --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.	<i>Documentation</i> --Initial tenant eligibility documentation for both programs is the same. <i>Definitions</i> --The Department also requires the use of the Section 8 definition of income for HOME. <i>Asset Income</i> --Follow more stringent HOME rules and verify all asset income.

	Tax Credit Program Rules	Combining Tax Credits with HOME
Reexaminations of Income	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.	Tax credit/ HOME projects may request waivers from NIFA in order to perform reexaminations similar to HOME. Otherwise, the project must follow the more stringent tax credit requirements.
Over-Income Tenants	Rent for over-income tenants remains restricted. An owner <i>may</i> increase an over-income tenants rent, but <i>only after</i> 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. "Over-income" is defined as above 140 percent of the project income limit.	HOME rules defer to tax credit rules -- rent remains restricted. (In other words, in no case can the rent exceed limits set by the tax credit program).
Monitoring	Projects are monitored annually throughout the affordability period. Statement of compliance is submitted annually with documentation of occupancy. On-site inspections are conducted by NIFA.	The Department and NIFA will each monitor according to their program requirements.

Occupancy Requirements

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

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.

16.3.2 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.

16.3.3 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.

16.4 Long-Term Affordability

16.4.1 Affordability Period

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

ACTIVITY	AVERAGE AMOUNT OF HOME FUNDS PER UNIT	MINIMUM AFFORDABILITY PERIOD
Rehabilitation or Acquisition of Existing Housing	<\$15,000 per unit	5 years
	\$15,000 - \$40,000 per unit	10 years
	>\$40,000 per unit	15 years
Refinance of Rehabilitation Project	Any \$ amount	15 years
New Construction or Acquisition of New Housing	Any \$ amount	20 years

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 ($\$100,000 \div 5 = \$20,000$ 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.

16.4.2 Land Use Restrictions

Awardees 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.

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 foreclosure or assignment to the U.S. Department of Housing and Urban Development. Therefore, the Department will require awardees to repay the Department the full amount of the HOME funds drawn for projects where affordability requirements are not met in full.

16.4.3 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.

Attachment 1. SROs & Group Housing

CATEGORY	SRO	GROUP
Description	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.	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.
Maximum Subsidy	Based on zero-bedroom unit subsidy limit times number of HOME-assisted units; common area costs prorated based on % of HOME-assisted units.	Based on number of bedrooms, including bedrooms of caretakers.
Targeting	All tenants of HOME-assisted units must be low-or very-low-income.	All tenants, excluding live-in service providers, must be low-income.
Rents	<p>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.</p> <p>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 at 50% of the area median income, adjusted for family size.</p>	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.

Attachment 2. Elder Cottage Housing Opportunity (ECHO) 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.

Attachment 3. Other Federal Requirements

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
- ❑ Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U. S. C. 4201-4655)
- ❑ 49 CFR Part 24
- ❑ 24 CFR Part 42 (subpart B)
- ❑ Section 104(d) "Barney Frank Amendments"

Attachment 4. §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.