

Chapter 27

HOMEBUYER

HOME funds are to be used by awardees to assist eligible individuals or families for acquisition of affordable housing for homeownership. **Homebuyers must receive housing counseling. Effective 8-1-2021, all homebuyers MUST receive homebuyer counseling from a HUD approved certified housing counselor.** If the Awardee is not a HUD approved certified housing counselor, the Awardee may contract with another agency to meet this requirement.

The housing must be acquired by a homebuyer whose family qualifies as a low-income family, which includes the HOME Student question below, and the housing must be the principal residence of the family throughout the period of affordability.

Is anyone attending an institution of higher education?

If yes, can this person meet an exception below?

1. *Is this person over the age of 23?*
2. *Is this person a veteran of the US military?*
3. *Is this person married? (HUD should recognize same sex marriage)*
4. *Does this person have dependent child(ren)?*
5. *Does this person have disabilities?*
6. *Will you reside with and are a dependent of a household member in this unit?*

If the student cannot meet one of the six exceptions above, they are not eligible to occupy a HOME unit.

See Chapter 8 on income. **The adjusted income method is used *only* for the purposes of determining rent. It is *never* used for verifying a tenant's annual income for purposes of establishing income-eligibility.**

Acquisition: Acquire homes for resale to individuals. Funds may be passed through in the form of a loan or grant to individuals for purchase of a home

Acquisition and rehabilitation: Acquire and rehabilitate substandard homes for resale to individuals.

New Construction: Construct homes for sale to individuals. The homebuyer must qualify as a low-income family at the time the contract is signed for construction of new housing.

Homebuyer assistance: Provide down payment and/or closing cost assistance, or reduce the monthly carrying cost of a loan for individuals purchasing affordable housing. OHFA's HOME Program down-payment assistance is limited to a maximum of \$10,000 per assisted household, and is further limited to the amount of HOME funds required to make the housing affordable to the homebuyer. Down-payment Assistance funds must be used in the following order:

- **First** Down-payment assistance (defined as the difference between purchase price and loan amount).

- Second Closing cost
- Third Pre-paids
- Fourth Principal reduction as reflected on the HUD closing statement

The homebuyer may be allowed to have returned from their earnest money the appraisal, pre-paid insurance, survey and credit report costs.

Written Agreements with Homebuyers

The awardee must enter into a written agreement with each eligible homebuyer, separate and apart from the note and mortgage, that includes, at a minimum, the following:

- The housing must conform to the requirements of 24 CFR 92.254(a).
- The housing must be modest; the home’s value must not exceed 95% of the median purchase price for the area and it cannot contain any luxury improvements (See Chapter 10).
- The home must be the principal place of residence of the homebuyer.
- Resale or recapture provisions must be set forth in detail, and written in such a way that the homebuyer can understand them.
- The agreement should set forth the amount of HOME assistance provided, the form of such assistance, and the deadline for acquiring the housing unit with the HOME funds.

It may be possible to have a single document that fulfills all of the requirements of both the Written Agreement and the Recapture Provision. However, it is recommended that you use separate documents since each fulfills a specific purpose.

HUD will provide the limits to be used for all newly constructed housing and for existing housing on an annual basis.

The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. *See bolded note below suggesting to add an additional six-month period to the period of affordability so the recapture agreement and IDIS will not show a discrepancy.

Homeownership assistance HOME amount per-unit	Minimum period of affordability in years
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15

OHFA has chosen the recapture option. Recapture provisions must ensure that there is recovery of all or a portion of the HOME assistance, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The amount subject to recapture is based on the amount of HOME assistance that is a direct subsidy to the homebuyer. OHFA requires that all recapture provisions for homeownership activities base the recapture amount on the net proceeds available from the sale and not the entire amount of the HOME investment. Net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. The recaptured funds must be returned to OHFA.

HOME funds are to be recaptured in one of the following three methods:

- Recapture of the HOME investment first, with the homeowner receiving any remaining net proceeds
- Allow the homeowner to recover his/her initial investment first, with the remainder of the net proceeds recaptured
- A “shared appreciation” method, where a pre-determined percentage of the net proceeds is retained by the homeowner, and the remainder of the net proceeds is recaptured

***As it would be in the best interest of the Awardee, OHFA strongly suggests adding an additional 6 (six) months to the period of affordability after completion. This process will ensure if the homebuyer moves prior to the period of affordability expiring, the time period listed on the recapture agreement covers the period listed in IDIS.**

The Recapture Agreement is specific to the terms and conditions for ensuring that “the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability.” (24 CFR 92.254(a)(5)(ii)). This agreement cannot be included in the note or mortgage because it includes the requirement that the homebuyer occupy the property for the specified period of affordability. This provision must remain in effect regardless of the status of the note or mortgage. If recapture requirements were included only in the note and mortgage, the requirement would become unenforceable if the note and mortgage were paid off while the original homebuyer maintained ownership of the property.

By recording the Recapture Agreement, it helps ensure that it is enforced in any property transaction subsequent to the purchase by the homebuyer that receives HOME assistance. This reinforces the reason for keeping this document separate from the Written Agreement.

If applicants demonstrate to OHFA staff that special conditions exist that would make the resale option superior, then it may be considered as an exception. In addition, when there is no direct subsidy to the homebuyer, the resale option must be used.

Deed restrictions, land covenants or other similar legal mechanisms must be in place and recorded to enforce these recapture or resale restrictions.

Conversion to Rental Units

New construction of HOME-assisted housing units for sale, or to acquire and/or rehabilitate HOME-assisted housing units for sale, should note that if a Homeownership unit has not been sold to a HOME-eligible homebuyer within nine (9) months of the completion of the construction or rehabilitation, the homeownership unit must be converted to a HOME Rental unit and be rented to an eligible tenant.

Additional Resources:

- Guidance for HOME Homebuyer Compliance Checklist
- Homebuyer Written Agreement
- Recapture Agreement
- Deed Restriction
- Amended Deed Restriction
- Resale Agreement Template
- Mortgage Template
- Forgivable Loan Template
- Requirements for HOME Homebuyer Program Policies and Procedures
- Debarred or Suspended Contractors