



OKLAHOMA HOUSING FINANCE AGENCY
~~2023-2025~~ HOME Program Processes, Procedures and
Topical Guidance

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Affirmative Marketing

Applicant must adopt an Affirmative Marketing Plan for all Projects with five or more HOME-assisted units, and all Programs regardless of the number of units, such as down-payment assistance and tenant-based rental assistance programs.

The Plan must include:

- methods for informing the public, owners and potential tenants about fair housing laws and the policies of the local program;
- a description of what grantees and/or the program administrator will do to affirmatively market housing assisted with HOME funds;
- a description of what grantees and/or the program administrator will do to inform persons not likely to apply for housing without special outreach;
- maintenance of records to document actions taken to affirmatively market HOME-assisted units and to assess marketing effectiveness; and
- a description of how efforts will be assessed and what corrective actions will be taken when requirements are not met.

Program and activity implementation manuals shall be provided to contractors and shall contain information regarding Affirmative Marketing Requirements and Procedures. In order to achieve compliance with requirements at 24 CFR Part 92.351, Written Agreements shall be executed between OHFA and all HOME Program Awardees. **During programmatic monitoring activities, OHFA shall review affirmative marketing activities and, should the level of compliance with the requirements be determined unsatisfactory, shall provide Awardees with the necessary guidance to achieve regulatory standards.**

CHDO Proceeds Reuse Plans

CHDOs as owners, developers and/or sponsors of HOME-assisted affordable housing Projects must describe the potential to generate CHDO proceeds and whether the CHDO Proceeds will be retained by the CHDO or returned to OHFA. If retained, CHDO proceeds must be used for HOME-eligible or other low-income housing activities. The CHDO Proceeds Reuse AMENDMENT must be approved and executed by OHFA.

1. CHDO Proceeds Reuse AGREEMENT / If an application is being submitted as a CHDO, Attachment G (CHDO Re-use Agreement), of the HOME

- application must be completed. If the application is funded, the Housing Development Director will execute the Agreement and a copy will be sent to the Awardee.
2. CHDO Proceeds Reuse AMENDMENT / this must be signed after proceeds are generated and expended. Include the specific reuse and dollar amount retained. This Amendment must be accompanied by information deemed relevant to prove use was for HOME eligible or other housing activities to benefit low-income.

Retaining CHDO Proceeds

OHFA allows a CHDO to retain CHDO proceeds. After the proceeds have been generated, the Awardee will be required to submit to OHFA a CHDO Proceeds Reuse AMENDMENT detailing the dollar amount expended and specific re-use. The Awardee will be required to submit to OHFA a Settlement Statement, CHDO proceeds log (stating contract #'s) and any other information deemed relevant to prove the use was for HOME eligible or other housing activities to benefit low-income families. OHFA must approve prior to use verbally or in writing. Please contact staff for a sample of the CHDO reuse AMENDMENT. **If an Awardee fails to submit information, the CHDO Proceeds may be requested to be returned to OHFA. In no event shall CHDO proceeds be allowed to be banked (not used) for more than 24 months.**

Once the CHDO Awardee wishes to retain Proceeds, said awardee must provide information that contains the following:

- A. The circumstances under which the proposed development could produce CHDO proceeds.
- B. The process or processes by which CHDO proceeds will be tracked.
- C. If proceeds produced by the proposed project may be combined with other financing to fund additional affordable housing activities.
- D. The role the CHDO Board will fulfill regarding the reinvestment of proceeds.
- E. No more than twenty percent (20%) can be reused for administrative costs.

The information above will, be used by OHFA to determine the CHDO's capacity to manage proceeds, provide proper oversight, and make prudent, self-sustaining reinvestments. Retention of CHDO proceeds is at OHFA's discretion and will be based on the awardee's capacity in managing proceeds. At any time, OHFA reserves the right to request additional documentation confirming the first re-use of CHDO Proceeds.

Compliance Monitoring

These compliance-monitoring procedures apply to all HOME contracts.

- A. OHFA will verify that the Awardee of a low-income housing Project is maintaining records for each qualified low-income HOME unit. These records must show, for each year in the Period of Affordability, the information required by the record-keeping provisions contained in the HOME Regulations, incorporated herein by reference.
- B. OHFA will verify that the records documenting compliance with the HOME Regulations for each year as described in Paragraph A above are retained for the entire affordability period.

- C. OHFA will conduct construction inspections in order to ensure that HOME funds are not being drawn down for work that has not been completed, work that has not been done according to the specifications of the Written Agreement, or costs that are ineligible for HOME funding.
- D. OHFA will inspect one hundred percent (100%) of the HOME Written Agreements as prescribed by HUD regulations and will inspect the low-income certification, the documentation the Awardee has received to support that certification, and the rent records for Rental Projects.
- E. For Rental Projects, OHFA will perform on-site inspections at the time of property completion, any time the property is flagged as high risk using OHFA's risk assessment and, at a minimum, every three years thereafter, in order to determine compliance with construction standards and ~~physical condition~~ NSPIRE standards. All HOME-assisted Rental housing must meet the ~~Uniform Physical Condition Standards~~ National Standards for the Physical Inspection of Real Estate, or UPCS NSPIRE. HOME Compliance monitors will not conduct a REAC inspection but will monitor for any violations.
- F. The Awardee must allow OHFA to perform an on-site inspection of any low-income unit and/or building in the Project through the end of the Period of Affordability. This inspection may be separate or in conjunction with any review of tenant files and will include habitability requirements.
- G. During programmatic monitoring activities, OHFA shall review Program Awardees' affirmative marketing, minority outreach, tenant selection plans, and fair housing activities to ascertain compliance with standards established by HUD's Fair Housing Office.
- H. OHFA will promptly notify the Awardee in writing if OHFA is not permitted to inspect and review as described in Paragraphs C, D, E, F and G, or otherwise discovers that the Project does not comply with the HOME Regulations. In such event, the Awardee will be allowed a correction period to supply missing documentation or to correct noncompliance. This correction period begins on the date of the letter.
- I. OHFA will notify HUD of an Awardee's noncompliance or failure to certify no later than forty-five 45 days after the end of the time allowed for correction and no earlier than the end of the correction period.
- J. Compliance with requirements of the HOME Regulations is the responsibility of the Awardee and the owner of the building for which HOME funds are loaned or granted. OHFA's obligation to monitor for compliance with the requirements of the HOME Regulations does not make OHFA or the State of Oklahoma liable to any owner or to any shareholder, officer, director, partner, member or manager of any owner or of any entity comprising any owner for an owner's non-compliance therewith.
- K. The Awardee must establish and maintain a Use of Funds Log, which clearly identifies the amount of funds used in each development.
- L. The Awardee must establish and maintain a Program Income Tracking Log or CHDO Proceeds Tracking Log, if applicable, which clearly identifies the amount of Program Income or CHDO Proceeds received and, if approved by OHFA, expended.
- M. The Awardee must establish and maintain a Match Tracking Log that will account for expenditures of match contributions used in the Project.
- N. Activity Completion Reports must be submitted within sixty (60) days of the final activity draw.

- O. Closeout documentation must be submitted no later than sixty (60) days after the end of the Written Agreement period or completion of the Project.
- P. The Awardee must maintain a narrative record of uses of any CHDO Operating awards.
- Q. The Minority Business Enterprises Report is due on or before October 10th of each year for the period from October 1 through September 30.
- R. The Annual Performance Report is due on or before May 15th of each year for the period of April 1 through March 31.
- S. The Rental Activity Annual Report, if applicable, is due on or before February 28th of each year, for the prior calendar year.
- T. The Awardee must provide other progress, performance, and financial reports as required, or as requested by OHFA.
- U. OHFA will use the reports provided by the Awardee to annually examine the financial condition of all HOME Rental Projects during the Period of Affordability and take actions to correct any problems that are discovered. Some Rental Projects with only a few HOME-assisted units may be exempt from this provision. OHFA will provide technical assistance to any Awardee, regardless of the number of HOME-assisted units in the Project, in order to help maintain the financial viability of a HOME Rental Project.

Conflict of Interest

In the procurement of property and services, the conflict-of-interest provisions in 2 CFR Part 200 apply. In all cases not governed by 2 CFR Part 200, the conflict-of-interest provisions of the HOME Rule apply.

The conflict-of-interest provisions of the HOME Program are stricter than those of other federal programs. The HOME conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of OHFA, a CHDO, a State recipient or sub-recipient receiving HOME funds. No person listed above who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds, or who is 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 benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

No owner, developer or sponsor of a development assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a CHDO when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit. This provision does not apply to an owner-occupant of single-family housing or to an employee or agent of the owner or developer of a rental housing project who occupies a HOME-assisted unit as the project manager or maintenance worker. When a CHDO is acting in the capacity of a HOME subrecipient, it may not also receive HOME funds to develop, sponsor or own housing funded through the subrecipient activity the CHDO administers. This could possibly be viewed a conflict of interest as it could appear the CHDO is directing its subrecipient funding to housing it develops.

Construction Standards

In accordance with 24 CFR 92.251, housing that is assisted with HOME funds, at a minimum, must meet local property standards, as well as OHFA's Written Rehabilitation Standards or Written New Construction Standards, whichever applicable.

All HOME-assisted units, regardless of the amount of HOME funds invested per unit, must meet all applicable Federal, State and local code requirements. HOME-assisted units must also meet the most recent version of the International Residential Code. Awardees should be aware that the most recent version of the International Residential Code, is now required by the State of Oklahoma for all newly constructed housing.

Awardees should be aware that the 2021 IECC codes are now required by Federal law on all newly constructed housing which is three stories or less, and the ASHRAE 90.1 codes are required on all structures which contain 4 or more stories.

OHFA will conduct progress and final inspections of construction to ensure that work is done in accordance with these standards. HOME funds disbursements will be consistent with the amount of work performed to OHFA's satisfaction. Final payment will not occur until the construction of the project is satisfactorily completed. Construction inspections are necessary before OHFA can disburse funds for any draws. OHFA has contracted with a third-party construction inspection firm to undertake these inspections.

Discretionary housing improvements beyond those required to meet property standards may include modest amenities and aesthetic features, but not luxury improvements. Any questions regarding what amenities or features would be considered luxury improvements should be directed to OHFA Staff. If necessary, OHFA will consult with the local HUD office to ensure that HUD does not consider the improvements to be luxury improvements.

All accessory structures, including but not limited to garages and storm shelter, must be attached to a residential unit. Any structure which is detached may not be paid for using HOME funding.

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Homebuyer Rehabilitation is only considered rehabilitation if a substandard property is being acquired and rehabilitated. The US Department of Housing and Urban Development (HUD) considers a property to be substandard if it has severe physical problems that endanger the safety or health of its occupants:

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- Lack of basic facilities: No bathroom or kitchen facilities, or no hot and cold running water
- Structural issues: Broken staircase or elevator, or at least five significant structural problems
- Electrical problems: Exposed electrical wiring, or outdated or faulty electrical systems
- Heating and ventilation: Lack of heating, or inappropriate ventilation
- Water problems: Leaking roof, water leaks, or plumbing leaks
- Temperature: Houses that don't maintain adequate temperatures
- Other hazards: Presence of insects or vermin, gas leaks, or fire hazards

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Debarred, Suspended or Ineligible Participants

No contractors that have been suspended or debarred under HOME or any other federal funding program may be used when working on a HOME Project. All HOME Awardees are to verify eligibility before contracting with any party. Awardees should check the web at www.sam.gov for the most current listing of debarred contractors. OHFA Staff can provide information on suspended or ineligible contractors.

Activity Types

Rental:

- A. Acquisition: Acquire housing for purposes of renting to individuals. If a home is acquired for rental without accompanying rehabilitation, it must meet all applicable State and local codes at the time of acquisition. If a unit is acquired which has not been previously occupied, or which was constructed in the last 12 months, this acquisition would be considered New Construction and must meet all new construction OHFA, Federal, State, and local construction standards and energy codes.
- B. Acquisition and Rehabilitation: Acquire and Rehabilitates a property for the purpose of renting to individuals. Rehabilitation will be defined the as the cost of improving a building, including labor, materials, and tools. The cost of repairs, not including additions to the unit such as storm shelters, garages, or ramps, should be at least \$7,000 per dwelling unit. All rehabilitated properties must meet OHFA's Rehabilitation Standards.
- C. Rehabilitation: Rehabilitate currently owned housing for purposes of renting to individuals. Rehabilitation will be defined the as the cost of improving a building, including labor, materials, and tools. The cost of repairs, not including additions to the unit such as storm shelters, garages, or ramps, should be at least \$7,000 per dwelling unit. All rehabilitated properties must meet OHFA's Rehabilitation Standards.
- D. New Construction: Construction of housing for the purpose of renting to individuals. If a unit is acquired which has not been previously occupied, or that is less than 12 months old, this acquisition would be considered New Construction.

Homebuyer:

- A. Acquisition: Acquisition is a homebuyer direct activity only. 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 activities allow eligible homebuyers to purchase affordable homes by providing downpayment or closing cost assistance, or by reducing the monthly carrying costs of a loan from a private lender. If HOME funds are used to assist a homebuyer who has entered a contract to purchase housing to be constructed, the homebuyer must qualify as a low-income family at the time the contract is signed. Acquisition is not a development activity thus it does not incur a developer's fee and nor does it count as CHDO development activity for the sake of CHDO operating funds.
- B. Acquisition Rehabilitation occurs when an applicant might acquire and rehabilitate sub-standard property, as defined by HUD, to be sold after rehabilitation to low-income purchasers.
- C. New Construction occurs when an applicant, working as the developer, constructs new housing.

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D. Homebuyer assistance: Provide down payment and/or closing cost assistance to individuals purchasing affordable housing.

Tenant-Based Rental Assistance

HOME funds may be used to help eligible individual households afford housing costs such as rent, utility costs, security deposits and utility deposits. Funding for TBRA will be from the Rental/Homeownership Set-Aside.

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Developer Fees

OHFA allows for developer fees where appropriate. **The maximum amount of the developer fee to be paid with HOME funds is fifteen percent (15%) of the total HOME award.** Although developer fees are considered soft costs, OHFA will not include them in the determination of the soft costs limit as outlined later in this section.

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The maximum developer fee is to be adjusted based upon the activity type applied for. Acquisition only activities are not development activities. For HOME Rental Activities in conjunction with AHTCs, HOME funds cannot pay for developer fees. For HOME DPA (10%) of the total HOME funds (including developer fee.) For Rental Acquisition, the developer fee may not exceed five percent (5%) of total HOME funds (including developer fees) or \$50,000. HOME Homebuyer Acquisition, the applicant will be classified as a subrecipient and is not eligible to receive a developer fee.

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OHFA will also take into account the total developer fee for the Project, and, if necessary, adjust the amount of HOME funds to ensure that the developer does not receive an undue or excessive profit, resulting in more federal assistance than is necessary for the project. The Affordable Housing Tax Credit Program sets a developer fee limit of fifteen percent (15%). OHFA considers developer fees in excess of fifteen percent (15%) to be excessive developer fees.

Eligible Costs

For guidance only. Refer to HOME Regulations and other HOME materials for a complete list.

Hard Costs – Eligible hard costs include, but are not limited to:

- Costs to meet local construction and/or rehabilitation standards.
- Acquisition of land and existing structures.
- Securing of buildings.
- Construction materials and labor.
- Essential improvements.
- Energy-conservation efficient improvements, if undertaken within a more comprehensive plan of work that brings the unit up to local property standards and the Written Rehabilitation Standards or Written New Construction Standards set forth herein.
- Lead based paint hazard reduction, if undertaken within a more comprehensive plan of work that brings the unit up to local property standards and the Written Rehabilitation Standards or Written New Construction Standards set forth herein.

- Accessibility for persons with disabilities, if undertaken within a more comprehensive plan of work that brings the unit up to local property standards and the Written Rehabilitation Standards set forth herein.
- Repair or replacement of major housing systems in danger of failure.
- Incipient repairs and general property improvements of a non-luxury nature.
- Demolition.
- Site improvements and utility connections.
- Lot clearing, prior to and in conjunction with rehabilitation.
- Temporary relocation costs.

Soft Costs – Capped at ~~tenseven~~ percent (~~710~~%) of the total HOME award, including soft costs – Reasonable and necessary costs directly related to an individual unit. Soft costs must be reasonable and within industry standards for the type of service provided. Applicants should note that OHFA reserves the right to adjust the award of HOME funds in order to offset any excessive, unreasonable fees on any HOME-eligible activity. Soft Costs are not a substitute for Administrative Costs. All soft costs must be a part of the total Project costs. Soft costs must be specifically tied to an address. Eligible soft costs include, but are not limited to:

- Financing fees.
- Credit reports.
- ~~Title binders~~ fees and insurance.
- Utility Cost Determinations
- Recordation fees, transaction taxes.
- Legal and accounting fees.
- Appraisals.
- Architectural/engineering fees, including specifications and job progress inspections.
- 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.
- Work write-ups and cost estimates.
- Building permits.
- Fair Housing information services.
- Environmental Review
- CPA Cost Certification for a project audit
- Energy audits

Developer fees will NOT be included in the calculation of total soft costs for the purposes of establishing the ~~seven-ten~~ percent (~~710~~%) limit.

Note: 24 CFR Part 92.206(d) (1) provides that HOME funds may pay for architectural, engineering and certain other costs of professional services incurred within eighteen (18) months of the commitment of HOME funds to a Project, provided that OHFA permits the HOME funds to be used for that purpose and authorizes payment of the costs in the Written Agreement with the Awardee.

Under no circumstances may any project-related soft costs be charged to or paid by low-income families. HOME funds may pay for these costs, but the low-income beneficiaries of the

HOME funding may not be directly charged for them. Reasonable and customary fees commonly charged to a loan applicant in unassisted real estate transactions, such as the of cost credit reports or appraisals, are permissible.

Awardees may not charge servicing, origination or other fees related to the cost of administering part of the OHFA HOME Program to the beneficiaries of the HOME assistance. These costs should be paid with HOME funds or other sources of funds.

Environmental Review

The environmental effects of each HOME Program activity must be evaluated and shown to be in compliance with the provisions of the National Environmental Policy Act of 1969 and the related authorities listed in HUD's Regulations at 24 CFR Part 58. The procedures for this process, by type of activity, are covered in OHFA's Environmental Review Procedures at <https://www.ohfa.org/home-investment-partnership-program/environmental-review/>

Field Code Changed

HUD's Regulations under 24 CFR Part 58, Sec. 58.22 include specific restrictions on what you can do prior to receiving environmental clearance to proceed. Sub-paragraph a) reads as follows:

Sec. 58.22 Limitations on activities pending clearance subparagraph.

(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 Sec. 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 Request for Release of Funds (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 Sec. 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

Equal Opportunity

Equal Employment Opportunity, [Title VI of the Civil Rights Act of 1964 \(42 USC §2000d, et seq.\), Executive Order 11246, as amended found in 41 CFR Part 60:](#) ~~p~~Prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin [under any program receiving federal funds and Title VII of the Civil Rights Act of 1964 \(42 USC §2000e, et seq.\) prohibits discrimination based upon the aforementioned characteristics in all hiring, firing, pay, promotions, benefits, and other employment terms. Implementing regulations are at 24 CFR, Part 1 and 24 CFR, Part 60.](#)

Section 3 of the Housing and Urban Development Act of 1968 found in 24 CFR Part 135: 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 and that contracts for work (all types) be awarded to businesses that are located in or owned by persons residing in the program service area.

Minority/Women's Business Enterprise (M/WBE) under Executive Orders 11625, 12432 and 12138; 24 CFR Part 85.36(e): 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 legal firms, in all contracts.

Applicants are required to adopt a M/WBE Plan which describes Applicant's policies and procedures for minority outreach in subcontracting and procurement of goods and services. The following practices are recommended:

- Request a list of certified woman-owned businesses from the Oklahoma Department of Commerce or visit www.OKcommerce.gov/smallbiz;
- Actively and affirmatively solicit bids for contracts and subcontracts from M/WBEs;
- Circulate bid solicitations to minority and women contractor associations;
- Make written solicitations in a timely fashion to businesses listed in the Minority and Women-Owned Business Directory;
- Make timely responses to any advertisements and solicitations provided by M/WBEs;
- Ensure that plan specifications, requests for proposal and other documents used to secure proposals for the performance of work or supply of materials will be made available in sufficient time for review by prospective M/WBEs;
- Divide, where economically and technically feasible, the work into smaller portions to enhance participation by M/WBEs;
- Encourage the formation of joint ventures, partnerships or other similar arrangements among contractors to enhance participation by M/WBEs;
- Use the services of governmental agencies, consultants and contractor associations to further the participation of M/WBEs;
- Waive credit requirements or develop other appropriate alternatives to encourage M/WBE participation; and
- Ensure that payments to M/WBEs are made on a timely basis to prevent undue hardship.

Applicants may be requested to submit M/WBE Utilization Reports, which should include, but are not limited to the following:

- The name, address and telephone number of each M/WBE the applicant is using or intends to use;
- A brief description of the contract scope of work to be performed for the applicant by each M/WBE and the scheduled dates for performance;
- A statement of whether the applicant has a written agreement with each M/WBE, and if requested, copies of the agreements the applicant is using or intends to use;
- The actual total cost of the contract, the work performed, and the materials provided, scope of work to be performed by each M/WBE for each contract;
- The actual amounts of any payments made by the applicant to each M/WBE as of the date the compliance report was submitted; and
- The percentage of total contractors, subcontractors, vendors and suppliers utilized for the development and the total prices for each.

Program and activity implementation manuals shall be provided to Awardees and shall contain information regarding Minority Outreach Requirements and Procedures. In order to achieve compliance with requirements of Section 281 of the National Affordable Housing Act and 24 CFR Part 92.351, Written Agreements shall be executed between OHFA and all Awardees.

During programmatic monitoring activities, OHFA shall review minority outreach activities and, should compliance with the requirements be determined unsatisfactory, shall provide Awardees with the necessary guidance to achieve regulatory standards.

Fair Housing and Equal Opportunity

Title VI of Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.) found in 24 CFR Part 1: States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color or national origin.

The Fair Housing Act (42 U.S.C. 3601-3620) found in 24 CFR Part 100-115, prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. Furthermore, section 104(b)(2) of the Act requires that each grantee certify to the Secretary of HUD that it is affirmatively furthering fair housing.

Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259) found in 24 CFR Part 107, prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Program and activity implementation manuals shall be made available to Awardees and shall contain information regarding Fair Housing Standards and Procedures. In order to achieve compliance with requirements at 24 CFR Parts 5.105(a), 92.202, and 92.250, Written Agreements shall be executed between OHFA and all Awardees. During programmatic monitoring activities, OHFA shall review fair housing activities and, should compliance with the requirements be determined unsatisfactory, shall provide Awardees with the necessary guidance to achieve regulatory standards.

Federal Requirements

Consult the Regulations and other HOME materials for more information. This chart is just a guide and not all inclusive of all activities.

Other Federal Requirements	Homebuyer	Rental
Non-Discrimination and Equal Access		
Fair Housing and Equal Opportunity	Yes	Yes
Affirmative Marketing	Yes if >5 HOME- assisted units	Yes if >5 HOME- assisted units
Handicapped Accessibility	Yes	Yes
Employment and Contracting		

Equal Employment Opportunity	Yes	Yes
Section 3 Economic Opportunity	Yes if assistance >\$200,000 OR subcontract >\$100,000	Yes if assistance >\$200,000 OR subcontract >\$100,000
Minority/Women's Business Enterprise	Yes	Yes
Labor Requirements		
Davis-Bacon and Related Acts	Yes if >12 HOME- assisted units	Yes if >12 HOME- assisted units
Contract Work Hours and Safety Stds. Act	Yes if >12 HOME- assisted units	Yes if >12 HOME- assisted units
Copeland Anti-Kickback Act	Yes	Yes
Fair Labor Standards Act of 1938	Yes	Yes
Contracting and Procurement Practices		
Procurement	Yes	Yes
Conflict of Interest	Yes	Yes
Debarred Contractors	Yes	Yes
Environmental Review	Yes	Yes
Site and Neighborhood Standards	No	Yes for new construction only
Lead-Based Paint	Yes for pre-1978 units	Yes for pre-1978 units
Relocation	Yes (tenants)	Yes

Handicapped Accessibility

- Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225):
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 requires the removal of architectural and communication barriers that are structural in nature in existing facilities.

- Fair Housing Act (42 U.S.C. 3601-19 and CFR Part 100.205): Multi-family dwellings must meet these design and construction requirements.
- Section 504 of the Rehabilitation Act of 1973 found in 24 CFR Part 8: Imposes requirements to ensure that “qualified individuals with handicaps” have access to programs and activities that receive federal funds.

Violence Against Women Act

Violence against Women Act (92.259 and 24 CFR 5.2001 et seq (Subpart L) applies to projects committed on or after December 16, 2016. The Act provides protections to applicants and tenants of HOME-units who are survivors of:

- Domestic violence,
- Dating violence
- Sexual assault, or
- Stalking

This applies regardless of the applicant’s or tenant’s gender.

An applicant may not be rejected or terminate/refuse to renew a tenant’s lease as a direct result of the fact the individual is /has been a victim.

The lease must provide bifurcation. This allows only the abuser to be evicted while the survivor stays.

HOME Per Unit Subsidy Limits

HOME Program subsidies are subject to a maximum per-unit subsidy limit. The limits are determined by OHFA as directed by HUD and vary by jurisdiction. The Oklahoma State HOME Program has only one set of limits for its entire area, since it does not use any of its funds within the city limits of Tulsa or Oklahoma City, which have their own specific limits. The limits are available on OHFA’s website, www.ohfa.org. The per-unit subsidy requirements are described in the HOME regulations at 24 CFR 92.250.

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, including points or fees required to buy down the interest rate
- 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.

Lenders use ratios to analyze a person's capability to make their mortgage payment. The housing expense, or front-end ratio, compares a person's mortgage payment (principal, interest, taxes, PMI,

homeowner's insurance, and HOA fees) to their gross monthly income. The total debt expense, or back-end ratio, a person's total monthly obligations (car payments, credit cards, child support, etc.) including their new mortgage payment, to their gross monthly income. The type of mortgage loan will dictate which ratios are to be used to qualify the Homebuyer. Conventional loans secured by a government sponsored entities (GSE), FHA/VA loans and other federal, state, or local government loan programs often set the underwriting ratios used to qualify the Homebuyer. **If the above type of loan programs do not have set underwriting ratios or another type of loan will be utilized, then the front ratio cannot exceed 35% and the back ratio cannot exceed 50%.**

In addition, the HOME Final Rule mandates that homebuyers cannot be provided HOME assistance in an amount greater than is required to make the home affordable. Therefore, the front-end ratio must be at least 15%.

Down-payment Assistance cannot be provided in an amount greater than ~~\$1418~~,999 to any homebuyer household. Interest rates charged must be reasonable and customary, and underwriting, origination, processing and document preparation fees charged to the homebuyer or paid for with HOME funds must not exceed \$1,500.00 total. **Awardees may not charge servicing, origination, processing or underwriting fees related to the cost of administering part of the OHFA HOME Program to the beneficiaries of the HOME assistance.** These costs should be paid with HOME funds or other sources of funds.

No adjustable rate mortgages are allowed.

All Homebuyer activities must incorporate housing counseling into project designs. Effective August 1, 2021, housing counseling must be provided by a HUD approved certified housing counselor. If the Awardee is not a HUD approved certified housing counselor, the Awardee may contract with another agency that is a HUD approved certified housing counselor. Applicants must explain the process for implementing the required counseling and who will provide. Agencies are approved by HUD and staff is certified. Counselors are only certified if they also work for a HUD approved housing counselor. Therefore, if the agency is not yet approved by HUD and a staff member passes the exam, the agency is not a HUD approved certified housing counselor.

Homeowner Rehabilitation

OHFA generally recommends reconstruction when the cost to rehabilitate exceeds 75% of the after-rehabilitation value, and a suitable dwelling can be constructed in compliance with all requirements of the HOME Program.

In Section 92.254(a)(2)(iii) of the Final Rule published on July 24, 2013, HUD established new homeownership value limits for HOME Participating Jurisdictions (PJs). The new HOME homeownership value limits for existing HOME units is 95 percent of the median purchase price for the area based on Federal FHA single family mortgage program data for existing housing and other appropriate data that are available nationwide for sale of existing housing in standard condition. Nationwide, HUD has established a minimum limit, or floor, based on 95 percent of the state-wide nonmetropolitan area median purchase price using this data. HUD has used the greater of these two figures as their HOME homeownership value limits for existing housing in each area. For more information, please refer to <https://www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/>.

Income Determination

OHFA mandates that awardees must calculate the annual income of households for all of its programs by using the Section 8 (Part 5) annual (gross) income definition. The Final Rule for the HOME Program mandates that only one definition of income may be used for each of a PJ's programs (e.g., Down-Payment Assistance, Homeowner Rehabilitation, etc.) Since OHFA will permit only the Section 8/Part 5 annual income definition, this provision of the Final Rule does not affect OHFA's programs. The Final Rule also states that "annual income" must include all persons, not just family members, living in the housing unit.

HUD has also revised 24 CFR 92.203(a)(1)(i) and (a)(2) to require that, when performing income determinations for potential HOME beneficiaries using source documentation, the PJ and/or the awardee must examine at least two (2) months of earning documentation (e.g., wage statements, interest statements, unemployment compensation). ~~This change codifies the existing standard that is already outlined in the "Technical Guide for Determining Income and Allowances for the HOME Program." OHFA already mandates this practice.~~

HOTMA is a piece of legislative reform aimed at modernizing and streamlining various aspects of housing policies in the U.S. by amending sections of the United States Housing Act of 1937. Significant changes to income calculation, net family assets, and income reviews are included in this reform. HOTMA will be implemented on January 1, 2025, resulting from the May 2023 Final Rule Summary.

Income Restrictions

HOME funds must assist households with income below 80% of Area Median Income.

Rental housing has additional requirements:

- Ninety percent (90%) of the initial occupants of HOME-assisted rental units must have incomes that are sixty percent (60%) or less of the area median income (AMI) as established by HUD. However, **OHFA requires that one hundred percent (100%) of all initial rental households have incomes that are sixty percent (60%) of AMI or below.** Exceptions may be made, but Awardees must obtain written permission of OHFA. This requirement applies only to the initial tenant household in a HOME rental unit. All successive tenant households may have incomes that do not exceed eighty percent (80%) of the area median income as established by HUD.
- Twenty percent (20%) of the units in each rental housing Project containing five or more units must be occupied by tenant families with income at or below fifty percent (50%) of AMI.

Integrated Disbursement Information System (IDIS)

The HOME Program will operate under HUD's IDIS. Under IDIS, OHFA will enter and control all Project set-ups and financial draws. Sufficient documentation justifying all financial draws is required. If the documentation is inadequate, additional clarification may be requested by OHFA, which may delay the processing of draws.

No release of funds shall be made to any funded Project until OHFA has received, reviewed and accepted in writing all fully executed legally binding operating, management, ownership or other agreements. No funds, whether HOME or non-HOME funds, may be spent until the Release of Funds has been received. Also, no contracts may be entered into, especially with a contractor or a homeowner, until the Release of Funds has been received.

The Integrated Disbursement and Information System (IDIS) will cancel any activity that has had no money drawn down for twelve months. Section 92.502 (b) (2) of the HOME regulations permits HUD to automatically cancel an activity that has been committed in the system for 12 months without an initial disbursement of funds. HUD has deemed it necessary to exercise its authority to automatically cancel these activities. **To avoid cancellation of activities, Awardees should ensure that they have drawn down money within 6 months of the Written Agreement open date.**

Labor Requirements

The construction contract for any HOME-assisted activity must contain the applicable labor requirements:

- Davis-Bacon and Related Acts (40 USC 276(A)-7): Ensure that mechanics and laborers employed in construction work under Federally-assisted contracts are paid prevailing wages and fringe benefits. Davis-Bacon does not apply to developments using solely volunteer labor or sweat equity, nor does it apply to Homeowner Rehabilitation. OHFA will monitor all appropriate contracts for compliance with Davis-Bacon requirements.
- Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333): Ensures that mechanics and laborers employed under Federally-assisted construction jobs are paid time and one-half for work in excess of 40 hours per week. This Act also addresses safe and healthy working conditions.
- Copeland Anti-Kickback Act (40 USC 276c): 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, as amended (29 USC 201, et. seq.): 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.

24 CFR Part 92.354 provides additional guidance for this requirement.

Language Access

Recipients of federal financial assistance, including HOME funds, are required to provide meaningful access to their programs and services for persons with limited proficiency in English (LEP). The U.S. Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI of the Civil Rights Act of 1964.

The requirement to provide language assistance to LEP individuals applies to all recipients of federal financial assistance, including HOME funds, regardless of conflicting state or local laws. When meaningful access requires interpretation, interpreters should be provided at no cost to the persons involved. Budgeting adequate funds to ensure language access is essential. While costs

are a consideration in determining what language assistance is reasonably required, fiscal pressures do not provide an exemption from civil rights requirements.

Recipients of HOME funds should develop, and periodically update, a written LEP plan that describes their language assistance services and explains how staff and LEP persons can access those services. Recipients who are not fully compliant with the LEP guidance issued by the federal government should be making steady progress toward becoming fully compliant. Guidance regarding LEP compliance can be accessed on the HUD website at www.hud.gov. The full Final Guidance was published in the Federal Register, Volume 72, Number 13, on January 22, 2007.

Lead Based Paint

Housing assisted with HOME funds is subject to:

- Lead-Based Paint Poisoning Prevention Act of 1971 (42 U.S.C. 4821-4846)
- Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856)
- Title X of the 1992 Housing and Community Development Act (24 CFR Part 35)

These regulations require the use of trained and certified lead paint professionals and certified abatement contractors. A list of certified lead-based paint contractors is available from the Department of Environmental Quality at:
<http://www.deq.state.ok.us/AQDnew/lbp/lbplistings.htm>.

24 CFR Part 92.355 provides additional guidance for this requirement.

Minority Outreach

Section 281 of the National Affordable Housing Act (the “Act”) requires the State to prescribe procedures acceptable to the Secretary of HUD to establish and oversee a minority outreach program 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 legal firms, 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 the Act or any other federal housing law applicable to such jurisdiction. **A separate file containing all minority outreach documentation must be maintained at the Awardee’s offices.**

Applicants will be required to adopt a Utilization Plan for the participation of Minority Business Enterprises/Women Business Enterprises (M/WBEs) in the Project. The Utilization Plan should include a policy statement signed by the Applicant's chief executive official (CEO) which describes the Applicant's policies and practices for subcontracting and/or for procurement of goods and services. **Recommended methods for encouragement of M/WBEs can be found in the Equal Opportunity section of this Guidance.**

All Applicants may be requested to submit M/WBE Utilization reports, which should include:

- The name, address and telephone number of each M/WBE the Applicant is using or intends to use;
- A brief description of the contract scope of work to be performed for the Applicant by each M/WBE and the scheduled dates for performance;

- A statement of whether the Applicant has a written agreement with each M/WBE, and if requested, copies of the agreements the applicant is using or intends to use;
- The actual total cost of the contract, the work performed and the materials provided, scope of work to be performed by each M/WBE for each contract;
- The actual amounts of any payments made by the applicant to each M/WBE as of the date the compliance report was submitted; and
- The percentage of total contractors, subcontractors, vendors, and suppliers utilized for the Project and the total prices for each.

Outcome Performance Measurement

The Office of Community Planning and Development (CPD) at HUD has developed an Outcome Performance Measurement System. This system will enable HUD to collect information on the outcomes of activities funded with CPD formula grant assistance, and to aggregate that information at the national, state, and local level. The outcome performance measurement system is not intended to replace existing local performance measurement systems that are used to inform local planning and management decisions and increase public accountability.

The outcome performance measurement system has three overarching objectives: (1) Creating Suitable Living Environments, (2) Providing Decent Affordable Housing, and (3) Creating Economic Opportunities. There are also three outcomes under each objective: (1) Availability/Accessibility, (2) Affordability, and (3) Sustainability. Thus, the three objectives, each having three possible outcomes, will produce nine possible "outcome/objective statements" within which to categorize HOME activities. OHFA will complete an outcome/objective statement in HUD's Integrated Disbursement and Information System (IDIS) by entering data in the form of an output indicator.

It is mandatory for OHFA to collect this data. The collection and reporting of performance data is not optional, but individual outcome indicators can and will vary, depending on the activity. The proposed outcome measurement framework will not change the types of activities available to eligible applicants, but it will require new ways of reporting the data. The flexibility of the Program will be maintained. The objectives and outcomes will be determined by OHFA, based on the intent of the activity.

For all activities to be undertaken with HOME funds in Program Year 2025³, the outcome/objective will be affordability for the purpose of providing decent housing.

Period of Affordability

Important note: According to HUD regulations, the Period of Affordability does not begin until the activity is shown as completed in HUD's Integrated Disbursement and Information System (IDIS). Therefore, the Period of Affordability may not start until sometime after the execution of any Written Agreements with beneficiaries of HOME funds. Interested parties must contact OHFA in order to determine the exact date on which the Period of Affordability will expire.

The relevant Periods of Affordability are as follows:

Rental Rehabilitation or Acquisition, and Homeownership:

Home funds:

Period:

\$1,000 - 14,999	5 years
\$15,000 - 40,000	10 years
\$40,001 - maximum allowable	15 years

For New Construction of rental housing or acquisition of newly constructed rental housing, the Period of Affordability is 20 years.

Procurement

It is important to keep the solicitation of bids for goods and services as well as professional services contracts open and competitive. Cities, counties and Sub-recipient organizations must follow procurement policies and meet federal requirements. At a minimum, these entities must comply with OMB Circular 2 CFR Part 200.

CHDOs, Nonprofit Developers and For-Profit Developers are only required to meet the cost reasonableness standard in 2 CFR Part 200.404 and 200.405.

Awardees should obtain 3 to 5 bids using formal advertising or requests for proposals for the procurement of professional services such as grant administration, inspections and work write-ups. There must be an established selection procedure and a written rationale for selecting the successful bid or proposal. All procurement documentation, including bids not chosen, must be kept.

No contractors that have been suspended or debarred under HOME or any other federal funding program may be used when working on a HOME Project. All HOME Awardees are to verify eligibility before contracting with any party. Awardees should check the web at www.sam.gov for the most current listing of debarred contractors. OHFA Staff can provide information on suspended or ineligible contractors.

Program Income

Awardees are required to clearly identify whether or not the proposed activity will result in Program Income. All Program Income must be returned to OHFA. OHFA no longer permits Awardees to retain Program Income. Exceptions may be made for awardees that are currently reusing Program Income derived from Written Agreements already completed and closed out. Such exceptions must be specifically approved by OHFA and HUD, and may be rescinded at any time should OHFA Finance or Monitoring Staff determine that the Program Income is not being used in strict accordance with HOME Program and OHFA rules and regulations.

Documentation Requirements:

An Awardee must describe:

- The circumstances under which the proposed activity will produce Program Income and the amount of program income that will be provided.
- The process or processes that will be used to ensure tracking and the steps to timely report and return of all the Program Income generated.

Project Completion

HUD has revised the definition of "Project Completion" in 24 CFR Part 92.2. For all HOME Projects, Project completion will mean that all construction work and title transfer (if applicable) is completed, and the final draw of HOME funds has been disbursed. In addition:

- For Homeownership Projects, completion means that beneficiary data is entered into IDIS;
- For Rental Projects, Project completion shall mean that the units must be ready for occupancy, but tenant data input in IDIS is not required for completion of Rental Projects. However, if tenant data is not provided the Project will appear on HUD's Vacant Unit Report.

The Awardee must repay to OHFA, and OHFA must repay to HUD, any funds expended on Projects that are not completed and ready for occupancy within four (4) years of the date the Written Agreement is executed between OHFA and the Awardee. HUD may grant a one-year extension, but only if OHFA and the Awardee are able to provide HUD with legitimate reasons why the project was not completed within the four (4) year time frame, as well as a detailed plan to achieve completion within one year and achievable benchmarks to measure progress towards completion.

Relocation

HOME-funded Projects are subject to relocation requirements contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) whenever displacement occurs as a direct result of rehabilitation, demolition or acquisition for a HOME-assisted Project. Section 104(d) of the Housing and Community Development Act (also known as the "Barney Frank Amendments") may be triggered by demolition or conversion of units when HOME funds are used for the Project. Acquisition only activities do not trigger Section 104(d).

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 HUD-sponsored All the Right Moves course book. 24 CFR Parts 42 and 92.353 provide additional guidance for this requirement.

Resale and Recapture

24 CFR 92.254 provides guidance for Resale/Recapture options for Homeownership. OHFA is authorized under the HOME Rules to select which option will be used for preserving the Period of Affordability. For ~~2023~~2025, OHFA has chosen the Recapture option. 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.

The Applicant is to describe to OHFA its procedures as they relate to the HOME Recapture or Resale requirements. The procedures must fully comply with the HOME Rules.

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. **Deed restrictions, land covenants or other similar legal mechanisms must be in place to enforce these Recapture and Resale restrictions.** The amount subject to Recapture is based on the amount of HOME assistance that is a direct subsidy to the homebuyer. The recaptured funds must be returned to OHFA.

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. Applicants may structure their Recapture provisions such that the HOME funds are 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

All Recapture provisions must be fully described in the Application for funding and must be approved by OHFA before they can be implemented. The entire amount may be recaptured at any time during the Period of Affordability, or a percentage of the HOME investment may be forgiven annually during the Period of Affordability.

HUD requires repayment if the HOME-assisted housing fails to meet the affordability requirements for the full affordability period, even in the event of foreclosure or transfer in lieu of foreclosure. In the event of foreclosure, or transfer in lieu of foreclosure, the Period of Affordability must still be enforced.

If the homebuyer receives no direct subsidy from the HOME funds, such as Down-payment Assistance or a reduction in the price of the home below its appraised value, and subsequently sells the home within the Period of Affordability, the Resale option will be used ensure that the HOME-assisted unit remains affordable over the affordability term. Under the Resale option:

- The homebuyer must sell the property to a new purchaser that meets the HOME Program definition of low-income.
- Said purchaser must occupy the property as his/her principal residence.
- The new purchaser’s PITI cannot exceed thirty-five percent (35%) of his/her gross income.
- The original homebuyer (now the seller) must receive a “fair return” on his/her investment. The original homebuyer’s investment is defined as the amount of the original down payment and any documented capital improvements or improvements to the real property paid for by the original homebuyer. A fair return is defined as the original homebuyer’s investment multiplied by the percentage increase in the sales price of the home.

In order for OHFA to permit the Resale option to be used, the homebuyer must not have received any direct subsidy from the use of HOME funds. A direct subsidy may not be limited to Down-Payment Assistance. According to HUD guidance, homebuyers receive a direct subsidy if the appraised value of the home purchased is greater than the sales price. If the homebuyer receives any form of direct subsidy, the Recapture method must be used.

Written Agreements with individual beneficiaries cannot contain a combination of both the Recapture and Resale options.

Assisted households must be informed that if they fail to occupy the unit as their primary residence, they must repay the full amount of the HOME assistance.

Site and Neighborhood Standards

Site and neighborhood standards apply only to New Construction Rental housing. In carrying out the site and neighborhood requirements with respect to new construction of rental housing, OHFA is responsible for making the determination that proposed sites for new construction meet the requirements in 24 CFR Part 983.57(c)(2) and (3).

The site must not be located in an area of minority concentration, except as permitted in the following paragraphs, 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.

A Project may be located in an area of minority concentration only if:

Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or the project is necessary to meet overriding housing needs that cannot be met in that housing market area.

As used in the preceding paragraph, “sufficient” does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, such that, over a period of several years, it will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.

Units may be considered “comparable opportunities” as used herein, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

- (A) A significant number of assisted housing units are available outside areas of minority concentration.
- (B) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.
- (C) There are racially integrated neighborhoods in the locality.
- (D) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.
- (E) Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(F) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

Application of the “overriding housing needs” criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”). An “overriding housing need”, however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

Student Housing

HUD has amended the definition of “housing” in 24 CFR 92.2 to exclude all student housing. Previously only dormitories were prohibited by the HOME rules, but now all types of student housing are prohibited. HUD has not clearly defined what constitutes “student housing.” Applicants should be aware of this new restriction when applying for HOME funds for Rental housing that could be construed as student housing.

Student Rule – Definition of Low Income Families

HUD has amended the definitions of “low-income families” and “very low-income families” in 24 CFR Part 92.2 to exclude “students” from qualifying as a low-income or very low-income family. The Final Rule has been revised to be consistent with recent statutory changes to the Section 8 Housing Choice Voucher Program, which prohibit voucher assistance to individuals who are enrolled in an institution of higher learning from qualifying as a low-income family if the individual is under 24 years of age, not a military veteran, unmarried, does not have a dependent child, not disabled, and is not otherwise individually low-income, or does not have parents who are low-income.

Subsidy Layering

Subsidy layering is the combining of other federal resources on a HOME-assisted Project that results in an excessive amount of subsidy for the Project. Such excess is prohibited. OHFA will analyze each Application to ensure that only the minimum amount of assistance is allocated to the Project. If OHFA determines that there will be an excessive amount of subsidy for the Project, adjustments will be made to the HOME award. OHFA must examine the sources and uses for each Project and determine whether or not the costs are reasonable and if the return to the owner and/or developer of the Project is reasonable. However, OHFA must also ensure that there is adequate subsidy to ensure the long-term viability of the Project.

Subsidy Limits

Minimum HOME Investment: The minimum amount of HOME funds that must be invested is \$1,000 multiplied by the number of HOME- assisted units in a Project. The minimum only relates

to the HOME funds, and not to any other funds that might be used for Project costs. The minimum HOME investment does not apply to Tenant-based Rental Assistance.

Maximum HOME investment: The HOME Program Maximum Per-Unit Subsidy Limits establish the maximum HOME investment permitted for a Project. These limits are determined by OHFA at the direction and with the oversight and approval of the local HUD Field Office. The limits are established by bedroom size and county. **See the Section on HOME Per-Unit Subsidy Limits on page 13 for further guidance.**

Applicants should be aware that the maximum HOME investment is further limited to a pro-rata share of the HOME-eligible costs in the project, based on the number of HOME units as compared to the total units in the Project. For further guidance on this issue, please see CPD Notice 98-02 or contact OHFA Staff.

The maximum for HOME Down-payment Assistance is \$14,999 per HOME-assisted unit. Down-Payment Assistance (DPA) is further limited to the amount of assistance required to make the housing affordable to the low-income homebuyers. **Each award of DPA must be underwritten to ensure that excessive subsidy is not being provided. Awardees should not simply award the same amount of DPA to each beneficiary.**

The minimum award of HOME funds in conjunction with Affordable Housing Tax Credits is \$200,000. Applications for less than \$200,000 will not be accepted.

Underwriting Standards - Rental

A minimum debt service coverage ratio (DCR) of **1.15** is required for all debt financing which would foreseeably result in foreclosure if not repaid. The debt coverage ratio must be maintained for 15 years. **Debt service coverage is defined as the ratio of a property's net operating income to debt service obligations.** Rental income, any subsidies, and reserve funds should be sufficient to cover the property's debt and operating expenses over the period of low-income use.

Proformas should not be unduly conservative or overly optimistic. OHFA will review all costs to ensure that they are customary, reasonable and necessary. This will be based on the type of development activity and comparable costs in the market area. If documentation is not adequate and does not support the costs, OHFA may request additional documentation or deny the Application. OHFA will review to ensure that the costs being funded by the HOME Program are eligible and the HOME funds per unit do not exceed the HOME Program Maximum Per-Unit Subsidy Limits or cost allocation limits.

OHFA may deny HOME financial assistance if the Applicant refuses to make reasonable adjustments or to limit the financial return or related soft costs.

Uniform Physical Condition StandardsNational Standards for the Physical Inspection of Real Estate (UPCSNSPIRE)

All new HOME-assisted housing funded through OHFA must meet the **Uniform Physical Condition StandardsNational Standards for the Physical Inspection of Real Estate (UPCSNSPIRE)** applied to public housing. **UPCSNSPIRE** will also be the minimum standard applied to ongoing compliance in Rental properties pursuant to 24 CFR Part ~~5.703-92.251(f)(1)(i)~~.

OHFA will not conduct a REAC inspection but will require correction of all observed violations of ~~UPCS~~NSPIRE.

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Written Agreements between HOME Awardees and Homebuyers

When HOME assistance is provided to homebuyers, the CHDO, State recipient, sub-recipient or nonprofit developer 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; its value must not exceed 95% of the median price of comparable housing and it cannot contain any luxury improvements. (For Homebuyer New Construction, its value cannot exceed the U.S. Census Bureau's National Non-Metro Sales Price.)
- 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.

Written Agreements between OHFA and HOME Awardees

Written Agreements will be used to contract with funded applicants in order to implement proposed HOME activities and govern execution. ~~The maximum Written Agreement period shall be three (3) years.~~ Funded applicants will have a maximum of three (3) years to expend funds allocated with the execution of a written agreement. The written agreement will be enforceable for the full period of affordability. A meeting between OHFA, the HOME Awardee, and any partners to review contractual and Project elements may be required prior to execution of Written Agreements.

If the applicant is participating in a Homeownership activity, a written agreement between OHFA, the funded applicant, and the income qualified homebuyer must be executed at the time the unit is sold to the qualifying homebuyer. The written agreement with the homebuyer supersedes the agreement with the funded applicant.

Written Agreement Modifications

Activity and design modifications to funded Applications are strongly discouraged. **Activity and design modifications cannot be made to funded Projects without the prior written approval of OHFA. Extensions of Written Agreement periods will not be permitted for any Written Agreement that has not completed the necessary environmental review.**

Funded Applications are subsequently made part of all Written Agreements between OHFA and the HOME Awardee. Unapproved variations to funded designs are considered violations of contractual agreements and may result in disallowed costs, the repayment of HOME funds to OHFA, or possible suspension from future HOME Program participation.

Written Agreement Performance

OHFA regularly assesses the performance of its HOME partners. Based on the performance pursuant to the requirements contained in its Written Agreements and the Program regulations, OHFA may withdraw funding due to non- performance, poor performance, and/or untimely performance. In addition, OHFA may, at its discretion and within its regulatory authority pursuant to 24 CFR Part 92.2, reassign untimely Written Agreement funding in order to affect timely expenditure, performance, and completion.

Written Agreement Performance Measurement

The OHFA HOME Finance Staff has developed the following chart outlining how Written Agreement progress will be monitored. All time periods are based on the date of execution of the Written Agreement.

<u>Time Period</u>	<u>% Expended</u>	<u>Action</u>	<u>Performance Measure</u>
0 – 9 months	If 0% expended	send letter	Concern
0 – 11 months	0% drawn down on Activity set-up in IDIS	send letter	Concern
0 – 12 months	If 0% expended and no explanation from applicant	send letter	Finding
0 - 18 months	<25% expended	send letter	Concern
0 - 24 months	<50% expended	send letter	Finding
0 - 36 months	<100% expended	send letter	Finding

There must be a plan in place to expend funds by the contract end date. If the funds are not expended by the contract end date, the contract may be subject to cancellation and/funds will be repaid.

30 days after all funds drawn down in IDIS	100% of funds expended	Letter sent if activity completion reports not received
60 days after all funds drawn down in IDIS	100% of funds expended	Letter sent if activity completion reports not received and if closeout documents not received within 60-days of the contract end date
75 days after all funds drawn down in IDIS	100% of funds expended	Letter sent if activity completion reports not received. This will be a concern

90 days after all funds drawn down in IDIS	100% of funds expended	If activity completion reports and closeout documents not received, a compliance visit will be scheduled and this will be finding
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The above is not an exclusive list of possible concerns or findings.

For CHDOs, excessive findings in regard to contract performance may result in CHDOs being placed on probation or, in severe cases, decertified.

PLEASE NOTE: HUD's Integrated Disbursement and Information System (IDIS) will cancel any activity that has had no money drawn down for twelve months.

Section 92.502 (b) (2) of the HOME regulations permits HUD to automatically cancel an activity that has been committed in the system for 12 months without an initial disbursement of funds. HUD has deemed it necessary to exercise its authority to automatically cancel these activities beginning January 1, 2012. To avoid cancellation of activities grantees should ensure that they have drawn down money within 12 months of the IDIS setup date.