

**WYOMING COMMUNITY  
DEVELOPMENT AUTHORITY**

**(WCDA)**

**2015**

**HOME**

**Program**

**Description**

# **2015 HOME Program Description**

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# 2015 HOME Program Description

## I. EXECUTIVE SUMMARY

The HOME Program was created under Title II (the Home Investment Partnerships Act) of the National Affordable Housing Act of 1990. The general purposes of HOME include:

- Expansion of the supply of decent and affordable housing, particularly rental housing, for low and very-low-income Americans.
- Strengthening the abilities of State and local governments to design and implement strategies for achieving adequate supplies of decent and affordable housing.
- Extending and strengthening partnerships among all levels of government and the private sector, including for-profit and non-profit organizations, in the production and operation of affordable housing.

HOME provides funding to meet both the short-term goal of increasing the supply and availability of affordable housing and long-term goals of building partnerships between State and local governments, private and non-profit organizations, while strengthening their capacity to meet the housing needs of low and very low-income residents.

For FY 1994 and subsequent years, there are match requirements that must be met under the HOME Program. Matching funds are the local contribution to the partnership. Match obligations must be met in the fiscal year they occur.

The State of Wyoming **anticipates** receiving an annual allocation in HOME funds of approximately \$3,500,000. See the WCDA Affordable Housing Allocation Plan, Attachment A for actual funding levels. These HOME funds will be allocated to local governments, Community Housing Development Organizations (CHDOs), Public Housing Authorities, Non-profit Organizations and for-profit developers of Low-income housing as described below. All projects outside of Casper and Cheyenne must be developed pursuant to the State's Consolidated Plan for Housing and Community Development. Casper and Cheyenne projects must be developed pursuant to their respective local Consolidated Plans. Projects located in entitlement cities (Cheyenne and Casper) must have a current letter of consistency with the Consolidated Plan from the appropriate Jurisdiction.

HOME funds must be spent quickly. The time frames for committing and expending funds are very short. From the time WCDA signs a HOME Investment Partnerships Agreement for HOME funds with the Department of Housing and Urban Development, the following **CRITICAL** time frames apply:

- 24 months to enter into written agreements with an Owner/Developer to reserve HOME funds.
- 24 months to commit funds in the HOME IDIS System for specific projects.
- Four years to actually expend funds.

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## **I. EXECUTIVE SUMMARY**

In an effort to quickly allocate HOME funds prior to the construction season, WCDA's application period for HOME funding runs prior to WCDA's receipt of HOME funds from HUD. Therefore no funding can be allocated until after WCDA signs a HOME contract with HUD. The final allocation may be different from the anticipated amount.

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## **II. ALLOCATION OF FUNDS**

- A. **Direct Administration Category – WCDA** The approximate amount of funding set-aside for Direct Administration is outlined in the current Year Summary, Attachment “A”. –This set aside is available for Rental Housing Production programs under which non-profit developers, for-profit developers, Local Governments, and public housing authorities may apply. Applications are anticipated to be accepted in January of each year. Projects are ranked competitively against the Ranking Criteria listed in the WCDA Affordable Housing Allocation Plan. For actual funding levels, see WCDA Affordable Housing Allocation Plan, Current Year Summary Attachment “A”.
- B. **HOME/WRAP – HOME/WRAP** – The approximate amount of funding set-aside in this category for HOME/WRAP programs is outlined in the current Year Summary, Attachment “A”. These funds will be administered by WCDA similar to the WRAP program created under the Neighborhood Stabilization Program. If all the HOME funds are not allocated in the first funding cycle, WCDA may retain any funds under any of the set asides for this eligible activity. In addition, as Program income is received and the available funding is increased, such funds may also be used under this set-aside.
- C. **Small Project Set-Aside**  
In Wyoming the HOME funding is allocated through a competitive process from applications received from outside Developers. WCDA does NOT retain any Rental funding to administer projects directly. Thus it is difficult to assure specific geographic distribution as applications are not received until after the Program Plan is approved. In an effort to achieve geographic distribution in areas of greatest need, WCDA analyzes information from various sources to ascertain where these locations are and then builds incentives in the Action Plan through scoring, set asides etc. In recent years it has been evident that the small communities have been overlooked on their affordable housing needs. In order to create an incentive for developers to consider more rural areas, and satisfy HUD’s geographic distribution requisite, this Small Project Set-Aside was created. The amount of the set-aside is disclosed in the Current Year Summary Attachment “A”.

In order to qualify for the Small Rural Project Set-aside the following criteria applies:

- The project must be in a small community with a population under 10,000 and no communities with a population over 10,000 are within 20 miles of the project.
- The project must have 24 or fewer units
- Project must not be done in conjunction with a separate project in the same locale.

Due to the fact that Market Rents are typically lower in rural areas, projects may have a 10% variance in Income and Rent Levels when qualifying for the Small Rural Project Set-aside.

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## **II. ALLOCATION OF FUNDS**

### **D. CHDOs - Community Housing Development Organizations**

#### **1. CHDO ELIGIBLE ACTIVITIES –**

Approximately fifteen percent (15%) of the Fiscal Year HOME funding allocation will be set aside for CHDO's. Applications for CHDO Eligible Activities will be accepted through a competitive application process during the initial application period at the beginning of each year. If funds are remaining, WCDA will open an additional competitive application process or, depending on the amount of remaining funds, accept applications on a first-come, first-serve basis to projects meeting the minimum ranking criteria until all funds are allocated to eligible projects. For actual funding levels, see WCDA Affordable Housing Allocation Plan, Current Year Summary Attachment "A". Activities that are NOT eligible under the CHDO set aside are; HOME/WRAP, Tenant Based Rental Assistance, Brokering or other Real Estate transactions.

#### **2. CHDO TECHNICAL ASSISTANCE-**

Ten percent of the CHDO set aside may be available to CHDOs for Project Specific Technical Assistance and Site Control Loans for items such as feasibility studies, consulting fees, architectural and engineering fees, etc. No administrative fees are eligible. **APPLICANTS WHO ANTICIPATE USING THE TECHNICAL ASSISTANCE AND SITE CONTROL LOANS SHOULD APPLY TO WCDA BEFORE ANY PROJECT COSTS ARE INCURRED IN ORDER TO ENSURE ELIGIBILITY FOR THE FUNDING.**

### **E. CHDO General Operating Costs and Capacity Building Reserve (not project specific)**

A Certified Community Housing Development Organization (CHDO) may apply to WCDA for HOME funding for any fiscal year for organizational operating funds in an amount that provides not more than \$50,000 or fifty percent (50%) of the CHDO's organization's total operating expenses, whichever is less, in that fiscal year. No CHDO may receive funding for more than 3 years. To apply for this set-aside a CHDO may apply on an annual basis prior to September 1<sup>st</sup> of each year.

In order to receive CHDO operating funds a CHDO must:

- 1) enter into a written agreement with WCDA that states the CHDO is expected to own, sponsor or develop a project which will receive funds under the CHDO set-aside within 24 months of receiving funds for operating expenses
- 2) submit a Development Plan outlining the CHDO's proposed housing projects, type of housing, number of units, and populations to be served, over the next 5 years
- 3) submit a timeline under which these projects will be developed
- 4) submit a list of anticipated funding sources for the projects in the Development Plan
- 5) submit a five year operating budget with all sources of operating income listed, designating which sources are firmly committed and which sources are tentative
- 6) submit a list of staff, experience of each staff member and their job description.

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### **II. ALLOCATION OF FUNDS**

- 7) submit a report or narrative of accomplishments achieved through prior HOME CHDO Operating funds received.

Applications will generally be accepted once a year and should be submitted to WCDA on or before September 1<sup>st</sup>. No more than \$175,000 of HOME funds may be allocated as Operating Funds in any given program year. Applications will be reviewed and funded according to the feasibility of the projects proposed in the Development plan and an assessment by WCDA staff of the CHDO's capacity to successfully complete the Development Plan.

**F. Administration And Contingency Reserve -**

Approximately 10% of Fiscal Year HOME allocation will be set-aside for WCDA administrative costs, and for a reserve for project over-runs that cannot be met from other funding sources.

After the first round of funding, WCDA reserves the right to re-allocate funds between categories as needed to most expeditiously commit and spend the funding, provided the minimum CHDO set aside is maintained.



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## III. RENTAL HOUSING PRODUCTION PROVISIONS

A. **Rental Housing Production** - can be accomplished in the following ways:

- **Rehabilitation**
  - Rehabilitation
  - Conversion
  - Reconstruction
  - Rehabilitation and Refinance
- **Acquisition and/or Rehabilitation**
- **New Construction**

There are three important things to remember about HOME assisted Rental Housing:

- Rents are **strictly** controlled
- Tenants must be low-income (80% of Area Median Income adjusted for family size as determined by HUD). In fact, most tenants in HOME assisted units must be very low-income (50% of Area Median Income adjusted for family size as determined by HUD).
- Both occupancy and rents must be maintained and monitored for a minimum affordability period of 5 to 20 years depending upon the amount of HOME funds provided per unit and the type of project (new or existing). Actual project affordability may exceed 20 years.

Both the rent and income targeting requirements are enforced by deed restrictions and specify remedies for breach of the provisions.

B. **Eligible Property Types**

- One or more buildings on a single site that are under common ownership, management and financing.
- Scattered sites are eligible as one project as long as the sites are under common ownership, management and financing, and receive HOME assistance as part of a single undertaking.
- There are no limits on the number of units per project.
- There are no preferences for unit size and style except for what is identified in the applicable Consolidated Plan.
- Properties may be privately or publicly owned.
- A letter of notification for proposed development will be sent to the local jurisdiction.

C. **Initial HOME Rents**

Every HOME assisted unit is subject to rent controls designed to make sure that rents are affordable to very low-income households. These maximum rents may be referred to as HOME RENTS. HOME RENTS are subject to change annually and will be made available to applicants by WCDA.

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## III. RENTAL HOUSING PRODUCTION PROVISIONS

LOW HOME RENT - 100% of HOME assisted units must have rents that are at or below the LOW HOME RENT. This requirement may be modified on a case by case basis at the discretion of WCDA and within the limits of the Federal Regulations.

The Low Home Rent is available on HUD's website as disclosed in the Affordable Housing Plan Current Year Summary Attachment "C" Item "1".

The maximum allowable HUD HOME RENTS must be reduced if the tenant pays for utilities. Utility adjustments are made in accordance with the HOME program Rules and Regulations. Utility adjustments proposed by owners/developers for specific projects must be approved by WCDA.

### **D. Affordability Period**

HUD requires HOME assisted **Rental** units be rent controlled for varying lengths of time depending upon the average amount of HOME funds invested per unit:

<u>RENTAL HOUSING ACTIVITY</u>	<u>PER UNIT HOME \$</u>	<u>MINIMUM AFFORDABILITY PERIOD</u>
Rehab or Acquisition of Existing	<\$15,000/unit	5 years
	\$15,000 - \$40,000	10 years
	>\$40,000	15 years
New Construction	all amounts	20 years

Maximum monthly rents and utility allowances must be recalculated annually by the owner. They are reviewed and approved by WCDA. Rent increases may be permitted, but tenants must be given at least 30 days written notice before increases are implemented. Any increases are also subject to other provisions of the lease agreements and subject to approval by WCDA.

### **E. Occupancy of HOME Assisted Rental Units**

There are two Federal constraints on occupancy:

1. **INCOME TARGETING:**  
90% of the units assisted with HOME Funds for rental housing must be used to assist tenants who have annual incomes that are 60% or less of the area median income. The remaining dwelling units assisted with such funds may be used to assist families with household incomes between 60% and 80% of median.
2. **PROJECT REQUIREMENT:**

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### **III. RENTAL HOUSING PRODUCTION PROVISIONS**

In projects with five or more rental units, or in the case of an owner of multiple one or two unit projects with a total of five or more rental units, not less than 20% of the rental units must be occupied by very low-income families (50% of area median income) bearing rents not greater than the low HOME rents determined by HUD, less any tenant paid utilities.

Owners of rental housing funded with HOME funds are required to have a written occupancy policy in place prior to the occupancy of HOME-assisted units. This policy should outline who is eligible for the units and be consistent with Fair Housing Laws. The HOME regulations list a number of prohibited lease provisions and some required lease provisions with which owners should become familiar. WCDA has a Suggested Occupancy Policy and a list of these provisions that owners can adapt for their project.

#### **F. Determining the Initial Income Eligibility of HOME Tenants/Homeowners**

The HOME Program beneficiaries under Rental Housing Production are tenants with incomes at or below 50% of the Area Median Income. The income of each tenant/homeowner must be determined initially in accordance with 24 CFR 92.203 by using Annual Income as defined under the Section 8 Housing Assistance Payments programs in 24 CFR Part 5.609.

#### **G. Annual Recertification of Income**

The annual incomes of tenants in HOME projects must be re-examined each year during the period of affordability. The project owner must re-examine each tenant's annual income by utilizing third party source documents evidencing annual income.

WCDA will require that the owner of HOME assisted rental units report at least once a year on the annual income of all tenants.

#### **H. Increases in Tenant Income**

Tenants occupying HOME assisted units whose annual incomes exceed 80% of median (that is, they are no longer low-income) may stay in their HOME assisted apartments. Over income tenants (those who no longer qualify as low income) in HOME assisted units must pay no less than 30% of their adjusted monthly income for rent and utilities. Adjusted income is calculated according to the rules for the Section 8 Program. In general, adjustments are made by deducting from the annual income certain allowances.

For rental housing with Low-Income Housing Tax Credits and for units under local rent controls, when a tenant's income increases above 80 percent of the area median income, that tenant's rent will not have to be adjusted to 30 percent of the family's income. However, the next available unit of comparable size must be rented to a HOME eligible household, at which time the 80% unit will be re-classified as a Tax Credit unit at the

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### **III. RENTAL HOUSING PRODUCTION PROVISIONS**

appropriate income and rent level. The rent on the 80% unit may not be increased until the unit is replaced with a qualifying HOME unit.

WCDA will review the owner's recertification of tenant income annually. WCDA will review rent and utility allowances annually. WCDA will perform on-site inspection for compliance with the HOME Investment Partnerships Programs Property Standards cited at 92.251 which includes that the housing be maintained as decent, safe, and sanitary housing in good repair, meet all applicable State and local code requirement and ordinances and in absence of State or local code requirements and ordinances, property must meet HUD's Uniform Physical Condition Standards (UPCS) prescribed by HUD pursuant to 24 CFR 5.705 (except for the scoring, item weight and level of criticality) at least once every three years.

WCDA will review the owner's compliance with Written Agreements annually.

#### **I. Eligible Activities for Rental Housing Production**

The following activities are eligible for rental housing production with HOME funds:

1. REHABILITATION -
  - a. Rehabilitation of existing structures.  
Rehabilitation and Refinancing to permit or continue affordability under 24 CFR 92.252.
    - i. Rehabilitation must be the primary eligible activity requiring at least \$30,000 of required rehabilitation costs per unit.
    - ii. A Capital Needs Assessment must be provided by an unrelated Professional Capital Needs Assessment provider to include a unit by unit breakdown and budget at time of application. The CNA must include an estimate of the remaining useful life of major systems and estimates of replacement costs. Major systems include: structural support, roofing, cladding, weather proofing (windows, doors, siding, gutters), plumbing, electrical and heating, ventilations, and air conditioning.
    - iii. A review of the owner's management practices will be made in order to determine that disinvestment in the property has not occurred, that the long term needs of the project can be met and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated.
    - iv. The refinancing must be made for the purposes of maintaining current affordable units or creating additional affordable units and

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### III. RENTAL HOUSING PRODUCTION PROVISIONS

the rehabilitation cost must be greater than the amount of debt that is refinanced.

- v. The minimum required period of affordability would be 15 years.
  - vi. Refinancing is an eligible activity throughout the State of Wyoming under the HOME Program.
  - vii. HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.
- b. Conversion - Conversion of an existing structure from an alternative use to affordable, residential housing is an eligible activity and is considered rehabilitation. If conversion involves additional units beyond the walls of an existing structure, the project will be deemed new construction.
  - c. Reconstruction - Reconstruction is defined as the rebuilding, on the same lot, of housing standing on a site at the time of project commitment. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing.
- 2. ACQUISITION - Acquisition of an eligible property is eligible as part of a rental housing project.
  - 3. NEW CONSTRUCTION - New Construction is an eligible use of HOME funds. New Construction is also defined as housing that has received an initial certificate of occupancy or equivalent document within a one-year period before the commitment of HOME funds to the project.
- **Failure to rent HOME units in 5 months.** If all HOME-assisted units are not rented within 5 months from project completion, Owner must provide WCDA information about current marketing efforts and an enhanced plan for marketing the units so that it is leased as quickly as possible. If efforts to market the units are unsuccessful and the unit is not occupied by an eligible tenant, Owner will be required to repay all HOME fund invested in the unit.

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## IV. HOME/WRAP

WCDA will administer a Single Family Rehabilitation Program similar to the Neighborhood Stabilization Program, Wyoming Rehabilitation and Acquisition Program (WRAP) called HOME/WRAP. This program may consist of Acquisition, Rehabilitation and/or Financing. Financing is subject to Recapture provisions as outlined in the HOME Program Description Section XIV HOME Program Definitions – Recapture.

**A. The Eligible Homebuyer**

The homebuyer must have a gross annual income that does not exceed 80 percent of HUD's median income for the area. Third party written verification of income will be required. Other requirements must be met in order to meet credit worthiness and financial capacity.

**B. The Eligible Property Type**

An eligible property is any single family property which the value of the property, after rehabilitation, does not exceed the HOME Single Family limits in effect at the time of HOME funds commitment.

All properties must also meet HUD's site and environmental requirements summarized below in Section VII Site and Neighborhood Requirements.

**C. Affordability Period**

Minimum Affordability Periods are as follows:

Amount of HOME Investment	Minimum Affordability Period
\$0 - \$ 15,000	5 years
\$ 15,001 - \$40,000	10 years
\$ 40,001 - or more	15 years

**D. Conversion to rental -** If the home is not sold with 6 months after rehabilitation is completed it must be converted to a rental property. If units are not occupied within 18 months from completion of rehabilitation all HOME funds must be paid back to HUD.

Should a property be sold or cease to be occupied by a qualified household during the period of time specified, Recapture provisions as outlined in Section XIV HOME Program Definitions will apply.

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### **V. PROPERTY STANDARDS**

Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet: as applicable, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. All new construction project must all meet the requirements in 24 CFR Part 92.251 (a)(2)(i) through (v).

Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280. These standards preempt State and local codes covering the same aspects of performance for such housing. Applicants 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 applicant must comply with the manufacturer's written instructions for manufactured housing units.

Since HOME regulations require that HOME-assisted units meet a minimum property standard, HOME funds **cannot** be used for emergency repair programs.

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### **VI. ELIGIBLE REHABILITATION COSTS**

- A. Development Hard Costs** - The actual rehabilitation costs including:
- Costs to meet the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council
  - Costs to meet rehabilitation standards
  - Essential improvements
  - Energy-related improvements
  - Costs to contain or abate Lead-based paint hazards
  - Costs to mitigate hazards including but not limited to mold, asbestos, and drugs
  - Improvements for handicapped persons
  - Repair or replacement of major housing systems in danger of failure
  - Incipient repairs and general property improvements of a non-luxury nature
- B. Demolition Costs** when part of a rehabilitation project.
- C. Site improvements** and utility connections can be funded with HOME funds only when conducted in conjunction with HOME eligible activities.
- D. Related Soft Costs** - reasonable and necessary costs, including:
- Architectural, engineering or related professional services (inspection, work write-ups) to a third party.
  - Financing costs such as loan points, credit and title costs, recordation fees, building permits, legal fees, appraisals, developer fees.
  - Relocation costs (permanent and temporary), affirmative marketing, and fair housing information services.
- D. Refinancing Costs** – only when cost of rehabilitation exceeds cost of refinancing.



## **Attachment “E” HOME Program Description** **2015 HOME Program Description**

### **VII. SITE AND NEIGHBORHOOD REQUIREMENTS**

HOME projects must be located on a site eligible for federal financial assistance. The types of items that are reviewed when looking at a site are listed below:

- The site's proximity to noise sources such as railroads, highways or busy streets, and airports or military airfields.
- The site and the project must have a clearance from the state historic preservation office.
- The site cannot be in a 100-year flood plain.
- Lead-based paint and asbestos are concerns and must be dealt with in accordance with HUD and state requirements.
- The site's proximity (within 3,000 feet) to a hazardous waste site listed on the CERCLIS list.
- The site's proximity to above ground storage tanks with hazardous materials.

WCDA will also do a site visit to determine the site's suitability for the type of housing being proposed. All funded projects will have to meet HUD's environmental review process and HUD's site and neighborhood standards requirement at 24 CFR Part 983.57(e)(2) and (3).

Projects with sites that do not meet the cited site and neighborhood standards or do not promote compliance with civil rights laws, or promote greater choice of housing opportunities will be denied funding regardless of ranking or scoring. Site selection is extremely important and is part of the evaluation and ranking process.

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### **VIII. ELIGIBLE FORMS OF FINANCIAL ASSISTANCE**

HOME funds can be structured as follows:

- Interest-bearing loans
- Non-interest-bearing loans
- Interest subsidies that leverage other monies
- Deferred payment loans
- Forgivable loans
- Grants
- Alternative forms must be approved by HUD

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## **IX. MATCHING REQUIREMENTS**

HUD requires that 25% of the HOME funds are matched by a non-federal eligible matching contribution. Matching funds are the local contribution to the partnership. Match obligations must be met in the fiscal year they occur.

### **A. Forms of matching contribution.**

The match obligations can be met with:

- Cash from a non-federal source (**owner's cash is not eligible as match**)
- Value of waived taxes, fees or charges
- Value of donated land or real property
- Cost of infrastructure improvements not made with federal resources associated with HOME projects
- Proceeds from multifamily and single family affordable housing project bond financing validly issued by a State or local government or an agency or instrumentality of the State or local government
- Reasonable value of donated site-preparation and construction materials not acquired with Federal resources
- Reasonable rental value of the donated use of site preparation or construction equipment
- The value of donated or voluntary labor or professional services
- The value of sweat equity
- The direct cost of supportive services provided to families residing in HOME-assisted units during the period of affordability
- The direct cost of homebuyer counseling services provided to families that acquire a property with HOME assistance

### **B. Size of the Match**

Every HOME project requires a 25% match contribution meaning that 25% of the HOME funds in a project must be matched by non-federal funds. For FY 2015, applicants will only be required to provide a match of 5.0%. However, tax credit projects with HOME as the only other source of funds must supply the full HUD required Match of 25% without the use of WCDA Banked Match.

This also means there will not be WCDA Match Pool funding available for this year as there has been in previous years. However, if projects require an additional financing source, they may apply to WCDA for funding from the WCDA Housing Trust Fund.

### **C. Sources of Match**

Match providers will include a wide array of local providers, both public and private. These may include:

- Local tax funded initiatives
- Tax assessing offices

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### **IX. MATCHING REQUIREMENTS**

- Water and sewer departments
- Streets and sidewalk departments
- Redevelopment agencies
- Public housing agencies
- State agencies
- State tax funded initiatives
- Charitable Organizations/Foundations
- Private sector organizations
- Lending institutions
- Corporate donations/commitments

## **2015 HOME Program Description**

### **X. DOUBLE DIPPING ON HOME ASSISTED PROJECTS**

Except for the first year after project completion, no further HOME funds can be used during the relevant period of affordability. The period of affordability will vary depending on the type of HOME activity.

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### **XI. HOME INVESTMENT PER UNIT--Maximum/Minimum HOME Expenditure**

The maximum, average subsidy per HOME assisted unit is established by HUD. Maximum Subsidy limits for Wyoming can be found in the WCDA Affordable Housing Allocation Plan Current Year Summary, Attachment A.

Only units receiving HOME monies are considered "HOME Assisted Units". HOME expenditure limits, rent and occupancy rules only apply to HOME Assisted Units.

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## **XII. RESERVATION CRITERIA**

See Affordable Housing Allocation Plan Section V. Initial Allocation Criteria

# **2015 HOME Program Description**

## **XIII. POLICIES & PROCEDURES**

### **A. AFFIRMATIVE MARKETING**

It is the affirmative marketing policy of WCDA to inform the public, homeowners, landlords and potential tenants about the Federal Fair Housing laws and the affirmative marketing goals by:

1. Making this program available for public review. An overview of the marketing policy is included.
2. Upon qualification and selection of a HOME project, the owner will be notified of Equal Opportunity requirements.
3. All advertising and literature used for the HOME program will carry the Equal Housing Opportunity logo or slogan.
4. Copies of media releases, advertisements and announcements where the HOME program was presented, will be maintained.
5. Affirmative marketing to the general public, landlords, tenants and homeowners will be done by the placement of Public Notices in the applicable local newspapers. The Casper Star-Tribune is considered the major Wyoming newspaper having statewide circulation.

As projects are completed, owners will send written notices containing information about the project (size of units, rent, etc.) to agencies such as the Department of Family Services and the local Salvation Army.

6. WCDA has a housing program brochure that briefly describes WCDA's housing programs. This brochure will be used to affirmatively market the HOME Program to the general public, tenants, and owners.
7. Throughout the year, WCDA has opportunities to affirmatively market the HOME Program on a statewide basis to REALTORS ®, lenders, and other housing and redevelopment officials at meetings and seminars in which WCDA participates.
8. Landlords will be advised that they must comply with Equal Housing Opportunity laws and their literature must contain the Equal Housing Opportunity logo. All projects will be required to display a fair housing poster when advertising vacancies. If it is found that a landlord is failing to follow the affirmative marketing requirements and blatantly ignoring fair housing laws, WCDA may enforce the default section of the HOME Agreement and Promissory Note.



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## XIII. POLICIES & PROCEDURES

9. If landlords are seeking tenants to fill vacant units, they will be provided assistance by WCDA in outreach methods for contacting groups and ethnic organizations to ensure equal access is provided. Landlords will be required to send written notices of vacancies to employment centers, places of worship or other community organizations that work with low-income persons.
10. Landlords of HOME assisted units will be required to keep records of families who apply for housing and document those cases where someone was denied housing. At a minimum, these records will contain data regarding income, family size, and minority status. Landlords will be required to keep copies of all media releases and advertisements for vacancies.
11. Any alleged housing discrimination complaints will be forwarded to the U.S. Department of Housing and Urban Development.
12. WCDA will monitor units of general local government to encourage their adoption of affirmative marketing procedures. On-site monitoring will be performed as required by HUD HOME Regulations.
13. Homebuyer Education Courses, made available through the Wyoming Housing Network, Inc.(WHN), will provide for a discussion of Fair Housing.
14. Information on Fair Housing can be obtained from the regional Fair Housing office in Denver. The mailing address for this office is Office of Fair Housing, US-HUD, 1670 Broadway, 23rd floor, Denver, CO 80202-4801 and the phone number for Fair Housing complaints is 800-877-7353.

### **A. MINORITY BUSINESS ENTERPRISE & WOMEN - OWNED BUSINESS**

**ENTERPRISE (MBE & WBE) OUTREACH PROGRAM (24 CFR 92.350 & 92.351)**  
WCDA will keep on file the names of agencies that have lists of MBE and WBE businesses that have been identified in source documents developed by agencies such as the Wyoming Business Council, and the Wyoming Highway Department. HOME applicants may request copies of these documents as they are updated.

WCDA will encourage general contractors on projects being funded with HOME funds to solicit bids from MBE/WBE businesses. WCDA will maintain project records on the use and participation of WBE and MBE.

- ### **B. Davis Bacon and other Labor Laws**
- If Davis Bacon and other Labor Laws apply, include experience with meeting these requirements. In addition, be aware Projects requiring David Bacon monitoring will be assessed a fee of \$3,000 for processing each draw and a quarterly fee of \$3,000 during project construction.

## **2015 HOME Program Description**

### **XIV. HOME PROGRAM DEFINITIONS**

#### **Adjusted Income**

Adjusted income is used in HOME to compute actual tenant rent payment for tenants who are required to pay 30% of their Adjusted Income for rent and utilities. Adjusted income is annual (gross) income reduced by deductions for dependents, elderly households, medical expenses, handicap assistance expenses and childcare.

#### **Acquisition Cost/Purchase Price**

Acquisition Cost is defined to mean the cost of acquiring the residence from the seller as a complete residential unit. Acquisition Cost includes the following; (1) All amounts paid, either in cash or in kind, by the mortgagor (or a related party for the benefit of the mortgagor) to the seller (or a related party for the benefit of the seller) as consideration for the residence; (2) If a residence is incomplete, the reasonable cost of completing the residence, including construction loan interest and fees, whether or not the cost of completing construction is to be financed from the mortgage loan; and (3) Where a residence is purchased subject to a ground rent (leased land), the capitalized value of the ground rent, using a discount rate provided by WCDA based on the related bond yield (currently between 5% and 7%).

#### **Affordability**

Affordability requirements are the HOME regulations at 24 CFR Part 92 that relate to the cost of housing both at initial occupancy and over established timeframes, as prescribed in the HOME Final Rule. Affordability requirements vary depending upon the nature of the HOME assisted activity (i.e. homeownership or rental housing; new construction vs. rehabilitation).

#### **Annual (Gross) Income**

The HOME Program allows for the use of one of two "Annual Income" definitions as described in 24 CFR Part 92.203. Annual Income is used for homeowner, homebuyer and tenant eligibility and targeting purposes. Changes to the HOME Final Rule published in the Federal Register July 24, 2013 eliminates the definition that is based on income reported on the U.S. Census Long Form.

#### **CDBG**

CDBG means the Community Development Block Grant program under 24 CFR part 570.

#### **Commitment**

The written, legally binding agreement that includes the date of the signature of each person signing the agreement, between the Participating Jurisdiction (or other entity) and the project owner providing a specific amount of HOME funds for an identifiable project for which all necessary financing has secured a firm commitment, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within twelve months of the agreement date.

## **2015 HOME Program Description**

### **XIV. HOME PROGRAM DEFINITIONS**

#### **Community Housing Development Organization (CHDO)**

A Community Housing Development Organization (CHDO) is a private, non-profit organization that meets a series of qualifications prescribed in the HOME Regulations. CHDOs must receive at least 15 percent of a participating jurisdiction's annual allocation of HOME funds. Changes to the HOME Final Rule published in the Federal Register July 24, 2013 amended the qualifications to become a CHDO. The most significant changes include the requirement that the CHDO have demonstrated capacity for carrying out housing projects assisted with HOME funds. This requirement may NOT be met with a consultant, volunteer or board members. The CHDO must have paid staff with the demonstrated capacity. For complete qualification requirements see 24 CFR Part 92.2

#### **Consolidated Plan**

Consolidated plan means the plan submitted and approved in accordance with 24 CFR part 91.

#### **HOME Assisted Units**

A term that refers to units within a HOME project where HOME funds are used and rent, occupancy, or resale/recapture restrictions apply.

#### **HOME Funds**

HOME funds include all appropriations for the HOME Program, plus all repayments and interest or other return on the investment of these funds.

#### **Homeownership**

Homeownership is defined as ownership in fee simple title in a 1- to 4-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD. Changes to the HOME Final Rule published in the Federal Register July 24, 2013 clarified when a long term ground lease is acceptable and elucidated Contract for Deeds are not an acceptable form of ownership. For further information see 24 CFR Part 92.2.

#### **Low-Income Families**

Families whose annual incomes do not exceed 80 percent of the median income for the area (adjusted for family size). HUD may establish income ceilings higher or lower than 80 percent of median income for an area on an exception basis. **CAUTION:** Changes to the HOME Final Rule published in the Federal Register July 24, 2013 amended the definition of a low-income family as it relates to students..

#### **New Construction**

For purposes of the HOME Program, new construction is any project with commitment of HOME funds made within one year of the date of initial certificate of occupancy. Any project that includes the creation of additional dwelling units outside the existing walls of a structure is also considered new construction.

## **2015 HOME Program Description**

### **XIV. HOME PROGRAM DEFINITIONS**

#### **Program Income**

Changes to the HOME Final Rule published in the Federal Register July 24, 2013 clarified HUD's long standing position that Gross income from the use or rental of real property that was acquired, rehabilitated, or constructed with HOME funds, less costs incidental to generation of the income (Program income does NOT include gross income from the use, rental or sale of real property received by the project owner, unless the funds are paid by the project owner to the PJ).

#### **Project**

A site or an entire building or two or more buildings, together with the site or sites on which the building or buildings is/are located, that are under common ownership, management and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking. If there is more than one site associated with the project, the sites must be within a four (4) block area.

#### **Project Completion**

All necessary title transfer requirements and construction work have been performed; the project complies with the requirements of 24 CFR Part 92 including the property standards under §92.251; the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into IDIS.

#### **Purchase Price**

See Acquisition Cost.

#### **Recapture**

Any HOME homeownership activity available under the Wyoming HOME Program is subject to Resale or Recapture provisions. To ensure a fair return to the homebuyer based on economic conditions as well as the condition of the home, the homebuyer will receive the balance of the Net Available Proceeds after the entire HOME Investment has been paid.

The Recapture requirement must be stipulated in a lien document separate from the mortgage which must be recorded. These Recapture provisions will be achieved by having the following language in the Note and separate lien document, which is recorded in County records; "In the event of a sale (whether voluntary or involuntary) of the Property subject to the Mortgage, Borrower may be relieved from the obligation to pay a portion of amount due under this NOTE, including Principal, only if the deficiency from the sale results from an economic condition or factors beyond the Borrower's control and not caused by the Borrower, such as unforeseen destruction or damage to the property and in the following, limited circumstance: If the net proceeds from the sale (net proceeds means the sale price minus closing costs of the sale) are not sufficient to pay all late charges, expenses, fees (including attorney's fees) and any other charges plus the entire Interest and Principal amount then due, payment of the net proceeds resulting from the sale to Lender will constitute payment in full of this NOTE and borrower shall be released from liability for any further payment. Provided, however, that if the sale is voluntary, the amount of the sale price must be equivalent to a price that unrelated, willing buyers and

## **2015 HOME Program Description**

### **XIV. HOME PROGRAM DEFINITIONS**

sellers would agree upon according to real estate market conditions that exist at the time and place of sale, otherwise Borrower shall not be released from liability for any further payment, unless otherwise agreed by Lender.”

#### **Reconstruction**

Reconstruction means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment, except that housing that was destroyed may be rebuilt on the same lot if HOME funds are committed within 12 months of the date of destruction. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased.

#### **State Recipient**

Any unit of local government designated by a state to receive HOME funds. The state is responsible for ensuring the HOME funds allocated to State Recipients are used in accordance with the HOME regulations and other applicable laws.

#### **Sub-recipient**

Means a public agency or non-profit organization selected by a participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME Program. A public agency or non-profit organization that receives HOME funds solely as a developer or owner of housing is not a sub-recipient.

#### **Substandard Condition**

Any residence that does not comply with the standards noted in the most currently adopted edition of the Uniform Housing Code.

#### **Substandard Condition but Suitable for Rehabilitation**

Any residence which does not comply with the standards noted in the most currently adopted edition of the Uniform Housing Code, yet is economically practical to rehabilitate. Meaning the cost of acquisition and rehabilitation does not exceed after rehabilitation value of the structure.

#### **Targeting**

Requirements of the HOME Program relating to the income or other characteristics of households that may occupy HOME assisted units.

#### **Uniform Physical Condition Standards (UPCS)**

Uniform national standards established by HUD pursuant to 24 CFR 5.703 for housing that is decent, safe, sanitary, and in good repair. Standards are established for inspectable items for each of the following areas: site, building exterior, building systems, dwelling units and common areas.

## **2015 HOME Program Description**

### **XIV. HOME PROGRAM DEFINITIONS**

#### **Very Low-Income**

Families whose incomes (adjusted for family size) does not exceed 50 percent of the median income for the area. HUD may establish income ceilings higher or lower than 50 percent of median income for an area on an exception basis. An individual does not qualify as a very low-income family if the individual is a student who is not eligible to received Section 8 assistance under 24 CFR 5.612.

## **2015 HOME Other Federal Requirements**

### Subpart H -- Other Federal Requirements under HOME

§ 92.350 Other Federal requirements.

§ 92.351 Affirmative marketing; minority outreach program.

§ 92.352 Environmental review.

§ 92.353 Displacement, relocation, and acquisition.

§ 92.354 Labor.

§ 92.355 Lead-based paint.

§ 92.356 Conflict of interest.

§ 92.357 Executive Order 12372.

#### **§ 92.350 Other Federal requirements.**

(a) The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.

(b) The nondiscrimination requirements at section 282 of the Act are applicable. These requirements are waived in connection with the use of HOME funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

#### **§ 92.351 Affirmative Marketing; Minority Outreach Program.**

(a) *Affirmative marketing.*

(1) Each participating jurisdiction must adopt affirmative marketing procedures and requirements for rental and homebuyer projects containing 5 or more HOME-assisted housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing with out regard to race, color, national origin, sex, religion, familial status or disability. (The affirmative marketing procedures do not apply to families with Section 8 tenant-based rental housing assistance or families with tenant-based rental assistance provided with HOME funds.)

(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 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

## **2015 HOME Other Federal Requirements**

community contacts, use of the Equal Housing Opportunity logotype, and display of fair housing poster):

- (iii) Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., 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 owners to affirmatively market 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. Section 85.36(e) of this title 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.

### **§ 92.352 Environmental Review.**

- (a) *General.* The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58.



## **2015 HOME Other Federal Requirements**

(b) *Responsibility for review.*

- (1) The jurisdiction (e.g., the participating jurisdiction or State recipient) or insular area must assume responsibility for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR part 58.
- (2) A State participating jurisdiction must also assume responsibility for approval of requests for release of HOME funds submitted by State recipients.
- (3) HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction.

### **§ 92.353 Displacement, relocation, and acquisition**

- (a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the participating jurisdiction must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.
- (b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:
- (1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.
  - (2) Appropriate advisory services, including reasonable advance written notice of:
    - (i) The date and approximate duration of the temporary relocation;
    - (ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

## **2015 HOME Other Federal Requirements**

- (iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and
  - (iv) The provisions of paragraph (b)(1) of this section.
- (c) *Relocation assistance for displaced persons.*
- (1) *General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR part 24. A "displaced person" must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.
  - (2) *Displaced Person.*
    - (i) For purposes of paragraph (c) of this section, the term displaced person means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:
      - (A) After notice by the owner to move permanently from the property, if the move occurs on or after:
        - (1) The date of the submission of an application to the participating jurisdiction or HUD, if the applicant has site control and the application is later approved; or
        - (2) The date the jurisdiction approves the applicable site, if the applicant does not have site control at the time of the application; or
      - (B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the jurisdiction or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

## **2015 HOME Other Federal Requirements**

- (C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
  - (1) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:
    - (i) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or
    - (ii) The total tenant payment, as determined under 24 CFR 5.613, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or
  - (2) The tenant is required to relocate temporarily, does not return to the building/complex, and either
    - (i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
    - (ii) Other conditions of the temporary relocation are not reasonable; or
  - (3) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.
- (ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person if:
  - (A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local

## **2015 HOME Other Federal Requirements**

law, or other good cause, and the participating jurisdiction determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.

- (B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;
  - (C) The person is ineligible under 49 CFR 24.2(g)(2); or
  - (D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.
- (iii) The jurisdiction may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.
- (3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term initiation of negotiations means the execution of the agreement covering the acquisition, rehabilitation, or demolition.
- (d) *Optional relocation assistance.* The participating jurisdiction may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section. The jurisdiction may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by State or local law, the jurisdiction must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.
- (e) *Residential anti-displacement and relocation assistance plan.* The participating jurisdiction shall comply with the requirements of 24 CFR part 42, subpart C.
- (f) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

## **2015 HOME Other Federal Requirements**

- (g) *Appeals.* A person who disagrees with the participating jurisdiction's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the jurisdiction. A low-income person who is dissatisfied with the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

### **§ 92.354 Labor.**

(a) *General*

- (1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a - 276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 - 332).
- (2) The contract for construction must contain these wage provisions if HOME funds are used for any project costs in §92.206, including construction or non-construction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.
- (3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.

## **2015 HOME Other Federal Requirements**

- (b) *Volunteers.* The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.
- (c) *Sweat equity.* The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

### **§ 92.355 Lead-based paint**

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

[64 FR 50224, Sept. 15, 1999]

### **§ 92.356 Conflict of Interest**

- (a) *Applicability.* In the procurement of property and services by participating jurisdictions, State recipients, and sub-recipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.
- (b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or 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.
- (c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or sub-recipient which are receiving HOME funds.
- (d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and

## **2015 HOME Other Federal Requirements**

efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

- (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  - (2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.
- (e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:
- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
  - (2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  - (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
  - (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
  - (5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
  - (6) Any other relevant considerations.
- (f) *Owners and Developers*
- (1) No owner, developer or sponsor of a project 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 community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or

## **2015 HOME Other Federal Requirements**

rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

- (2) *Exceptions.* Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:
- (i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class:
  - (ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question:
  - (iii) Whether the tenant protection requirements of § 92.253 are being observed:
  - (iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and
  - (v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

### **§ 92.357 Executive Order 12372**

- (a) *General.* Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and HUD's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.
- (b) *Applicability.* Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.



## **2015 HOME Other Federal Requirements**

### **§ 92.358 Consultant activities**

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. 104-204 (September 26, 1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

### **Executive Order 11246 Equal Employment Opportunity**

[Executive Order](#) 11246 signed July 21, 2014 prohibits federal contractors from discriminating against employees based on gender identity and sexual orientation. Specifically, the Executive Order amends Executive Order 11246 to add gender identity and sexual orientation to the protected categories.