



CLACKAMAS COUNTY
COMMUNITY DEVELOPMENT DIVISION



**HOME Program
Guidelines
Program Year 2019 - 2020**

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BACKGROUND & PURPOSE

The HOME Investment Partnership Program (HOME Program) is a federally funded program created under Title II of the National Affordable Housing Act of 1990. The main purposes of the program are:

- To strengthen partnerships among all levels of government and the private sector, including for-profit and nonprofit organizations, in the production of affordable housing;
- To expand the supply of decent and affordable housing, particularly rental housing, for very low-income and low-income Americans;
- To strengthen the abilities of state and local governments to design and implement strategies for achieving an adequate supply of decent, affordable housing.

CLACKAMAS COUNTY'S HOME PROGRAM

Clackamas County Community Development Division (CDD) administers the HOME Program in Clackamas County. All projects funded under the HOME Program are governed by the rules and regulations set forth at 24 CFR Part 92. The purpose of these guidelines is to clarify specific aspects of Clackamas County's HOME Program. **These guidelines do not attempt to re-state all of the requirements of 24 CFR Part 92.**

Clackamas County receives an annual allocation from the federal Department of Housing and Urban Development (HUD). The allocation is based on a formula set forth at 92.50 that takes into account factors such as the age, condition and amount of rental housing units and the County's population and poverty rate. A maximum of 10 percent of the annual allocation can be set aside for program administration.

The County's HOME funds, and any Program Income received, must be used for HOME-eligible purposes to address the housing needs for low-income households identified in the County's Consolidated Plan. Clackamas County currently utilizes its HOME funds for activities related to:

- 1) Development of rental properties including:
 - a) Acquisition of land and new construction;
 - b) Acquisition and/or rehabilitation of existing properties; and
 - c) Conversion of non-residential uses to residential.
- 2) Development of homebuyer properties including:
 - a) Acquisition of land and new construction; and
 - b) Acquisition of existing properties that are in or brought up to standard condition.
- 3) Direct financial assistance to low-income homebuyers.
- 4) Rehabilitation of owner-occupied housing through the County's Housing Rehabilitation Program.
- 5) Tenant Based Rental Assistance.

COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS (CHDO)

In accordance with 92.300, a minimum of 15 percent of the County HOME allocation must be set aside for housing projects developed by Community Housing Development Organizations (CHDOs). CHDO activities must result in the development of affordable housing in Clackamas County that meets the requirements of the County's HOME Program Guidelines and all regulatory requirements. A CHDO must act as project owner, developer or sponsor.

To be eligible for certification as a CHDO, an organization must meet the HOME Program requirements for a CHDO and have a history of successfully developing affordable housing or must demonstrate the ability to develop affordable housing. The organization must be incorporated as a nonprofit

organization under Oregon law and must have IRS not-for-profit tax exempt status, e.g. 501 (c) (3). Nonprofit organizations that are affiliated with religious organizations must demonstrate that the housing development programs of the organization are conducted in a wholly secular manner. The 2013 Rule expands this definition to include: (1) a subordinate of a central organization under IRC 905 (this was previously permitted in practice, but is now codified); or (2) a wholly-owned entity that is regarded as an entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly-owned by an organization that qualifies as tax-exempt), when the owner organization has a tax exemption ruling from the IRS under section 501(c)(3) or 501(c)(4) of the IRC.

At least one-third of the CHDO board members must be “residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations.” Clackamas County CCD considers a person to be a resident of a low income neighborhood if they live in a block group where 51% or more households are at or below 80% of median income.

The 2013 Rule requires that a nonprofit have paid employees with housing experience appropriate to the role the nonprofit expects to play in projects (i.e., developer, sponsor, or owner) in order to receive a CHDO designation. Note, the definition of “owner” has been significantly revised in the 2013 Rule at §92.300. The Rule now permits a CHDO to own and operate housing that it does not develop. Therefore, a nonprofit that will undertake development activities must demonstrate development capacity. A nonprofit that will undertake property ownership and management must demonstrate ownership/management experience. The requirement for development capacity can no longer be demonstrated through the use of consultants with development experience, except during the first year of operation as a CHDO, provided that the consultant trains the CHDO staff.

Organizations may not discriminate in their membership or in the implementation of their activities on the basis of race, color, religion, national origin, sex, disability or familial status.

Annual CHDO Certification

The County’s fiscal / program year runs from July 1 through June 30. The County designates / certifies CHDOs for each program year. An eligible nonprofit organization must submit an application to CDD each year in order to be certified as a CHDO for the following program year.

CHDO Operating Support

As provided in 24 CFR 92.208 and 92.300, the County may award up to five percent (5%) of its annual HOME allocation to qualified CHDOs for operating assistance. In order to be considered for operating assistance:

1. The CHDO must submit an application requesting operating funds for the following program year.
2. The CHDO must be certified by the County as a CHDO in the year prior to the year for which the CHDO is requesting operating funds.
3. The County must be reasonably certain that the CHDO will receive CHDO set-aside funds under 24 CFR 92.300(a) from the County within 24 months of receiving funds for operating expenses.

The County has chosen to divide Operating Support Funds equally among the qualified CHDOs in the County. The maximum grant awarded to any one CHDO is 50% of the CHDO’s total operating budget or the CHDO’s share of the Operating Support Funds, whichever is less.

The purpose of the Operating Support Funds is to further the County’s housing objectives, as expressed in the Consolidated Plan, by providing assistance to CHDOs that are involved in the development of housing for low-income households. The Operating Support Funds are intended to

support the core costs of the housing development functions of the organization but are not intended to be the sole source of operating support.

Eligible costs:

- Relate to day-to-day operations of the housing development functions. If an organization has multiple functions or missions, the eligible activities and costs must relate to the housing development activity rather than other organizational activities (e.g. housing property management, housing related services, social services, community organizing, etc. are ineligible activities under this program).
- May include costs associated with staff involved in selection and acquisition of properties, obtaining project financing, securing and supervising contractor (including technical assistance providers as well as construction contractors), initial lease-up or sale of completed projects
- May include administrative supervision and support for housing development functions. Such costs must be budgeted and billed as direct costs rather than as an overhead percentage. Indirect costs are not generally eligible unless the organization has a federally approved indirect cost allocation plan.

Ineligible costs include:

- Capital costs for improvements to office space.
- Project-specific costs such as financing, pre-development costs (architectural, engineering, appraisals, legal, etc.), site control and project equity.

Pre-Development Loans for CHDO Projects

Under the provisions of 24 CFR 92.300 and 92.301 Clackamas County may provide Technical Assistance, Site Control or Seed Money loans to qualified CHDO's for specific projects on a case by case basis. Such pre-development loans will be limited to projects that are identified in the Action Plan and have preliminary financial commitments for development from other sources in the form of grants or deferred loans. The costs covered by the loan must:

1. Be related to a specific project which, if deemed feasible, would be eligible to receive HOME funds for development; and
2. Not exceed customary and reasonable project preparation costs.

The loan will be structured as a zero-interest deferred payment loan. The loan will be due and payable as follows:

- If the project is developed, the loan will be incorporated into the additional HOME project financing. The loan terms of the development/permanent financing will apply.
- If the project is not developed because there are impediments to project development that the County believes are reasonably beyond the control of the CHDO, the County may waive repayment of the loan.
- If the project is not developed for reasons that the County believes are reasonably within the control of the CHDO, the CHDO must repay the loan.

APPLYING FOR PROJECT FUNDING

Project Owners, Sponsors or Developers must submit an application to CDD in order to be considered for funding. The County has an open door policy and, generally, considers applications for project funding on a first come first served basis. However, proposed projects must meet the HOME

Program's criteria and priorities identified in the County's Consolidated Plan. CDD evaluates each application and makes recommendations to the Board of County Commissioners.

The County reserves the right to fund those projects which reflect the highest and best use of HOME funds.

ELIGIBLE APPLICANTS

Public agencies, CHDOs, other nonprofit organizations and for-profit organizations are eligible to apply for Clackamas County HOME funds.

To be eligible, the organization must provide evidence that it has the administrative and financial capacity and experience necessary to develop and manage the project and to administer ongoing compliance with the complex requirements of the HOME Program throughout the period of affordability. If the applicant does not have adequate experience administering state, federal or local programs, the County may require the applicant to contract or partner with an experienced entity to assist in administering and managing the HOME project.

Conflict of interest (Excerpt from 24 CFR 570.611)

(a) Conflicts prohibited. No persons described in paragraph (b) of this section who exercise or have exercised any functions or responsibilities with respect to HUD-assisted activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a HUD-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a HUD-assisted activity, or with respect to the proceeds of the HUD-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

(b) Persons covered. The conflict of interest provisions of paragraph (a) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

ELIGIBLE BENEFICIARIES

HOME funds may be used only for units that will be occupied by low- or very low-income households which are defined by HUD as follows:

- Very low-income households are those with incomes at or below 50% of the area median income.
- Low-income households are those with incomes between 51% and 80% of the area median income.
- While student households may still qualify for HOME assistance, the 2013 Rule specifically excludes certain students from participating independently in the HOME program. Please contact Clackamas County Community Development Division for more information.

ELIGIBLE PROJECTS

Clackamas County's HOME Program provides funds to projects that benefit low-income people. Eligible projects are ones that result in:

- Safe, decent affordable rental housing opportunities for low-income individuals, families, the elderly and persons with disabilities or special needs;
- Permanent or transitional housing for homeless;
- Assistance for homebuyers;
- Affordable home ownership opportunities; or
- Preservation of existing owner-occupied housing units.
- The 2013 Rule specifically excludes halfway housing, dormitories (including farmworker dormitories), and **all** types of student housing.

A project may include one or more buildings on a single site under common ownership, management and financing. Structures scattered on more than one site that are under common ownership, management and financing are also considered a single project. There must be at least one HOME-assisted unit in each building of the project. HOME-assisted projects may:

- Contain any number of units;
- Contain any combination of unit sizes and styles; and
- Be privately or publicly owned.

Requirements for Broadband Infrastructure Effective 2017, HUD requires installation of broadband infrastructure at the time of new construction or substantial rehabilitation of multifamily rental housing that is funded or supported by HUD, the point at which such installation is generally easier and less costly than when undertaken as a stand-alone effort. The rule, however, recognizes that installation of broadband infrastructure may not be feasible for all new construction or substantial rehabilitation, and, therefore, it allows limited exceptions to the installation requirements. Installing unit-based broadband infrastructure in multifamily rental housing that is newly constructed or substantially rehabilitated with or supported by HUD funding will provide a platform for individuals and families residing in such housing to participate in the digital economy and increase their access to economic opportunities. Through this rule, HUD continues its efforts to narrow the digital divide in low-income communities served by HUD by providing, where feasible and with HUD funding, broadband infrastructure to communities in need of such infrastructure.

HUD defines broadband infrastructure as cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure—including wireless infrastructure—as long as the installation results in broadband infrastructure in each dwelling unit meeting the Federal Communications Commission's (FCC's) definition in effect at the time the pre-construction estimates are generated.

PROJECT SELECTION GUIDELINES

To be considered for HOME funding a project must meet the following threshold requirements. The proposed project **MUST** be:

- Located within Clackamas County;
- Eligible under HOME Program regulations; and
- Consistent with Clackamas County's Consolidated Plan and HOME Program priorities.

Projects that meet the threshold requirements will be further evaluated based upon the extent to which the project meets the following criteria:

- **Readiness to proceed.** The project should be ready to begin construction within 12 months.

- **Developer capacity.** The Developer/Sponsor and Owner must have the experience and ability to carry out the proposed project.
- **Need / Demand.** The Developer/Sponsor/Owner must provide evidence that there is a need and a demand for the project.
- **Underwriting criteria:**
 - **Feasible and cost effective.** The development proforma must show that the project is financially feasible and costs are reasonable.
 - **Complete Financial Package.** The project must have firm commitments from other reliable funding sources (e.g., owner's equity, non-federal assistance) to cover the total cost of the project.
 - **Matching Funds.** The project must provide matching resources as described in 24 CFR 92.218.
 - **Subsidy Layering.** In accordance with 24 CFR 92.250 (b), the development proforma must show that the HOME funds, in combination with other governmental assistance, is not more than is necessary to provide affordable housing.
 - **Sustainable.** The operating proforma must show that the project will generate sufficient income to sustain the project in compliance with all applicable HOME property standards for the duration of the period of affordability.
- **Preservation.** Preference is given to projects that preserve the affordability of privately owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment.
- **Location.** The project must add to the County's housing stock that is affordable to very-low- and low-income persons, particularly in areas that are accessible to expanding job opportunities.
- **Targeting.** Preference is given to projects that exceed the HOME Program income targeting requirements in serving very low-income and low-income residents.
- **Supportive Services.** If the proposed project targets persons with special needs, the proposal must describe how supportive services will be offered and funded.
- **Equal Housing Opportunities.** The project must remedy the effects of discrimination and improve housing opportunities for disadvantaged minorities.
- **Public-Private Partnerships.** The project must stimulate investment and participation by the private sector, including nonprofit organizations.

ENVIRONMENTAL REVIEW PROCESS

The County must conduct an Environmental Review (ER) of every project funded with HOME funds prior to the release of funds. The purpose of the review is to ensure that the development will not significantly impact the environment or that the environment will not negatively impact the residents of the development.

Until the ER is completed, no activities should be conducted that would limit the development to that particular site. Such activities include acquisition, demolition or construction (including entering into construction contracts), whether paid with HOME funds or other funding sources. Such activity could limit or prevent the use of HOME funds. Predevelopment activities such as architectural, engineering and surveys may be completed. However, HOME funds may not be used to pay for any project costs

until the environmental review has been completed and HUD has issues a Release of Funds (if necessary).

Depending on the nature of the proposed project, the ER process may involve public notification in a newspaper of general circulation. The notice defines the project and outlines any impacts that were identified when the County conducted the review. The notice provides a 30-day public comment period. If no comments are received, then HUD issues a Release of Funds. The release of funds does not mean that HOME dollars are ready to be expended on the project. It means that HUD finds that the project is environmentally acceptable and will not cause any significant impacts.

The ER process may take four to six weeks to complete and may be carried out concurrently with the preparation and execution of the required agreement between the project owner and the County. However, if environmentally significant conditions are found or mitigation measures are required, the time required for the ER process will be extended. HOME funds may not be used to pay for any project costs until the environmental review has been completed and HUD has issues a Release of Funds (if necessary).

AFFIRMATIVE MARKETING PLAN

Statement of Policy

In accordance with 24 CFR 92.351 and in keeping with Clackamas County's commitment to non-discrimination and equal opportunity in housing, the County has established procedures to affirmatively market rental and homebuyer housing projects that contain five or more HOME-assisted housing units. The goal of the affirmative marketing procedures is "to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability."

Affirmative Marketing Plan

This Affirmative Marketing Plan outlines strategies for advertising the HOME projects available and underway in the County in order to make the general public aware of the housing opportunities create by these projects.

1. Methods for informing the public, owners, investor and potential tenants about fair housing law and affirmative marketing policy:

Clackamas County Community Development Division (CCCD) will:

- Make this policy a part of the Agreement between the County and any owner, sponsor or developer of a HOME-assisted project.
- Include the Equal Housing Opportunity statement or logo on all written information and solicitations.

2. Requirements and practices that owners must follow to comply with affirmative marketing.

For housing containing five or more HOME-assisted units, the project owner must:

- Display the Equal Housing Opportunity statement or logo on all project signs.
- Use the Equal Housing Opportunity statement or logo on all advertisements and publications, e.g., newspapers, radio, television, brochures, or flyers.
- Display a Fair Housing Poster in a place visible to tenants and prospective tenants and in common area(s) of housing assisted with HOME funds.

3. Procedures to be used to inform and solicit applications from persons in the housing market area who are not likely to apply:

- Project owner must solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts.

In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the project is located are considered those least likely to apply. The owner may utilize the housing authority, community action agencies, community development corporations, other community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, Clackamas County's Social Services' Information and Referral, or medical service centers to publicize unit vacancies or otherwise provide information to potential tenants.

4. Documentation by county and owners to assess results of efforts to affirmatively market units.

- Project owners must maintain file records containing all marketing efforts including, but not limited to, copies of newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc. *These records shall be made available to County for inspection during normal working hours.*

5. Description of how an owner's efforts will be assessed and what corrective actions will be taken when an owner fails to follow affirmative marketing.

- During the rent-up and initial marketing phase, CD will assess the efforts of owners through the use of certifications of compliance by the owner. Thereafter, CD will annually assess the efforts and the success of the affirmative marketing actions by the project owner.
- In the event an owner fails to comply with the affirmative marketing requirements, CD will require corrective actions which include, but are not limited to, requiring the owner to conduct extensive outreach efforts on all future vacancies using appropriate contacts such as those outlined above in order to achieve occupancy goals. CD may impose other sanctions in accordance with the HOME Loan Documents.

ELIGIBLE ACTIVITIES

Clackamas County provides loans for new construction, rehabilitation, acquisition/rehab and acquisition of low-income housing units.

Only units receiving HOME dollars are considered "HOME-Assisted Units"; therefore, only HOME-Assisted Units must adhere to HOME expenditure limits, and rent and occupancy guidelines.

HOME funds may be used in mixed income projects.

Rehabilitation:

Rehabilitation includes repairs to existing structures or the conversion of an existing structure to affordable housing. Rehabilitation also includes the reconstruction or the rebuilding, on the same lot, of housing as long as the number of housing units remains the same. However, the number of rooms per units may be increased or decreased. The reconstructed housing must be substantially similar to the original housing. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit or manufactured housing.

- "Moderate rehabilitation" means the total development costs (not just HOME funds) will be less than 75 percent of the replacement cost.
- "Substantial rehabilitation" means that the rehabilitation costs will be 75 percent or more of the replacement cost.

- “Gut rehabilitation” means that the major systems will be replaced and the structure will be demolished down to the stud walls.

New Construction:

New construction includes newly built projects, rehabilitation projects that include new construction of one or more units outside the existing walls of the structure, and any project which received its first certificate of occupancy within one year prior to receiving HOME assistance.

Manufactured Homes:

HOME funds may be used for eligible activities in accordance with Part 92, HUD Notice CPD 03-05 and the County’s guidelines for specific programs.

Transitional Housing:

HOME funds may not be used towards the acquisition, construction, or rehabilitation of residential property that will be used as temporary shelter. Transitional housing, however, is an eligible HOME activity. Transitional housing must be designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless families and children, and homeless individuals with disabilities. The purpose of the housing is to move individuals and families to independent living within a reasonable time period. HOME applicants undertaking transitional housing must submit a transitional plan with the application that describes the housing and supportive services that will be offered to the tenants in order to transition them to independent living; the plan must include the estimated time period it will take to transition the tenants.

The Tenant and Participant Protections of 92.253 apply.

NOTE: Project must comply with HUD’s current guidance on Transitional Housing!

Single Room Occupancy (SRO):

For new construction, conversion of non-residential space, or reconstruction projects with Single Room Occupancy (SRO) units, each SRO unit must contain either food preparation or sanitary facilities (or both). For acquisition or rehabilitation of an existing residential structure, neither food preparation nor sanitary facilities are required in each SRO unit. If individual units do not contain sanitary facilities, they must be provided in the building for tenants to share.

Special Needs Housing

1. Affirmative Marketing Requirements. In accordance with HOMEfires, Vol1 No. 4, October 30, 1997:

“The ... project must meet all HOME Program requirements. Although preference may be given to specific needs populations, housing projects of five or more HOME-assisted units must be affirmatively marketed to all persons within the special needs group. For instance, a project may be marketed exclusively to disabled individuals. However, a project may not be filled exclusively through referrals from a single social service agency. A good faith effort must be made to inform and solicit applications from members of the special needs group throughout the market area.”
2. The Tenant and Participant Protections of 92.253 apply.
3. Housing and Services Options. In accordance with the memorandum from Assistant Secretary for Community Planning and Development, U.S. Department of HUD, dated January 2001:

"In time-limited transitional housing programs, services may be required as part of the tenancy in order to support programmatic goals, such as addiction treatment, mental health stabilization, etc...

NOTE: Project must comply with HUD's current guidance on Special Needs Housing!

ELIGIBLE COSTS

In accordance with the 24 CFR 92.504 HOME funds cannot be committed or disbursed for a project prior to execution of the HOME agreement. Clackamas County may reimburse owners/sponsors/developers for project-related soft costs incurred prior to execution of the HOME agreement on a case-by-case basis. In general, project owners/sponsors/developers should not enter into any agreement or contracts which will be paid with HOME funds until the HOME agreement is executed.

Incurring costs includes entering into an earnest money or sales agreement for acquisition and such agreements should be contingent upon receipt of HOME funds. HUD recommends the use of option agreements as the preferred method of obtaining site control.

Acquisition:

In accordance with 24 CFR 92.206(c), HOME funds may be used to acquire improved or unimproved real property.

HOME-funded projects are subject to the relocation and acquisition requirements under the Uniform Relocation Act and Section 104(d) of the Housing and Community Development Act of 1974.

Therefore, **Clackamas County strongly discourages the acquisition of tenant-occupied properties.** (See 24 CFR 92.253)

Existing housing assisted with HOME funds must meet the property standards found at 24 CFR 92.251 and the County's Housing Rehabilitation Standards.

Acquisition of vacant land must result in construction within 12 months.

Soft Costs:

In accordance with 24 CFR 92.206(d), eligible project "soft costs" must be reasonable and necessary. Eligible "soft costs" may include:

- Option / earnest agreement money
- Loan origination fees
- Title reports
- Appraisals
- Architectural and engineering fees
- Audits
- Cost estimates
- Preparation of work write-ups
- Legal fees
- Due diligence / Environmental review costs
- Credit reports
- Recording fees
- Developer's fees (consultant's fees)
- Impact fees or system development charges
- Building permits
- Affirmative marketing and fair housing expenses
- Fund initial operating reserve

Initial Operating Reserves: Funding of initial operating reserves is an eligible new construction or substantial rehabilitation cost, with the following restrictions: The reserves can be used to cover shortfalls in project income during the initial rent-up but for no longer than 18 months. During the 18 months, the operating reserves may only be used to pay for operating expenses, reserve for replacement payments, and debt service.

Excess funds in the reserve at the end of 18 months must be returned to Clackamas County's HOME Investment Trust Fund Account.

Hard Costs:

In accordance with 24 CFR 92.206(a), Hard costs are directly related to the cost of material and labor in construction and rehabilitation activities required to make the housing accessible, energy efficient, and bring it up to the applicable property standards. Hard costs can include:

- Site acquisition, demolition and general property improvements of a non-luxury nature if done as part of an eligible project
- Essential improvements
- Lead hazard controls and other environmental mitigation
- Correction or replacement of major housing systems
- Costs of utility connections
- Appliances (only those typically found in rental housing, i.e., stoves and refrigerators)
- Energy related improvements
- Accessibility improvements for persons with disabilities
- Securing of buildings
- Demolition

Demolition: Any demolition must result in construction within 12 months.

Site Improvements: HOME funds may be used to provide site improvements to the project that are in keeping with improvements of surrounding standard projects. Site improvements may include on-site road and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located. HOME funds may also be used to make utility connection including off-site connection from the property line to the adjacent street.

Relocation Costs:

In accordance with 24 CFR 92.206(f), HOME funds may also be used to pay the relocation costs of individuals, families, and businesses permanently or temporarily displaced by the project. HOME sponsors/developers should be aware that relocation costs will increase the total cost per unit.

For rental projects, Clackamas County strongly discourages acquisition of occupied properties.

Developer's Fees:

Developer's fees are an eligible expense under the HOME Program; however, the County must ensure that all development costs, including developer's fees, are reasonable. In determining the overall reasonableness of a developer's proposed fees, the County follows the guidelines established by the State of Oregon's Housing and Community Services Department in its current Qualified Allocation Plan (QAP).

Generally, the maximum amount of County HOME funds that may be expended on developer's fees will be limited to the pro rata share of HOME funds to the total development cost of the project. The remainder of the developer's fees is paid from other funding sources.

INELIGIBLE PROJECTS OR PROPERTIES

HOME funds cannot be used for assistance on any of the following properties:

- Public Housing;
- Properties receiving HUD Rental Rehabilitation Program funds;

- Commercial properties;
- Shelters or other public facilities; or
- Projects that have started construction (including site work or demolition) or have executed contracts for construction at the time of application for HOME funds.

INELIGIBLE ACTIVITIES

- Prohibited Activities: A list of prohibited activities is found at CFR 92.214.
- Additional HOME Funds: Projects may only be assisted one time with HOME funds. “Double dipping” on HOME-Assisted Projects is not allowed. Except for the first year after project completion, no further HOME funds can be used during the period of affordability. However, under CFR 92.255 a tenant can be assisted with HOME funds to buy a home that was previously assisted with HOME funds.

SUBSIDY LAYERING

The County is required by 92.250 to evaluate projects that use HOME funds in combination with other federal assistance to ensure that no more than the necessary HOME funds are invested in any one project. Federal assistance includes any loan, grant (including CDBG), guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or and other form of direct or indirect assistance from the federal government for use in, or in connection with, a specific housing project.

The above review is conducted in accordance with CPD Notice 98-01 (Layering Guidance for HOME) to determine whether the amount of HOME assistance with other governmental assistance is not greater than is necessary to provide affordable housing. The project costs, including developer fees, are within a reasonable range, taking into account project size, project characteristics, project location and project risk factors and, if applicable, the amount of equity capital contributed by investors to the project partnership is not less than the amount generally contributed by investors in current market conditions.

BID SOLICITATION AND CONTRACTING

Cost Reasonableness:

The County must ensure that all development costs are reasonable. The construction costs per unit and per square foot are important factors in weighing applications. Land acquisition costs, “hard” construction costs and “soft” construction costs will be identified separately and compared to area standards and other projects when being reviewed.

The County uses cost, construction and other information from recent similar project in determining the overall cost reasonableness.

Sponsors, owners or developers are not required to obtain formal competitive bids; however, to assure cost reasonableness, project developers are encouraged to obtain multiple bids for each contract.

MINORITY OUTREACH (MBE/WBE)

In accordance with 24 CFR 92.351(b), Clackamas County Community Development Division (CD) will take the following steps to ensure, to the maximum extent possible, that minority-owned and women-

owned business enterprises (MBE/WBE) are used whenever possible and economically feasible. CD will:

- ◆ Include qualified MBE/WBE on any contractor or solicitation lists.
- ◆ Coordinate with the Oregon Office of Minority, Women and Emerging Small Business to maintain a list of eligible MBE/WBE. This list will be made available to HOME recipients.
- ◆ Through contractual agreement, ensure that recipients of HOME program funds solicit MBE/WBE whenever they are potential sources.
- ◆ When feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE/WBE.
- ◆ When feasible, establish delivery schedules which will encourage participation by MBE/WBE.
- ◆ When necessary and appropriate, utilize the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- ◆ Include language in all notices and advertisements related to the HOME Program which states that MBE/WBE are encouraged to apply for such funds and to participate as suppliers, contractors, professional service providers, etc. on projects assisted with HOME funds. All informational and documentary materials will also include this language.
- ◆ In conjunction with HOME-Assisted Projects, CD will:
 - ◆ Encourage project sponsors, developers and owners to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
 - ◆ Request that project sponsors/developers maintain statistical data and identify jobs which have been bid by MBE/WBE. CD may inspect the project site to confirm the percentage of minority and women laborers working at the site.
 - ◆ Monitor project sponsors, developers and owners to determine their compliance efforts in promoting the use of MBE/WBE in specific procurement areas, i.e. supplies, professional services, and construction services.

Developers must encourage participation by minority-owned and women-owned business enterprises (MBE/WBE). Advertisements for bids for HOME-funded projects should state that "minority and women owned businesses are encouraged to apply." A list of registered minority and woman owned business can be found on the internet at <http://www.cbs.state.or.us/omwesb>

MATCHING FUNDS

The County must provide matching funds in an amount equal to not less than 25 percent of the total HOME funds drawn down for projects each year. HOME funds must be matched with eligible non-federal funds as defined in 92 CFR 220. The match requirements are calculated on the County's entire HOME Program.

The County prefers that each project provide eligible matching contribution of at least 25 percent of the HOME funds in the project; however, CDD recognizes that projects that serve persons with special needs may not achieve the 25 percent match. The project developer is required to document the amount of matching funds that are being contributed to the project.

PROJECT FUNDING

HOME funds will be allocated in amounts appropriate to the scope of the proposed project and the needs and resources of the applicant. The County reserves the right to adjust the amount of funds allocated to projects and to negotiate modifications to the proposed work plan and budget prior to executing an agreement.

If the project for which assistance was allocated changes purpose without prior approval by the County and no longer adheres to the original intent as described in the application, the County may revoke use of HOME funds for the project.

The minimum investment of HOME funds in a project is \$1,000 per HOME-assisted unit.

The maximum amount of HOME funds in a project is limited by:

1. The per unit subsidy limit. The HOME assistance cannot exceed the maximum amounts allowed per unit by HOME Program rules found at 24 CFR 92.250. The typical per-unit subsidy is up to \$50,000. Requests for funding in excess of \$50,000 per unit may be approved on a case-by-case basis.
2. The total per-unit development costs. HOME assistance per unit cannot exceed the average per-unit development costs for the unit. (The HOME subsidy would then be subsidizing non-HOME units, which do not come under the occupancy and rent controls of HOME).
3. The financial needs of the project. HOME projects may not receive more subsidy than is required to produce a financially feasible project.
4. The ratio of HOME funds to total development costs. The County typically limits HOME funds to no more than 50 percent of the total costs of any project.
5. The maximum loan amount is approved on a case-by-case basis.

HOME funds are provided in the form of low-interest loans. The County negotiates specific loan terms on a project-by-project basis. The terms of the loan and the loan amount will be appropriate to the scope of a proposed project, and the needs and resources of the project sponsor.

PROJECT TIME LIMITATIONS

The County may fund only those projects that can reasonably be expected to start construction within 12 months of contract execution. The County will evaluate a proposed project's readiness to proceed at the time the application is reviewed. HOME funds may be revoked for projects that fail to proceed within the 12 month time frame.

The Developer must provide a project schedule that includes dates and benchmarks. The project schedule will be included in the HOME Agreement.

Progress Reports must be completed and submitted to the County on a monthly basis until the project is completed. Reports should identify what progress has taken place during the previous 30-day period. Reports must be submitted even if construction work is not occurring and even if the County funds are not being requested.

HOME BUYER PROPERTIES

Homeownership – Ensuring Affordability

Clackamas County ensures the long-term affordability of HOME-assisted homebuyer properties during the period of affordability by monitoring to verify that the home remains owner-occupied and by imposing restrictions on the sale of the homes.

Indirect Homebuyer Assistance – Resale Provisions

Currently, Clackamas County is not permitting indirect Homebuyer Assistance with HOME funds. We anticipate this policy may change as HUD provides additional guidance on the topic of Land Trust programs.

Direct Homebuyer Assistance

The County provides direct financial assistance under the Clackamas Homebuyer Assistance Program (CHAP). CHAP funds can be used for down payment and reasonable closing costs. The **Clackamas Homebuyer Assistance Program Overview and Guidelines** provides a detailed description of the CHAP. Please ask HCD staff for a copy.

Beneficiaries: First time homebuyers with incomes at or below 80% of the Area Median Income (AMI) for Clackamas County.

Affordability: The CHAP guidelines impose limits on the price of the home and the homebuyer's debt to income ratio to ensure affordability. The maximum home purchase price cannot be higher than 95% of the median home purchase price as established by HUD.

Marketable Title: CHAP ownership interest must be in good, marketable title, subject to only certain restrictions (such as HOME resale restrictions, mortgages, deeds of trust, or liens or instruments that secure debt on the property), provided these are approved by the County. The 2013 HOME Rule expressly states existing HUD policy that a contract for deed (also known as an installment contract or land sales contract) is **not** an eligible form of homeownership.

CHAP loans are zero-percent interest, deferred-payment loans. The County records a Trust Deed and Declaration of Land Use Restrictive Covenants on every property acquired with CHAP funds. If the property is sold or title transferred or the borrower no longer uses the property as their primary residence, the County imposes the **recapture** provisions as provided in 24 CFR 92.254 (a)(5)(ii)(A).

The County attempts to recapture the full HOME subsidy out of the net proceeds available from the sale. If there are no net proceeds from the sale of the Property, or the net proceeds are insufficient to repay the entire HOME investment due, the amount of HOME funds recaptured is based on the net proceeds available from the sale, if any. The net proceeds are defined as the remainder of the final sale price of the Property minus any superior non-HOME loan repayment and closing costs. For complete HOME recapture provisions, please refer to the **Clackamas Homebuyer Assistance Program Overview and Guidelines**.

Monitoring: Clackamas County further ensures the long-term affordability of HOME-assisted homebuyer properties during the period of affordability by monitoring to verify that the home remains owner-occupied.

INCOME CALCULATION / DETERMINATION OF ANNUAL INCOME

To calculate the Annual Income of the beneficiary household, the County uses the Part 5 method found at 24 CFR 92.203(b) (1) for families who are tenants of HOME-assisted housing.

PROPERTY STANDARDS

All housing assisted with HOME funds must, at a minimum, meet the property standards at 24 CFR 92.251 and the County's Housing Rehabilitation Standards.

The State of Oregon has adopted statewide building codes, manufactured dwelling installation codes and an energy code that meet or exceed the model codes listed at 24 CFR 92.251(a). The “Certificate of Occupancy” issued by the local building official certifies that the structure has met code. Note: Clackamas County’s Department of Transportation and Development, i.e. the building department, issues a “Certificate of Satisfactory Completion” which certifies that the structure has met code.

Clackamas County has adopted written minimum Rehabilitation Standards for its programs. The State of Oregon has not adopted statewide “housing” codes.

92.251	COMPLIANCE
<p>(a) <i>New construction projects.</i> (1) <i>State and local codes, ordinances, and zoning requirements.</i> Housing that is newly constructed with HOME funds must meet all applicable State and local codes, ordinances, and zoning requirements. HOME-assisted new construction projects must meet State or local residential and building codes, as applicable or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon project completion.</p> <p>(2) <i>HUD requirements.</i> All new construction projects must also meet the requirements described in paragraphs (a)(2)(i) through (v) of this section:</p> <p>(i) <i>Accessibility.</i> The housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).</p> <p>(ii) [Reserved]</p> <p>(iii) <i>Disaster mitigation.</i> Where relevant, the housing must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.</p> <p>(iv) <i>Written cost estimates, construction contracts and construction documents.</i> The participating jurisdiction must ensure the construction contract(s) and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The participating jurisdiction must review and approve written cost estimates for construction and determining that costs are reasonable.</p>	<p>Rental or Homeowner New construction or rehab</p> <p>(1) Inspection done by:</p> <p>A. New construction = the local building department inspects for code compliance. Rehab Advisor inspects for verification of payment requests.</p> <p>B. Rehabilitation = the local building department inspects for code compliance. The Rehab Advisor inspects for compliance with County’s written Rehab Standards.</p> <p>Proof of meeting 92.251(a)(1):</p> <p>A. New Construction = “Certificate of Occupancy” issued by the local Building Official.</p> <p>B. Rehabilitation = Final applicable inspection reports from the local Building Department and a final inspection by the Rehab Advisor.</p> <p>(2) (Multifamily new construction only) Inspection done by:</p> <p>A. Local building department inspects.</p> <p>Proof of meeting 92.251(a)(3):</p> <p>A. Certificate of Occupancy issued by the local Building Official.</p> <p>B. Certification by architect.</p>

<p>(v) <i>Construction progress inspections.</i> The participating jurisdiction must conduct progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.</p> <p>Section 504 (per HOMEfires Vo 1 No. 5, 02/02/1998): "a minimum of 5% of the units in the project (but not less than one) must be accessible to individuals with mobility impairment, and an additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments..."</p>	
<p>(b) <i>Rehabilitation projects.</i> All rehabilitation that is performed using HOME funds must meet the requirements of this paragraph (b).</p> <p>(1) <i>Rehabilitation standards.</i> The participating jurisdiction must establish rehabilitation standards for all HOME-assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The participating jurisdiction's description of its standards must be in sufficient detail to determine the required rehabilitation work including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. The rehabilitation standards must address each of the following:</p> <p>(i) <i>Health and safety.</i> The participating jurisdiction's standards must identify life-threatening deficiencies that must be addressed immediately if the housing is occupied.</p> <p>(ii) <i>Major systems.</i> Major systems are: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For rental housing, the participating jurisdiction's standards must require the participating jurisdiction to estimate (based on age and condition) the remaining useful life of these systems, upon project completion of each major systems. For multifamily housing projects of 26 units or more, the participating jurisdiction's standards must require the participating jurisdiction to determine the useful life of major systems through a capital needs assessment of the project. For rental housing, if the remaining useful life of one or more major system is less than the applicable period of affordability, the participating jurisdiction's standards must require the participating jurisdiction to ensure that a replacement reserve is established and monthly payments are made to the reserve</p>	<p>See Rehab Policy and Procedures for compliance.</p>

that are adequate to repair or replace the systems as needed. For homeownership housing, the participating jurisdiction's standards must require, upon project completion, each of the major systems to have a remaining useful life for a minimum of 5 years or for such longer period specified by the participating jurisdiction, or the major systems must be rehabilitated or replaced as part of the rehabilitation work.

(iii) *Lead-based paint.* The participating jurisdiction's standards must require the housing to meet the lead-based paint requirements at 24 CFR part 35.

(iv) *Accessibility.* The participating jurisdiction's standards must require the housing to meet the accessibility requirements in 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619). Rehabilitation may include improvements that are not required by regulation or statute that permit use by a person with disabilities.

(v) [Reserved]

(vi) *Disaster mitigation.* Where relevant, the participating jurisdiction's standards must require the housing to be improved to mitigate the impact of potential disasters (e.g., earthquake, hurricanes, flooding, and wildfires) in accordance with State and local codes, ordinances, and requirements.

(vii) *State and local codes, ordinances, and zoning requirements.* The participating jurisdiction's standards must require the housing to meet all applicable State and local codes, ordinances, and requirements or, in the absence of a State or local building code, the International Existing Building Code of the International Code Council.

(viii) *Uniform Physical Condition Standards.* The standards of the participating jurisdiction must be such that, upon completion, the HOME-assisted project and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703. HUD will establish the minimum deficiencies that must be corrected under the participating jurisdiction's rehabilitation standards based on inspectable items and

<p>inspected areas from HUD-prescribed physical inspection procedures (Uniform Physical Conditions Standards) pursuant to 24 CFR 5.705.</p> <p>(ix) <i>Capital Needs Assessments.</i> For multifamily rental housing projects of 26 or more total units, the participating jurisdiction must determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the project through a capital needs assessment of the project.</p> <p>(2) <i>Construction documents and cost estimates.</i> The participating jurisdiction must ensure that the work to be undertaken will meet the participating jurisdiction's rehabilitation standards. The construction documents (i.e., written scope of work to be performed) must be in sufficient detail to establish the basis for a uniform inspection of the housing to determine compliance with the participating jurisdiction's standards. The participating jurisdiction must review and approve a written cost estimate for rehabilitation after determining that costs are reasonable.</p> <p>(3) <i>Frequency of inspections.</i> The participating jurisdiction must conduct an initial property inspection to identify the deficiencies that must be addressed. The participating jurisdiction must conduct progress and final inspections to determine that work was done in accordance with work write-ups.</p>	
<p>(c) <i>Acquisition of standard housing.</i> (1) Existing housing that is acquired with HOME assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HOME funds, must meet the property standards of paragraph (a) or paragraph (b) of this section, as applicable, of this section for new construction and rehabilitation projects. The participating jurisdiction must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance.</p> <p>(2) All other existing housing that is acquired with HOME assistance for rental housing must meet the rehabilitation property standards requirements of paragraph (b) of this section. The participating jurisdiction must document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the property does not meet these standards,</p>	<p>Acquisition, e.g. homebuyer.</p> <p>Inspection done by:</p> <p>A. New construction = Local building department inspects</p> <p>B. Existing Housing = Local building department and the Rehab Advisor inspect.</p> <p>Proof of meeting 92.251(a)(2):</p> <p>A. New Construction = Certificate of Occupancy issued by the local Building Official.</p> <p>B. Existing Housing = Documentation of inspection in file</p>

<p>HOME funds cannot be used to acquire the property unless it is rehabilitated to meet the standards of paragraph (b) of this section.</p> <p>(3) Existing housing that is acquired for homeownership (e.g., downpayment assistance) must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the specific deficiencies proscribed by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (Uniform Physical Condition Standards) issued pursuant to 24 CFR 5.705. The participating jurisdiction must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) or it cannot be acquired with HOME funds.</p>	
<p>(d) <i>Occupied housing by tenants receiving HOME tenant-based rental assistance.</i> All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards in 24 CFR 982.401, or the successor requirements as established by HUD.</p>	<p>Compliance: CD Rehab Specialist performs HQS inspection and records results in the file.</p>

<p>(e) <i>Manufactured housing.</i> Construction of all manufactured housing including manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes which are not identical to the federal standards for the new construction of manufactured housing. Participating jurisdictions providing HOME funds to assist manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.43f(c)(i). All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability. In HOME-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or state codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285. Manufactured housing that is rehabilitated using HOME funds must meet the property standards requirements in paragraph (b) of this section, as applicable. The participating jurisdiction must document this compliance in accordance with inspection procedures that the participating jurisdiction has established pursuant to § 92.251, as applicable.</p> <p>Additional Reference: Notice: CPD 03-05</p>	<p>Manufactured homes</p> <p>Inspection done by:</p> <p>A. New installation = Local building department.</p> <p>B. Rehabilitation = Local building department and the Rehab Specialist.</p> <p>Proof of meeting 92.251(a)(4):</p> <p>A. New Installation = Certificate of Occupancy issued by the local Building Official.</p> <p>B. Rehabilitation = Final applicable inspection reports from the local Building Department and a final inspection by the Rehab Specialist</p>
<p>(c) An owner of rental housing assisted with HOME funds must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.</p>	<p>Rental</p> <p>Proof of meeting 92.251(c): Inspection by Rehab Specialist at time of monitoring visit</p>

RENTAL HOUSING REQUIREMENTS

Income Targeting and Occupancy Requirements

Both occupancy and rents in HOME-assisted rental units must be controlled and monitored for varying lengths of time depending upon the amount of HOME funds invested per unit.

Program Rule: The HOME “Program Rule” rule requires that 90 percent of the total households assisted through the County’s rental housing program have incomes below 60 percent of the area median income (AMI).

Project Rule: The HOME “Project Rule” rule requires that, in projects of five or more HOME-assisted units, at least 20 percent of the HOME-assisted units must be occupied by households at or below 50 percent of AMI.

To ensure compliance with the HOME “Program Rule”, Clackamas County:

1. Requires rental projects to restrict tenant eligibility at initial project lease-up to households earning at or below 60 percent of AMI; and
2. Gives preference to projects that target all HOME-assisted units to households below 60 percent of AMI.

Both the rent and income-targeting requirements will be enforced by deed restrictions. Remedies for breach of the provisions will be specified in the deed restrictions and may include:

- Barring a recipient from applying for future HOME assistance
- Revoking an existing HOME allocation
- Withholding unexpended HOME funds
- Requiring repayment of expended HOME funds

HOME Rents

Every HOME-assisted rental unit is subject to rent controls designed to make sure that rents are affordable to low- and very low-income tenants. HOME rent level requirements are found at 92.252. HUD publishes the maximum HOME Program Rents each year for the two rents that apply to the HOME-assisted units: "High HOME Rents" and "Low HOME Rents". The project’s HOME Rental Project Agreement spells out the number of units required to serve tenants at each rent/income level.

The published HOME rents must be reduced if the tenant pays for utilities. This is because the calculation includes all utilities (except telephone).

The utility allowances prepared by the Housing Authority of Clackamas County will be used when adjusting rents. If utility allowances are proposed by owners and developers of the project, they must be approved by the County.

Fixed or Floating Units

The HOME Rental Project Agreement will state whether the HOME units are fixed or floating as defined at 24 CFR 92.252(j).

HOME DEVELOPMENT PROCESS

Application

Project Owner, Sponsor or Developer must submit an application to CDD in order to be considered for funding.

The Application narrative must:

- Describe the scope and purpose, population to be served and need for the project.
- Describe the proposed site, how it is appropriate for the targeted population, status of site control and explain how relocation issues will be addressed, if applicable.
- Provide unit rent information. Show comparable unit market rents and tenant income range. Indicate which utilities the tenant will pay and which will be included in the unit rent. (Use the Housing Authority's current utility allowances.)
- State consistency with the Consolidated Plan.
- Identify the amount and type of non-federal sources of HOME matching funds.
- Identify who will estimate costs and determine that the costs are reasonable.
- State why HOME funds are needed for the proposed project and what happens to the project if HOME funds are not awarded.

The following documentation must be submitted:

1. * Development team members, roles, responsibilities and qualifications.
 2. * Process for selecting General Contractor.
 3. * Background information and financials on borrowers.
 4. * Copy of IRS 501(c)(3) determination and by-Laws, if nonprofit.
 5. * Current Needs Assessment
 - Market Analysis may also be required
 6. * Proforma
 - Development Proforma (Statement of Sources and Uses of Funds).
 - Operating Proforma (Budget).
 7. * Project schedule/timeline.
 8. * Preliminary commitment letters from other funding sources. (Final commitment must be received before HOME approval.)
 9. *Site information/documentation:
 - Evidence of site control
 - Evidence of compliance with URA
 - Title report
 - Evidence of proper zoning
 10. Property management agreement.
 11. Model lease agreement. (Must comply with 24 CFR Part 92).
 12. Letters of community support (optional).
 13. Preliminary architectural design work (site plan, floor plan and unit design).
- * Items marked with an asterisk must be submitted with the application. The remaining documents must be submitted prior to approval.

Environmental Review process (ER)

The County must conduct the Environmental Review before HUD issues a Release of Funds.

Non-compliance of either of the following two issues will cause the entire project to become ineligible for HOME funds:

1. Under no circumstances can any property be acquired by any applicant using any resource, including a predevelopment loan, after application for HOME funds but before the ER is completed.
2. No member of the development team or any independent third party can purchase the property between the application for HOME funds and completion of the ER.

Site Control

URA.

HOME-funded projects must comply with the applicable sections of the Uniform Relocation Assistance and Real Estate Acquisition Policies Act of 1970 (URA) and Section 104(d) of the Housing and Community Development Act of 1974. Applicants who acquire property as part of the project must ensure that the transaction complies with the provisions of a “voluntary sale” under the URA regardless of whether HOME funds are to be used to reimburse the cost of acquisition. To establish a voluntary sale the applicant must inform the seller of the following two things in writing:

1. The buyer does not have the power of eminent domain; and
2. An estimate of the fair market value of the property. However, the offer to purchase may be less than market value and the sale price can be freely negotiated.

The buyer must give the seller this written information and must obtain evidence that the seller received this information before making an offer. Guideform Notice Exhibit 5-1 of the HUD Handbook 1378 should be used as a guide for this purpose.

To minimize potential displacement, relocation or replacement, CDD prefers projects that do not involve the acquisition or the demolition of existing rental properties.

Site Control methods and timing

The following are common methods of obtaining site control:

1. Applicant purchases property after ER is completed. (Preferred method.)
 - a. At the time of application for HOME funds, the applicant has site control in the form of a written non-binding option or earnest money agreement with the seller.
 - b. The applicant must demonstrate that the purchase of the property is a “voluntary sale” as defined by the URA.
 - c. No choice-limiting actions (acquisition, demolition, construction, awarding of contracts) can take place until the ER process has been completed.
 - d. The property can be purchased with HOME funds or non-HOME funds after completion of the ER process. In order to use HOME funds for acquisition, however, the applicant must have also completed all conditions of award and have executed the HOME Agreement and loan documents.
2. Obtain Site Control using a HOME Predevelopment Loan
 - a. A CHDO may use a predevelopment loan to obtain site control of the property prior to completion of the ER. Once an application for HOME funds is submitted, however, no choice-limiting actions can take place on the property prior to the completion of the ER.

- b. The transaction must be established as a voluntary sale under the URA as indicated above.
 - c. HOME funds can be used to reimburse the purchase if the project is subsequently awarded HOME funds and an ER is completed.
3. Purchase of Property Prior to Applying for HOME Funds (No HOME predevelopment loan)
- a. HOME funds cannot be used to reimburse the purchase if it was made prior to completion of the ER.
 - b. Once an application for HOME funds is submitted, no choice-limiting actions can take place until the ER process has been completed.
 - c. Before acquisition the transaction must be established as a voluntary sale under the URA as indicated. Exception:

URA acquisition or voluntary sale requirements **would not apply** for acquisition prior to application **if**:

- 1. The developer did not anticipate applying for HOME funds at the time of purchase. Anticipating HOME funding would occur if the developer, or others involved in the project, had discussed applying for HOME funds with the County or others prior to the purchase.
- 2. HOME funds are not used to reimburse the acquisition cost.

URA relocation benefits could apply if tenants occupied the property.

- d. If the property is purchased by a third party with the intent to transfer the purchase to the applicant at some point:
 - i. The transfer cannot take place until the ER is complete.
 - ii. The eventual transfer price from the third party to the applicant cannot be for more than the original purchase price by the third party. In other word, the third party cannot obtain holding fees for the transaction.
 - iii. The third party may not initiate any choice-limiting action on the site after application for HOME funds but prior to completion of the ER.

Insurance

Specific insurance requirements are stated in the Loan Agreement. Insurance may include: title insurance, property insurance, liability, and builder's all-risk.

Zoning

Applicants must attach documentation from the local planning department indicating that the property is properly zoned for the use intended, or the intended use is allowed with conditions and that the application has been made for a conditional use permit. Under no circumstances will anything other than documentation from the local planning department be accepted as evidence of proper zoning. If the project site requires a zone change or annexation, the application will not be accepted.

Key Documents

HOME Agreement

The HOME Agreement meets the provisions set forth in 24 CFR 92.504(c). It outlines all of the conditions with which the Sponsor, Developer and Owner must comply during the development of the project and throughout the period of affordability. In General, HOME funds may only be used to reimburse eligible costs incurred after the date of the execution of the HOME Agreement.

Declaration of Land Use Restrictive Covenants

The Declaration of Land Use Restrictive Covenants outlines the restricted rental charges and income limits of the tenants that will be required for the specific term of affordability. The document is recorded as a lien against the property. No HOME funds will be disbursed until after the Declaration of Land Use Restrictive Covenants is executed and recorded.

Trust Deed and Promissory Note

The Trust Deed is a recorded lien against the property and outlines the provisions of the Promissory Note. No HOME funds will be disbursed until after the Promissory Note and Trust Deed are executed and the Trust Deed is recorded.

Project Schedule and Progress Reports

The Sponsor/Developer must provide a project schedule that includes dates and benchmarks. The project schedule will be made part of the HOME Agreement.

During the development process, the Sponsor/Developer must complete and submit progress reports to the County on a monthly basis until the project is complete. Reports should identify the progress that has taken place during the previous 30-day period. Reports must be submitted even if the construction work is not occurring and even if the County funds are not being requested. The County will provide forms to be used for this purpose.

Sources and Uses of Funds

The Sponsor/Developer should submit an updated copy of the Sources and Uses to the County for review and approval whenever changes occur during the course of construction.

Disbursement of HOME Funds

The Sponsor/Owner/Developer may request HOME funds only after HUD has released the funds and the loan documents have been executed. HOME funds will only be disbursed when needed for payment of eligible costs in accordance with the HOME Agreement, development proforma and project schedule. The amount of each request will be limited to the amount needed.

The County provides a form for payment requests. The Developer must attach source documentation such as invoices to the request for payment. Requests for payment to contractors should be on standard AIA forms for application and certification for payment. Other similar forms that require the architect's certification for payment are acceptable. All parties must sign the form before submitting it to the County.

HOME funds are kept in the US Treasury, not at the County. It usually takes a minimum of 10 working days after the County has received a request before a check is available. Contractors and payees should be informed of these timelines.

Hold Back of HOME Funds

For multi-family development projects, five percent (5.0%) of the HOME Funds may be withheld until the project is complete and meets the property standards in 24 CFR 92.251 and the developer submits all project completion documentation.

Documentation for Final Disbursement of HOME Funds

1. The County must receive the following documentation prior to final disbursement of HOME funds:
 - a. Property Standards:
 - i. A copy of the certificate of occupancy.
 - ii. Certification from the architect that the completed project meets the accessibility requirements of 24 CFR 92.251(a) (3).
 - b. Project Financing:
 - i. Final Sources and Uses or Cost Certification that identifies the actual cost and funding source of each line item on the development budget.
 - ii. Documentation for each source of match.
 - c. General Contractor information, forms and assurances:
 - i. Debarment or suspension. Certification that no participants in lower tier covered transactions having to do with the project are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in federal projects.
 - ii. Affidavit of Payment of Debts and Claims;
 - iii. Affidavit of Release of Liens;
 - iv. Consent of Surety Company to Final Payment (if bonded);
 - v. Section 3 Summary Report; and
 - vi. Minority- and Woman-Owned Business Enterprise Activity form.
 - vii. For project with 12 or more HOME-assisted units: Documentation that all federal labor standard requirements have been met.
 - d. For rental projects:
 - i. Copy of tenant lease; and
 - ii. Copy of the written tenant selection criteria.
 - e. For Rehab projects:
 - i. If the structure was vacant prior to rehab work and the structure was constructed before 1978, then a Lead Based Paint Notification letter must be given to each new tenant at initial rent-up. This letter must be signed and forwarded to the County.
 - ii. Relocation information (if applicable.)
2. Within 30 days of initial occupancy, the owner must submit a household characteristics survey for each HOME-assisted unit as delineated on the form HUD-40097. If there are existing tenants in a rehab project, then a new survey must be completed.

MONITORING

HOME-assisted Rental Housing

In accordance with 24 CFR 92.504(d), the Community Development Division (CDD) of Clackamas County Housing and Community Development (HCD) monitors HOME-assisted rental housing projects at initial lease-up and during the period of affordability to ensure that the project owner is managing the project in compliance with the HOME regulations.

CDD participates in the *Oregon Streamlining Compliance Initiative*, a coordinated effort among a group of affordable housing funders. Its purpose is to reduce the cost and amount of time that owners and funders spend on compliance functions and to reduce intrusions in the lives of the tenants. An electronic portal for file sharing is managed by the Oregon Housing and Oregon and Community Services Department with the assistance of the Portland Housing Bureau. *Oregon Streamlining Compliance Initiative* forms and protocols are found online at http://www.oregon.gov/ohcs/pages/pcs_streamlining_compliance.aspx

Compliance with 24 CFR 92.504(d)(1), pertaining to on-site inspection and property standards and compliance with 24 CFR 92.504(d)(2), pertaining to financial oversight of HOME-assisted projects, is accomplished as follows.

Each February, CDD sends a **Certification of Compliance** form to every HOME-assisted rental property that is within the HUD-required period of affordability. The forms are due back by April 15. CDD performs a desk audit when the property returns the Certification of Compliance form. This is in addition to any inspection that may take place that calendar year. The owner is asked to submit the following documents:

1. A HOME Rental Compliance Report¹, rent and occupancy report or rent roll that identifies each HOME-assisted unit and states:
 - Whether the unit is a High HOME Rent unit or a Low HOME Rent unit;
 - Tenant's name;
 - Tenant household's annual gross income;
 - Number of people in the unit;
 - Number of bedrooms in the unit;
 - Date of the most recent income recertification;
 - Rent charged; and
 - Whether the tenant pays for utilities, and the utility allowance.
2. The most recent project financial statements for this project and an annual audit highlighting this project as an element of your overall portfolio.
3. Current proof of insurance.

The Management Questionnaire, which is part of the Streamlining Compliance Initiative's protocol, is only sent when CDD is actually doing an on-site (physical inspection and file review) audit.

Monitoring activities include both desk and on-site monitoring. Monitoring activities primarily focus on:

- The affordable rental housing requirements at 24 CFR 92.252, 92.253, 92.351;

¹ The HUD HOME Rental Compliance Report can be found online at <https://www.onecpd.info/resource/2102/home-rental-project-compliance-report/>

OHCS' HOME Monitoring Report can be found online at http://www.oregon.gov/ohcs/pages/pcs_program_compliance_section.aspx Either version is acceptable.

- The specific provisions of the HOME rental project agreement; and,
- Inspection and record-keeping requirements at 24 CFR 92.504 and 92.508.
- At least annually, CDD must examine the financial condition of HOME-assisted rental projects with **10 or more HOME-assisted units** to determine the continued financial viability of the project.

CCD reviews the project's policies and procedures, including the fair housing and tenant selection policies.

- The policies and procedures, including the requirement to affirmatively further fair housing and tenant selection policies, must be in compliance with the HOME regulations and the provisions of the HOME Rental Housing Agreement; and
- The information and tenant files maintained by the project owner including leases, tenant incomes, rents and utility allowances must be current, complete, accurate and in compliance with the HOME regulations. CCD requires the owner to submit a "HOME Rental Project Compliance Report" or similar document. CCD reviews the tenant files using the "Streamlining Tenant File Review Checklist" to verify and document that:
 - Incomes are below the maximum and are verified with source documentation when required;
 - Rents are below the HOME maximum; and
 - Leases are signed and in compliance.

On-site Inspection Protocol

CDD uses various checklists to monitor regulatory requirements of 24 CFR Part 92. The on-site inspection focuses on the following items:

- CCD performs a physical inspection to verify that the property and the HOME units meet the property standards at 24 CFR 92.251. The 2013 HOME Rule §92.504(d) is revised substantially to provide PJs more flexibility in designing risk-based inspection strategies, as summarized below:

Required Inspections

§92.504(d)(1) requires PJs to conduct on-site inspections of HOME-assisted properties.

- **Project completion inspections.** Upon completion of the project, CCD must conduct an on-site inspection to confirm that contracted work is completed and the property meets the property standards specified in §92.251.
- **Ongoing property inspections.** On an ongoing basis throughout the period of affordability, CCD must conduct on-site inspections to determine that the property meets the property standards adopted by CCD pursuant to §92.251(f) and to verify the information submitted by the owners regarding rent, occupancy, and unit mix. The inspections must be done in accordance with CCD's inspection procedures required at §92.251.

Inspection Schedule

- **Frequency of inspections.** The first on-site ongoing inspections must occur within 12 months after project completion, and an inspection must be conducted at least once every three years thereafter.
- **Follow up to address deficiencies.** If any deficiencies are identified for any inspectable items (as established in CCD's inspection procedures), a follow-up on-site inspection is required

within 12 months. For non-hazardous deficiencies, CCD can either conduct an on-site inspection or accept third party documentation (such as a paid invoice for work completed).

- **Health and safety deficiencies.** Health and safety deficiencies identified during inspections must be corrected immediately. CCD must adopt a more frequent inspection schedule for these properties.
- **Annual certification.** Property owners must submit an annual certification to CCD that each building and all HOME-assisted units in the project are suitable for occupancy.

Sample Sizes

For each inspection visit, CCD must determine how many HOME-assisted units must be inspected in the project (for inspectable items--site, building exterior, building systems, and common areas) within these parameters:

- For projects with one to four units, the inspectable items for each building with HOME-assisted units and 100 percent of the HOME units must be inspected.
- For projects with more than four HOME-assisted units, the inspectable items for each building with HOME-assisted units and at least 20 percent of the HOME-assisted units in each building, but not fewer than four units in each project and one HOME-assisted unit in each building.

CCD may contract with third parties to conduct these inspections and, in the future, inspections performed by other funders may be permitted once administrative alignment of inspection standards and guidelines at the federal level has been achieved. CCD may establish inspection schedules that involve more frequent inspections or larger sample sizes.

CCD will adopt a more frequent inspection schedule if a property is found to have health and safety deficiencies that are not corrected within a reasonable time as determined by CCD.

MONITORING RESPONSIBILITIES:	
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CDD:	Project Owner:
<p><i>Periodically:</i> Send copy of current HOME rents and income when they are updated by HUD.</p> <p><i>Annually:</i> All projects: Review the “HOME Compliance Report” (or similar from) submitted by the Owner.</p> <ul style="list-style-type: none"> • <p><i>Per required frequency:</i> Schedule and perform the on-site inspection.</p>	<p><i>Ongoing:</i> Comply with applicable provisions of 24 CFR Part 92 and the HOME Agreement throughout the period of affordability.</p> <p><i>Ongoing:</i> Maintain rents of HOME-assisted units at or below the high- and low HOME rents.</p> <p><i>Annually:</i> Complete the “HOME Compliance Report” and return to CDD within 30 days.</p> <p><i>When notified of on-site visit:</i> Prepare for and participate in the on-site inspection, notify tenants of inspections and make files and other information accessible.</p>

Projects with 10 or more units: Review audit and financial information submitted through the Oregon Streamlining Initiative.

After monitoring visit: Notify owner in writing of any deficiencies.

Ongoing: Establish and maintain sufficient records to document that program requirements are met.

After monitoring visit: Correct any deficiencies noted.

Annually: Re-examine each tenant's annual income in accordance with 24 CFR 92.252(h).

Ongoing: Retain records of individual tenant income verifications and project rents for the most recent five year period, until five years after the affordability period terminates

Homebuyer Assistance

CDD monitors HOME-assisted homebuyer assistance projects and activities during the period of affordability to ensure compliance with 24 CFR 92.254. Monitoring activities may include desk or on-site monitoring. The primary purpose of the ongoing monitoring is to verify that the housing remains the principal residence of the family throughout the period of affordability.

Owner-Occupied Single-Family Rehabilitation

Activities such as owner occupied single family rehabilitation, which constitute a one-time relationship with the County, will be monitored at the completion of the activity. The activities will be monitored to verify that the work has been done to standard and that the proper documentation is submitted as required.

TBRA

CDD will annually monitor the subrecipient to ensure compliance with the HOME Rule.

UTILITY ALLOWANCES

CDD uses the utility schedule published by HACC which is based on the "HUD Utility Schedule Model". HUD staff approved this method in 2013.