

CHAPTER 5 - RENTAL HOUSING ACTIVITIES

Chapter Overview

- Overview of Program Requirements
- Home-Eligible Rental Housing Costs
- Maximum HOME Investment
- Determining the HOME-Assisted Units
- Allocating Costs to the HOME-Assisted Units
- Eligible Property Types
- Ineligible Property Types
- Property Standards
- Other Standards
- Housing Visitability
- Affirmative Marketing Requirements
- Long-Term Affordability
- Long-Term Lease-Purchase
- Rent and Occupancy Requirements
- Understanding Home Rent Limits
- Income Eligibility Requirements for Owners
- Income Eligibility Requirements for Grantees
- Annual Recertification of Income
- Increases in Tenant Income
- Leases
- Monitoring
- Record Keeping
- Reporting
- Other Federal Requirements
- Tenant Selection Procedure
- Using the Low Income Housing Tax Credits with HOME Funds

Overview of Program Requirements

HOME funds may be used for the acquisition, new construction or rehabilitation of affordable rental housing. This chapter covers the basic program requirements governing HOME-assisted rental housing, such as eligible activities and costs, income and occupancy requirements and rent levels.

WARNING: The HOME Administration Manual contains information on eligible uses and requirements of HOME funds as general guidance. However, the Department further defines eligible uses and requirements for HOME funds administered by the Department via the Housing and Community Development Annual Action Plan, NAHP Application Guidelines and the HOME Program Contract. **Applicants and grantees must adhere to the requirements imposed on HOME funds for the particular program year and specific award.**

Eligible Activities

HOME funds may be used for acquisition, new construction or rehabilitation of affordable rental housing. The developers or owners of the rental housing may be small-scale property owners, for-profit developers, nonprofit housing providers, CHDOs, the local government, redevelopment organizations or public housing agencies.

Forms of Assistance

The Department provides assistance to rental projects as grants or loans with specific terms and restrictions incorporated on a project-by-project basis.

HOME funds may be used to refinance existing debt if the HOME funds are used to rehabilitate the property and refinancing is necessary to permit or continue affordability.

Home-Eligible Rental Housing Costs

Hard Costs

- Acquisition of land (for a specific project) and existing structures
- Site preparation or improvement, including demolition
- Securing buildings
- Construction materials and labor

Soft Costs

- Financing fees
- Credit reports
- Title binders and insurance
- Surety fees
- Recordation fees, transactions taxes
- Legal and accounting fees, including cost certification
- Appraisals
- Architectural/engineering fees, including specifications and job progress inspections
- Environmental reviews
- Builders' or developers' fees
- Affirmative marketing, initial leasing and marketing costs
- Operating deficit reserves (up to 18 months)

Relocation Costs

- Payment for replacement housing, moving costs and out-of-pocket expenses
- Advisory services
- Staff and overhead related to relocation assistance and services

Operating deficit reserve: The Final Rule clarifies the use of HOME funds to cover the cost of funding an initial operating deficit reserve for new construction and rehabilitation projects.

- This reserve is meant to meet any shortfall in project income during the project rent-up period.
- The reserve cannot exceed 18 months.
- The reserve can be used only for project operating expenses, scheduled payments to replacement reserves and debt service.
- Reserves remaining at the end of 18 months may be retained for reserves in the project at the Department's discretion.
- The disposition of any remaining funds at the end of the 18-month period must be determined in the agreement between the developer/owner and the Department.

Maximum HOME Investment

The investment of HOME funds is limited by per-unit subsidy limits based on number of bedrooms and location. The subsidy limits are kept current for all Nebraska counties on the Department's website.

*Example: A six-unit structure with six two-bedroom units will be rehabilitated with HOME funds in Clay County. The maximum per-unit HOME subsidy for two-bedroom units in Clay County is \$106,090. Thus, the HOME subsidy for this project **cannot exceed** \$636,540 (6 X \$106,090).*

The actual subsidy provided will depend on the following factors.

- The proportion of the total project cost that is HOME-eligible --some planned project costs may not be eligible expenses under the HOME Program.
- How many of the units in the project are HOME-assisted --Projects may have a mix of HOME-and non-HOME-assisted units.
- The financial needs of the project --HOME projects may not receive more subsidy than is required to make them financially feasible. The HOME program allows the Department to determine what is required and reasonable.

*Example: Three two-bedroom units in a six-unit structure in Clay County will be rehabilitated with HOME funds. The maximum-per-unit HOME subsidy for two-bedroom units in Clay County is \$106,090. Thus, the HOME subsidy for this project **cannot exceed** \$318,270 (3 X \$106,090). The developer has estimated rehabilitation costs of \$75,000 per unit. However, the subsidy needed to make the project financially feasible based on an analysis of the cash flow and development costs is only \$210,000, or \$70,000 per unit.*

Determining the HOME-Assisted Units

What is a HOME-assisted unit? Unlike other federal programs, such as CDBG, the HOME Program distinguishes between the units in a project that have been assisted with HOME funds and those that have not --hence the term **HOME-assisted** unit. This distinction between HOME-assisted and unassisted units allows HOME funds to be spent on mixed-income projects while still targeting HOME dollars only to income-eligible households.

- The HOME rent and occupancy rules apply only to HOME-assisted units.
- The number of HOME-assisted units in project must be specified in the HOME Contract.
 - HOME rules create a floor for the number of HOME-assisted units a project must have. This floor is based on the proportional share of total eligible costs to be paid with HOME funds.
 - The Department may require a higher number of HOME-assisted units in a project.
 - Some projects may consist of only HOME-assisted units.

Example: The Department is considering a request for HOME funds from Excellent Housing Corporation for a 20-unit building. The HOME-eligible development costs total \$400,000. The applicant has requested \$100,000 in HOME funds. Since the HOME funds represent one-fourth of the total eligible development costs, the Department must require the project to have at least five HOME-assisted units, the "floor." The Department may choose to require more than five units to be HOME-assisted.

- The Department may choose to specify a minimum number of units that must be designated as HOME-assisted, and then develop the needed subsidy amount based on the total HOME-eligible costs.

Example: When Can-do CHDO approached the Department for development funds for a 30-unit rehabilitation project, the Department decided to subsidize half of their units. All of the units were comparable in size, features, number of bedrooms and development cost. Consequently, the Department provided half of the \$600,000 in HOME-eligible development costs (i. e., \$300,000) to Can-do and 15 of the 30 units were designated HOME-assisted.

Fixed and Floating Units

For properties with both assisted and non-assisted units, the Department specifies in the HOME Contract whether the units are "fixed" or "floating". This designation can not be changed after the initial contract has been executed.

Fixed

When HOME-assisted units are "fixed," the specific units that are HOME-assisted (and, therefore, subject to HOME rent and occupancy requirements) are designated and never change. Designating fixed units allows the project to have a composition of HOME-assisted units by unit size (number of bedrooms) that varies from the composition of non-HOME assisted units by unit size (number of bedrooms). In other words, a project with two three-bedroom units and four four-bedroom units could "fix" one three-bedroom unit and one four-bedroom units as HOME-assisted.

Floating

When HOME-assisted units are "floating," the units that are designated as HOME-assisted may change over time as long as the total number of HOME-assisted units in the project remains constant. HOME-assisted floating units must represent the same percentage of all comparable unit sizes in the project. In other words, a project with two three-bedroom units and four four-bedroom units could "float" one three-bedroom unit and two four-bedroom units (thus "floating" fifty percent of each unit size in the project. "Floating" often results in an increase in total HOME-assisted units required in a project.

- The floating designation gives the owner some flexibility in assigning units, and can help avoid stigmatizing the HOME-assisted units.
- If the floating designation is used, the owner must ensure that the HOME-assisted units remain comparable to the non-assisted units over the affordability period in terms of size, features and number of bedrooms.

Example #1: The Meadow View Ridge Townhouse Estates is a 20-unit project. 10 of the units are 3-bedroom, 5 are 2-bedroom and 5 units are one-bedroom. The project is required to have 5 HOME-assisted units. It is determined it would be most beneficial for these units to be the 3 bedroom units due to the HOME rent limits. Therefore, these units must be fixed HOME-assisted units.

Example #2: The Prairie View Ridge Townhouse Estates is a 20- unit project. 10 he units are 3-bedroom, 5 are 2-bedroom and 5 are 1-bedroom. The project is required to have 5 HOME-assisted units, 25% of the project units. The project owner would like to float units for maximum flexibility. Therefore, three 3-bedroom units, two 2-bedroom units and 2 one-bedroom units are required in order to be at least 25% of each comparable unit designation. This results in a total of 7 HOME-assisted units required in the project in order to designate these units as floating.

Allocating Costs to the HOME-Assisted Units

Before determining the allowable HOME subsidy amount, the Department must establish the total HOME-eligible cost for the project.

- For mixed projects with HOME-assisted and non-HOME-assisted units, the Department must allocate costs across units.
 - If both the assisted and non-assisted units are comparable in size, features and number of bedrooms, the HOME-eligible costs can be pro-rated across units (Since floating units, by definition, must be comparable, costs should always be pro-rated if HOME units float).

Example: The Department wants to subsidize development of a 30-unit project with HOME funds. Twenty of the units have one bedroom and ten have two bedrooms. All of the units have identical amenities. The Department plans to underwrite fifteen of the units (ten one-bedrooms and five two-bedrooms) and the applicant plans to use the floating unit approach. Since all of the one-bedroom units are comparable to one another the costs associated with the one-bedroom units (and common costs on a pro-rated basis) can be spread across all of the one-bedroom units. The same is true of the two-bedroom units, since they also are comparable to one another

- If the assisted and non-assisted units are *not* comparable, the actual costs must be determined and allocated unit-by-unit. The specific units identified to "receive" HOME funds must be fixed --that is, designated as HOME-assisted.
- HUD Notice CPD 98-02 provides further guidance on allocating costs in projects with HOME and non-HOME units.

Eligible Property Types

- HOME rental projects may be one or more buildings on a single site, or multiple sites that are under common ownership, management and financing.
 - The project must be assisted with HOME funds as a single undertaking.
 - The project includes all activities associated with the site or building.
- HOME funds may be used to assist mixed-income projects (but, only HOME-eligible tenants may occupy HOME-assisted units).
- Transitional as well as permanent housing, including group homes and SROs, is allowed. (See Attachment 1 at the end of this chapter for additional details.)
- There are no preferences for project or unit size or style.
- HOME funds may be used for the initial purchase and initial placement costs of Elder Cottage Housing Opportunity (ECHO) units that meet the HOME requirements. ECHO units are small, free-standing, barrier-free, energy-efficient and removable units designed to be installed adjacent to existing single-family dwellings (See Attachment 2 at the end of this chapter for additional details).

Ineligible Property Types

- Properties previously financed with HOME during the affordability period cannot receive additional HOME assistance unless assistance is provided during the first year after project completion.
- HOME funds may not be used for operations or modernization of public housing projects financed under the Housing Act of 1937.
- Projects assisted under 24 CFR Part 248 (Prepayment of Low-Income Housing Mortgages) may not receive HOME funds, *unless* assistance is provided to "priority purchasers" of such housing.
 - A priority purchaser is a resident council organized to acquire a project in accordance with a resident homeownership program, or any nonprofit organization or state or local agency that agrees to maintain low-income affordability restrictions for the remaining useful life of the project. Organizations or agencies affiliated with a for-profit entity for the purposes of purchasing a property do not qualify as priority purchasers.

Property Standards

Properties that are rehabilitated with HOME funds must meet the following standards:

- The Department's Rehabilitation Standards (Attachment 2 in Chapter 3)
- Handicapped accessibility requirements, where applicable.
- Also, one of the following:
 - Local Code Requirements
 - Uniform Building Code (ICBO)
 - National Building Code (BOCA)
 - Standard Building Code (SBCCI)
 - Council of American Building Officials one-or two-family code (CABO)
 - Minimum Property Standards at 24 CFR 200.925 or 200.926 (FHA)

New construction with the use of HOME funds must meet the following standards:

- **2003 International Energy Conservation Code**
- **Handicapped accessibility requirements, where applicable.**
- **New construction of rental housing must meet site and neighborhood standards at 24 CFR 893.6(b)**
- Also, one of the following:
 - **Local Code Requirements**
 - **Uniform Building Code (ICBO)**
 - **National Building Code (BOCA)**
 - **Standard Building Code (SBCCI)**
 - **Council of American Building Officials one-or two-family code (CABO)**
 - **Minimum Property Standards (FHA) at 24 CFR 200.925 (for multi-family) or 200.926 (for one- and two-unit dwellings)**

Acquisition of existing housing (no rehab or construction) must meet the following standards:

- **Applicable local housing quality standards and code requirements.**
- **If no local standards/codes apply, DED Rehabilitation Standards**
- **Handicapped accessibility requirements, where applicable.**

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

Other Standards

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

(1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(2) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, and implementing HUD regulations.

(3) The site must not be located in an area of minority concentration and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

In addition, the Department will not approve new construction of rental housing proposed in an area of low-income concentration.

Housing Visitability

All ground floor units must be visitable to the maximum extent feasible, unless doing so would impose an undue financial burden on the project. A visitable design provides that new single-family homes, duplexes, and triplexes are more accessible and usable to persons with disabilities. Housing units built to visitable standards have features that allow a person using a wheelchair or other mobility device to visit without any special assistance, and are more easily modified should a resident need adaptations in the future.

The Department uses the Nebraska Assistive Technology Partnership definition of visitability:

The requirements include having at least one no-step/zero grade entrance with a 36” door into the unit’s main floor, minimum 32” clear space opening in interior doorways, minimum 36” wide hallways, a first floor bathroom which allows for wheelchair access (while maintaining privacy), reinforcement in bathroom walls to permit future installation of grab bars, and modification in the locations of light switches, electrical outlets and environmental controls.

Affirmative Marketing Requirements

HOME rental project grantees must adopt affirmative marketing procedures and requirements for all housing with five or more HOME-assisted units. State-designated CHDOs must adopt an affirmative marketing plan and procedures for all HOME projects.

Affirmative marketing procedures must include the following elements:

- Methods for informing the public, owners and potential tenants about fair housing laws and the grantee’s policies (for example: use the Fair Housing logo or equal opportunity language).
- A description of what owners and/or the grantee will do to affirmatively market housing assisted with HOME funds, and maintenance of records that document the actions taken in this marketing effort.
- A description of persons not likely to apply for housing without special outreach and on what basis the owners and/or the grantee made this determination.

- A description of what owners and/or the grantee will do to inform persons not likely to apply for housing without special outreach, and maintenance of records that document the actions taken in this marketing effort.
- A description of how efforts will be assessed and what corrective actions will be taken where requirements are not met, and maintenance of records that document an assessment of the effectiveness of the marketing effort.

Long-Term Affordability

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

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

HOME affordability periods are minimum requirements. The Department may establish longer terms of affordability.

If a shorter affordability period is desirable on a project that does not include refinancing or new construction, the Department and applicant can take one of the following steps to minimize the HOME per-unit subsidy:

- The HOME subsidy could be reduced and replaced with other funds that do not have long-term requirements
- The developer may choose to designate a higher number of HOME-assisted units than required by the "floor" in order to reduce the HOME investment per unit.

Example: The Department provided \$100,000 in HOME funds for the \$400,000 20-unit Excellent Housing Corporation rehabilitation project and required that five of the 20 units be designated HOME-assisted. Under this arrangement, Excellent Housing Corporation would be obligated to keep the development affordable for 10 years ($\$100,000 \div 5 = \$20,000$ HOME funds per unit requiring a 10-year affordability period). If Excellent Housing Corporation designates 10 of the units as HOME-assisted, the per-unit HOME investment will be reduced to \$10,000 per-unit, requiring only a five-year affordability period.

The HOME Rule does allow for termination of affordability restrictions upon foreclosure or transfer in lieu of foreclosure as a means to encourage lenders to participate in the HOME program. However, the Department must repay the U.S. Department of Housing and Urban

Development if HOME-assisted housing fails to meet the affordability requirements for the full affordability period without regard to the term of any loan or mortgage or the transfer of ownership, even in the event of foreclosure, transfer in lieu of foreclosure or assignment to the U.S. Department of Housing and Urban Development. Therefore, the Department will require grantees to repay the Department the full amount of the HOME funds drawn for projects where affordability requirements are not met in full.

Long-Term Lease-Purchase

HOME-assisted rental units may be converted to homeownership units with or without the use of additional HOME funds by having the owner of the rental units, sell, donate or otherwise convey the units to the existing tenants.

If additional HOME funds (direct assistance) are used to help the tenants become homeowners, the minimum period of affordability is the affordability period required by the amount of direct homeownership assistance provided.

If no additional HOME funds are used, the homeownership units are subject to resale provisions and to a minimum period of affordability equal to the remaining affordability period that would apply if the units continued as rental units.

Rent and Occupancy Requirements

Grantees must enforce rent and occupancy agreements through one of the following:

- Covenants running with the property
- Deed restrictions
- Other mechanisms approved by the Department and HUD

Covenants and deed restrictions may be suspended upon transfer by foreclosure or deed-in-lieu of foreclosure.

HOME Rents

Every HOME-assisted unit is subject to rent limits designed to help make rents affordable to low income households. These maximum rents are referred to as "HOME Rents."

- Annually, the Department establishes maximum monthly rents for HOME-assisted rental projects. Based on changes in area income levels or market conditions, HOME rents, as calculated by HUD and approved by the Department, may increase.
- 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. For example, rents may not increase until the tenant's lease expires.
- HOME rents may decrease. While project rent levels are not required to decrease below the HOME rent limits in effect at the time of project commitment, decreasing HOME rents may reflect a change in market conditions that may force owners to reduce rents in order to maintain tenants.
- The Department with HUD's approval may permit adjustments to the rent structure if the financial feasibility of the project is threatened. This is important to lenders providing financing to HOME-assisted projects.

There are two HOME rents used in the HOME program:

- High HOME Rents: The maximum amount an owner can collect per month on a “High” HOME-assisted unit.
- Low HOME Rents: The maximum amount an owner can collect per month on a “Low” HOME-assisted unit.

The HOME rent limits are kept current via the Department’s website. The limits as displayed look similar to the following:

<i>Example</i>		Efficiency	# of bedrooms					
			1	2	3	4	5	6
Logan County	LOW HOME RENT LIMIT	253	326	416	532	634	729	824
	HIGH HOME RENT LIMIT	253	326	416	532	634	729	824
	For Information Only:							
	FAIR MARKET RENT	253	326	416	532	634	729	824
	50 RENT LIMIT	422	452	543	628	700	773	845
	65 RENT LIMIT	530	569	684	782	853	923	993

Note: The Low HOME rent limits and the High HOME rent limits are the limits placed upon HOME-assisted units. The fair market rent, the 50 rent limit and the 65 rent limit are used by HUD to determine the HOME rent limits.

Understanding Home Rent Limits

It is imperative that grantees understand HOME rent limits as they apply to their project.

HOME Rents and Utility Allowances

The Department adopts HUD published Low and High HOME rents limits. HUD’s calculation of Low and High HOME rents assumes the owner pays the utilities. If the tenant pays utilities, the maximum allowable rent that could be collected by the owner would be the applicable Low or High HOME rent minus a utility allowance. The Department approves utility allowances on a project by project basis based upon allowances prepared by local public housing authorities or local utility providers. The HOME rent limits restrict the maximum total rent (minus the utility allowance) that can be received by project owners regardless of the amount of rental assistance provided to a tenant.

Example: A HOME-assisted rental project in Logan County has Low HOME one and two bedroom units and High HOME one and two bedroom units. The tenants pay all utilities and the project does not have any project-based rental subsidy. The Department has approved a monthly utility allowance of \$70 for the one-bedroom units and \$90 for the two-bedroom units. The following chart shows how the maximum total rent, from the tenant or from any assistance program, that can be received by a project owner is calculated for each unit.

	1 Bedroom High HOME Unit		2 Bedroom High HOME Unit
\$326	High HOME Rent Limit	\$416	High HOME Rent Limit
-\$70	Utility Allowance	-\$90	Utility Allowance
\$256	Maximum Rent Owner May Collect	\$326	Maximum Rent Owner May Collect

	1 Bedroom Low HOME Unit		2 Bedroom Low HOME Unit
\$326	Low HOME Rent Limit	\$416	Low HOME Rent Limit
-\$70	Utility Allowance	-\$90	Utility Allowance
\$256	Maximum Rent Owner May Collect	\$326	Maximum Rent Owner May Collect

Low HOME Units and Project-Based Rental Subsidy

The only instance when a HOME-assisted unit is not restricted to HOME rent limits is for a Low HOME unit in a project that receives federal or state project-based rental subsidies and the tenant pays no more than 30% of their adjusted income for rent. The maximum rent may then be the rent allowable under the project-based subsidy program. **Note: this only applies to LOW HOME UNITS and the HOME income limits still apply.** However, tenant-based rental subsidy programs do not supersede Low HOME rent requirements.

Implementing New HOME Rent Limits

The Department will inform grantees of updated HOME rent limits upon the Department's approval of new HUD-published limits (generally in the spring each year). However, tenants' rents should not be adjusted until their leases are renewed.

Income Eligibility Requirements for Owners

Owners may not refuse to lease HOME-assisted units to a certificate or voucher holder under the Section 8 Program, or to a holder of a comparable document evidencing participation in a HOME tenant-based rental assistance (TBRA) program, because of the status of the prospective tenant as a holder of such certificate, voucher or comparable HOME TBRA document.

High HOME-Assisted Units

The Department, to meet HOME requirements, requires all initial tenants of High HOME-assisted units to have incomes at or below 60% of the area median income. Subsequent tenants are restricted to the income as specified in the HOME Contract for the project. The maximum income allowed under the HOME program for rental projects is 80% of the area median income; however the Department may further restrict the income level for a project.

The rents collected by the owner on High HOME-assisted units are restricted to the High HOME rent limits less tenant paid utilities per an approved utility allowance.

Low HOME-Assisted Units

The Department, to meet HOME requirements, requires all projects with five or more HOME-assisted units to designate at least 20 percent of the HOME-assisted units as Low HOME units. Tenants must have incomes at or below 50% of the area median income to occupy Low HOME-

assisted units. The Department via the HOME Contract may require more Low HOME-assisted units for a project than the HOME rules require.

The rents collected by the owner on Low HOME-assisted units are restricted to the Low HOME rent limits less tenant paid utilities per an approved utility allowance. The only exception is for Low HOME units in a project that receives federal or state project-based rental subsidies and the tenant pays no more than 30% of their adjusted income for rent. The maximum rent may then be the rent allowable under the project-based subsidy program.

Income Eligibility Requirements for Grantees

The Department requires grantees to use the Annual (Gross) Income definition found at 24 CFR Part 5.609 (also referred to as the Section 8 method) to determine applicant income eligibility. Eligibility is based on anticipated income during the next 12 months. A detailed explanation of the Annual (Gross) Income definition can also be found in the “Technical Guide for Determining Income and Allowances for the HOME Program” on pages 11-31.

The HOME Program allows grantees to use two forms of verification for the Annual (Gross) Income basis of determining income eligibility. These forms are third party verification and review of source documents.

Third Party Verification

Third Party Verification is the preferred method of verification in most instances, because a review of documents often does not provide needed information. For example, an employed applicant’s pay stubs may not provide sufficient information about the average number of hours worked, overtime, tips, bonuses and anticipated raises.

Under third party verification, a third party (e.g. employer, Social Security Administration, or public assistance agency) is contacted to provide information. Written requests and responses are preferred. However, to clarify or complete missing information on a written response, conversations with a third party are acceptable if documented through a memorandum to the file that documents the contact person, information conveyed and date of call.

To conduct third party verifications, a grantee must obtain a written release from the household that authorizes the third party to release required information.

Some third party providers may, however, be unwilling, unable or charge a fee to provide the needed information in a timely manner. In such cases, the grantee should attempt to find suitable source documentation without the third-party verification – for example, bank statements.

Review of Documents

Source documents provided by the applicant may be more appropriate for certain types of income such as persons that are self-employed, and can be used as an alternative to the third party verification method. Source documents, such as wage statements, interest statements, unemployment compensation statements and income tax returns, etc. are reviewed to determine annual (gross) income.

Calculating Annual (Gross) Income

The Part 5 definition of annual income “inclusions” – types of income to be counted and “exclusions” – types of income that are not considered (income of minors, etc.) comes directly from 24 CFR PART 5.609.

Timing of Income Determinations

Income determinations must be completed before a tenant occupies a HOME-assisted unit. If the income determination was completed more than six months before the tenant occupies a HOME-assisted unit, the determination will need to be redone.

Remember: Income eligibility is based on anticipated income. When collecting income verification documentation, property owners (or managers) must also consider any likely changes in income. For example, last year's tax return does not establish anticipated income, nor is it adequate source documentation.

Annual Recertification of Income

Because the HOME Program imposes occupancy restrictions over the length of the affordability period, owners must establish systems to recertify tenant income on an annual basis.

Typically, each tenant's income will be examined on the anniversary of the original income evaluation or at lease renewal. However, the owner may adopt an annual schedule and perform all verifications at the same time.

When the Department performs on-site inspections of the project, it will verify that tenant income recertification documentation is in the tenant files.

Methods of Recertification

The final HOME rule allows two additional methods of income recertification, in addition to the method of collecting source documentation.

- One option is a written statement from the family indicating family size and annual income. This must include a certification from the family that information is complete and accurate, and must indicate that source documents will be provided upon request.
- Another option is a written statement from the administrator of another government program under which the family receives benefits, and that examines the annual (gross) income (not adjusted gross income) of the family each year. The statement must also indicate the family size, or provide the current income limit for the program and a statement that the family's income does not exceed that limit.

Using Alternative Recertification Methods

If the agency chooses to use either of the two alternative methods described above, owners are still required to collect full source documentation every sixth year of the tenants lease period.

Increases in Tenant Income

A tenant's income is likely to change over time. If these changes occur during the affordability period, the project owner must take certain steps to maintain compliance with HOME rent and occupancy requirements.

- The project must maintain the correct number of High and Low HOME rent units.
- Rents must be adjusted for tenants whose incomes rise above 80 percent of the area median income.
- Owners of projects assisted with HOME and Low Income Housing Tax Credits must comply with the specific requirements associated with combining these funding sources. (See additional information later in this chapter).

Keeping the Correct Number of High and Low HOME Rent Units

The owner should take the following steps to maintain the correct numbers of High and Low HOME rent units.

If the income of a tenant occupying a Low HOME rent unit increases, but **does not exceed 80 percent** of area median income, that unit becomes a High HOME rent unit. To replace the Low HOME rent unit, the owner must rent the next available comparable unit (for "floating" unit projects) or HOME-assisted unit (for "fixed" unit projects) to a very-low-income tenant (income at or below 50% of the area median income). Subject to the terms of the lease, the rent of the tenant whose income has increased may be increased to the High HOME rent for the unit. This process should not increase the number of assisted units.

If a tenant's income **increases above 80 percent** of the area median income, the unit this tenant occupies is still considered to be a HOME unit, but the tenant's rent must be adjusted as described below.

Adjusting Rent for Over-Income (Above 80% of AMI) Tenants in "Floating Units"

Over-income tenants in HOME-assisted "floating" units must pay 30 percent of their **adjusted** income for rent and utilities; however, the rent may not exceed the market rent for comparable, unassisted units in the neighborhood. Rent may only be increased at lease renewal. In projects where the HOME units float, the next available unit in the project of comparable size or larger must be rented to a HOME-eligible household. The unit occupied by the over-income tenant is no longer considered HOME-assisted subject to HOME rules after a HOME-eligible household rents a comparable unit.

Note: In units that are financed with both HOME and Low Income Housing Tax Credits (LIHTCs), the LIHTC rules apply when a tenant's income exceeds 80% of AMI. Under the LIHTC program, the tenant's rent is not adjusted, and the unit does not need to be replaced by another comparable unit until the tenant's income rises above 140 percent of the LIHTC program eligibility threshold.

Adjusting Rent for Over-Income (Above 80% of AMI) Tenants in “Fixed Units”

Over income tenants in HOME-assisted "fixed" units must pay 30 percent of their adjusted income for rent and utilities. Rent may only be increased at lease renewal. There is no rent cap for "fixed" units.

Computing adjusted income for purposes of adjusting rent for over-income tenants is derived by subtracting any of the following deductions (also called allowances) that apply to the household from a household's annual (gross) income:

- \$480 for each dependent (includes any of the following family members who are not the head of household or spouse: persons under 18, handicapped/ disabled family members, or full-time students);
- Reasonable child care expenses (for children 12 and under) during the period for which annual income is computed that enable a family member to work or go to school, if no adult is available in the household to provide child care.
- For elderly households (62 and older) only, medical expenses, including medical insurance premiums, in excess of three percent of annual income that are anticipated during the period for which annual income is computed and that are not covered by insurance.
- Reasonable expenses in excess of three percent of annual income for the apparatus and care of a handicapped or disabled family member that enable that person or another person to work that are anticipated during the period for which annual income is computed.
- \$400 for any elderly family (head of household or spouse is 62 or older or handicapped or disabled).

For a detailed discussion of calculating annual and adjusted income under Section 8 rules, see the HOME Model Series "Technical Guide for Determining Income and Allowances for the HOME Program." For up-to-date rules and requirements, consult the regulations at 24 CFR Part 5 (subpart F).

Leases

The lease between the owner and the tenant in a HOME-assisted property must be for at least one year, unless another lease length is mutually agreed upon by the tenant and the owner.

The lease between the owner and tenant in a HOME-assisted property **can not** contain any of the following provisions either explicitly stated or implied:

- Agreement to be sued
Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- Treatment of property
Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property.

- Excusing owner from responsibility
Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
- Waiver of notice
Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.
- Waiver of legal proceedings
Agreement of the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- Waiver of a jury trial
Agreement by the tenant to waive any right to a trial by jury.
- Waiver of right to appeal court decision
Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease.
- Tenant chargeable with cost of legal actions regardless of outcome
Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

Owners may terminate tenancy or refuse to renew a lease only upon 30 days' written notice, and only for: serious or repeated violation of the terms and conditions of the lease; violation of applicable federal, state or local law; completion of the tenancy period for transitional housing or for other good cause that is clearly defined in the lease.

An owner of HOME-assisted rental housing must adopt written tenant selection policies and criteria that:

- Are consistent with the purpose of providing housing for very low-income and low-income families.
- Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease.
- Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable.
- Give prompt written notification to any rejected applicant of the grounds for any rejection.

Monitoring

The Department monitors rental projects for compliance using on-site reviews and submitted reports. Grantees must keep superb records to document compliance of all requirements including demonstrating that:

- The project is marketed to qualified applicants.
- Tenants are screened for eligibility.

- Rent and occupancy targets are observed.
- Adequate property maintenance is conducted.

Hiring a qualified property manager will help ensure all necessary actions are taken. In order to verify compliance with property standards and the information submitted by owners on tenants' incomes, rents and other HOME rental requirements during a project's period of affordability, HOME rules require on-site inspections of HOME properties according to the total number of units in a project as follows:

Number of Units	Inspection Required
1 – 4	Every 3 years
5 – 25	Every 2 years
26 or more	Annually

Note: The Department may inspect properties more frequently than the HOME rules require.

HOME rules require that at least a “sufficient” sample of HOME-assisted units are inspected during an on-site visit. A good "rule-of-thumb" is that the Department will inspect at least 15 percent to 20 percent of the HOME-assisted units in a project, and a minimum of one unit in every building of eight units or more.

Record Keeping

As for all program activities, HOME requires documentation for rental projects to show that all program regulations have been met. Because of the long-term monitoring required for rental projects, however, record-keeping responsibilities are more extensive. This section briefly describes the record-keeping responsibilities associated with rental housing for the property owner.

Property Owner Records

One of the owner's responsibilities is to keep adequate records, to be able to demonstrate compliance with HOME requirements. The owner should keep both project and tenant records.

- Project records should include documentation to back-up rent and utility allowance calculations. If the project's HOME-assisted units are "floating," the owner should also keep records to show how HOME occupancy targets were met (for example, rental logs to show that as units were vacated or tenants became over-income, HOME-assisted units were properly replaced).
- Tenant files should include the documentation necessary to demonstrate that each HOME-assisted unit is properly occupied by an income-eligible tenant. Such documentation includes: the tenant's application, initial income verification documents, subsequent income recertification documents and the tenant's lease.

General rental housing records must be kept for five years after project completion. Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the affordability period.

Reporting

The Department requires that agencies submit a Rental Housing Project Compliance Report annually until the end of the project's affordability period. The form is available on the Department's website.

Other Federal Requirements

Attachment 3 identifies the other federal requirements that must be followed in implementing rental housing activities. The attachment is meant to serve as a checklist only.

Tenant Selection Procedure

An eligible Lease Agreement must contain the following requirements related to:

- Educational services the tenant must participate in
- Tenant contributions, above and beyond rent, to be used at time of home purchase (if applicable) and how these funds will be managed. The lease agreement cannot contain many prohibited provisions either explicitly stated or implied. Look for a list of prohibited provisions earlier in this chapter.

If the project is a long-term lease/purchase program, homebuyer program guidelines must include the following:

- Requirements of the Tenant, including income eligibility requirements, monthly or annual contributions to a home purchase fund, participation in educational programs, required time period of tenancy required before purchase, etc.
- Management of the Home Purchase Fund. If the tenant is making contributions to a fund that will eventually be used to purchase a home, an explanation of who will manage the fund, how it will be managed and how the funds will be distributed if the tenant is not ready, willing or able to purchase an eligible property at the end of the allowable period.
- Conflict of Interest Clause.
- Grievance Procedures.
- Process for Amending Program Guidelines, including language that amendments must be approved by the NDED Program Representative.
- Types of Assistance Provided to Purchase a Home, including NAHP funds and other sources such as employer contributions in an employer assisted housing program.
- Amounts of Assistance Allowed for Purchasing a Home, including NAHP funds and other sources such as employer contributions in an employer assisted housing program.
- Eligible Properties, including whether the tenant must by the occupied unit, the geographic boundaries where the properties must be located, etc.
- Methods for ensuring the affordability period and principle residence requirement, including project-wide recapture or resale provisions, legal instruments to be used, and how rental project affordability period requirements will be maintained if the NAHP-assisted unit is purchased prior to the end of the NAHP affordability period.

- Appropriate Lead Based Paint Procedures, if applicable.
- Relocation policy, if applicable.
- Rehabilitation process, if applicable.

Using the Low Income Housing Tax Credits with HOME Funds

There are essentially four ways HOME funds can be used with low-income housing tax credits.

Market Rate Loan

If the HOME funds are provided at or above the applicable federal rate, these funds are not treated like a federal subsidy. The project qualifies for the 9% credit for eligible improvement costs and is eligible for the 130 percent basis for projects in "qualified census tracts" or "difficult development areas" (QCT/ DDA).

Below Market Rate Loan with 9% Credit

If HOME funds are provided at an interest rate below the applicable federal rate, they may still be counted in the eligible basis and the project may receive a 9% credit if the project meets stricter occupancy requirements. The project may receive the 9% credit if 40% of the residential rental units are occupied by tenants with incomes at or below 50% of the area median income. However, such projects are not eligible for the 130 percent basis for projects in "qualified census tracts" or "difficult development areas".

Below Market Rate Loan with 4% Credit

Some projects qualify only for a 4% credit regardless of the way HOME funds are invested in the project. For example, a project with other Federal or tax-exempt mortgage revenue bond funds included in the basis is only eligible for a 4% credit under any circumstance, so HOME funds can be lent at any below market interest rate terms without consequence to the credit.

Grant

HOME funds may be provided in the form of a grant, but, they may not be counted in the eligible basis for the project, and therefore do not contribute to the credits for which the project is eligible. Therefore, a loan instrument is generally preferable to a grant. (Note that deferred payment loans are generally permissible provided the debt service accrues and there is a reasonable expectation that the loan can be repaid no later than when the loan matures.) In some cases, however, a grant of a small amount of HOME funds may be preferable to a below market interest rate loan, particularly if the project is eligible for the 130% QCT/ DDA basis. Some experts have estimated that it could be more cost effective to provide a HOME investment of up to 20% of basis as a grant rather than a loan in such circumstances.

Projects using HOME funds with Low Income Housing Tax Credits have to consider a number of items in blending the two sets of program rules. The following chart provides an overview of tax credit rules and the requirements for combining the two programs.

RULES FOR COMBINING HOME FUNDS AND TAX CREDITS

	Tax Credit Program Rules	Combining Tax Credits with HOME
Occupancy Requirements	<p>At least 20 percent of assisted units must be reserved for households with incomes at or below 50 percent of area median;</p> <p>OR</p> <p>40 percent of the units must be reserved for households with incomes at or below 60 percent of area median income.</p>	<p>If HOME funds are provided at below the market interest rate, at least 40 percent of the units must be reserved for households with incomes at or below 50 percent of the area median income to qualify for the 9 percent credit.</p> <p>Otherwise, on projects with 5 or more HOME-assisted units at least 20 percent of the units must serve households with incomes at or below 50 percent of area median income (to meet HOME requirements).</p>
Rent Requirements	<p>Rents for qualified units must not exceed the rent limit set for the program. These limits are set by bedroom size and are based on the qualifying incomes of an imputed household size. They are provided by the Nebraska Investment Financing Authority (NIFA).</p>	<p>For units to qualify as both tax credit and HOME-assisted units, rents cannot exceed either program limit. Low HOME rent units are subject to Low HOME rents and tax credit limits and High HOME rent units are subject to High HOME rents and tax credit limits.</p>
Establishing Tenant Eligibility	<p><i>Documentation</i> --Tenants must provide acceptable documentation of income from a third party source. All sources of income are verified.</p> <p><i>Definitions</i> --The tax credit program defines income using the Section 8 definition of annual (gross) income.</p> <p><i>Asset Income</i> --Assets \$5000 or less: tenants certify asset amount and income. Use actual income. Assets above \$5000: verify amount and income. Use larger of actual income from assets or imputed asset income.</p>	<p><i>Documentation</i> --Initial tenant eligibility documentation for both programs is the same.</p> <p><i>Definitions</i> --The Department also requires the use of the Section 8 definition of income for HOME.</p> <p><i>Asset Income</i> --Follow more stringent HOME rules and verify all asset income.</p>

	Tax Credit Program Rules	Combining Tax Credits with HOME
Reexaminations of Income	Reexaminations are performed annually following the same procedures as at initial certification; however, an owner may request a waiver from NIFA for reexamination requirements if all units in the project are tax credit units.	Tax credit/ HOME projects may request waivers from NIFA in order to perform reexaminations similar to HOME. Otherwise, the project must follow the more stringent tax credit requirements.
Over-Income Tenants	Rent for over-income tenants remains restricted. An owner <i>may</i> increase an over-income tenants rent, but <i>only after</i> the unit is replaced with another low-income unit in the project, thereby keeping the portion of low-income units above the minimum amount required for the owner to be eligible for the credit. "Over-income" is defined as above 140 percent of the project income limit.	HOME rules defer to tax credit rules -- rent remains restricted. (In other words, in no case can the rent exceed limits set by the tax credit program).
Monitoring	Projects are monitored annually throughout the affordability period. Statement of compliance is submitted annually with documentation of occupancy. On-site inspections are conducted by NIFA.	The Department and NIFA will each monitor according to their program requirements.

Occupancy Requirements

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

In order to take the 9 percent credit in conjunction with below-market-rate HOME funds, joint HOME/ tax credit projects must meet a higher occupancy standard than either the tax credit program or the HOME program alone requires:

- 40 percent of the units must be occupied by tenants with incomes at or below 50 percent of area median. (However, such projects are not eligible for the 130 percent increase in basis for projects in "qualified census tracts" or "difficult development areas.")

To receive the 130 percent increase, the project must either take the four percent credit, or use the HOME funds at or above the applicable federal rate.)

In all other cases, projects must ensure that they meet both sets of program rules. For example, a project receiving a market rate loan can comply with both sets of rules by establishing a 20 percent set-aside for households with incomes at or below 50 percent of the area median income (as long as all remaining HOME-assisted units are leased to tenants with incomes at or below 80 percent of the area median income).

Of course, projects may choose and may be required to exceed these standards. Owners/developers of tax credit projects will generally try to maximize their credits by creating higher set-asides for qualified occupants.

Rents

When combining the two types of funding, two sets of rent rules apply.

Qualified tax credit units must not exceed tax credit rent limits, while HOME-assisted units must meet HOME rent requirements. If a unit is being counted under both programs, the stricter rent limit applies:

- Low HOME rent units are subject to the lower of the Low HOME rent and the tax credit rent.
- High HOME rent units are subject to the lower of the High HOME rent and the tax credit rent.

When tenants receive additional subsidy through rental assistance programs such as Section 8, additional requirements apply.

- HOME allows the rent to be raised to the rental assistance program limit only if the tenant pays no more than 30 percent of adjusted income, the subsidy is project-based (not tenant-based), and the tenant's income is less than 50 percent of the area median income.

- Tax credit rules state that if the rental assistance program rent limit exceeds the tax credit rent, the unit rent may be raised to the higher limit as long as tenants pay no more than 30 percent of their adjusted monthly income for housing costs.
- In a joint tax credit/ HOME-assisted unit, the stricter HOME requirements would apply.

Establishing Tenant Eligibility

Both the HOME and tax credit programs require project owners to certify tenants' incomes, to ensure that they are income-eligible and that the project is in compliance with initial occupancy requirements.

- To demonstrate eligibility under both programs, property managers must have tenants certify their income, and obtain supporting documentation. This documentation must be kept in project unit files for review by the monitoring agencies.
- Under tax credit rules the Section 8 definition of annual (gross) income is used.
- The Department requires the use of the Section 8 definition of annual (gross) income for HOME projects.

A difference between HOME and tax credit rules is that HOME requires verification of all asset income, whereas the tax credit rules require verification of asset income if the household's assets are greater than \$5,000. For total assets of less than \$5,000, the tax credit program allows tenants to provide a signed statement of asset income.

A tenant in a unit subsidized by both sources of funds would have to comply with the stricter HOME requirements.

Reexaminations of Tenant Eligibility

The tax credit program does not allow alternative methods of tenant recertification allowed under the HOME program.

For projects with both HOME funds and tax credits, owners may seek a project waiver from the state allocating agency to allow certification documentation similar to HOME. Alternatively, the project must comply with the tax credit rules (and, thus, automatically comply with the HOME requirements).

Over-Income Tenants

The HOME and tax credit programs have slightly different approaches to over-income tenants. The definition of an over-income tenant differs under the two programs. Tax credit rules define "over-income" as having income above 140 percent of the project income limit.

Under HOME, the tenants are considered over-income if their income rises above 80 percent of area median income.

Further, unlike under HOME, the rent remains restricted under the tax credit program. An owner may increase an over-income tenant's rent, but only **after** the unit is replaced with another low-income unit in the project, thereby keeping the portion of low-income units above the minimum amount required for the owner to be eligible for the credit. To resolve this conflict, HOME rules

state that when funds from both programs are used on the same unit, the tax credit rules should be followed.

Monitoring

Both programs require annual monitoring to ensure compliance with program rules over the length of a pre-established affordability period. The Department and the Nebraska Investment Finance Authority will each monitor according to their program requirements.

Using Nebraska HOME and Local PJ HOME Funds

A project's financing may include Nebraska HOME funds and Lincoln or Omaha HOME funds. In this case, the subsidy levels, HOME-assisted unit designation, allocating costs in the project, and other related items must be decided cooperatively between the department and the local HOME PJ to ensure that all HOME requirements are met cumulatively prior to project approval.

Using HOME and Other Local, State and Federal Subsidy Programs

Nebraska HOME funds may be used with other subsidy programs, including but not limited to, Lincoln and Omaha Community Development Block Grant programs, USDA- Rural Development 515 and 538 programs, HUD 202 and 811 programs, Nebraska Energy Office interest buy-down programs, and Rehabilitation Tax Credits for historic buildings.

There are no circumstances where the HOME program specifically identifies one of these programs and defers requirements to other funding source requirements. Therefore, where both funding sources provide restrictions, the most restrictive requirement applies.

SROs AND GROUP HOUSING COMPARED

CATEGORY	SRO	GROUP
Description	Single-room occupancy units (SROs) are single-room dwelling units with either sanitary and/ or food preparation area in the unit. If project is new construction or reconstruction, it may have both. If acquisition or rehabilitation, not required to have sanitary and food preparation areas. May have common facilities. NOT student housing.	One unit with separate bedroom(s) and shared living, kitchen, dining, and/or sanitary facilities. Occupied by two or more single persons or families. NOT student housing.
Maximum Subsidy	Based on zero-bedroom unit subsidy limit times number of HOME-assisted units; common area costs prorated based on percent of HOME-assisted units.	Based on number of bedrooms, including bedrooms of caretakers.
Targeting	All tenants of HOME-assisted units must be low-or very-low-income.	All tenants, excluding live-in service providers, must be low-income.

CATEGORY	SRO	GROUP
Rents	<p>If the unit has neither food preparation nor sanitary facilities, or only one, the rent may not exceed 75 percent of the FMR for a zero-bedroom unit. The "lesser of" rule comparing the FMR to 30 percent of 65 percent of area median income and low HOME rents does not apply.</p> <p>If the unit has food and sanitary facilities, High and Low HOME rents apply. In projects with 5 or more units, 20% of the units should have Low HOME rents. Low HOME rents are defined for SROs as not more than 30 percent of the occupant's monthly adjusted income or not more than 30 percent of the gross income of a family at 50% of the area median income, adjusted for family size. High HOME rents apply to all other units. (They are defined, as for other projects, as the lesser of the FMR or 30% of 65% of area median income, adjusted for family size.)</p>	<p>Maximum rent based on appropriate FMR (based on number of bedrooms excluding rooms occupied by live-in service providers); each household pays proportionate share of rent. There is no Low HOME rent requirement.</p>
Tenancy	Permanent and transitional rental housing.	Permanent and transitional rental housing.

ELDER COTTAGE HOUSING OPPORTUNITY UNITS

Elder Cottage Housing Opportunity (ECHO) units are small, free-standing, barrier-free, energy-efficient, removable and designed to be installed adjacent to existing single-family dwellings.

- The owner of an ECHO unit must be the owner-occupant of the single-family host property on which the ECHO unit will be located, or a non-profit organization.
- During the affordability period, the tenant must be a low-income family and an elderly or disabled family as defined in 24 CFR 5.403.
- HOME rental housing restrictions apply, except for the following:
 - Only one ECHO unit may be provided per host property.
 - The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit rent, but if a rent is charged, it must meet HOME requirements.
 - The ECHO unit must meet the HOME affordability restrictions. If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:
 - Rent the unit to another eligible occupant on site;
 - Move the ECHO unit to another site for occupancy by an eligible occupant; or

If the owner of the ECHO unit is the host property owner-occupant, the owner may repay the HOME funds in accordance with the Department's recapture provisions.

DO OTHER FEDERAL REQUIREMENTS APPLY TO RENTAL ACTIVITIES?

Non-Discrimination and Equal Access Rules

Fair Housing and Equal Opportunity – Yes, must affirmatively further Fair Housing. Particular attention should be paid to signs of discrimination in leasing practices.

Regulatory Citations & References:

- ❑ 92.202 and 92.250
- ❑ Title VI of Civil Rights Act of 1964 (42 U. S. C. 2000d et. seq.)
- ❑ Fair Housing Act (42 U. S. C. 3601-3620)
- ❑ Executive Order 11063 (amended by Executive Order 12259)
- ❑ Age Discrimination Act of 1975, as amended (42 U. S. C. 6101)
- ❑ 24 CFR 5.105(a)

Affirmative Marketing – Yes, must have affirmative marketing requirements and procedures.

Regulatory Citations & References:

- ❑ 92.351

Handicapped Accessibility – Yes.

Regulatory Citations & References:

- ❑ Section 504 of the Rehabilitation Act of 1973 (implemented at 24 CFR Part 8)
- ❑ For multi-family buildings only, 24 CFR 100.205 (implements Fair Housing Act)

Employment and Contracting Rules

Equal Opportunity Employment – Yes, contracts and subcontracts for more than \$10,000 must include language prohibiting discrimination.

Regulatory Citations & References:

- ❑ Executive Order 11246 (implemented at 41 CFR Part 60)

Section 3 Economic Opportunity – Yes, if amount of assistance exceeds \$200,000 OR contract or subcontract exceeds \$100,000.

Regulatory Citations & References:

- ❑ Section 3 of the Housing and Urban Development Act of 1968 (implemented at 24 CFR Part 135)

Minority/Women Employment – Yes

Regulatory Citations & References:

- ❑ Executive Orders 11625, 12432 and 12138
- ❑ 24 CFR 85.36(e)

Davis-Bacon – Yes, if construction contract includes 12 or more units that are HOME-assisted.

Regulatory Citations & References:

- ❑ 92.354
- ❑ Davis-Bacon Act (40 U. S. C. 276a -276a-5)
- ❑ 24 CFR Part 70 (volunteers)
- ❑ Copeland Anti-Kickback Act (40 U. S. C. 276c)

Conflict of Interest –Yes

Regulatory Citations & References:

- ❑ 92.356
- ❑ 24 CFR 85.36
- ❑ 24 CFR 84.42

Debarred Contractors – Yes, check HUD's list of debarred contractors.

Regulatory Citations & References:

- ❑ 24 CFR Part 5

Other Federal Requirements

Environmental Reviews –Yes

Regulatory Citations & References:

- ❑ 92.352
- ❑ 24 CFR Part 58.35 b(5)
- ❑ National Environmental Policy Act (NEPA) of 1969

Flood Insurance – Yes, must obtain flood insurance if located in a FEMA designated 100-year flood plain. Community must be participating in FEMA's flood insurance program.

Regulatory Citations & References:

- ❑ Section 202 of the Flood Disaster Protection Act of 1973 (42 U. S. C. 4106)

Site and Neighborhood Standards – Yes, for new construction only.

Regulatory Citations & References:

- ❑ 24 CFR 893.6(b)

Lead-Based Paint – Yes, for pre-1978 units. Applies to HOME and non-HOME-assisted units. Requirements differ depending on whether rehabilitation work is performed. Rehabilitation notices to owners. Paint testing of surfaces to be disturbed. Risk assessment, if applicable, based on level of rehabilitation assistance. Appropriate level hazard reduction activity (based on level of rehabilitation assistance). Safe work practices and clearance. Provisions included in all contracts and subcontracts.

Regulatory Citations & References:

- ❑ 92.355
- ❑ Lead Based Paint Poisoning Prevention Act of 1971 (42 U. S. C. 4821 et. seq.)
- ❑ 24 CFR Part 35
- ❑ 982.401(j) (except paragraph 982.401(j)(1)(i))

Relocation – Yes. Displacement must be minimized; existing tenants must be provided a reasonable opportunity to lease a dwelling unit in the building upon completion of the project. Reimbursement for temporary relocation, including moving costs and increase in monthly rent/utilities, must be provided, as well as advisory services.

Regulatory Citations & References:

- ❑ 92.353
- ❑ Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U. S. C. 4201-4655)
- ❑ 49 CFR Part 24
- ❑ 24 CFR Part 42 (subpart B)
- ❑ Section 104(d) "Barney Frank Amendments"