



HOME Investment Partnership Policies & Procedures Manual

City of Boulder, Department of Housing & Human Services

City of Boulder – HOME Policies & Procedures Manual
Updated October 2022

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Introduction

The Home Investment Partnerships Program was established by Title II of the Cranston-Gonzales National Affordable Housing Act signed into law in 1990 (NAHA). The HOME Program is designed to strengthen public-private partnerships and to expand the supply of safe, sanitary, and affordable housing. Primary attention is given to rental housing for very low- and low-income households.

HOME funds are used to achieve the following objectives:

- To provide decent affordable housing to lower-income households.
- To expand the capacity of non-profit housing providers.
- To strengthen the ability of state and local governments to provide housing.
- To leverage private sector participation.

Eligible activities are defined in accordance with the following categories:

- Housing rehabilitation,
- Homebuyer activities,
- Rental housing activities, & Tenant-based Rental Assistance (TBRA).

The primary purpose of this manual is to serve as the City of Boulder's administrative policies and procedures for the HOME Program. It also serves as a quick reference for the new HOME Final Rule dated July 24, 2013. This Policies and Procedures Manual addresses the following purposes:

- To provide uniform guidance on the administration of the City's HOME Program. While it conforms to federal rules and guidelines, it focuses primarily on locally crafted procedures.
- To ensure that all stakeholders, including applicants for funding, local jurisdictions and other interested residents, have access to information about program administration.
- To demonstrate to HUD that the HOME Program is administered in a way that is consistent with federal regulations and guidelines.

This policies and procedures manual is not intended to be a substitute for HOME regulations, but as a supplement to them. It is not exhaustive regarding all considerations affecting the use of HOME funds. The City of Boulder reserves the right to add, remove, or change policies, procedures or forms in this manual. Notwithstanding any information contained herein, where a conflict of language or omission of requirements occurs, the requirements of the Federal Notice and HUD Guidance on the HOME Program, as may be amended, shall prevail.

Definitions

Action Plan: The one-year portion of the Consolidated Plan. It includes the PJ's annual application for HOME funds.

Adjusted Income: Adjusted income is annual (gross) income reduced by deductions for dependents, elderly households, medical expenses, handicap assistance expenses and childcare (these are the same adjustment factors used by the Section 8 Program). Adjusted income is used in HOME to compute the actual tenant payment in TBRA programs and the low HOME rent in rental projects in which rents are based on 30% of a household's income.

Affordability: The requirements of the HOME Program that relate to the cost of housing both at initial occupancy and over established timeframes, as prescribed in the HOME Final Rule. Affordability requirements vary depending upon the nature of the HOME assisted activity (i.e., homeownership or rental housing).

Annual Income: The HOME Program allows the use of one of two definitions of annual income: as defined at 24 CFR 5.609 (known a Part 5 definition), or adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual Federal annual income tax purposes.

Commitment: Commitment means (1) The City of Boulder as a participating jurisdiction has executed a legally binding written agreement with a subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing, provide down payment assistance, or provide tenant-based rental assistance; or has met the requirements to commit to a specific local project, as defined in paragraph (2) of this definition. (See § 92.504(c) for minimum requirements for a written agreement.) An agreement between the City of Boulder and a subrecipient that is controlled by the City of Boulder (e.g., an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment. An agreement between the representative unit and a member unit of general local government of a consortium does not constitute a commitment. In addition, and only until October 21, 2013, a properly executed written agreement reserving a specific amount of funds for a CHDO may constitute a commitment. As of October 22, 2013, the requirements for commitment to a specific local project will apply to all CHDO fund commitments.

Consolidated Plan: plan prepared in accordance with the requirements set forth in 24 CFR Part 91 which describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including HOME.

Community Housing Development Organization (CHDO): A private, nonprofit organization that meets a series of qualifications prescribed in the HOME regulations at 24 CFR Part 92.2. The HOME New Rule requires that CHDO's have paid staff with demonstrated capacity appropriate to the CHDO's role (this requirement cannot be met through volunteer, donated staff, shared staff, or board members). A participating jurisdiction must award at least 15 percent of its annual HOME allocation to CHDOs.

CHDO Set-Aside: Each year a minimum of 15% of the HOME annual allocation must be set-aside for award to a project in which a certified CHDO is the developer, owner or sponsor as established in 92.300. If the CHDO owns the project in partnership, it must be the sole general partner or sole general manager with effective control.

Extremely Low-Income Households: Those households earning less than 30 percent of the median family income.

Fair Market Rent (FMR): Published by HUD, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe and sanitary rental housing of a modest (non-luxury) nature with suitable amenities. The FMRs are the maximum eligible rent levels allowed under the Section 8 Housing Choice Voucher Program.

First-Time Homebuyer: An individual and his or her spouse who have not owned a home during the three-year period prior to purchase of a home with HOME funds. Definition also includes an individual who is a displaced homemaker or single parent as defined by HUD.

Fixed HOME Unit: Specific units that are designate HOME assisted and subject to HOME rent and occupancy requirements throughout the Period of Affordability. The designated units never change during the Period of Affordability.

Floating HOME Unit: 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.

Final Rule: The Final HOME Rule was published at 24 CFR Part 92 on July 24, 2013 and became effective on August 24, 2013

Group Home: Housing occupied by two or more single persons or families consisting of common space and/or facilities for group use by the occupants of the unit, and (except in the case of shared one-bedroom units) separate private space for each family.

HOME-Assisted Units: A term that refers to the units within a HOME project for which rent, occupancy and/or resale restrictions apply. The number of units designated as HOME-assisted affects the maximum HOME subsidies that may be provided to a project.

HOME Funds: All appropriations for the HOME Program, plus all repayments and interest or other returns on the investment of these funds.

HOME Rents: Rents of HOME assisted units cannot exceed the High and Low HOME rent levels that have been established by HUD. Rents cannot exceed 30% of the targeted AMI for the appropriate unit size.

Household: One or more persons occupying a housing unit.

Housing: Includes manufactured housing and manufactured housing lots, permanent housing, housing for disabled homeless persons, transitional housing, single room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing *does not* include emergency shelters, (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, halfway houses, dormitories (including those for farm workers), and student dormitories and all types of student housing.

HUD Low-Income Households: Households whose annual incomes does not exceed 80% of the Area Median Income (AMI), with adjustments for smaller and larger families.

IDIS: The Integrated Disbursement and Information System, a HUD-operated computer network utilized to set-up projects, monitor budgets, draw funds and file necessary reports for HUD-funded projects.

Jurisdiction: A state or unit of local government.

Match: The local contribution to HOME program activities. The match contribution must equal not less than 25 percent of the HOME funds drawn down in that fiscal year.

New Construction: The creation of new dwelling units in a project that includes the creation of new or additional dwelling units in an existing structure.

Participating Jurisdiction (PJ): The term given to any state, local government or consortium that has been designated by HUD to administer a HOME Program. HUD designation as a PJ occurs if a state or local government meets the funding thresholds, notifies HUD that they intend to participate in the program and has a HUD-approved Consolidated Plan.

Program Income: Gross income received by City of Boulder, or a subrecipient directly generated from the use of HOME funds or matching contributions.

Project: A site or an entire building or two or more buildings, together with the site or sites on which the building or buildings is located, that are under common ownership, management and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking. The HOME Final Rule eliminated the requirement that all buildings fall within a four-block radius.

Project Completion: All necessary title transfer requirements and construction work have been performed; the project complies with all HOME requirements; the final draw-down of HOME funds has been disbursed for the project; and the project completion information has been entered in the disbursement and information system established by HUD (IDIS), except that with respect to rental housing project completion, for the purposes of § 92.502(d) of this part, project completion occurs upon completion of construction and before occupancy. For TBRA, project completion means the final draw-down has been disbursed for the project.

Reconstruction (also Rehabilitation): The rebuilding, on the same lot, of housing standing on a site at the time of project commitment. Except that housing that was destroyed may be rebuilt on the same lot if HOME funds are committed within 12 months of the date of destruction the number of housing units on the lot may not be changed as part of the reconstruction project, but the number of rooms per unit may change. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing.

Single-Room Occupancy (SRO): Housing consisting of single-room dwelling units that is the primary residence of its occupant or occupants. The unit must contain food preparation and/or sanitary facilities if the project involves new construction, conversion of non-residential space, or reconstruction. If the units do not contain sanitary facilities, the building must contain sanitary facilities shared by the tenants. SRO must be in compliance with the local zoning regulations.

Subrecipient: A public agency or nonprofit organization selected by the City of Boulder to administer all or a portion of the City's HOME Programs or Projects. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a sub recipient.

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

Tenant-Based Rental Assistance (TBRA): A form of direct rental assistance in which the recipient tenant may move from a dwelling unit with a right to continued assistance. Includes security and utility deposits associated with the rental of dwelling units.

Uniform Physical Condition Standards (UPCS): Uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair pursuant to 24 CFR 5.703. These are newly adopted standards for HOME rehab, acquisition, and TBRA projects. Effective 1/24/2015.

Very Low-Income Household: A household whose annual incomes do not exceed 50 percent of the median income for the area (adjusted for family size).

Chapter 1: General Requirements

Eligible Activities

HOME funds may be used to develop and support affordable rental housing and homeownership affordability through:

- Acquisition (including assistance to homebuyers),
- New construction (includes adding additional units to an existing structure), reconstruction, or rehabilitation of non-luxury housing with suitable amenities, including related costs such as:
 - Real property acquisition,
 - Site improvements,
 - Demolition, and
 - Other eligible expenses including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations;
- Tenant-based rental assistance to eligible household(s), including security deposits;
- Operating expenses of community housing development organizations.

All housing supported with HOME funds must be permanent or transitional housing. The specific eligible costs for these activities are set forth in 24 CFR 92.206 through 209. The activities and costs are eligible only if the housing meets the property standards as outlined at 24 CFR 92.251 upon project completion.

Eligible Applicants

Public agencies, nonprofit organizations, and for-profit entities are all eligible to apply to City of Boulder for HOME funds. Fund recipients are classified into one of three categories:

- Subrecipients: A subrecipient is a public agency or nonprofit housing service provider selected by the City of Boulder to administer HOME-assisted projects or programs.
- Developers, Owners, Sponsors: For-profit entities, housing authorities, nonprofit organizations, and CHDOs can receive HOME funds in the roles of developers, owners, and sponsors of eligible activities.
- Community Housing Development Organizations (CHDO): A CHDO is a private nonprofit organization which meets certain specific criteria, including having 1) IRS tax exempt status, 2) a mission/purpose related to housing and service to a low-income community, and 3) a board composition which includes one-third low-income residents or their representatives.

Eligible Properties:

- 1-4 Single family unit homes
- Condominiums/Cooperatives
- Acquisition, rehabilitation, or new construction of affordable multi-family rental housing.
- Group Homes
- Transitional Housing & Single Room Occupancy Units
- Permanent Supportive Housing

- May be one or more buildings on a single site, but project must be assisted with HOME funds as a single undertaking.

Forms of Subsidy [92.205(b)]

HOME allows a variety of financial assistance for eligible projects and to eligible beneficiaries. The City of Boulder determines the terms of assistance it will provide. HOME regulations list the following forms of assistance as eligible:

- Interest or Non-Interest-Bearing Loans or Advances: Amortizing loans, with or without accruing interest. Repayment is expected on a regular basis so that over a fixed period of time all of the principal and interest is repaid. The term of the loan may vary and the property or other assets are used as collateral.
- Deferred Loans (forgivable or repayable): Principal and interest payments are deferred until some point in the future. Deferred loans can be structured in a variety of ways and terms may differ greatly. Deferred payment loans use the property or another form of collateral as security for repayment.
- Grants: No requirement of repayment.
- Equity Investments: An investment made in return for a share of ownership. Under this form of subsidy, the City acquires a financial stake in the assisted property and is paid a monetary return on the investment if money is left after expenses and loans are paid.
- Loan Guarantees & Accounts: HOME funds may be pledged to guarantee loans or to capitalize a loan guarantee account. A loan guarantee or loan guarantee account ensures payment of a loan in case of default.
- Generally, HOME assistance for development projects will be in the form of an amortized, deferred loan, or grant. Funding Agreements will establish the minimum HOME affordability period, based on the funding amount. Some forms of assistance will require legal instruments for implementation. The City of Boulder is required to get HUD approval before providing HOME funds in any form not specified in 92.205(b)(1). HUD must approve alternative forms of assistance in writing, independent of the consolidated plan.

Distribution of Funding [92.201(a)]

The City of Boulder distributes HOME funds geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in its approved Consolidated Plan. The City of Boulder only invests HOME funds in eligible projects within its boundaries. The city's funding process, application requirements, and schedule is outlined in the Funding Policies published on the city's website. <https://bouldercolorado.gov/media/2522/download?inline?inline>

The City solicits applications through the Competitive Process. The City will contact those agencies which have shown interest in or are known to do business relevant to the program. In addition, notification to the public is made through advertisement in local print media, and notices on the City website. All interested parties are invited to submit a proposal for consideration. The most current application forms may be accessed through the City's website.

<https://bouldercolorado.gov/services/affordable-housing-investments>

Potential City of Boulder HOME projects will be presented, assessed, prioritized and selected based on the funding recommendations made by the Technical Review Group and approved by the City Manager.

Subsidy Limits [92.250(b)]

The maximum per unit HOME subsidy varies by metropolitan area and is based on Section 221(d) (3) limits. HUD calculates these maximum amounts by area annually. The minimum amount of HOME funds that must be invested in any project is \$1,000 for every HOME-assisted unit in the project. The minimum relates only to HOME funds, not to any other funds, including a match that might be used for project costs.

Subsidy Layering & Underwriting Guidelines [92.250(b)] and [92.254(f)]

Before committing funds to a project, The City will evaluate the proposal to determine that there will be a reasonable level of profit or return on owner's or developer's investment in a project and that no more HOME funds is invested, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for the entire affordability period. At minimum, the city will:

- Examine the sources and uses of funds for the project to determine that the costs are reasonable to provide quality affordable housing throughout the affordability period.
- Assess, at minimum, the current market demand in the neighborhood in which the project will be located. The level of review in the market assessment may vary, depending on project scale and complexity.
- Evaluate the qualifications of the developer, including experience and financial capacity which are outlined in the funding application.
- Verify that there are firm written financial commitments for the project.
- All documents referenced above will be maintained in the project file.

The City of Boulder will conduct a subsidy layering review prior to the award of any funds. The City will evaluate the reasonableness and need for the requested assistance by analyzing pro-formas for cash flow, debt-coverage ratios, and the appropriateness of fees charges with and without the HOME funds. The City will review and keep project records demonstrating that each housing project meets required subsidy layering guidelines. Subrecipients or Recipients are required to submit a pro forma with their application that includes achievable rent levels, market vacancies, and operating expenses.

Cost Reasonableness Analysis

The city will review costs to determine if they are necessary (required to implement the project) and reasonable and document the findings. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. At minimum, this analysis will include:

- a. A review and approval of cost estimates and make a determination that the costs are reasonable.
- b. Evidence of the subtraction of HOME-ineligible costs from the total development costs
- c. Assessment of the developer's profit or return on investment to ensure that it does not exceed the city's established standards; and

- d. Verify that all soft costs charged to the HOME program are eligible.

Developer/Owner Return on Investment

Owners/Developers may financially benefit from HOME-assisted projects in several ways:

- a. Developer fees
- b. Sales revenues
- c. Tax benefits
- d. Equity appreciation
- e. Identity of interest (IOI) roles

The HOME regulations at (§92.250(b) require that any profit or return on the owner’s or developer’s investment will not exceed established standards. This analysis includes profit that is projected to flow to the developer as operating cash flow from rental projects, sales proceeds from homebuyer units (if not considered as program income by the City) and any other professional fees being paid to the developer or related entities.

The City will determine a reasonable limit for overall returns and cash flow distributions to ensure that owners do not receive excessive gains/profits from the project as a result of HOME. Developers and owners are permitted to financially benefit from HOME-assisted projects in several allowable ways. Developer fees are charged by the developer as part of the project cost to compensate for the risk, time and effort to build and sell or lease the property. Developer fees are allowed under the HOME program but must fall within reasonable limits.

The City’s developer fee schedule reflects the local market and is based on the following:

- The scope and complexity of the project being developed;
- The size of the project;
- The relative risk the developer is taking;
- The costs a developer will incur from the fee as compared to those being charged as project costs;
- The fees that are regularly and customarily allowed in similar programs and projects; and,
- Other fees the project is generating for the developer and its related entities.

Allowable Developer Fee		
Rehabilitation	Acquisition	New Construction
<25 units = 10%	Without rehabilitation 10%	<25 units = 15%
>25 units = 5%	With rehabilitation = 5%	>25 units = 10%

- Sales revenues: Developers of for-sale properties may keep some or all of the sales proceeds, as deemed reasonable by the City.
- Cash-Flow: Assuming that the rental property is properly structured and financed, successfully attracts residents, and is effectively managed; the project likely will have net cash-flow after the payment of debt service. Cash-flow is distributed to the owner and/or investors as a return on their original investment.

- Tax Benefits: Rental owners and/or investors can also benefit from tax savings—a reduction in the income taxes they owe due to tax losses or tax credits.
- Equity Appreciation: Over time, the value of the rental project sponsor/owner’s ownership share in the project will increase as debt financing is paid down (due to the portion of debt service that is applied to the loan principal), and depending on market conditions, the property appreciates in value.
- Identity of Interest (IOI) Roles: Some developers may also own construction companies and if this company is used for the HOME project, the construction firm may earn reasonable profit and overhead as a component of the development budget. If the rental property owner also operates a property management company contracted to service the property, the developer may earn fees from those activities. These and other IOI contracts require additional scrutiny to make sure that they are clearly disclosed, priced at arms-length rates, and subject to cancellation if the IOI contractor does not provide acceptable service.
- City will also consider how the sales revenues will be distributed, especially if the HOME assistance was provided as a grant to the developer or if the unit sells for more than the development cost. In instances where sales prices have appreciated and/or the project finishes under budget, the City shall share in unanticipated sales revenues pro rata with the developer (split pro rata by federal vs. non-federal level of investment).

Profit from rental project operations must also be analyzed and determined to be reasonable. The simplest evaluation is the cash flow return on the investment. The cash-on-cash rate of return measures the annual cash-flow that is distributed to an investor as a percentage of the funds invested ($\text{Annual Cash Flow/Equity Invested} = X\%$). An evaluation of what constitutes an acceptable rate of cash-on-cash return depends upon the perceived level of risk in the project (is cash flow actually going to be there) and the level of return available in other investments (e.g., what is the going rate on lower risk investments such as Treasuries).

For projects where developers do not actually invest equity into a project (other than that from the syndication of tax credits), returns may be evaluated against guidelines on reasonable per-unit per-year cash flow allowances and can be controlled by: requiring annual installment payment on HOME loans; requiring reduced rents on affordable units to serve lower-income tenants, or other means.

Developers shall adhere to the City’s standards related to the use and distribution of project cash flow, including payment to reserves, payment of related party fees (e.g., asset management fees, investor service fees, incentive or performance fees) to the developer or owner, and the relative priority of distribution for net cash flow.

The city will conduct an analysis which includes profit that is projected to flow to the developer as operating cash flow from rental projects, sales proceeds from homebuyer units and any other professional fees being paid to the developer or related entities. The city will ensure that any profit or return on the owner’s or developer’s investment will not exceed the city’s established standards.

Minimum Proforma Underwriting Assumptions

The following guidelines are established in the city’s Funding Policies.

Debt Coverage Ratio (DCR)	Minimum 1.15			
Per Unit Per Annum Expenses (P.U.P.A)	Minimum \$3,900 excluding replacement reserves, higher for projects that are providing additional services, and \$5,000 for project-based Section 8 developments. For senior-only projects, a lower P.U.P.A. is acceptable if documentation of actual expenses from an existing senior-only deal is made available. A lower P.U.P.A. is acceptable for projects that are exempt from real estate taxes if evidence of the exemption and county estimates of per unit taxes is provided.			
Replacement Reserve	\$300/unit (\$250/senior units)			
Operating Reserve	At least 4 months of projected annual operating expenses and 4 months of debt service payments.			
Vacancy Rate	Reflect current Boulder rental vacancy rate			
Allowable Developer or Administrative Fee Deferred Developer Fee allowed up to 50% of total fee. NOTE: If project is using LIHTC, the city will defer to CHFA limits as published in the QAP in effect at the time of the award	<i>Rehabilitation</i> <25 units = 10% >25 units = 5%	<i>New Construction</i> <25 units = 15% >25 units = 10%	<i>Acquisition</i> With improvements = 10% Without improvements = 5%	<i>Capital Improvement Projects (Community Development only)</i> 2.5% project costs. Requires 1 to 1 financial match.

Developer Capacity

The developer must have the organizational capacity to implement the project. Developer capacity will be evaluated on the information demonstrating experience and skills as provided in the funding application.

1. Experience: Considerations include, but may not be limited to, the following skills of the developer and development team.
 - Recent, similar, successful experience
 - Similar project location, size and scope
 - Years of experience developing affordable housing
 - Managing affordable rental projects
 - Using multiple funding sources
 - Adequate staffing with appropriate experience to their roles in the project
 - Previous working history with the Department
2. Skills: Considerations include, but may not be limited to, the following skills of a developer and the development team:
 - Project management
 - Market analysis
 - Site selection and control
 - Property management

- Planning and construction
- Design, architecture, engineering
- Legal and accounting
- Federal funding rules
- Other funding source rules

3. Fiscal Soundness: The applicant will be asked to provide evidence of financial ability to implement the project. Applicants will be required to provide proof of commitments from other funding sources, current financial statements and proof of sufficient reserves or a line of credit available, if necessary, to complete the project.

Cost Allocation [92.205(d)]

Projects containing both HOME and Non-HOME units, HOME funds may be used to assist one or more housing units in a multi-unit project. Only the actual HOME eligible development costs of the assisted units may be charged to the HOME program.

There are three methods to allocate costs:

1. Standard Method - may be used in all projects, always used when units are not comparable
2. Proration Method - may only be used when units are comparable
3. Hybrid Method - also requires comparable units

- a. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a Standard Method of cost allocation.
- b. If the assisted and non-assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the HOME- assisted units can be determined by prorating the total HOME eligible development costs of the project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME-assisted units in the project.

The city uses the Cost Allocation Tool to ensure compliance with 24 CFR 92.205(d) and ensures that all ineligible costs are subtracted. The city will not commit HOME funds to a project until:

- A project is identified
- Environmental review requirements have been met
- A budget and production schedule is established
- All necessary financing is secured
- Underwriting and subsidy layering is complete (including assessment of market and developer capacity)
- Construction is expected to start within 12 months of execution of the Funding Agreement

Financial Management [92.504(d)]

Projects and programs receiving HOME funds must abide by the financial management requirements of 2 CFR 200 Subpart D. Projects and programs must demonstrate:

- Accurate, current, and complete disclosure of financial results of each federally sponsored project/program.
- Accounting records which accurately detail the source and application of Federal funds.
- Effective control and accounting of funds and properties.
- Budgetary control with comparisons of outlays to budgets.

- Proper case management.
- Written procedures to determine allowable costs; and
- Source documentation for expenses and revenue.

The City of Boulder Procurement Policies & Procedures Manual can be found under the Purchasing Division's website.

https://work-static.bouldercolorado.gov/docs/City_of_Boulder_Purchasing_Manual_Signed_7_7_2020-1-202007080957.pdf

Disbursement of Funds

With the exception of acquisition and financing costs, HOME funds are available for reimbursement for eligible expenses. All costs must be in direct relation to the approved activities and budget, supporting documentation of all expenditures is required for all costs paid with HOME funds. All construction costs will have a minimum 10% retainage withheld from the total allocation. The city will release the retainage after construction is complete and all reporting and compliance requirements have been satisfied.

Match Contribution Requirement [92.218]

The City is required to match at least 25% of the HOME funds that are spent on projects/programs. "Match" can be provided through cash, assets, services, labor, and other contributions of value to the HOME program. Federal resources (i.e., CDBG funds) are not an eligible source of match.

Match does not have to be provided on a project-by-project basis. The match requirement applies to the expenditure of HOME funds on projects/programs in a given federal fiscal year (October 1 - September 30). Match is tracked on an ongoing basis using a HUD provided (HUD form 40107). This information is monitored and maintained by the City. The City will only commit HOME funds up to the percent that banked match will allow.

Eligible sources of matching funds include:

- Cash from a non-federal source
- Value of waived taxes, fees, or charges
- Value of donated land
- Cost of infrastructure improvements
- 25% to 50% (depending on the type of bonds) of the proceeds of government issued housing bonds provided as a loan to a project
- Value of donated materials, equipment, labor, or professional services
- Sweat equity
- Costs of supportive services for residents of HOME projects

Uniform Administrative Requirements [92.505]

The requirements of 2 CFR 200 apply to the City of Boulder and its Subrecipients or Recipients receiving HOME funds, except for the following provisions: 200.306; 200.307; 200.308 (not applicable to City of Boulder only); 200.311 (except as provided by 92.557); 200.312; 200.329; 200.333; 200.334. The provisions of 2 CFR 200.305 apply as modified by 92.502(c). If there is a conflict between definitions in 2 CFR part 200 and 24 CFR part 92, the definitions in 24 CFR part 92 govern.

Project/Activity Set-Up in IDIS

Once a project/activity has been approved for funding, the project/activity will not be set-up in IDIS

until after the execution of the appropriate written agreement(s).

Reporting Accomplishments/Beneficiaries in IDIS

The City of Boulder requires HOME Accomplishments and beneficiary data to be entered into IDIS within 120-days of the final project draw.

Affirmative Marketing & Minority Outreach [92.351]

All Subrecipients or Recipients must undertake outreach efforts in accordance with state and federal fair lending regulations to assure nondiscriminatory treatment, outreach, and access to the Program. Subrecipients or Recipients must inform potential applicants of the program via flyers, public notices, local media articles, or meetings with Subrecipients or Recipients staff. The marketing information will include basic eligibility requirements, a general description of the Program, and the appropriate Fair Housing logo.

The Subrecipients or Recipient's marketing approach must address: (1) how the program will be announced (i.e., which media and other sources); (2) where applications will be taken (i.e., at one site or more); (3) when applications will be accepted (i.e., daily, during normal working hours, or extended hours for a specified period); and (4) the method for taking applications (i.e., in person, by mail).

The Subrecipients or Recipients must maintain a file that contains all marketing efforts (i.e., copies of newspaper ads, memos of phone calls, copies of letter, etc.) The records, which help assess the results of these actions, must be available for inspection by the City.

The Subrecipients or Recipients also has an obligation to assure that information about the program reaches the broadest possible range of potentially qualified applicants. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible without regard to race, color, national origin, sex, religion, familial status or disability.

To further fair housing objectives, the Subrecipients or Recipients should identify those households that have been determined to be "least likely to apply," and determine what special outreach activities, including placing advertising in minority-specific media, will ensure that this population is fully informed about the program. The Subrecipients or Recipients should work with the City to assure that all marketing initiatives and materials adequately reflect the available assistance types.

Conflict of Interest [92.356]

The conflict-of-interest provision of 92.356(b) specifies that the type of conflict is a financial benefit or interest. Elected or appointed officials, who do not receive a salary, or any other financial compensation are not in conflict of interest. Conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, board member, loan committee member, elected official or appointed official of the City of Boulder or the Recipient that is receiving HOME funds

In the procurement of property and services by Subrecipients or Recipients, the conflict-of-interest provisions respectively, apply. Any person who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities, may not have an interest in any contract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their

tenure or for one year thereafter.

Occupancy of HOME units is prohibited to immediate family members of an officer, employee, agent, elected or appointed official or consultant of an owner, developer or sponsor during the HOME period of affordability. The Subrecipient or Recipient shall ensure that officers, employees, agents or consultants will not occupy any HOME assisted affordable housing units in the project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the CHDO who occupies a housing unit as the project manager or maintenance worker.

The Subrecipient or Recipient must maintain a written code of standards of conduct that will govern the performance of its officers, employees, or agents engaged in the award and administration of contracts funded with Federal dollars.

Consultant Activities [92.358]

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event shall such compensation exceed the limits in effect under the provisions of any applicable statute. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.

Program Accessibility

Section 504 of the Rehabilitation Act of 1973 requires that a HOME-funded activity, when viewed in its entirety, is usable and accessible to persons with disabilities. The obligation to provide accessible units, in accordance with 24 CFR 8.22 and 8.23 is broader and includes the following:

All program activities, including public hearings, homebuyer briefings, counseling sessions, and meetings should be held in locations that are accessible to persons with disabilities. Information about all programs and activities should be disseminated in a manner that is accessible to persons with disabilities. Auxiliary aids and special communication systems should be used for program outreach, public hearings related to housing programs, and other program activities.

Reasonable steps should be taken to provide information about available accessible units to eligible persons with disabilities. Homebuyer projects are not required to produce accessible units but reasonable accommodations during the application process are required for any buyers with accessibility needs. Program advertising should acknowledge that the program will work with households with accessibility needs. Should a successful homebuyer applicant have a need for a unit with an accessible design, the program must accommodate those needs. Information about the accessibility requirements of HOME-funded multifamily housing is included in the rental housing chapter of this manual.

Section 504 Barrier Removal Standards for Multifamily Housing

For new construction of rental or owner-occupied multifamily projects of four or more units, a minimum of 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments. The total number of units in a HOME-assisted project, regardless of whether they are all HOME-assisted, is used as the basis for determining the minimum number of accessible units. Also, in a project where not all the units are HOME-assisted, the accessible units may be either HOME-assisted or non- HOME-

assisted. The standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards, although deviations are permitted in specific circumstances. Accessible units must be, to the maximum extent feasible, distributed throughout the projects and sites and must be available in a sufficient range of sizes and amenities so as not to limit choice.

Owners and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps. They must also take reasonable non-discriminatory steps to maximize use of such units by eligible individuals. When an accessible unit becomes vacant, before offering the unit to a non-handicapped individual, the owner/manager should offer the unit first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.

All HOME programs require adherence to the three following regulations governing the accessibility of Federally assisted buildings, facilities, and programs:

- Americans with Disabilities Act (42 U.S.C. 1213; 47 U.S.C. 155, 201, 218 and 225): Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. The Act also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable, and able to be carried out without much difficulty or expense.
- Fair Housing Act: Multifamily dwellings must meet the design and construction requirement at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19).
- Section 504: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in Federally assisted programs on the basis of disability. Section 504 imposes requirements to ensure that “qualified individuals with handicaps” have access to programs and activities that receive Federal funds. Under Section 504, Subrecipients or Recipients are defined more broadly than under the HOME program and include any entity that receives Federal funding. Section 504 requirements are summarized below:
 - For new construction of multifamily projects, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent of the units (but not less than one unit) must be accessible to individuals with sensory impairments.
 - The Section 504 definition of substantial rehabilitation of multifamily projects includes construction in a project with 15 or more units for which the rehabilitation costs will be 75 percent or more of the replacement cost. In such developments, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent of the units (but not less than one unit) must be accessible to individuals with sensory impairments.
 - When rehabilitation less extensive than substantial rehabilitation is undertaken,

alterations must, to the maximum extent feasible, make the unit accessible to and usable by individuals with disabilities, until 5 percent of the units are accessible to people with mobility impairments. Alterations to common spaces must, to the maximum extent feasible, make the project accessible.

- Accessible units must be, to the maximum extent feasible, distributed throughout projects and sites and must be available in a sufficient range of sizes and amenities so as to not limit choice.
- Owners and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities. They also must take reasonable nondiscriminatory steps to maximize use of such units by eligible individuals.
- When an accessible unit becomes vacant, before offering the unit to a nondisabled individual, the owner/manager should offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.
- The usual standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS), although deviations are permitted in specific circumstances.
- Individuals with disabilities must be able to find out about, apply for, and participate in Federally- assisted programs or activities.
- Special communication systems may be needed for outreach and ongoing communication.
- Policies and procedures must be nondiscriminatory.
- Employers must not discriminate.
- Employers must remove physical and administrative barriers to employment.
- Employers must make reasonable accommodations for individuals with known disabilities.
- If Subrecipients or Recipients have 15 or more employees, they must:
 - ✓ Designate a Section 504 Coordinator, and
 - ✓ Notify program participants and employees of non-discrimination policies.
- All Subrecipients or Recipients should conduct self-evaluations of compliance with Section 504.
- For any Subrecipient or Recipient principally involved in housing or social services, all of the activities of the agency – not just those directly receiving Federal assistance – are covered under Section 504.

- Contractors and vendors are subject to Section 504 requirements only in the work they do on behalf of a Subrecipient or Recipient.
- The ultimate beneficiary of the Federal assistance is not subject to Section 504 requirements.
- Under Section 504, Subrecipients or Recipients are not required to take actions that create undue financial and administrative burdens or alter the fundamental nature of the program.

Non-Discrimination

No person shall be excluded from participation in, denied the benefit of, or be subject to discrimination under any program or activity funded in whole or in part with HOME funds on the basis of religion or religious affiliation, age, race, color, creed, gender, sexual orientation, marital status, familial status, physical or mental disability, gender identity or expression of a person, national origin, ancestry, military status, or other arbitrary cause.

Reasonable Accommodations for Persons with Disabilities

Employers receiving HOME funds may not discriminate against prospective or current employees with disabilities. Employers must remove physical and administrative barriers to employment and make reasonable accommodations for employees with known disabilities.

Minority, Women & Disadvantaged Business Enterprises

The City of Boulder encourages participation by business enterprises owned by minorities and women, and disadvantaged business enterprises (M/W/D-BE). Contracts for the procurement of services should be awarded to the maximum extent possible to M/W/D-BE. 2 CFR Part 200 of the Uniform Administrative Requirements outlines recommended steps for achieving participation goals.

Procurement

Subrecipients or Recipients receiving HOME funds must comply with the procurement requirements of 4 CFR Part 200, with the exception of currently certified CHDOs undertaking CHDO-eligible projects (as stated in HUD CPD Notice 97-11).

Environmental Review [92.352]

Prior to entering into a contract with a Subrecipients or Recipients, a federal Environmental Review will be completed in compliance with the National Environmental Policy Act (NEPA) and other related federal and state environmental laws. No choice-limiting activities may be undertaken by the applicant for HOME funds during the time between the submission of the application and the completion of the Environmental Review (receipt of Authority to Use Grant Funds from HUD).

The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. The applicability of the provisions of 24 CFR part 50 or part 58 is based on the HOME project (new construction, rehabilitation, acquisition) or activity (tenant-based rental assistance) as a whole, not on the type of the cost paid with HOME funds.

The City of Boulder as the Responsible Entity assumes responsibility for environmental review, decision making, and action for each activity that it carries out with HOME funds, in accordance

with the requirements imposed on a recipient under 24 CFR part 58. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR part 58.

The City of Boulder as the Responsible Entity, per the National Environmental Policy Act (NEPA) (40 CFR 1500-1508) and Part 58, is required to ensure that environmental information is available before decisions are made and before actions are taken. The City of Boulder may not commit or expend resources, either public or private funds, or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair, or construction pertaining to a specific site until environmental clearance has been achieved. The City of Boulder must avoid any and all actions that would preclude the selection of alternative choices or could have an adverse impact before a final decision based upon an understanding of the environmental review is made. Part 58 also prohibits the commitment and expenditure of HOME and non-HOME funds by the project owner/participants until the environmental review process has been completed if such actions could have adverse impacts or limit choices of reasonable alternatives.

Recordkeeping & Retention of Records [92.508]

In order for HUD to monitor the City of Boulder for compliance with the HOME requirements records will be maintained as follows 92.508:

- Program Records: will be maintained according to 92.508(2) and will be made available to HUD upon request.
- Project Records: will be maintained according to 92.508(3) in the Project files and the applicable database.
- Program Administrative Records: will be maintained according to 02.508(6) and will be made available to HUD upon request. Documentation that program administration requirements have been met will include written policies, procedures, and systems, including risk assessment and a system for monitoring entities.
- Record Retention: HOME requires that all records pertaining to each fiscal year of HOME funds must be retained for the most recent five-year period, with the following exceptions:
 - Rental: retain five years after the project completion date; except the records of individual tenants must be retained for the most recent five-year period, until five years after the period of affordability ends.
 - Homeownership: retain five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained five years after the period of affordability ends.
 - TBRA: retain records for five years after the period of rental assistance ends.
 - Written agreements: retain five years after the agreement terminates.
 - Displacement and acquisition: retain for five years after the date all displaced persons and persons whose property was acquired received final payment.

- If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the retention period all records must be retained until completion of the action and resolution of all issues.

Protecting Personally Identifiable Information (PPI)

The City of Boulder is committed to maintaining the confidentiality and privacy of clients, residents and beneficiary information. All Subrecipients and Recipients must keep all client, resident and beneficiary information confidential and secure. Any loss of data must be reported to the City of Boulder which will then be reported to HUD immediately. All hard copies of PPI are stored in secured file cabinets. All electronic copies of PPI are stored on a secure server managed by the City of Boulder. Access to PPI is limited to City of Boulder compliance staff. No PPI will be distributed or released until the release is authorized by the Director or Deputy Director of Housing and Human Services.

Procurement

All projects must comply with the most restrictive of the applicable City of Boulder or Federal competitive procurement regulations or costs may not be reimbursable. Federal procurement requirements at 2 CFR 200 apply to all nonprofit organizations acting as a Subrecipient and all public entities. Owners, sponsors, and developers are not subject to Federal procurement requirements. Agencies are encouraged to contact City staff if they have questions regarding which procurement requirements apply to their specific programs or projects.

Upon request, agencies must provide a copy of their procurement policies and procedures that meet applicable Federal and State regulations. Projects involving construction or rehabilitation must outline how they have or will procure prime or general contractors, subcontractors, architects, engineers, consultants, etc. in a competitive manner.

Prior to publish a Public Notice, the City of Boulder requires review and approval of all bid documents to ensure that all local, Federal, and State requirements are included prior to finalization. All other applicable Federal requirements are included in bid specifications.

Contractors and subcontractors must not be Federally debarred or suspended and must have a current Colorado business license with current Workers Compensation accounts, including proper insurance and bonding, in order to work on capital construction projects. The City of Boulder checks the status of the general contractors for Federal debarment and suspension, licensing, insurance, bonding, and Workers' Compensation accounts for capital construction projects. The entity receiving funding is responsible for checking the status of all subcontractors for compliance.

Audit

Audits of the City will be conducted in accordance with 2 CFR part 200, subpart F. The City and/or its Subrecipients or Recipients are required to have a single or program-specific audit conducted for a fiscal year if the City and/or Subrecipients or Recipients expends \$750,000 or more during the Federal fiscal year in accordance with the provisions of this part. If the City expends \$750,000 or more during the City's fiscal year in Federal awards, it must have a single audit conducted in accordance with 200.514 except when it elects to have a program-specific audit. If the City expends less than \$750,000 during its fiscal year in Federal awards, it is exempt from Federal audit requirements for that year, except as noted in 200.503; records must be available for review or audit by appropriate officials of HUD and the Government Accountability Office.

Payments received for goods or services provided as a contractor are not Federal awards. Section 200.330 sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

Auditees must make copies of their audit available for public inspection, ensuring that protected personally identifiable information is not included. Audit reports must be submitted to the Federal Audit Clearinghouse (FAC) and all Federal agencies, pass-through entities, and others interested in an audit report must obtain it from FAC. Indian tribes may opt out of authorizing the FAC to publish the reporting package on the web but are then responsible for providing the reporting package directly to any affected pass-through entities and also making it available for public inspection.

Program Income, Repayments & Recapturing Funds [92.503]

Program income is reported to the City of Boulder when draw requests are made. Program income must be used in accordance with the requirements of part 92. Program income must be deposited in the City's HOME Investment Fund local account unless the City permits the Subrecipients or Recipients to retain the program income for additional HOME projects pursuant to the written agreement required by 92.504.

Any HOME funds invested in housing that does not meet the affordability requirements for the period specified in or 92.254 must be repaid by the City. Any HOME funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the City, except for repayments of project-specific community housing development organization loans that are waived, in accordance with 92.301(a)(3) and (b)(3). HUD will instruct the City to either repay the funds to the HOME Investment Trust Fund Treasury account or the local account. If the City is not a participating jurisdiction at the time the repayment is made, the funds must be remitted to HUD and reallocated in accordance with 92.454.

HOME funds recaptured in accordance with 92.254(a)(5)(ii) must be used in accordance with the requirements of part 92. Recaptured funds must be deposited in the City's HOME Investment Trust Fund local account unless the City permits the Subrecipients or Recipients or CHDO to retain the recaptured funds for additional HOME projects pursuant to the written agreement required by 92.504. If the City is not a participating jurisdiction when the recaptured funds are received, the funds must be remitted to HUD and reallocated in accordance with 92.454.

Beginning with the Fiscal Year 2017 action plan, as provided in 24 CFR 1.220(l)(2) and 91.320(k)(2), program income, repayments, and recaptured funds in the City's HOME Investment Trust Fund local account must be used in accordance with the requirements of this part, and the amount of program income, repayments, and recaptured funds in the City's HOME Investment Trust Fund United States Treasury account at the beginning of the program year must be committed before HOME funds in the HOME Investment Trust Fund United States Treasury account, except for the HOME funds in the United States Treasury account that are required to be reserved, under 92.300(a), for investment only in housing to be owned, developed, or sponsored by community housing development organizations. The deadline for committing program income, repayments, and recaptured funds received during a program year is the date of the City's commitment deadline for the subsequent year's grant allocation.

The City of Boulder will consult with HUD in the event that repayments and recaptured funds will need to be paid back to HUD. 92.503

Post Award Requirements

Recipients awarded funding must:

- Enter into a funding agreement, which establishes if the HOME units are fixed or floating 92.252(j) with the City of Boulder.
- Begin to expend funds within 12 months of executing a funding agreement.
- Must not conduct any activity at the project site until the HUD required environmental review has been completed by the City of Boulder as the Responsible Entity.
- Expend all funds within four years of the allocation.

Chapter 2: Policies & Procedures for Development Projects

The provisions in this chapter apply to HOME-funded rental housing development, rental housing acquisition (no rehabilitation), and homebuyer development projects.

Subrecipient/Recipient Standards

Subrecipients or Recipients for HOME Funds will need to demonstrate, with a reasonable level of assurance, that the agency/organization is fiscally sound and has reliable systems to manage and account for public funds. The following documents will be submitted at the City's request:

- Complete audit reports for each of the past two years for the Subrecipient or Recipient, including an OMB circular A- 133 supplement as appropriate, any audit findings, corrective action plan, management letter and agency response.
- If the Subrecipient or Recipient organization has not been audited, financial statements for each of the past two fiscal years and a year-to-date statement certified by the Subrecipients or Recipient 's Chief Financial Officer. Financial statements will include balance sheets and cash flow, revenue, and long-term debt statements.
- Nonprofit organizations will need to submit an IRS Form 990 for the prior two years.
- Outstanding HOME Annual, Close-out or Monitoring Reports.

Subrecipients or Recipients must demonstrate that the skills and experience of the development team and the property management team, and the capacity of the organization are appropriate to the size and complexity of the project. If the Subrecipients or Recipients does not have prior experience in affordable housing development or has not had experience within the past ten (10) years, they must partner with a development consultant experienced in affordable housing development.

Eligible Activities [92.205]

HOME Funds may be used by the City of Boulder to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction or rehabilitation of non-luxury housing [per 24 CFR 92.205(a)].

Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing.

Eligible Costs: Eligible costs depend on the activity. HOME funds can be used to cover both hard (e.g., construction, rehabilitation) and soft (e.g., fees, insurance, appraisals) costs associated with a project. Eligible expenses the City of Longmont funds may be used for

- **New Construction:** Funds can be used for the new construction of both rental and ownership housing.
- **Rehabilitation:** Includes the alteration, improvement or modification of an existing structure. Any project that includes the addition of dwelling units to an existing structure is considered new construction.

- **Reconstruction:** This refers to rebuilding a structure on the same lot where housing is standing at the time of project commitment. HOME funds may be used to build a new foundation or repair an existing foundation. Reconstruction also includes replacing a substandard manufactured house with a new manufactured house. During reconstruction, the number of rooms per unit may change, but the number of units may not.
- **CHDO Operating Expenses:** The city may pay up to 5% of its fiscal year HOME allocation for operating expenses for eligible CHDO's per 92208. These funds are separate from the minimally required 15% CHDO set-aside funds for project costs per 92300.
- **Conversion:** Conversion of an existing structure from once use to affordable residential housing is usually classified as rehabilitation. If conversion involves the addition of units beyond the walls of an existing structure, the entire project will be deemed new construction.
- **Site Improvements:** Site improvements include the installation of on-site improvements (e.g., sidewalks, utility connections, and sewer and water lines) that are essential to development, or the repair of existing improvements. Building new, off-site utility connections is also eligible.
- **Acquisition of Property:** Acquisition of existing standard property, or substandard property in need of rehabilitation, is eligible as part of a homebuyer or a rental housing project.
- **Acquisition of Vacant Land:** Acquisition of vacant land is eligible only if construction will begin on a HOME project within 12-months of purchase. Land banking is not an eligible HOME activity.
- **Demolition:** Demolition of an existing structure may be funded only if construction will begin on a HOME project within 12-months.
- **Relocation Costs:** The Uniform Relocation Act and Section 104(d) apply to all assisted properties. Both permanent and temporary relocation assistance are eligible HOME costs. These funds are included in the subsidy limit calculation.
- **Troubled HOME-assisted rental housing projects (92.210):** A HOME-assisted rental project is no longer financially viable if its operating costs significantly exceed its operating revenue. The city may request, and HUD Headquarters may approve that the city invests additional HOME funds in the project. The total HOME funding may not exceed the per unit subsidy limits in 92.250(a). The HOME funds may be used for rehabilitation and recapitalization of project reserves for the HOME units. The HOME period of affordability may be extended with additional funding. HUD may allow the city to reduce the number of units as HOME-assisted under 92.205(d). If all of the units are HOME-assisted units, one unit may be converted to an on-site manager's unit according to 92.205(d)(2). The city must determine that the project has been identified as having marketing, management, or financial difficulties.
- **Refinancing:** HOME funds may be used for refinancing rental projects where rehabilitation is the primary activity. To be eligible, the rehabilitation cost must exceed the amount of debt

that is refinanced with HOME funds. HOME funds may not be used to refinance existing debt unless rehabilitation is the primary activity 92.206(b)(2). Guidelines for multi-family rehabilitation with refinancing:

- Demonstrate that rehabilitation is the primary eligible activity and establish a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing
 - Review the management practices to demonstrate that disinvestment in the property has not occurred, the long-term needs of the project can be met and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated.
 - Determine if the new investment maintain current affordable units or create additional affordable units.
 - Specify the required period of affordability. A minimum 15 years POA is required.
 - Determine whether the HOME funds may be jurisdiction-wide or limited to a specific geographic area.
 - State that HOME funds cannot be used to refinance multi-family loans made or insured by any Federal program, including CDBG.
 - Each project receiving an allocation for rehabilitation with refinancing must have the above guidelines documented in the project file.
- **Tenant-Based Rental Assistance (TBRA) (92.209)**
 - Rental assistance and security deposit payments made to provide tenant-based rental assistance for a family.
 - Utility deposit assistance only if assistance is provided With TBRA or security deposit payment.
 - Administrative is eligible under general management oversight and coordination at 92.207
 - Costs for inspecting housing units and determining income eligibility are eligible costs of the TBRA
 - Funds cannot be used to pay for any cost that is not eligible under 92.209
- **Project Related Soft Costs (92.206 (d)):** These costs must be reasonable and necessary, including:
 - Architectural, engineering and related professional services. HOME funds may be used to pay architectural and engineering and other professional services costs incurred no more than 24 months before the date the HOME funds are committed to the project and the written agreement specifically allows for these costs 92.206(d)(1).
 - Project audit- including certification of costs performed by a certified public accountant, that the city may require with respect to the development of a project 92.206(d)(3).
 - Costs for affirmative marketing and fair housing services to prospective tenants or owners of a funded project
 - Staff time directly related to carrying out a project
 - City staff costs directly related to projects (except TBRA)

Prohibited Activities [92.214]

Funds cannot be used for

- Project Reserve Accounts (except for troubled properties)
- Tenant Based Rental Assistance to serve special purposes of the Section 8 program,
- a Match for federal programs (except McKinney-Vento Act funds)
- Operations or modernization of public housing
- Payment of delinquent taxes, fees, or charges on properties to be assisted with HOME funds.

During the first year after HOME project completion, the city may commit additional funds to a project. After the first year, no additional HOME funds may be provided to a HOME assisted project during the period of affordability except that a homebuyer may be assisted with HOME funds to acquire a unit that was previously assisted with HOME funds. 92.214(a)(1)(6)

Costs to Beneficiaries 92.214 (b)(1): Low-income households cannot pay for staff and overhead costs related to carrying out a project. These costs may be charged as administrative or project costs. The city is allowed to charge a nominal application fee to applicants for homeownership down payment assistance and housing counseling services.

The city may not charge servicing, origination or other administrative fees except that (i) - It may charge fees to cover the cost of ongoing monitoring and physical inspection of HOME projects during their period of affordability. The city has determined that it will not charge these fees at this time. 92.214(b)(1)(i) 92.214(b)(3) Rental project owners may not charge fees to tenants that are not reasonable or customary (e.g., laundry room access). Project owners may charge (92.214(b)(3):

- Reasonable application fees
- Parking fees to tenants only if such fees are customary for rental housing projects in the area
- Fees for services such as bus transportation or meals, if the services are voluntary and fees are charged for services provided.

Public Housing (92.213): HOME funds cannot be used for public housing units except to develop new units that will serve as public housing if that unit also receives HOPE VI funding, and no Capital Funds are used to develop the unit. The unit may receive Operating Fund assistance.

Eligible Development Costs

HOME funds may be used for, but are not limited to:

- Site preparation or improvement, including demolition if construction begins within 12 months
- Securing buildings
- Construction materials and labor
- Onsite improvements in keeping with surrounding projects, including sidewalks, utility laterals, etc. Offsite infrastructure is not eligible as a HOME expense
- Relocation costs, including moving costs, replacement housing costs, advisory services, staff costs related to relocation assistance
- Financing fees
- Credit reports
- Title binders and insurance
- Recording fees and transaction taxes
- Legal and accounting fees, including project audit costs
- Appraisals

- Architectural and engineering fees
- Environmental reviews
- Developer fees (subject to a limit)
- Permit fees
- Homebuyer counseling to purchasers of HOME-assisted housing units only

Income Targeting [92.216 & 217]

- **Rental Projects:** HOME funds must provide affordable housing to no less than 90% of households with incomes that do not exceed 60% AMI. The remaining 10% of households must have been income at or below 60% AMI at the time of initial occupancy (92.216).
- **Homeownership Projects:** 100 percent of the households in homeowner units must qualify as low-income families at the time of purchase (92.217).

Form of HOME Investment

The City may provide rental housing development awards in the form of amortized loans, deferred loans, recoverable grants, grants or a combination of these.

Grants may be provided to housing projects serving the lowest income, highest need populations that require public operating subsidy to cover basic operating expenses. These projects will typically not have the cash flow or financial ability to service additional debt reflected in the operating pro forma submitted and reviewed as part of the application process. Grants may need to be structured based on the nature and additional sources being leveraged as in the case of HUD funded projects.

Loans may be amortized or deferred. Loans will be structured based on the project's operating pro forma. Deferred loans will have principal and interest, if interest is being charged, due and payable in full on or before the termination date of the contract. Loan terms may be set based on the needs of other funding sources such as the federal Low-Income Housing Tax Credit program. The City's interest in the property will be secured by appropriate collateral and documentation. The City may authorize deferred payment and/or forgivable loans for those projects with inadequate sources to repay the loans. Deferred payment and/or forgivable loans shall be secured in a manner to ensure that if the project no longer provides the benefits of affordable housing as approved by the City, that the loan (with interest) would become due and payable.

Project Completion Deadline [92.205(e)(2)]

A project that is not completed within four years from the date the written agreement is executed (project commitment) is determined to be terminated and the city must repay the HOME funds to HUD. The city may request one 12-month extension from HUD. The request should provide information about the status of the project, steps being taken to overcome obstacles, proof of adequate funding to complete the project, and a schedule for project completion.

The city will evaluate all projects before committing funds to determine if the proposed the production schedule realistically shows that the project can be completed within the 4 year deadline.

HOME-funded projects must meet the following deadlines or face loss or required repayment of HOME funds:

- Before the City will enter into a HOME funding commitment, the Subrecipient or Recipients will need to provide evidence of firm written financial commitments from all other funders for the project. Projects failing to obtain these commitments within twelve months from the time of award letter face loss of their preliminary allocation of HOME funds.
- Construction must begin within twelve months of project commitment (Written Agreement signature).
- If the housing is not occupied by eligible tenants within six months following the date of project completion, the owner must submit marketing information and a marketing plan to the City. If the HOME units remain vacant after 18 months from the date of project completion, the City will require the owner to repay the HOME funds invested in those units.

Fixed vs. Floating HOME Units [92.252 (j)]

In a project containing HOME-assisted and other units, the City may designate fixed or floating HOME units. This designation must be made at the time of project commitment in the written agreement between the City and the owner, and the HOME units must be identified not later than the time of initial unit occupancy. Fixed units remain the same throughout the period of affordability. Floating units are changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit. All HOME-assisted units must be designated as “fixed” or “floating” at the time of project commitment.

- **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.
- **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.

Most Subrecipients or Recipients will choose to designated HOME-assisted units as floating because it provides greater flexibility.

Prevailing Wage & Labor Requirements [92.354]

Federal Davis Bacon prevailing wages apply to all projects with 12 or more HOME-assisted units regardless of whether HOME funds were used for construction or other projects costs. When triggered, Davis Bacon wages apply to the entire project. When federal funds trigger prevailing wages determined under the Davis-Bacon Act in a project, the higher of either the State Residential Prevailing Wage Rates (unless modified as stated below) or Davis- Bacon wage rates will apply to each job classification, unless applicable law requires otherwise. In cases where Davis-Bacon wages are triggered, Davis-Bacon monitoring procedures are followed.

Every contract for construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the development of any part of the

housing. Such contracts must also be subject to the overtime provisions of the Contract Work Hours and Safety Standards Act.

The contract for construction must contain these wage provisions if HOME funds are used for any project costs in, including construction or non-construction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single family housing, and not any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

The City, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards. The assigned City of Boulder Project Manager shall be responsible for ensuring compliance by contractors and subcontractors with labor standards described in this section. The City shall:

- Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations;
- Conduct on-site inspections and employee interviews;
- Collect and review certified weekly payroll reports;
- Correct all labor standards violations promptly;
- Maintain documentation of administrative and enforcement activities;
- Require certification as to compliance with the provisions of this section before making any payment under such contracts

The prevailing wage provisions do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

The prevailing wage provisions do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

The following labor requirements apply to HOME activities:

- Davis-Bacon and Related Acts (40 USC 276(A)-277): Ensures that mechanics and laborers employed in construction work under Federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed. This Act also provides for the withholding of funds to ensure compliance and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs. Every contract for the construction of housing (rehabilitation or new) that contains 12 or more units assisted with HOME funds triggers the requirements.
- Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333): Provides

that mechanics and laborers employed on Federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week and provides for the payment of liquidated damages where violations occur. This Act also addresses safe and healthy working conditions.

- Copeland (Anti-Kickback) Act (40 USC 276c): Governs the deductions from paychecks that are allowable. Makes it a criminal offense to induce anyone employed on a Federally assisted project to relinquish any compensation to which he/she is entitled and requires all contractors to submit weekly payrolls and statements of compliance.

Fair Labor Standards Act of 1938, as amended (29 USC 201, et. Seq.): Establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work and establishes child labor standards.

Volunteers are defined at 24 CFR Part 70 and additional guidance concerning the use of bona-fide volunteers is there. Generally, volunteers are defined as individuals who: perform services for a public or private entity for a civic, charitable, or humanitarian reason, without promise, expectation, or receipt of compensation for services rendered; may be paid expenses, reasonable benefits, or a nominal fee for such services for which the individual volunteered; and are not otherwise employed at any time in the construction work.

HOME provides for a sweat equity program (NAHA Section 255) that permits members of an eligible family to provide labor in exchange for acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Such sweat equity participants are exempt from Davis-Bacon prevailing wage requirements.

HOME funds may not be used to directly or indirectly employ, award contracts to, or otherwise engage the services of any contractor or Subrecipient or Recipient during any period of debarment, suspension, or placement of ineligibility status. The City checks all contractors, and Subrecipients against the excluded parties list maintained on the Federal System of Award Management.

Debarred Contractors

Prior to entering into a contract with contractor or subcontractor, the Subrecipient or Recipient must verify that they are not listed in the Federal publication of debarred, suspended and ineligible contractors. HOME funds may not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of a contractor during a period of debarment, suspension, or ineligibility.

Section 3 Economic Opportunity

Section 3 requirements apply to recipients of Housing and/or Community Development Assistance exceeding \$200,000 combined from all sources in any one year, per 24 CFR §135. Section 3 covers the expenditure of any portion of those funds for any activity that involves housing construction, rehabilitation, or other public construction. All contractors or subcontractors that receive covered contracts in excess of \$100,000 for housing construction, rehabilitation, or other public construction are required to comply with the requirements of Section 3. The purpose of Section 3 to ensure that employment (e.g., new hires) and other economic opportunities generated by this HUD financial assistance shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns

which provide economic opportunities to low- and very low-income persons.

Affordability Period

At a minimum, all projects must comply with the following HOME affordability periods, during which HOME regulations apply:

- New construction of rental housing: 20 years
- New construction of homeownership housing or acquisition of rental housing
 - HOME investment of less than \$15,000 per unit: 5 years
 - HOME investment of \$15,000 - \$40,000 per unit: 10 years
 - HOME investment of more than \$40,000 per unit: 15 years

Site Control

Site control is typically required at the time of application for development projects. Site control documentation includes the following: a deed of trust, current option, current purchase and sale agreement, a current title report showing the entity holding fee simple title, an executed lease agreement for the length of the commitment to serve low-income households, or an executed disposition or development agreement.

Phase I Environmental Site Assessment

Development projects must provide a Phase I Environmental Site Assessment (ESA) at the time of application to ensure that any environmental hazards are recognized and mitigated. The Phase I ESA should be prepared in accordance with the requirements of ASTM E-1527 “Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process,” and must clearly document compliance with 24 CFR 58.5(i)(2) or 50.3(i). Each assessment will include limited surveys of lead-based paint, asbestos, mold, and wetlands as applicable. If any hazards are identified, they will be abated or mitigated before occupancy. The Phase I ESA must be dated six months or less from the due date of the City application. If, at the time that the City undertakes the federal Environmental Review, the Phase I ESA is more than six months old, an update will be required. If the Phase I ESA is more than a year old at the time that the City undertakes the federal Environmental Review, a new Phase I ESA must be completed. Development projects must also meet federal environmental review requirements under the National Environmental Policy Act (NEPA) as applicable.

Displacement, Relocation & Acquisition [92.353]

HOME-funded projects are subject to relocation requirements contained in the Uniform Relocation Act (URA) and, in some cases, Section 104(d) of the Housing and Community Development Act (also known as the Barney Frank Amendments). URA relocation requirements are triggered whenever displacement occurs as a direct result of rehabilitation, demolition or acquisition of a HOME-assisted project. Displacement includes residential and commercial tenants and owners. More information is available in HUD Handbooks 1378 and 1374. As a practical matter, the City discourages applications that involve permanent displacement because of the impact on residents, the cost, and the delay.

The City will ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of a program or project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

Residential tenants who will not be required to move permanently but who must relocate temporarily for a project assisted with HOME funds must be provided:

- Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.
- Appropriate advisory services, including advance written notice of:
 - The date and approximate duration of the temporary relocation
 - The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period
 - The terms and conditions under which the tenants may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project
 - Reimbursement as outlined at 92.353(b)(1)

A displaced person must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (424201-4655) and 49 CFR part 24. A “displaced person” must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

A displaced person means a person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership, or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

- After notice by the owner to move permanently from the property, if the move occurs on or after:
 - The date of the submission of an application to the City, another jurisdiction, or HUD, if the Subrecipient or Recipient has site control and the application is later approved; or
 - The date the jurisdiction approves the applicable site, if the Subrecipient or Recipient does not have site control at the time of the application; or
- Before the date described in the section above, if the City or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or
- By a tenant-occupant of a dwelling unit, if any of the following three situations occurs:
 - The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions, including a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

- ✓ The tenant's monthly rent before such agreement and estimated average monthly utility costs; or
 - ✓ The total tenant payment, as determined under 24 CFR 5.628, if the tenant is low-income, or 30 percent of gross household income, if the tenant is low-income;
- The tenant is required to relocate temporarily, does not return to the building/complex, and either:
- ✓ The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
 - ✓ Other conditions of the temporary relocation are not reasonable; or
 - ✓ The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

A person does not qualify as a displaced person if:

- The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State, or local law, or other good cause, and the City determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; the effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action;
- The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person, and the fact that the person would not qualify as a displaced person or for any assistance as a result of the project;
- The person is ineligible under 49 CFR 24.2(g)(2);
- HUD determines that the person was not displaced as a direct result of the acquisition, rehabilitation, or demolition for the project.

The City may, at any time, ask HUD to determine whether a displacement is or would be covered by the above rules.

Relocation Costs

For purposes of determining the formula for computing replacement housing assistance to be provided to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

The City may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to the above requirements. The City may also provide relocation assistance to persons covered by the above sections beyond that required. For any such assistance that is not required by State or local law, the City must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides

for equal relocation assistance within each class of displaced persons.

The City complies with the requirements of 24 CFR part 42, subpart C. The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B. A person who disagrees with the City's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the City. A low-income person who is dissatisfied with the City's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

Appraisal & Real Property Acquisition

If the Subrecipient or Recipient is proposing the purchase of real property and/or building(s), a full appraisal must support the purchase price. Appraisals and acquisition must comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended. The URA generally applies to federally- funded projects involving acquisition, rehabilitation, or demolition, and requires compliance with the following real property acquisition process, unless the project meets the requirements of 49 CFR 24.101(b)(1)-(5).

Subrecipients or Recipients must follow the procedures for a Voluntary Acquisition under the URA. Prior to making an offer for the property, the Subrecipient or Recipient must, in writing, advise the owner of the property that federal funds may be involved in the purchase of the property, let the owner know that the Subrecipient or Recipient does not have the power of eminent domain and that it will be unable to acquire the property if negotiations fail to result in agreement, and provide the owner with what it currently believes to be the market value of the property. If the Subrecipient or Recipient has not yet completed an appraisal of the property at the time of the offer, the statement of market value provided to the seller must have a reasonable basis (e.g., assessed value).

The application for HOME funding must include a current appraisal. An appraisal must be dated no more than 12 months prior to the application due date. A letter updating an appraisal completed more than 12 months prior to the application due date will be accepted. The appraisal must be conducted by someone with a current general appraisal certificate in the State of Colorado.

Chapter 3: Project Requirements

Minimum Amount of Assistance [92.205(c)]

The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is \$1,000 times the number of HOME-assisted units in the project.

Maximum Per-Unit Subsidy Amount [92.250 (a)]

The maximum HOME per-unit subsidy may not exceed 240% of the base limits authorized by 2201(d)(3)(ii) of the National Housing Act. HUD releases annually the maximum per-units subsidy limits based on the number of bedrooms in the unit. The minimum per unit subsidy is \$1,000.

Property Standards [92.251]

HOME-funded properties must meet minimum property standards found at 92.251 upon project completion. State and local codes, ordinances, and zoning requirements apply to all HOME-funded project regardless of whether the project is acquisition, rehabilitation, or new construction. There are additional requirements for projects outlined below. (HUD will issue guidance on incorporating UPCS for rehabilitation and acquisition activities):

- **New Construction [92.251(a)]** New construction projects must meet State and the City of Boulder’s local codes, ordinances and zoning requirements. Construction contracts and construction documents must be provided in adequate detail and reviewed by the City to ensure that the documents address minimum housing and property standards, as well as city and/or state code requirements. Subrecipients or Recipients must also provide written cost estimates prior to execution of construction contracts to ensure that costs are reasonable. Additionally, the following will apply to all new construction projects:
 - **Accessibility:** Section 504 accessibility (24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973, and Titles II and III of the American with Disabilities Act implanted at 28 CFR 100.201
 - **Disaster Mitigation:** Housing must be constructed to mitigate the impact of potential disasters (e.g., flooding and wildfires), in accordance with State and local codes, ordinances, or other requirements as HUD may established.
 - **Written Cost Estimates:** The City will ensure the construction contracts and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The City will review and approve written cost estimates for construction and determining that costs are reasonable.
 - **Construction Progress Inspections:** Progress and final inspections of construction to ensure that work is done in accordance with applicable codes, the construction contract, and construction documents.
- **Rehabilitation Projects [92.251(b)]** The City has established rehabilitation standards for all HOME-assisted housing rehabilitation activities that set forth the

requirements that the housing must meet upon project completion. The rehabilitation standards include the following:

- **Lead based Paint:** The City requires the housing to meet the lead-based paint requirements at 24 CFR part 35.
- **Accessibility:** Section 504 accessibility (24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973, and Titles II and III of the American with Disabilities Act implanted at 28 CFR 100.201
- **Disaster Mitigation:** Where relevant, housing must be constructed to mitigate the impact of potential disasters in accordance with State and local codes, ordinances, or other requirements, or other requirements as HUD may establish.
- **State & Local Codes, Ordinances & Zoning Requirements:** Housing must meet all applicable State and local codes, ordinances, and requirements.
- **Uniform Physical Condition Standards:** Local building code standards must be such that, upon completion, the HOME-assisted project and units will be decent, safe, sanitary, and in good repair as described by 24 CFR 5.703.
- **Capital Needs Assessment:** Multifamily rental housing projects of 26 or more total units 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.
- **Written Cost Estimates:** The City will ensure the construction contracts and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The City must review and approve written cost estimates for construction and determining that costs are reasonable.
- **Construction Progress Inspections:** The City conducts an initial property inspection to identify the deficiencies that must be addressed. The City must also conduct progress and final inspections to determine that work was done in accordance with applicable codes, the construction contract, and construction documents. All work undertaken needs to meet City rehabilitation standards. The construction documents must be in sufficient detail to establish the basis for a uniform inspection of the housing to determine compliance with State and local code.
- **Property Standards for Acquisition of Standard Housing [92.251(d)]**
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 the commitment of HOME funds, must meet the property standards of 92.251(b) or 92.251(c), as applicable, for new construction and rehabilitation projects. The City documents 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.

All other existing housing that is acquired with HOME assistance for rental housing must meet the rehabilitation property standard requirements of 92.251(b). The City documents 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, HOME funds cannot be used to acquire the property unless it is rehabilitated to the standards outlined in 92.251(b).

Existing housing that is acquired for homeownership must be decent, safe, sanitary, and in good repair. The City establishes 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 City inspects the housing and documents 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 outlined within this paragraph or it cannot be acquired with HOME funds.

- **Tenants Receiving TBRA [92.251(e)]** 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.
- **Manufactured Housing [92.251(f)]** Manufactured housing must be on a permanent foundation that meets State or local codes at the time of inspection. The Model Manufactured Home Installation Standards at 24 CFR part 3285 will be followed.
- **Ongoing Property Condition Standards: Rental [92.251(g)]** Properties must be maintained to meet all State and local codes. Housing must be free of all health and safety defects and life-threatening deficiencies must be corrected immediately. Lead-based paint requirements must be met.

Long-Term Affordability

To ensure investments provide affordable housing over the long term, rent and occupancy restrictions will continue throughout the period of affordability. The City will execute a promissory note and record a Deed of Trust and covenant with the Boulder County Clerk and Recorder to secure the property. If the affordability restriction is terminated prior to the HOME period of affordability, the City will have to repay funds to HUD 92.503(b).

HOME Period of Affordability [92.252(f)(2)]

The minimum HOME Period of Affordability is five years. If the project has additional funding sources, the compliance period for those additional funding sources may be extended beyond the HOME Program’s minimum requirements. HOME projects for which the City requires a longer period of affordability will have a deed restriction which reflects the extended period.

Per Unit Investment	Rental	Homeownership
<\$15,000	5 years	5 years
\$15,000 - \$40,000	10 years	10 years
>\$40,000	15 years	15 years
Refinancing of Rental Housing (with rehabilitation)	15 years	n/a
New Construction	20 years	n/a

Chapter 4: CHDO

Community Housing Development Organizations

A Community Housing Development Organization (CHDO) is a private non-profit, community-based service organization that has significant capacity and whose primary purpose is to develop affordable housing for the community it serves.

CHDO Development Set-Aside [§92.300]

HOME regulations (24 CFR Part 92.300) require the City of Boulder to set aside at least 15% of its annual HOME allocation for projects owned, developed or sponsored by CHDOs. A certified CHDO must serve as the owner, developer, or sponsor of a HOME-eligible project when using funds from the 15% CHDO set-aside. A CHDO may serve in one of these roles or it may undertake projects in which it combines roles, such as being both an owner and developer. Once an organization becomes a certified CHDO, it is eligible to take advantage of the HOME funds set-aside and financial support for a portion of the CHDO's operating expenses. The City will review and re-certify a CHDO's eligibility immediately prior to the commitment of CHDO development set-aside funds. CHDO set-aside funds can be used for the following types of projects:

- New construction of homeownership housing
- New construction of rental housing
- Acquisition of existing rental housing

Please note that to be considered a CHDO eligible project, CHDO set-aside funds must be used during the development of the project.

Availability of Operating Support for CHDOs [§92.208]

Up to 5% of the City's fiscal year HOME allocation may be used for the operating expenses of CHDOs. This amount is in addition to amounts set aside for housing projects that are owned, developed, or sponsored by CHDOs as described in 92.300(a). These funds may not be used to pay operating expenses incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials; and supplies. The requirements and limitations on the receipt of these funds by CHDOs are set forth in §92.300(e) and (f).

From time to time, funds may be available to provide general operating assistance to CHDOs receiving or expected to receive CHDO set-aside funds for activities. Operating funds will be provided based on availability and the CHDO's demonstrated need and performance. To be eligible for operating support, CHDOs must demonstrate incrementally increasing production goals and/or expansion of its services to the community. If the CHDO is not currently administering an eligible project, it must have a CHDO-eligible project in pre-development that will be submitted to the City for funding within 12 months and be able to describe the intended project design and location. The CHDO must provide a copy of its annual operating budget.

Eligible operating expenses for which CHDOs may use operating funds include:

- Salaries, wages, benefits, and other employee compensation

- Employee education, training and travel
- Rent and utilities
- Communication costs
- Taxes and insurance
- Equipment, materials and supplies

Because the purpose of providing CHDO operating support is to nurture successful CHDOs and ensure their continued growth and success, the City will periodically evaluate the performance of any CHDO applying for or receiving CHDO operating funds.

Per 24 CFR 92.300(f), the City of Boulder will ensure that a CHDO does not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or \$50,000, whichever is greater, of the CHDO's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under § 92.208.

Requirements for CHDO Certification

In keeping with the U.S. Department of Housing and Urban Development (HUD), the City has established eleven (11) criteria for becoming a certified CHDO:

1. **Organized Under State/Local Law:** A nonprofit organization must show evidence in its Articles of Incorporation that it is organized under state or local law.
2. **Nonprofit Status:** The organization must be conditionally designated or have a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c) of the Internal Revenue Code of 1986. A 501(c) certificate from the IRS must evidence the ruling.
3. **Purpose or Mission:** Among its primary purposes, the organization must have the provision of providing housing that is affordable to low- and moderate-income people. This must be evidenced by a statement in the organization's Articles of Incorporation and/or Bylaws.
4. **Board Structure:** The board of directors must be organized to contain no more than one-third representation from the public sector and a minimum of one-third representation from the low- income community.
5. **Prohibition of For-Profit Control:** The organization may not be controlled by, nor receive directions from, individuals or entities seeking profit from or that will derive direct benefit from the organization.
6. **No Individual Benefit:** No part of a CHDO's net earnings (profits) may benefit any members, founders, contributors, or individuals. This requirement must also be evidenced in the organization's Articles of Incorporation.
7. **Clearly Defined Service Area:** The organization must have a clearly defined geographic service area outlined in its Articles of Incorporation and/or Bylaws. CHDOs may serve individual neighborhoods or large areas. However, while the organization may include an entire community in their service area (such as a city, town, village, county, or multi-county area), they may not include their entire state.

8. **Low-Income Advisory Process:** A formal process must be developed and implemented for low- income program beneficiaries and low-income residents of the CHDO's service area to advise the CHDO in all its decisions regarding the design, location, development and management of affordable housing projects.
9. **Capacity/Experience:** The key staff and board of directors must have demonstrated experience and capacity to carry out HOME-assisted projects in its service area. At least one paid staff member must have demonstrated development experience.
10. **Community Service:** Organizations applying for CHDO certification must have a minimum of one year of related experience serving the community where it intends to develop affordable housing.
11. **Financial Accountability Standards:** The organization must meet and adhere to the financial accountability standards as outlined in 2 C.F.R. Part 200 and §92.300(f), "Standards for Financial Management Systems."

CHDO Organizational Structure Requirements

The HOME Program establishes requirements for the organizational structure of a CHDO to ensure that the governing body of the organization is representative of the community it serves. These requirements are designed to ensure that the CHDO is capable of decisions and actions that address the community's needs without undue influence from external agendas.

There are four specific requirements related to the CHDO board of directors, which must be evidenced in the organization's Articles of Incorporation and/or Bylaws. These are:

1. **Low Income Representation:** At least one-third of the organization's board must be representatives of the low-income community served by the CHDO. There are three ways a board member can meet the definition of a low-income representative:
 - The person lives in a low-income neighborhood where 51% or more of the residents are low- income. This person does not necessarily need to be low-income; or
 - The person is a low-income (below 80% area median income) resident of the community; or
 - The person was elected by a low-income neighborhood organization to serve on the CHDO board. The organization must be composed primarily of residents of the low-income neighborhood and its primary purpose must be to serve the interests of the neighborhood residents. Such organizations might include block groups, neighborhood associations, and neighborhood watch groups.

The CHDO is required to certify the status of low-income representatives.

2. **Public Sector Limitations:** No more than one-third of the organization's board may be representatives of the public sector, including elected public officials, appointees of a public official or any employees. If a person qualifies as a low- income representative and a public sector representative, their role as a public sector representative supersedes their residency or income status. Therefore, this person counts toward the one-third public sector limitation.
3. **Low-Income Process:** Input from the low-income community is not met solely by having

low-income representation on the board. The CHDO must provide a formal process for low-income program beneficiaries to advise the CHDO on design, location of sites, development and management of affordable housing. The process must be described in writing in the Articles of Incorporation and/or Bylaws. Each project undertaken by the CHDO should allow potential program beneficiaries to be involved and provide input on the entire project from project concept, design and site location to property management. One way to accomplish this requirement is to develop a project advisory committee for each project or community where a HOME assisted project will be developed. Proof of input from the low-income community will be required at the CHDO's annual recertification.

4. **For-Profit Limitations:** If a CHDO is sponsored by a for-profit entity, the for-profit may not appoint more than one-third of the board. The board members appointed by the for-profit may not appoint the remaining two-third of the board members.

Experience & Capacity Requirements

The 2013 New HOME Rule requires CHDO's to have paid staff with demonstrated capacity appropriate to the CHDO's role. (this requirement cannot be met through volunteer, donated staff, shared staff or board members. CHDOs must demonstrate that their key staff and board of directors have the *relevant* experience necessary to perform the HOME-assisted activities they plan to undertake. CHDOs must provide resumes and/or statements of key staff members that describe their experience in successfully completed projects similar to those proposed.

Financial Accountability

CHDOs must have financial accountability standards that conform to the requirements detailed in 2 C.F.R Part 200, "Standards for Financial Management Systems." This can be evidenced by:

- A notarized statement by the president or chief financial officer of the organization.
- Certification from a certified public accountant.
- Audit completed by CPA.

CHDO Service Area

CHDOs must demonstrate a history of serving the community where the HOME assisted housing will be located. The City of Boulder requires that organizations show a history of serving the community by providing:

- A statement that documents at least one (1) year of experience serving one or more communities within the City of Boulder.
- For newly created organizations, provide a statement that the parent organization (if applicable) has at least one (1) year experience serving the community. CHDOs will be required to provide updates and documentation on how it is ensuring that it is active and visible in the communities included in its service area.

CHDO Certification

The City of Boulder will Certify and re-certify a CHDO's eligibility prior to the commitment of CHDO development set-aside funds.

Quarterly Progress Reporting for CHDO Projects & Operating

To document its performance and eligibility to receive operating funds, the CHDO must provide quarterly progress reports for CHDO eligible projects and/or operating funds, The CHDO must use the quarterly progress report form provided by the City and describe the following:

- The status of the funded CHDO project. If the CHDO is not currently administering an eligible project, it must have a CHDO-eligible project in pre-development that will submit an application to the City of Boulder for funding within 12 months and be able to describe the proposed project and location. If the CHDO does not have an eligible project funded by the City within that timeframe, operating support will not be awarded.
- The uses of CHDO operating funds and what the receipt of operating funds has enabled the CHDO to undertake or accomplish that it would otherwise have been unable to achieve.
- The CHDO's progress in meeting its project completion goals
- How the CHDO has engaged with the community, including both the intended beneficiaries of its projects and as partner organizations and other entities involved in serving low- and moderate-income households.
- The activities and involvement of the board of directors in the planning and development of the CHDO's projects.

CHDO Procurement

As noted in [HUD CPD Notice 97-11](#), CHDO organizations are not subject to the requirements of 2 CFR, Part 200 with respect to the procurement of goods and services. This exemption is only applicable to procurement associated with CHDO-eligible projects.

City of Boulder Requirements for CHDO Certification

In addition to regulatory requirements, the City of Boulder has established additional criteria for CHDO certification. To be eligible for CHDO certification, an organization must also:

1. Maintain a record of good standing with the City of Boulder
2. Maintain a history of no significant compliance findings on its City of Boulder funded projects.

Chapter 5: Homebuyer

Eligible Activities

Eligible homebuyer activities include the construction of new housing units or down payment assistance for low-income households. Eligible homeowner activities include the rehabilitation of housing units that are owned and occupied by low-income households.

Eligible Costs

HOME assistance may be provided to assist a household to purchase a home that was previously assisted with city HOME funding. The price or value may not exceed 95% of the area median purchase price for the housing type; in the case of rehabilitation the limit is based on value after rehabilitation. Go to the HOME program website to determine the applicable value, at: <http://portal/hud.gov/hudportal/HUD?src=/programoffices/commplanning/affordablehousing/programs/home/limits/maxprice>

Eligible Properties

Properties eligible for HOME development assistance must serve as the purchaser's principal residence throughout the period of affordability. Property types:

- Single-family dwelling
- Condominium
- Cooperative unit or a unit in a mutual housing project
- Manufactured Home

Underwriting Standards

When providing assistance to homebuyers, the city must establish and implement homebuyer program policies that address underwriting standards for buyers of HOME-assisted units, responsible lending standards, and subordination requirements, with the goal of ensuring that participating buyers will be successful homeowners. The City has adopted the following minimum underwriting criteria to ensure that housing debt and overall debt of the household, the appropriateness of the amount of assistance, monthly expenses of the household, assets available to purchase the housing and financial resources to sustain homeownership. This evaluation will be conducted as outlined in the Homeownership Policies & Procedures published on the city's website. <https://bouldercolorado.gov/media/1757/download?inline=>

Eligible Homeownership Types

- Fee simple title to the property or a 99-year leasehold interest in a one-to-four unit dwelling
- Own a condominium
- Housing located on land owned by a community land trust, for at least 50 years
- Manufactured housing on a ground lease that is at least equal to the applicable affordability period.

Homebuyer Eligibility

Households may not own another home (including mobile homes) or other real property at the time of purchasing a home through the program. If a home or other real property is owned by any household member at the time of application, the household may apply to the program. The property must be sold before closing on a home through the program and this must

be documented by a settlement statement and a warranty or quit claim deed for appropriate payment. To be eligible for HOME funds, the prospective household must:

- Be low-income; that is, all persons residing in the home must have an annual gross income that does not exceed the HUD low-income limit; and
- Occupy the property as a principal residence.

Maximum Purchase Price

- For new construction or acquisition of standard housing, to be considered an eligible property, the property must have a purchase price that does not exceed 95% of the median purchase price for single family housing in the area.
- HUD establishes the median purchase price limits and these limits can be found on its website: <https://www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/>

Resale Policy

In order to maintain affordability, encourage homeowners bound by older versions of the covenant to agree to the marketing procedures, and to allow the City to assess a program administration fee, the resale options will be as follows:

- Option A: If a homeowner chooses to list with a Real Estate Broker, the maximum resale price will be defined by the terms of the covenant, i.e., the starting price of the home *plus* appreciation *plus* capital improvement credit *plus* a sales commission (the maximum sales commission is established by the City Manager in partnership with BARA and is currently 2.5%) with \$650 added to cover the owner's closing costs.
- Option B: If a homeowner chooses to sell the home without paying a seller agent sales commission (for sale by owner), to abide by the City's marketing procedures; the maximum resale price will be the starting price of the home *plus* appreciation *plus* capital improvement credit *plus* \$650 to cover closing costs *plus* \$550 for the owner's efforts to sell the property *plus* a 1.25% buyer agent commission.

A homeowner who chooses Option B and does not find a buyer for the property by the end of the marketing period will have two choices:

- The owner can continue to sell the property at the maximum re-sale price as defined by Option B; or
 - The owner can list with a Real Estate Broker and sell the home at the price defined by Option A.
- Option C: If a homeowner chooses to sell the home without abiding by the City's marketing procedures (because they have an older covenant that does not require the open marketing period) and without an agent, the \$550 for the owner's efforts to sell the property will not be included in the maximum resale price. The resale price may *not* be increased for Option C by the amount of any buyer's agent commission until the marketing period is complete and the home is unsold.

Enforcement of Resale Provisions

The resale policy is enforced through the use of a Written Agreement and Restrictive Covenant

signed by the homebuyer, and developer if applicable, at or before the closing for the sale of the home. The Written Agreement and Restrictive Covenant will specify:

1. **Affordability Period.** The resale policy is enforced for the affordability period and is based on the total amount of HOME funds invested in the home. The typical affordability period for HOME- assisted home purchases is ten years (\$15,000 to \$40,000 of HOME funds) but may be five years if less than \$15,000 or fifteen years if more than \$40,000. If more than one type of funding is used to assist the homebuyer, the home may be subject to multiple affordability periods. Where multiple affordability periods exist in a home, resale of the home will be restricted to the longest period set forth in the Funding Agreement and Restrictive Covenant.
2. **Principal Residence [92.254(3)].** All HOME-assisted homeowners must occupy the property as their principal residence. If the homeowner rents out the property or does not occupy it as their principal residence, the homeowner is required to pay back the unpaid balance of the HOME funds to the City or reoccupy the property immediately. The funds paid back are considered repayment and the City must repay these funds to the account from which the HOME funds were drawn.

The principal residency requirement should be reflected in all documents that convey the HOME requirements to the homeowner including:

- Deed restriction or covenant running with the land;
- HOME Written Agreement; and
- Other loan documents between the homeowner and the City of Boulder.

3. **Subsequent Homebuyer Requirements & Reasonable Range of Low-Income Homebuyers.** When sold, the home must be made affordable to a reasonable range of low-income households. Affordable is defined as a monthly housing cost for mortgage principal, interest, taxes and insurance of not more than 38% of the gross monthly income for a household between sixty percent (60%) and eighty percent (80%) percent of the area median income, adjusted for household size.

The initial homebuyer may not sell the home during the affordability period except in a manner that results in a subsequent homeowner who will occupy the home as their principal residence and whose household income is between sixty (60%) and eighty percent (80%) of area median income, adjusted for household size. To accomplish this, proceeds from the sale that exceed the fair return on investment will be returned to the HOME account to be used to make the unit affordable for a subsequent homebuyer.

The City of Boulder, Homeownership Program will verify the subsequent buyer's income eligibility. To determine maximum purchase price paid by the subsequent homebuyer, the City of Boulder intends to use the HOME affordable homeownership limits for the area provided by HUD in accordance with 24 CFR 92.254(a)(2)(i).

4. **Security.** Any HOME funds invested in housing that does not meet the affordability and resale requirements must be repaid to the City of Boulder. The City will secure its financial interest in the affordability requirements through a recorded Restrictive Covenant, a Funding Agreement, a Deed of Trust and/or Promissory Note that will ensure repayment in

the event that the affordability requirements are not met.

The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The City of Boulder may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability.

5. **Homebuyer Fair Return on Investment.** A homeowner that sells HOME-assisted homes is provided a fair return on their investment. The homeowner that sells a home may receive from sale proceeds their original contribution (down payment), plus amounts paid towards mortgage principal, plus the value of any credit-eligible improvements paid by homeowner plus/less any agreed-upon appreciation/depreciation. The calculation is further described below:
 - a. **Cash down payment:** The amount of cash paid by the homebuyer to acquire the property.
 - b. **Amount paid to principal:** The amount of cash paid by the homebuyer that is credited to principal on a mortgage on the property.
 - c. **Capital improvements:** The addition of livable space (bedroom, bathroom, finished basement, finished attic space, porch or deck, the addition of a garage (either attached or detached)) shall be considered a Qualified Capital Improvement. In order to receive credit for a Qualified Capital Improvement, the homebuyer must submit to the City (or leaseholder if a community land trust), prior to commencing construction, detailed plans, itemization of expected costs and permits for the proposed construction. The City (and leaseholder if a community land trust) may agree to the scope of the proposed construction and timeline for completion, in addition to the future affordability of the improvements for subsequent resale to qualified low-income homebuyers. Fifty percent of the value of the qualified Capital Improvements that is agreed to in advance by the City (or community land trust) shall qualify as Capital Improvement Credit.
 - d. **Capital Systems Replacement:** For the purpose of qualifying as a Capital Systems Replacement, the roof, plumbing (excluding fixtures), foundation, electrical (excluding fixtures), heating, sewer line, insulation, or windows, shall be considered Capital Systems if at least fifty percent of the Capital System is replaced, and the new Capital System has an expected life-span of at least thirty years. The addition of alternative energy production system(s) shall qualify for credit under this passage. In order to receive a credit for Capital Systems Replacement, the homeowner must consult with the City (or community land trust) prior to replacing a Capital System, and an agreement must be reached between the homeowner and City (or community land trust) regarding the scope and cost of the proposed replacement. The intention of this credit is to encourage and create incentives for homeowners to maintain the functionality of these systems and to increase the quality of energy efficiency, durability and ease of maintenance over time while simultaneously maintaining affordability. Provided all conditions of this paragraph and the agreement between the City (or community land trust) and homeowner

described herein are met, the following payment schedule shall apply:

If the home sale is less than 10 years from Capital System Replacement, 100 percent of the cost can be credited. If the home sale is between 10 and 20 years from Capital System Replacement, 50 percent of the cost can be credited. Replacement of less than fifty percent of any Capital System will be considered repair and the cost of such a repair will not be eligible for credit under this section.

- e. **Appreciation:** The City of Boulder Homeownership Program will use the actual Median Income (previously reported as the Median Family Income) reported by HUD to figure the change in AMI for the purposes of calculating appreciation in the homeownership program. In order to be consistent with other housing programs, the City will continue to use the Income Limits reported by HUD as the basis for other AMI calculations.
6. **Resale Process.** The homebuyer must notify the City of Boulder Homeownership Program prior to offering the home for sale. The homebuyer will need to provide the City with documentation of principal paid, capital improvements made, and capital systems replaced in order to help determine the homebuyer's fair return on investment. Within thirty days, the City will provide a written response regarding the homeowner's fair return on investment. Proceeds from the sale that exceed the fair return on investment will be returned to the HOME account to be used to make the unit affordable for a subsequent homebuyer.

Housing Counseling

All homebuyers of HOME-assisted housing are required to complete a Homeownership training course through the Boulder County Housing Counseling Program (or another CHFA-approved course) 92.254(a)(3).

Converting Rental Units to Homeownership Units [92.255]

Homeownership housing must be converted to rental housing if it does not have a ratified sales contract with an eligible homebuyer within nine months of the completion of construction or rehabilitation. If the unsold unit is not converted to rental housing, the Subrecipient or Recipient will repay the HOME funds to HUD. 92.254(a) (3). The City will track the Homebuyer Activity Report quarterly on line at <http://www.hud.gov/offices/cpd/affordablehousing/reports/#buy>

Chapter 6: Rental

Eligible Activities

HOME funds may be used for rental activities and projects that support and provide incentives for the development of affordable rental housing that address the needs identified in the Consolidated Plan. These activities may include new construction, reconstruction, acquisition, or rehabilitation of non-luxury housing with rent restrictions that serve very low and extremely low-income households. Housing development may only be permanent or transitional housing. Single-room occupancy (SRO) and group homes are permitted but have additional conditions. If Tenant-Based Rental Assistance (TBRA) is identified in the current Consolidated Plan as an appropriate response to market conditions, such programs may be awarded HOME funding.

Project Eligibility

The HOME-assisted units in a rental housing project must be occupied by households that are eligible as low-income families and must meet the requirements of 92.252 to qualify as affordable housing. If the housing is not occupied by eligible tenants within six months following the date of project completion, HUD will require the City to submit marketing information and, if appropriate, submit a marketing plan. HUD will require the City to repay HOME funds invested in any housing unit that has not been rented to eligible tenants 18 months after the date of project completion.

Broadband Infrastructure §92.206(a)(3)(ii)

All HOME-assisted new construction of rental housing must include broadband infrastructure which includes making utility connections from the property line to the adjacent street. This includes installation of broadband internet connections.

Site and Neighborhood Standards

New construction of rental housing must meet the site and neighborhood standards outlined in 24 CFR § 983.57(e)(2) and (3). The site must not be located in an area of minority concentration, except as permitted, 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.

Proposed sites for potential HOME rental projects must meet the following site and neighborhood standards:

- Be adequate to accommodate the number and type of units proposed;
- Have sufficient utilities and streets to service the site;
- Be in full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, E.O. 11063;
- Promote greater choice of housing opportunities;
- Avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- Be accessible to social, recreational, educational, commercial, and health facilities and services,
- Be accessible to municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- Be so located to places of employment providing a range of jobs for lower income workers.

- The neighborhood must not be one which is seriously detrimental to family life or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

A site and neighborhoods standards review will be conducted as part of the application threshold review for all new construction rental projects requesting HOME funds to ensure compliance with the site and neighborhood standards under 24 CFR 983.57(e)(2) through (4):

- The site 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.
- The site must not be located in an area of minority concentration, unless all of the following conditions are met:
 - ✓ Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; and
 - ✓ The project is necessary to meet overriding housing needs that cannot be met in the housing market area.
- The site promotes greater choice of housing opportunities and avoids undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- The neighborhood is not seriously detrimental to family life or one in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- The housing is accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- For non-elderly housing, the travel time and the cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive.

Maximum Income & Rents for HOME-Assisted Units

In projects of five or more HOME-assisted rental units, at least 20% of the HOME-assisted units must be occupied by households who have annual incomes that are 50% or less of median income. These very low-income tenants must occupy units with rents at or below the Low HOME Rent level. The balance of HOME-assisted units must be occupied by households who have annual incomes that are 60% or less of median income, and the rents must be at or below the High HOME Rent level. More than 20% of HOME-assisted may be designated as 50% or less of median income/Low HOME Rent units.

Income Certification & Recertification

The income of each household must be determined at initial occupancy and every 6th year in accordance with 92.203(a)(1)(i). In addition, each year during the period of affordability the project owner must re-examine each tenant's annual income in accordance with one of the options in 92.203.

In projects of five or more HOME-assisted rental units, at least 20% of the HOME-assisted units must be occupied by households who have annual incomes that are 50% or less of median income. These very low-income tenants must occupy units with rents at or below the Low HOME Rent level. The balance of HOME-assisted units must be occupied by households who have annual

incomes that are 60% or less of median income, and the rents must be at or below the High HOME Rent level. More than 20% of HOME-assisted may be designated as 50% or less of median income/Low HOME Rent units.

Definition of Income [92.203(b)]

Annual income is the gross amount of income anticipated by all adults (everyone 18 years and older) in a household projected for 12 months following the effective date of determination. The determination must not be more than 6 months old at the time assistance is received.

To calculate annual (gross) income, the city may choose among two definitions of income:

- Part 5/ Section 8 annual (gross) income;
- IRS adjusted gross income, using the calculation for “adjusted gross income” on IRS form 1040

The city uses the Part 5, commonly referred to as Section 8 definition of income for rental housing units. Detailed information on calculating Part 5 income may be found at 24 CFR Part 5 Subpart F.

HUD’s “Technical Guide for Determining Income and Allowances for the HOME Program” provides the method by which income for HOME-assisted projects must be calculated. Applicants must use HUD's "CPD Income Eligibility Calculator" to determine eligibility and document records. See <https://www.onecpd.info/incomecalculator/>

- For HOME Rental Housing projects, annual income is the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period, as defined in 24 CFR Part 5 (Part 5 annual income). This is called the “Section 8 income determination method.” For rental projects, initial income must be verified using source documentation. Income must be recertified annually, and source documentation obtained every six years.

Household Beneficiary: The HOME Program is designed to provide affordable housing to low-income families and individuals. Therefore, the Program has rules about targeting program resources and establishing applicant eligibility (92.203)

Income Certification

Before a tenant occupies a HOME unit, all income must be verified with source documentation. In such instances where management is unable to obtain third-party documentation sources documents, such as wage statements, interest statements and unemployment compensation statements from at least the past two months may be used. The agency will be required to collect and obtain this information to be kept in client file. If a household member 18 years of age or older are claiming they receive no income, they are required to complete an *Affidavit of Non-employment*.

The income of all household members (including unrelated individuals) must be considered when determining eligibility. Households must have income verified income using **at least two months of source documentation** (e.g. wage statements, interest statements, or unemployment compensation statements) to calculate anticipated income.

Income eligibility is based on anticipated income for the next 12 months. Likely changes in income must also be used in the determination, such as projected raises. If six months has passed before assistance is provided, e.g. rehabilitation has not yet started or family has not closed on a home,

income must be recertified in the manner described above.

Recertification

To ensure compliance with the affordability period, owners must establish systems to re-certify tenant income on an annual basis during the Period of Affordability. Typically, each tenant's income will be examined on the anniversary date of the original income certification or at lease renewal. However, the owner may adopt an annual schedule to perform all verifications at the same time. Recertification documentation will be monitored by the city.

One of the following methods may be used for recertifying tenant income:

1. Examination of at least 2 months of source documentation (e.g., wage statement, interest statement, unemployment compensation statement) for each household member.
2. For rental projects, the requirement for annual income re-certification can be fulfilled with a tenant self- certification. Self-certification must include a statement that provides the family's annual income, family size, and a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request. Income must be verified with source documentation every sixth year if this method is chosen by a project.
3. A written statement from the administrator or other government program from which the family receives benefits. Statements must include family size, current income, current income limit for their program and a statement that the family's income does not exceed that limit.

Full income verifications and collection of source documents is required every sixth year throughout the required affordability period.

Over Income Tenants

A tenant's income is likely to change over time. If these changes occur during the affordability period, the project owner must take certain step to maintain compliance with HOME rent and occupancy requirements. The project must maintain the correct number of units targeting the identified incomes based on the written agreement between the grantee and the city.

HOME-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the income of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

- Rents must be adjusted for tenants whose incomes rise above 80 percent of the area median income to either 30% of tenant income or fair market rent.
- If the income of a tenant occupying a Low rent unit increases but does not exceed 80% of the area median income, that unit becomes a High rent unit and the Low rent unit must be the next available unit (if floating units) or HOME assisted unit (for fixed units) to a very low income tenant that meets the 50% median income requirement. Subject to the terms of the lease, the rent of the initial tenants whose income has increased may be increased to the High rent limit for the unit. This process should not increase the number of assisted units.
- If a tenant's income increases above 80% of the area median income, the unit this tenant occupies is still considered to be a HOME unit, but the tenants rent must be adjusted to 30%

of the household's income. 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, and the rent of that unit can be adjusted as appropriate.

Maximum Rents

HUD provides the following maximum HOME rent limits. The rent limits apply to the rent plus the utilities or the utility allowance. The maximum HOME rents (High HOME Rents) are the lesser of:

- The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or
- A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit; the HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

The City may designate (in its written agreement with the project owner) more than the minimum HOME units in a rental housing project, regardless of project size, to have Low HOME Rents that meet the requirements of 92.252(b). In rental projects with five or more HOME-assisted rental units, at least 20 percent of the HOME-assisted units must be occupied by very low-income households and meet one of the following rent requirements:

- The rent does not exceed 30 percent of the annual income of a household whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households; HUD provides the HOME rent limits which include average occupancy per unit and adjusted income assumptions; however, if the rent determined under this method is higher than the applicable rent under the High HOME Rents method, then the maximum rent for units under the Low HOME Rent limit is that calculated at the High HOME Rent limit.
- The rent does not exceed 30 percent of the household's adjusted income; if the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the household's adjusted income, then the maximum rent is the rent allowable under the Federal or State project-based rental subsidy program.

The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. HUD then provides the new maximum HOME rent limits to participating jurisdictions. Regardless of changes in fair market rents and in median income over time, the HOME rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment.

The City will provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in the paragraph above) in accordance with the written agreement between the City of Boulder and the owner. Owners must annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance. The City will review rents and approve or disapprove them every year.

Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents. Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of a project within the HOME rent limits.

Single Room Occupancy (SRO) Max Rents [92.2529(c)]

The maximum rent that can be charged for SRO units is 75% of a zero-bedroom fair market rent. There are no Low HOME rent limits for these projects. If there are five or more HOME units, at least 20% of the units must be occupied by very low-income persons. If the SRO unit has a project-based voucher and the occupant is very low-income, the project-based voucher rent may be charged.

- Rent limits for SRO units that have both sanitary and food preparation facilities, the maximum HOME rent is based on the zero-bedroom fair market rent.
- SRO units without sanitary or food preparation facilities (or only one of the two), the maximum HOME rent is 75% of the zero-bedroom rent

Tenant Protections & Selection [92.253]

- There must be a written lease between the tenant and the owner of rental housing assisted with HOME funds that is not for a period of less than one year, unless by mutual agreement between the tenant and the owner a shorter period is specified. Lease terms must be consistent with the tenant protections set forth in the HOME Rules, 24 CFR § 92.253 (HOME Lease Addendum).
- Owners of rental housing must comply with the affirmative marketing requirements pursuant to 24 CFR § 92.351(a).
- The owner must adopt and follow written tenant selection policies and criteria consistent with 24 CFR § 92.253(d).
- The lease must incorporate the VAWA lease term/addendum required under 92.359(e), except as otherwise provided by 92.359(b).

Prohibited Lease Terms

The lease may not contain any of the following provisions:

- **Agreement to be Sued:** Agreement by the tenant to be sued, to admit guilt, or to a judgement 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 take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
- **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 by 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; and

Termination of Tenancy

An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing. To terminate or refuse new tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

VAWA Requirements [92.359]

The Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, apply to all HOME rental housing assisted with HOME funds. For HOME, the "covered housing provider" refers to either the housing owner for the purposes of 24 CFR 5.2005(d)(1), (d)(3), and (d)(4), and 5.2009(a); and the City and the owner for purposes of 24 CFR 5.2005(d)(2), 5.2005(e), and 5.2007, except as otherwise provided.

The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking became applicable upon enactment of VAWA 2013 on March 7, 2013. Compliance with the VAWA regulatory requirements under this section and 24 CFR part 5, subpart L, are required for any rental housing project for which the date of the HOME funding commitment is on or after December 16, 2016.

The notice and certification form that meets the requirements of 24 CFR 5.2005(a) is provided in the City's Rental Compliance Manager which is provided to the owner of HOME-assisted units. The owner of HOME-assisted rental housing must provide the notice and certification form to the applicant for the HOME-assisted unit at the time the applicant is admitted to a HOME-assisted unit,

or denied admission to a HOME-assisted unit based on the owner's tenant selection policies and criteria. The owner of HOME- assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HOME-assisted unit.

If a household living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.

The City has developed a VAWA lease term/addendum to incorporate all requirements that apply to the owner or lease under 24 CFR part 5, subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CF 5.2005(b) and (c). This VAWA lease term/addendum also provides that the tenant may terminate the lease without penalty if the City or Owner determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.20025(e).

The Owner of HOME-assisted rental housing must meet all of the VAWA requirements in accordance with 24 CFR 92.359 throughout the HOME period of affordability.

- a. Notification Requirements: The Agency must provide a notice and certification form that meets the requirements of 24 CFR 5.2005(a) to the applicant for a HOME-assisted unit at the time the applicant is admitted to a HOME-assisted unit, or denied admission to a HOME-assisted unit based on the owner's tenant selection policies and criteria. The Agency of HOME-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HOME-assisted unit.
- b. Bifurcation of Lease Requirements: For the purposes of this part, the following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):

If a household living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.
- c. VAWA Lease Term/Addendum: The Agency must develop a VAWA lease term/addendum to incorporate all requirements that apply to the Agency or lease under 24 CFR part 5, Subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the Agency determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). When HOME tenant-based rental assistance is provided, the lease term/addendum must require the Agency to notify the City before the Agency bifurcates the lease or provides notification of eviction to the tenant. If HOME tenant-based rental assistance is the only assistance provided (*i.e.*, the unit is not receiving project-based assistance under a covered housing program, as defined in 24 CFR 5.2003), the VAWA lease term/addendum may be written to expire at the end of the rental assistance period.
- d. Emergency Transition Plan: The Agency is required to follow the City's Emergency Transfer Plan as outlined in the City's Rental Compliance Manual.
- e. Early Termination of Lease: If a tenant who is living in an affordable unit is a victim of family violence, the Agency must allow the tenant to terminate their lease without penalty.

Tenant Selection Policies

The tenants must be selected in accordance with 92.253(d). The owner must adopt and follow written tenant selection policies and criteria that:

- Satisfy fair (affirmative) marketing requirements
- Limit the housing to very low-income and low-income households
- Are reasonably related to the applicants' ability to perform the obligations of the lease
- Do not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher Program or an applicant participating in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based rental assistance document;
- Provide for the selection of tenants from a written waiting list in the chronological order of their application, in so far as is practicable;
- Give prompt written notification to any rejected applicant of the grounds for any rejection; and
- Comply with the VAWA requirements prescribed in 92.359.

Preference

A development owner may limit eligibility or give preference to a particular segment of the population if that is specified in the written agreement with the City if the preference is described in the City's consolidated plan and the preference does not violate nondiscrimination requirements in 92.350. Preferences must be outlined in the Tenant Selection Plan. Preference does not violate nondiscrimination requirements if the housing also receives funding from a federal program that limits eligibility to a particular segment of the population.

If a project does not receive funding from a federal program that limits eligibility to a particular segment of the population, the project may have a limitation or preference for persons with disabilities who need services offered at a project only if:

- The limitation or preference is limited to the population of households (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing.
- Such household will not be able to obtain or maintain themselves in housing without appropriate supportive services; and
- Such services cannot be provided in a non-segregated setting. The household must not be required to accept the services offered at the project.

Utility Allowance

Per [26 CFR 1.42-10\(b\)\(4\)\(c\)](#) and [HOMEfires Vol. 13 No 2](#), the City has determined that the Utility Allowance Schedule developed by the Colorado Department of Local Affairs (CDOLA) is calculated using a method acceptable under the HOME Program. Therefore, the City will adopt the Utility Allowance Schedule published annually by CDOLA.

The City reviews and approves rents proposed by the owner for units, subject to the maximum rent

limitations outlined in 92.252(a) and (b). For all units subject to the maximum rent limitations in 92.252(a) or (b) for which the tenant is paying utilities and services, the City ensures that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.

Recordkeeping

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). General rental housing records must be kept for five years after the conclusion of the City's period of affordability.
- 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 annual income recertification documents and the tenant's lease. Tenant income rent and inspection information must be kept for the most recent five years, until five years after the HOME affordability period.

Monitoring & Project Oversight [92.504(d)]

The City of Boulder is responsible for on-site inspections and financial oversight of rental projects. The objective of the HOME Monitoring Plan is to establish standards for evaluating and reporting a recipient's compliance with program requirements. The City of Boulder will review the proper maintenance, marketing, occupancy, rents and utility allowances of housing funded with HOME funds by applying the procedures that are described in detail in this document.

HOME activities will be evaluated on the basis of the following program areas:

- Adherence to HOME guidelines, procedures and regulations for programs as a whole and for individual projects
- Internal Procedures and policies and those of program partners
- Overall administration and management
- Fair Housing
- Construction quality, ongoing housing condition and maintenance
- Davis-Bacon, Lead Based Paint, and other Federal Requirements as applicable
- Cost reasonableness and financial accountability
- Environmental Review

The City of Boulder may withhold, reduce, or terminate funding to a developer or subrecipient where deficiencies have not been sufficiently corrected to the City and/or HUD's satisfaction.

Approach & Project Selection for Monitoring

Project oversight will be provided on all active development projects and will be similar to but generally more rigorous than ongoing monitoring.

- **Desk Review:** City of Boulder compliance staff will conduct ongoing monitoring as

part of desk reviews which will be based primarily on the analysis of quarterly and annual reports, inspections and documents submitted for review as projects are developed and managed through the affordability period. Annually, Owners and Managers will submit annual tenant reports to the City compliance staff.

The development process will be monitored by the designated City Project Manager through the draw process, including reviewing draw for reimbursement requests. Prior to final payment and project closeout the project manager will conduct a review of the project file and IDIS information to assure the project is in compliance prior to project close-out.

- **Risk Assessment:** The City of Boulder will conduct an annual Risk Assessment. The results of this assessment will determine which HOME-assisted rental housing projects will be monitored within the program year. At minimum, all properties will be monitored on-site every three years. The following factors will be used to determine the level of risk noncompliance:
 - No previous experience developing, owning or managing a HOME-assisted property.
 - Previous monitoring resulted in areas of noncompliance.
 - Property is experiencing high staff turnover.

Compliance staff will inspect HOME-assisted units in a project, to ensure compliance with property standards. Compliance staff will also ask to see a sample of the files of residents of HOME-assisted units to review income documentation, rent calculations, HOME lease provisions and compliance with other HOME regulations. Project owners must submit information on tenant incomes, rents, fees and utility allowance annually on the form provided by the City.

On-Site Inspections

The City of Boulder will inspect each project at project completion and during the period of affordability to determine that the project meets the property standards of 92.251. Before completing the project in the disbursement and information system established by HUD, the City of Boulder will perform an on-site inspection of HOME-assisted housing to determine that all contracted work has been completed and that the project complies with the property standards of 92.251.

During the period of affordability, the City of Boulder compliance staff will perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards of 92.251 and to verify the information submitted by the owners in accordance with the requirements of 92.252. The inspections must be in accordance with the inspection procedures that the City establishes to meet the inspection requirements of 92.251:

- The on-site inspections must occur within 12 months of project completion and at least once every 3 years thereafter during the period of affordability.
- If there are observed deficiencies for any of the inspectable items in the property standards established by the City, a follow-up on-site inspection will be conducted to verify that the deficiencies are corrected must occur within the timeframe established by the City. The City member may establish a list of non-hazardous deficiencies for which correction can be verified through third-party documentation rather than re-inspection. Health and safety deficiencies must be corrected immediately. The City will conduct frequent inspections for properties that have been found to have health and safety deficiencies.

- The property owner must annually certify to the City that each building and all HOME-assisted units in the project are suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the City.
- Inspections are based on a statistically valid sample of units appropriate for the size of the HOME-assisted project, as set forth by HUD through notice. For projects with one-to four HOME-assisted units, the City inspects 100 percent of the HOME-assisted units and the inspectable items (site, building exterior, building systems, and common areas) for each building housing HOME-assisted units.

Pre-Monitoring Preparation

Prior to an on-site monitoring visit, City compliance staff will conduct a desk review of the project and provide written notification of the visit to the Owner/Manager. The notice will provide the following information:

- The date(s) and time of the visit.
- A copy of the monitoring checklist.
- A list of the properties to be inspected and client files to be reviewed.
- The recipient will be asked to provide the compliance staff with the following:
 - Disbursement and expenditure reports.
 - Agreements/contracts.
 - Policy guidelines and procedures, administrative plans, and operation manuals

Monitoring Letter

Within 30-days of the site visit, a monitoring letter will be prepared and provided to the recipient following the completion of the monitoring review. The letter will include the following information:

- An explanation of the purpose and scope of the review
- A list of the files reviewed
- A list of the houses/units inspected
- A summary of the project and funds expended to date
- An evaluation of project performance to date
- A list of findings, concerns, comments, recommendations, and corrective actions to be take
- A time frame for taking corrective action.

Sanctions

Whenever compliance staff determines that a recipient of HOME funds has failed to comply with the requirements of the HOME program the compliance staff shall notify the recipient of the noncompliance and shall request appropriate compliance action. If within a reasonable period of time the recipient fails or refuses to comply, the City compliance staff may:

- Terminate payments to the recipient, if applicable
- Require repayment of funds spend improperly
- Reduce payments to the recipient by an amount equal to the amount of such payments that were not expended in accordance with the required HOME project, if applicable

- Prohibit the recipient from participation in future HOME/CDBG competitions
- Limit the availability of payments to programs or activities not affected by such failure to comply
- Take such other action as may be provided by law, regulation or program policies and/ or
- Refer the matter to the Attorney General with a recommendation that an appropriate action be instituted

Opportunity for Informal Consultation

Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action taken, the Subrecipient or Recipient shall be notified of such proposed action and be given an opportunity within a prescribed time period for an informal consultation.

Additional resources for HOME monitoring can be found in the HOME Certified Specialist Training Notebook, Chapter 10, and Compliance in HOME Rental Projects: A Guide for PJs, Prepared by ICF 2009. See Appendix I: Rental Compliance Guidance.

Chapter 7: Tenant Based Rental Assistance

Overview

The Tenant Based Rental Assistance (TBRA) Program provides targeted, very low-income households with utility deposit, and rent assistance for up to two years.

Eligible Activities & Costs

- Up to 24 months of rent assistance per household to assist with paying the cost of monthly rent and utilities. A household may continue to receive assistance following the initial 24-month period, dependent on the availability of funding.
- Security deposits, regardless of whether the household will be receiving rent assistance.
- Utility deposit assistance, **only** in conjunction with rental assistance.
- Project delivery costs, which specifically includes administrative time determining income eligibility.
- When HOME TBRA is combined with other subsidies, the HOME TBRA assistance may only be used as a supplement to further reduce the household rent payment to 30 percent of income.

Ineligible Activities

- Project-based rental assistance. Households must be free to use the assistance in any eligible unit.
- Rental assistance to a household already receiving rental assistance under another Federal program, or a state or local rental assistance program that reduces the tenant rent payment to 30% of income.
- Providing TBRA for overnight or temporary shelter.
- Move-in costs and credit checks.
- Case management and support services.
- Utility deposits without rental assistance.
- Payment of rent arrearages.

Subrecipient or Recipient Eligibility

Eligible Subrecipients or Recipients are public housing authorities and nonprofit community-based organizations assisting households in areas throughout the City of Boulder and Consortium areas. Subrecipients or Recipients must have prior experience administering a tenant based rental assistance program, unless an experienced entity has agreed to mentor the applicant for the term of the contract.

Targeted Assistance

The TBRA program can be targeted to special needs populations and persons with disabilities. See 92.209(c)(2)(i) and (ii). However, the City has not established a preference for individuals with special needs or persons with disabilities. As such, the City does not offer, in conjunction with a tenant-based rental assistance program, particular types of non-mandatory services that may be most appropriate for persons with a special need or particular disabilities. Tenant-based rental assistance and the related services are made available to all persons with special needs or disabilities who can benefit from such services. Participation is not limited to persons with a specific disability.

Tenant Selection

TBRA Tenant selection policies must be based on local housing needs and priorities consistent with the consolidated plan. The Subrecipient or Recipient must select low-income households in accordance with tenant selection policies and criteria that are based on local housing needs and priorities established in the City's consolidated plan. Tenant-based rental assistance may only be provided to very low- and low-income households; the Subrecipient or Recipient must determine that the household is very low- or low-income before the assistance is provided. During the period of assistance, the City's Subrecipient's must annually determine that the family continues to be low-income.

As the City's Consolidated Plan does not identify a preference, applicants must be chosen in a first come first-serve manner from a written waiting list. Each agency must outline its procedures for notifying households on the wait list of their eligibility for TBRA assistance, timing requirements for households once notified, and procedures for maintaining the written waiting list.

The Subrecipients or Recipient's program cannot be administered in a manner that limits the opportunities of persons based on race, color, religion, sex, national origin, handicap, sexual orientation, gender identification, or familial status. A person selected for the TBRA program may not be prohibited from applying for or participating in other available programs or forms of assistance for which they might qualify. Subrecipients or Recipients must administer the TBRA HOME program in compliance with Fair Housing Law.

Unit Selection & Approval

Approved applicants may select units that are publicly or privately owned and located within the City of Boulder or Consortium area, as determined by the Subrecipients or Recipient's County of service. TBRA may not be provided to a family who proposes to rent a unit that receives project-based rental assistance through federal, state, or local programs, if the TBRA assistance would lower the household's rent and utility costs to less than 30% of the household income. Student housing units are not eligible for TBRA assistance.

Rent Reasonableness

Units must rent for a reasonable amount, compared to rents charged for comparable, unassisted units. Subrecipients or Recipients must document the basis of their rent reasonableness determinations. Although documentation of three comparable units is preferable, in some rural areas this may be difficult or impossible. In these cases, comparable units from neighboring communities are acceptable if the rents are similar. Documentation of fewer than three units is also acceptable with a written explanation. A rental lease must be disapproved if the rent is not reasonable, based on rents charged for comparable unassisted units.

Housing Quality Standards (HQS)

All units must meet Section 8 Housing Quality Standards (HQS). Inspections must be made at initial occupancy and annually during the length of assistance. A copy of the inspection must be retained in the client file. If tenants are occupying a unit owned by the contractor, the unit must be inspected by a third party. Units may also be inspected as a result of housing quality complaints initiated by the owner or the tenant.

If a unit fails to pass inspection, the owner may be given a reasonable period of time to correct the deficiencies. If the owner fails to make the needed corrections, the Subrecipient or Recipient has several options. The Subrecipient or Recipient may, with adequate notice to the owner and household, terminate the TBRA Rental Assistance Contract and require the household to move to another location in order to continue to receive assistance. Inspection documentation shall be retained in the client file.

Lead Based Paint

HUD's Lead Regulation 24 CFR Part 35, Subpart M applies to the TBRA program. The regulation only applies to structures built before 1978 that house children under the age of six. Please consult the regulation itself to make sure that your agency implements this regulation fully and properly.

1. **Evaluation:** The Subrecipient or Recipient must conduct a visual assessment of a unit prior to occupancy and at least annually thereafter. The visual assessment identifies deteriorated paint, dust, debris, and other residue. The visual assessment must be done by a person who is trained in visual assessment.
2. **Paint Stabilization:** The property owner must correct any conditions identified in the HQS inspection, including stabilizing deteriorated paint identified in the visual inspection. Paint stabilization can involve repairing the substrate, scraping and repainting the surface. All deteriorated paint must be stabilized by properly trained or supervised workers using lead-safe work practices.

Documentation of safe work practices is required and consists of having copies of certificates of safe work practices training completion on file for those doing the lead reduction work.

When work is complete, the Subrecipient or Recipient must ensure that the unit passes clearance and keep a copy of the clearance report. Failure to get clearance on any unit where lead hazard reduction activities have occurred will result in rental assistance being discontinued on the unit. Keep records of any unit where clearance is required but has not been obtained to ensure that the unit does not become rent assisted, even if another eligible household wants to live there.

3. **Communication with Residents:** The Subrecipient or Recipient must ensure that residents receive the following communications:
 - a. **Lead Hazard Information Pamphlet:** Prior to occupying the unit, the Subrecipient or Recipient must provide the resident with the most up-to-date Protect Your Family from Lead in Your Home pamphlet. This document can be accessed in multiple languages at the following link: <https://www.epa.gov/lead/lead-safety-documents-and-outreach-materials>. The Subrecipient or Recipient must retain in the client file documentation of receipt of this pamphlet by the resident prior to occupation of the unit, which must include a signature of acknowledgement signed by the resident.
 - b. **Lead Disclosure Notice:** Residents must receive, from the owner, a Lead Disclosure Form notifying them of any known lead-based paint or hazards in the unit, prior to occupying the unit. The Subrecipient or Recipient must retain in the client file

documentation of any Lead Disclosure provided to the resident by the owner, which must include a signature of acknowledgement signed by the resident.

- c. Notice of Lead Hazard Reduction: For instances in which visual assessment and lead hazard evaluation determines a need for paint stabilization and/or abatement, and the owner has conducted paint stabilization activities, the resident must receive a Notice of Lead Hazard Reduction within 15 days of the completion of paint stabilization and clearance. The Subrecipient or Recipient must retain this documentation in the client file, which must include a signature of acknowledgement signed by the resident.
- d. Notice of Lead Hazard Evaluation: Because a visual assessment is not a method of lead hazard evaluation, a notice of lead hazard evaluation is not required. However, if any lead hazard evaluation is conducted, for example in the event of a child with an Environmental Intervention Blood Lead Level (EIBLL), such a notice is required and must be posted at the applicable work site. The Subrecipient or Recipient must retain all related documentation in the client file.

4. Child with an Elevated Blood Lead Level (EIBLL)

- a. Should the Subrecipient or Recipient be made aware that a child less than 6 years of age living in a dwelling unit participating in the TBRA program has been identified as having elevated blood lead levels, the Subrecipient or Recipient must conduct an inspection of the dwelling unit for Lead Based Paint risk. The Subrecipient or Recipient must immediately notify the household and the owner of the unit of the results of the inspection, and the owner must conduct paint stabilization and/or abatement in compliance with the requirements of 24 CFR Part 35, Subpart M. Hazard reduction must occur within 30 calendar days of notification to the owner. The Subrecipient or Recipient must retain all documentation of the EIBLL, as well as subsequent inspections, notification, and stabilization and/or abatement in the client file.

Occupancy Standards

Occupancy standards are used to determine the unit size for which the household is eligible and thus, the amount of assistance to be provided. Fair housing rules permit a household to select smaller units that do not create seriously crowded conditions. Participants may also select larger units, but the Subrecipient or Recipient is not required to increase the subsidy to cover the increased costs of a larger unit.

Subrecipients or Recipients will use the Section 8 Housing Quality Standards (HQS) basic occupancy standard of two persons per living/sleeping area. This basic standard can be modified when a specific household composition or circumstance warrants the need to deviate from this standard. In conjunction with the annual re-examination of income, the Subrecipient or Recipient should re-examine the household's size and composition to determine whether the current unit is still suitable and appropriate.

Lease Approval

In addition to ensuring that the unit selected by the household meets the above requirements for Rent Reasonableness, Housing Quality Standards, and Occupancy Standards, the Subrecipient or

Recipient must also ensure that the unit lease meets all requirements of the HOME program, as outlined in 24 CFR 92.253. The lease may not contain any of the provisions prohibited in 24 CFR 92.253(b):

- 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 take, hold, or sell personal property of household members without notice to the tenant and a court decision on the right of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law.
- 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 by 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.
- Mandatory supportive services: Agreement by the tenant to accept supportive services that are offered.

Processing Requests for Rent Increases

Typically, owners offer leases that specify the rent for one year. This means that, unless the Subrecipient or Recipient has negotiated a two-year rent, most owners will request a rent increase at the end of the first year of the contract. The Subrecipient or Recipient must again determine that the proposed rent is reasonable in comparison to rents charged for comparable, unassisted unit, and also that it is within any other limitations established in the Subrecipient or Recipient's program.

Moves & Termination of Tenancy

Subrecipient or Recipient should, at a minimum, require that owners comply with local landlord-tenant ordinances and may impose some additional requirements.

TERMINATION: Agency must notify tenant in writing when terminating tenant assistance. Agency must follow landlord tenant rules of Washington State.

- End of Assistance Time Period: Provide notice in writing to tenant and landlord. If deposit assistance was provided at the beginning of the lease term, all returned deposits shall belong to the tenant.
- Property Owner Termination: If a property owner terminates the tenancy through no fault of the tenant, and the tenant is still eligible for assistance, the Agency will work to find another unit. Any deposit assistance received at the beginning of the original lease term that is returned to the tenant must be applied to the new unit if assistance is continued.
- Tenant Caused Eviction: If the tenant is evicted due to breaking the lease or participating in illegal activities, the agency is under no obligation to continue to provide rental assistance. If it is determined that the tenant may continue to receive assistance and is eligible to receive their security deposit back the returned deposit must be applied to the required deposits for the new unit.
- Tenant Moves: Tenant moves are accommodated only in rare instances such as family size, job change, unit not meeting annual HQS standards, or other extenuating circumstances that pose a threat to the tenant's health, safety, or wellbeing as documented by a case manager. Any deposit assistance received at the beginning of the original lease term that is returned to the tenant must be applied to the new unit if assistance is continued.

Notices of moves and Terminations of tenancy must be documented in writing and maintained in the tenant file. Acceptable forms of documentation include eviction letters issued by landlord, notice of lease ending, etc. Documentation should detail why the tenant is moving or tenancy is being terminated. All types of deposits may only be provided using HOME funds twice during a 12-month period per household.

Monitoring

The City will monitor TBRA Subrecipients or Recipients through data and documentation collected in periodic program reports and on-site monitoring. Subrecipients or Recipients will also be subject to monitoring and evaluation by the U.S. Department of Housing and Urban Development.

Environmental Review

Because the proposed project involves the provision of rental assistance to private landlords on behalf of tenant, it is exempt from the National Environmental Policy Act (NEPA) requirements of 24 CFR 58. There are no circumstances that require compliance with laws and authorities in 24 CFR 58.5; therefore, the project is found to be exempt pursuant to Section 58.34(a)(10). The City has certified that the proposed project is exempt from NEPA.