



GRANTS ADMINISTRATION

HOME Investment Partnership Policies and Procedures Manual

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Berkeley County
Grants Administration Department
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Introduction

Berkeley County receives and administers funds provided under the HOME Investment Partnerships Act (the HOME Act, Title II of the Cranston-Gonzalez National Affordable Housing Act), which was created to provide funds to expand the supply of decent, safe, and affordable housing for low-income persons.

The purpose for this Manual is to provide information on program implementation that will meet HOME regulatory requirements and provide an approach to set-up, implement and monitor HOME activities for both the County and its HOME recipients. This Manual is intended only as a guide and is not a substitute for federal and local laws and regulations. Though not all-inclusive, this Manual covers the major areas of HOME administration and provides reference to applicable laws and regulations. The County reserves the right to update and amend this Manual as needed to comply with program requirements.

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, and
- Tenant-based Rental Assistance (TBRA).

*NOTE: At this time, Berkeley County is only funding homeownership development projects. If the County begins funding other types of eligible projects, these Policies and Procedures will be updated accordingly.

Definitions

1. **Action Plan:** The one-year portion of the Consolidated Plan. It includes the PJ's annual application for HOME funds.
2. **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).
3. **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).
4. **Annual Income:** Annual income as defined in 24 CFR 5.609, referred to as "Part 5 annual income", also known as the rules for determining income under the Section 8 voucher program.
5. **Commitment:** Commitment means (1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with a State recipient, 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 participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (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.
6. **Commitment to a specific local project:** Commitment to a specific local project means that a legally binding agreement was executed meeting one of the following sets of requirements:
 - a. For rehabilitation or new construction projects, the PJ (or other entity) and the project owner will execute an agreement for an identifiable project for which all necessary financing has been secured, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within 12 months of the agreement date. If the project is owned by the Berkeley County or state recipient, the project must be set up in the disbursement and information system and construction reasonably expected to start within 12 months of the set-up date.
 - b. If the project consists of acquisition of standard housing by the PJ, the agreement must be a binding contract for the sale of an identifiable property

and the property title must be transferred to the PJ (or other entity) within six months of the date of the contract.

- c. If the project involves the acquisition of standard housing and Berkeley County is providing HOME funds to a purchaser, under the agreement, the title of the property must be transferred to the purchaser within six months of the agreement date.
 - d. Note that preliminary or conditional “commitments” may be made, but no funds are considered committed under the rules unless the above conditions have been met.
7. **Consolidated Plan:** A 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.
 8. **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.
 9. **Draw-Down:** The process of requesting and receiving HOME funds. Berkeley County and authorized recipients draw down funds from a line of credit established by HUD.
 10. **Final Rule:** The Final HOME Rule was published at 24 CFR Part 92 on July 24, 2013, and became effective on August 24, 2013.
 11. **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.
 12. **HOME-Assisted Units:** A term that refers to the units within a HOME project for which rent, occupancy and/or recapture restrictions apply. The number of units designated as HOME-assisted affects the maximum HOME subsidies that may be provided to a project.
 13. **HOME Funds:** All appropriations for the HOME Program, plus all repayments and interest or other returns on the investment of these funds.
 14. **HOME Investment Trust Fund:** The term given to the two accounts - one at the Federal level and one at the local level - that “hold” the County’s HOME funds. The Federal HOME Investment Trust Account is the U.S. Treasury account for each participating jurisdiction. The local HOME Investment Trust Fund account includes repayments of HOME funds, matching contributions and payment of interest or other returns on investment.
 15. **Household:** One or more persons occupying a housing unit.
 16. **Jurisdiction:** A state or unit of general local government.
 17. **Low-Income Families:** Families whose annual incomes do not exceed 80 percent of the median income for the area (adjusted for family size).

18. **Match:** Match is the County's contribution to the HOME Program -- the local, non-Federal contribution to the partnership. The County's match contribution must equal not less than 25 percent of the HOME funds drawn down for projects in that fiscal year.
19. **New Construction:** The creation of new dwelling units. Any project which includes the creation of new or additional dwelling units in an existing structure is considered new construction.
20. **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 the County, state recipient, or a sub recipient directly generated from the use of HOME funds or matching contributions.
21. **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.
22. **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, 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.
23. **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.
24. **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.
25. **Sub recipient:** A public agency or nonprofit organization selected by the County to administer all or a portion of the County's HOME Program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a sub recipient.
26. **Targeting:** Requirements of the HOME Program relating to the income or other characteristics of households that may occupy HOME-assisted units.

27. **Underwriting and Subsidy Layering Analysis:** The County is required to undertake a subsidy layering and underwriting analysis of all development projects to which they provide HOME funds, rental, and homeownership alike, with the exception of owner-occupied housing rehabilitation and down payment assistance. This includes but is not limited to a review of sources and uses, market demand, and qualifications of the developer.
28. **Very-Low-Income Families:** Families whose annual incomes do not exceed 50% of the median income for the area (adjusted for family size).

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Distribution of Funding

HUD determines annually an allocation for Berkeley County, utilizing U.S. Census and HOME data in conjunction with a HOME formula to calculate the entitlement award.

Berkeley County 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 County's distribution plan for HOME funds provides:

- **Administration (10%):** Funds are used by the County for planning, administration, allocation of indirect costs and monitoring of the program. Funds are also used to conduct training and technical assistance to entities interested in applying for and implementing HOME funded projects.
- **Programmatic HOME Funds (75%):** The County distributes the programmatic HOME funds to eligible projects within its geographic region.
- **CHDO Set Aside (15%):** In accordance with HOME regulations, a minimum of 15% of annual HOME funds are set-aside for use exclusively by HOME designated community housing development organizations (CHDOs) for specific allowable activities (housing owned, developed and/or sponsored by the CHDO). These funds are awarded to CHDOs by the County via a competitive proposal process. ****This requirement has been waived until December 31st, 2025.****

Community Development Advisory Board

The volunteer Community Development Advisory Board is comprised of nine citizens of Berkeley County, representing a diversity of life experience and a range of professional expertise including but not limited to housing, human and social services, accessibility, and familiarity with issues affecting those with low- and moderate-income. HOME Program staff and consultants will complete eligibility review and underwriting review of the applications and present funding recommendations to the board. The Board will further review the applications and provide funding recommendations to County Council.

Homeowner Development Project Criteria

The County will provide HOME assistance to developers of affordable homeownership projects to assist with costs that are in excess of construction, permanent, and/or other subsidy financing and equity resources.

HOME funds may be used for acquisition, new construction, or rehabilitation of affordable single-family housing for homeownership. Berkeley County will work to preserve and expand the area's affordable housing stock by providing deferred loans and/or low-interest loans to housing partners including Community Housing Development Organizations (CHDOs) for the production of affordable housing units.

Berkeley County HOME funds will be leveraged with other funding in order to maximize the numbers of units produced while minimizing cost burden to new homeowners.

The amount of funds invested in a homeownership housing project will always reflect the minimum amount of public subsidy necessary to achieve the maximum public benefit. Before committing funds to a housing project, the County will evaluate the project and verify that the developer did not request or was not allocated any more HOME funds in combination with other governmental assistance than is necessary to provide the affordable housing.

Eligible Activities

Activities allowed with the use of County funds are activities that support the development of affordable housing and address the needs identified in the Consolidated Plan. The activities may include but are not limited to:

- Acquisition of existing structure(s) for rehabilitation of affordable homeownership housing
- Rehabilitation of existing structure(s) of affordable homeownership housing
- New construction of affordable homeownership housing

Eligible Types of Projects

- 1-4 Single family unit homes
- Condominiums/Cooperatives
- May be one or more buildings on a single site, but project must be assisted with HOME funds as a single undertaking.

Manufactured Housing

- In accordance with 24 CFR 92.205(a)(4), HOME funds may be used to purchase manufactured housing units or purchase the land upon which a manufactured housing unit is located.
- Berkeley County Home funds shall not be used to rehabilitate manufactured housing units.
- Any manufactured housing unit purchased with HOME funds must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

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 that contains other non-Home units. However, the following additional restrictions apply:

- Only the actual HOME eligible development costs may be supported by the HOME program.
- Actual Costs can be determined by the following:
 - If the assisted and non-assisted units are not comparable (non- HOME units may contain luxury materials, for example) the actual costs may be determined based on a method of cost allocation.
 - 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 pro-rating 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.

Eligible Project Costs

HOME funds may be used to pay the following eligible costs:

- Acquisition Costs
- Development Hard Costs
- Related Soft Costs
- Community Housing Development Organization Costs (if an approved CHDO- project)
- Relocation Costs (if required under the Uniform Relocation Act)

These project costs are explained in further detail in the following pages.

NOTE: If a property supported (acquired, rehabilitated, etc.) with HOME funds is ultimately unable to provide affordable housing in accordance with HUD regulations, the project will be deemed ineligible and subject to the recapture of HOME funds.

Acquisition Costs

- Includes costs of acquiring improved or unimproved real property
- Acquisition of vacant land or demolition can only be undertaken for particular housing project intended to provide affordable housing.
- Costs to make utility connections to an adjacent street or to make improvements to the project site, in accordance with the provisions of 24 CFR 92.206(a)(3)(ii) and (iii) are also eligible in connection with acquisition of standard housing.
- Acquisition costs must be supported by an independent real estate appraisal or assessment.

Development Hard Costs

- Includes the actual cost of constructing or rehabilitating housing.
- New Construction: Project costs must meet the Berkeley County Construction Standards.
- Rehabilitation: Project costs must meet the Berkeley County Construction Standards.

- Demolition of Existing Structures (Uniform Relocation Act applies)
- Creation of utility connections including off-site connections from the property line to the adjacent street.
- Improvements to the project site (only property owned by the project owner, where the project is located) that is in keeping with improvements of surrounding, standard projects. Including:
 - On-site roads
 - Sewer Lines
 - Water Lines

*Costs must be necessary to the development of the project.

Soft Costs

Costs include other reasonable and necessary costs incurred by the owner and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds.

- These costs include, but are not limited to:
 - Architectural Services;
 - Engineering Services;
 - Preparation of plans, drawings, specifications, or work write-ups;
 - Costs to process and settle the financing for a project;
 - Private lender origination fees;
 - Credit reports;
 - Fees for title evidence;
 - Fees for recordation;
 - Filing of legal documents;
 - Building permits;
 - Attorney's fees;
 - Private appraisal fees;
 - Fees for an independent cost estimate;
 - Builders or developers' fees;
 - Costs of a project audit;
 - Affirmative marketing and fair housing information to prospective homeowners;
 - Staff and overhead costs directly related to carrying out the project, such as:
 - Work specifications preparation,
 - Loan processing inspections, and
 - Other services related to assisting potential owners, tenants, and homebuyers.
 - Housing counseling (only for individuals who ultimately occupy a HOME unit)
 - All costs must be reasonable and thoroughly documented (including timesheets detailing actual time worked on HOME activities).
 - For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.
 - Costs of environmental review and release of funds in accordance with 24 CFR Part 58 which are directly related to the project.
 - Relocation costs (for persons displaced by the project):
 - Replacement housing payments
 - Moving expenses

- Other reasonable out-of-pocket costs incurred in the temporary relocation of persons.
- Staff time associated with providing relocation to displaced persons (including referrals housing search assistance, property inspections, counseling, and other assistance necessary to minimize hardship).

The activities and costs are eligible only if the housing meets the property standards in 24 CFR 92.251 upon project completion.

A HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and will be subject to recapture.

Demolition must be undertaken only when related to a particular housing project intended to provide affordable housing within specific time frame.

Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding one or more units beyond the existing floor plan, in which case, the project is considered new construction.

Ineligible Activities

HOME funds shall not be used to:

- Provide project reserve accounts, except as provided in § 92.206(d)(5), or operating subsidies;
- Provide tenant-based rental assistance for the special purposes of the existing section 8 program, in accordance with section 212(d) of the Act;
- Provide non-federal matching contributions required under any other Federal program;
- Provide assistance authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds);
- Provide assistance to eligible low-income housing under 24 CFR part 248 (Prepayment of Low-Income Housing Mortgages), except that assistance may be provided to priority purchasers as defined in 24 CFR 248.101.
- Provide assistance (other than assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction in the written agreement under §92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.
- Pay for the acquisition of property owned by Berkeley County, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project;
- Pay delinquent taxes, fees or charges on properties to be assisted with HOME funds.
- Pay for pre-award costs (costs incurred prior to the execution of the written agreement). (Eligible pre-award costs are narrowly defined under §92.206(d); and may only be reimbursed if prior written authorization was provided by the County.);
- Pay for any cost that is not eligible under §§ 92.206 through 92.209.

- Support activities in connection with litigation involving discrimination or fair housing are set forth in section 224 of the Act
- Development of homeownership units where there is not a considerable market study illustrating demand for homeownership housing

Eligible Beneficiaries

Eligible homebuyers must meet the following requirements:

- Household must be qualified under the Part 5 Income Definition to be at or below 80% of area median income (*at time of purchase*). Current year HOME Income Limits can be found at <https://www.hudexchange.info/programs/home/home-income-limits/>
- Household must reside in or be relocating to Berkeley County.
- Household must not be an agent, consultant, officer, employee, and/or elected official of Berkeley County or a HOME recipient of funds (household may still be able to receive assistance IF a waiver is approved by HUD);
- Household will ultimately use the dwelling unit as their principal residence;
- Household will ultimately legally own the dwelling unit/property (as evidenced though a fee simple title, 99-year leasehold interest, or equivalent form of ownership) approved by Berkeley County; and
- Household must meet all other requirements where applicable.

Income Eligibility Determination

Annual income is used to determine program eligibility and, in some programs, the level of assistance the household will receive. When determining the income eligibility of a household, Berkeley County uses the definition of “Annual Income” found at 24 CFR 5.609.

The total household income will be used for determining program eligibility and must be documented with at least two-months of source documentation (e.g. paystubs, benefit records, bank statements). Income attributable to all household members, whether related by blood or marriage or not, will be included for eligibility purposes.

Developers will be responsible for determining income eligibility for potential homebuyers.

Calculating Annual (Gross) Income

Developers shall use the Part 5 definition of annual income to calculate household income. The Part 5 definition of 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. Each of the italicized phrases in this definition is key to understanding the requirements for calculating annual income:

- **Gross amount.** For those types of income counted, gross amounts (before any deductions have been taken) are used;
- **Income of all adult household members.** The Part 5 definition of annual income contains income “inclusions” – types of income to be counted – and “exclusions” – types of income that are not considered (for example, income of minors); and

- **Anticipated to be received.** The Part 5 annual income is used to determine eligibility and the amount of Federal assistance a family can receive. Therefore, Developers shall use a household's expected ability to pay, rather than past earnings, when estimating housing assistance needs.

Beneficiaries of HOME funds must be determined income eligible based upon a review of their projected **gross anticipated annual income** by all adult household members (everyone 18 years of age and older).

- The income determination cannot be more than **6 months** old at the time the assistance is received.

All HOME recipients are required to document:

- Income of ALL Adults (persons 18 and over), even if there is no income
- If there are more than one ADULT in a household, documentation must be provided for each ADULT household member.
- If an adult has more than one income source or job, each source of income should have its own documentation (i.e. paystubs for employment & RIW benefit letter for Jane Smith).

To determine if applicants are income eligible, recipients shall review and verify income using the following (but not limited to):

- Pay stubs
- SSI/SSDI benefit letters
- Pension Statements
- Wage statements
- Interest statements
- Unemployment compensation statements
- Tax returns, w-2 forms
- Profit and loss statement from business
- Other Third-party documentation (bank statements, etc.)

Method of Assistance

Berkeley County HOME funds are provided through loans:

- Construction financing may be used by developers to build affordable housing at a low-interest rate.
 - Construction loans will be fully repayable upon sale of the home unless purchase assistance is provided to the homebuyer.
 - If purchase assistance is provided to the homebuyer, that amount will be deducted from the repayable portion of the construction loan.
 - The amount of purchase assistance provided to each household will be dependent on income level and the amount of subsidy needed to bring the purchase price within an acceptable debt-to-income (DTI) ratio.
- Developer Subsidy provided in the form of a deferred forgivable loan
 - Developer subsidies will require enforcement of the resale provision through a restrictive covenant.
- **Minimum amount of assistance.** The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is \$1,000/HOME-assisted unit.

- **Maximum per unit HOME Investment** is tied to the Section 234-Condominium Housing basic mortgage limits, for elevator-type projects, which is updated annually and can be found here: <https://www.hudexchange.info/resource/2315/home-per-unit-subsidy/>

HOME Subsidy Layering and Underwriting Policy

Before committing funds to a project, the County must evaluate the proposal to determine that there will be a reasonable level of return on owner's or developer's investment in a project and that no more HOME funds are 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. This evaluation will include:

- An examination of the sources and uses of funds for the project and a determination that the costs are reasonable; and
- An assessment, at minimum, of the current market demand in the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer, and firm written financial commitments for the project.

The County may rely upon the guidelines developed and/or evaluations conducted by other agencies, such as when Low Income Housing Tax Credits (LIHTC) or other HUD program funding, are used.

Applicants seeking HOME funds are required to submit to Berkeley County's Grants Administration Department:

- The applicable HOME application workbook.
- Commitment letters with all terms and conditions for the following:
 - Mortgages
 - Grants and/or other governmental assistance
 - Subordination agreements
 - Bridge (interim) loans
 - Investment tax credits (historic, low-income, if applicable)
 - Copy of partnership agreement (if the applicant is a partnership), which indicates the cash contributions by the general partners and/or limited partners

*Note: The proceeds from the sale of tax credits must be identified as a source of funding.

Documentation to verify the sources indicated in the Template including:

- Earnest money agreement, option or closing statement for land and/or buildings
- Construction cost estimate
- Construction contract or preliminary bids
- Agreements governing the various reserves which are capitalized at closing (to verify that the reserves cannot be withdrawn later as fees or distributions)
- Appraisal (to substantiate the value of land and property after rehabilitation/construction)

If low-income housing tax credits are utilized, documentation on the syndication costs (legal, accounting, tax opinion, etc.) from the organization /individual who will syndicate and sell the offering to ensure that the project can support the fees necessary to syndicate/fund the project. All assumptions in the offering should be verified in the supporting documentation.

If the documentation is not adequate and does not support the costs as stated, the County will request additional documentation or a second opinion and/or reference from an appropriate source, such as another construction cost estimator, architect, or lawyer.

When required documentation cannot be obtained, the County may deny HOME funding for the project.

If the County determines that the project is feasible after the initial application is reviewed, it will provide the applicant with a conditional commitment letter. The applicant will then have six (6) months to finalize the budget, get firm funding commitments from other sources, and finalize construction plans. The applicant will be required to submit the Underwriting application before funds are committed to the project. More details can be found in the HOME Underwriting Guidelines.

Site and Neighborhood Standards

Proposed sites for potential HOME 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;
- The site must not be located in an area of minority concentration, except as permitted below:
 - Sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration; or
 - The project is necessary to meet overriding housing needs that cannot be met in that housing market area.
 - Please refer to 24 CFR 983.6 for more details regarding utilization of the exceptions listed above.

Site and neighborhood standards are part of any County underwriting analysis. A market analysis may be requested from the developer to provide justification for site selection and the need for HOME investment.

Construction Standards

- All properties constructed or rehabilitated with County HOME funds will meet the minimum local codes and standards once construction is completed and occupied.

- All projects will be designed and constructed in compliance with the Berkeley County HOME Property Standards.
- Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.
- All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.
- Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing.
- Monitoring visits will be conducted by the County to ensure property and construction standards are being met before, during, and after construction.
- Prior to occupancy or resale, the County shall conduct a Uniform Physical Conditions Standard inspection. No transfer shall be authorized by the County until a property passes UPCS inspection. Projects that fail UPCS shall be informed of the deficiencies to be corrected and the protocol to request a new inspection once remedied.
- The housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).
- All new construction housing developments with 5 or more units must design and construct 5 percent of the dwelling units, or at least one unit, whichever is greater, to be accessible for persons with mobility disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter.
- All renovations of existing structures with 15 or more units (where the cost of the alterations is 75 percent or more of the replacement cost of the completed facility) must have 5 percent of the dwelling units to be accessible for persons with mobility disabilities. These units must be constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) or a standard that is equivalent or stricter.
- Regardless of project size, all multifamily housing projects shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps.
- In projects with less than 15 units, HOME recipients are not required to take any action would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens.

Marketing & Selling Policies

The developer must use fair housing marketing practices when selling HOME units, as required by the Fair Housing Act (4.2 U.S.C. 3601-29). The County will review and approve the developer's marketing policy as part of the application review, and it will incorporate the policy as part of the funding agreement.

All HOME projects shall be in compliance with Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

The ownership interest may be subject only to the following:

- Mortgages, deeds of trust or other debt instruments approved by the Berkeley County; or

- Any other encumbrances or restrictions that do not impair the marketability of the ownership interest, other than the HOME Program restrictions on resale.

Qualifications as Affordable Housing

- All projects must be fully complete with units sold within 4 years of the commitment of HOME funds. Per 24 CFR 92.254(a)(3), any unit not sold within 9 months of the completion of construction must be converted to rental and meet all of the requirements for HOME rental housing. HOME funds provided for any such unit that is not rented within 18 months of conversion must be repaid to the County.
 - A ratified sales contract within nine (9) months of completion will count as sold.
 - If for any reason the unit is not able to be converted to rental, the HOME funds invested must be repaid to Berkeley County.
- 100% of HOME funds must be invested in dwelling units that are occupied by households that qualify as low-income families (80% AMI and below).
- All homeowners must be provided homebuyer counseling prior to purchase.
- All units must be sold at or below the HOME Homeownership Value Limits (95% of the median purchase price for the area for the specified housing type). The limits can be found at: <https://www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/>
 - Unit prices may vary (underneath this limit) based on neighborhood trends, target buyers, and project underwriting.
- The sale of a property and any assistance to a homebuyer require that the buyer be underwritten according to the County’s HOME Underwriting Guidelines for homebuyers.
- Resale of the property during the affordability period and qualification of subsequent buyers will be governed by the HOME covenant and land use restriction on the property.

Term of Affordability

The minimum length of an affordability period depends on the amount of the HOME investment in the property:

HOME Investment per Unit	Affordability Period
Less than \$15,000	5 years
\$15,000-\$40,000	10 years
More than \$40,000	15 years

In some cases, the County or developer may opt for a longer period of affordability (typically 30 or more years). This is permissible; however, it is important to note that compliance will be required throughout the entire designated period of affordability unless the County’s Restrictive Covenant is executed to legally differentiate the local versus federal periods of compliance.

Affordability requirements shall be recorded on the property through:

- A deed restriction or covenant running with the land; and
- Loan documents.

** Loan default and subsequent foreclosure negates the principal residence limitation, but not the affordability restrictions.*

Throughout the period of affordability, income eligible households must occupy the assisted units.

All property acquired with HOME funds is subject to a period of affordability, which is safeguarded by the appropriate legal instrument (Land Use Restrictive Covenant) and resale or recapture provision. If a homebuyer project becomes non-compliant during the period of affordability, the appropriate **resale or recapture** provisions shall apply.

The County employs Recapture Provisions when direct subsidy is provided to a homebuyer. Resale is employed in the event an assisted property is acquired without direct subsidy to the buyer.

Berkeley County will use the **Recapture** method to recover HOME funds from projects where a homebuyer subsidy was provided that fail to meet the minimum affordability requirements. This allows an income-restricted unit to be sold and the homeowner bearing the responsibility of repayment of the HOME funds that supported the homebuyer's original purchase. The proceeds from the repayment of the HOME subsidy will go to support an additional project.

To ensure that the County recovers a reasonable amount of the HOME Program funds from the sale, transfer, foreclosure, or conveyance of a subsidized property within the minimum federally- required affordability period, the following recapture provisions will be made an express covenant of the borrower applicable to the loan:

If the mortgaged property is sold, refinanced, conveyed, assigned, leased, or otherwise transferred or if a senior lender forecloses on any senior mortgage prior to the end of the minimum federally required affordability period as defined by 24 CFR 92.254(a)(4), the HOME Program loan assistance shall be repaid to the Berkeley County Grants Administration department on a net proceeds' basis according to the following formula:

- **Net Proceeds** = Sales price minus municipal liens, minus principal owed to senior lenders, minus selling costs;
- **Homeowner Investment** = Down-payment plus principal paid on first mortgage and any verifiable capital improvement investment made from the date of purchase;
- **County's Investment** = HOME Program assistance;
- **Total Investment** = Homeowner investment plus County's investment

Amount of Net Proceeds to be returned to County upon sale prior to the end of the minimum federally required affordability period = (County's investment / Total Investment) * Net Proceeds.

Recaptured funds will be advertised in the development of the following year's Action Plan and will go through the Advisory Board to be reallocated to another eligible activity.

In the event of resale of a property where there is not a direct subsidy to the homebuyer, the County will employ a **Resale Provision** to preserve the remaining affordability period to ensure the housing is retained

for occupancy for low-income households. The Resale Provision requires that if the owner of an income-restricted property sells, conveys, or transfers his/her ownership interest in the property prior to the end of the minimum federally required affordability period, the sale, conveyance, or transfer shall only be to an eligible, income-qualified purchaser. Other restrictions concerning notice of sale, maximum resale price, and marketing of affordable unit(s) shall apply and are fully detailed in the County's Resale Provision and recorded Land Use Restrictive Covenant.

With the resale provision, during the period of affordability prescribed by covenant, for any subsequent sale the property may only be sold to a household properly certified by the County as eligible under the income limits as established by HUD and in effect at the time of sale. In addition, the property must be affordable to a reasonable range of households qualifying as eligible under the HUD income limits. Housing remains affordable if the subsequent purchaser's monthly payments of principal, interest, taxes and insurance do not exceed 30% of the gross income of a household with an income falling within the range of 70% to 80% of median income for the area, as determined by HUD. Further, in the event that a subsequent sale generates net proceeds, as defined below, those proceeds will be shared as described in the definition of "Fair Return to the Mortgagor" and the amount owing to the County will be immediately paid from closing funds.

"Net Sales Proceeds" means the subsequent sales price of the property minus ordinary closing costs and any repayment of a senior loan(s).

"Fair Return to the Mortgagor" is defined as a share of available net sales proceeds from sale of the property. If there are sufficient proceeds from the sale, the owner shall receive equity invested, adjusted for the U. S. consumer price index, plus the value of any permanent improvements to the home as approved and determined by the County. Upon sale, after these amounts are reserved for the owner, any additional equity gain shall be apportioned between the County and the homeowners in proportion to their contributions. Proceeds allocated to the County may be used, to lower the cost of the property to the subsequent low-income purchaser, if necessary to meet the affordability requirements. If no proceeds are available to the County, HOME funds may be provided in the form of down payment assistance or another appropriate mechanism in order to enhance affordability (subject to the Department of Housing and Community Development approval and availability of funds).

Presumption of Affordability

In accordance with 24 CFR 92.254(a)(5)(i)(B), the County may presume that certain housing will provide a fair return to an original homebuyer upon sale, will be available and affordable to a reasonable range of low-income homebuyers, and will serve as the primary residence of a low-income family during the period of affordability. In such cases, the County does not need to impose resale restrictions because the characteristics of the neighborhood make it probable that these requirements will be met without the imposition of the restrictions.

To utilize the presumption of affordability, the County shall complete a market analysis of the neighborhood in which the housing is located and submit the analysis for HUD review and approval. The market analysis shall include an evaluation of the location and characteristics of the housing and residents in the neighborhood, including:

- 1) Sale prices,
- 2) Age and amenities of the housing stock,
- 3) Incomes of residents, and

4) Percentage of owner-occupants.

The County will compare these neighborhood-specific data to the housing conditions and incomes in the County. Using an average period of affordability based on its expected investment per unit (e.g., 5, 10 or 15 years), the County will analyze the current and projected incomes of neighborhood residents and determine that such data supports the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing. An analysis of housing data must support the conclusion that home values are affordable, and will continue to be affordable, for the same average period of affordability.

If the County continues to provide homeownership assistance for housing in the neighborhood without the imposition of resale restrictions, it will annually verify that conditions have not changed. Every three to five years it shall undertake a new market analysis to ensure that it is still reasonable to presume continued affordability.

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Written Agreements

The HOME Program Specialist is responsible for ensuring that Program Agreements are drafted for all federally- funded activities listed in the Annual Action Plan and Consolidated Plan. The County must enter into a legally binding written agreement with Sub-recipients prior to activity set- up in IDIS. HOME projects must be completed no later than four years after the agreement execution date.

For rehabilitation, new construction projects or acquisition of standard housing, HOME funds are considered committed when the County and the owner of the project have executed a legally binding agreement under which HOME assistance will be provided. Prior to executing the agreement, staff must ensure that:

- all necessary financing has been secured;
- a budget and schedule have been established;
- underwriting is complete; and
- construction is scheduled to start within 12 months.

When the HOME-funded activity consists of acquisition of standard housing some additional requirements in the regulation, also apply:

- In instances in which the County is providing HOME funds to a family to acquire single family housing for homeownership or to a purchaser to acquire rental housing, the County must have executed a written agreement with the purchaser for a specific property. Property title must be transferred to the family or purchaser within six months of the agreement date. This is required at §92.2 “Commitment” (2)(ii)(B))
- In instances in which the County itself is acquiring standard housing with HOME funds, the County and the property owner must have executed a legally binding contract for sale of an identifiable property, and the property title must be transferred to the PJ within six-months of the date of the contract. This is required at §92.2 “Commitment” (2)(ii)(A).

Fiscal Policies

- All cost must be in direct relation to the County's HOME assisted unit and supporting documentation of all expenditures is required for all costs being paid for with HOME funding.
- Disbursement of HOME funds are determined by a draw schedule that is specified in the written agreement.
- Related soft costs must be necessary for the development of the County HOME units, and documentation must be provided for any cost re-imbursement.
- Funding will be limited to the amount necessary to facilitate completion of the project and will not exceed a proportionate share of costs in a project with multiple units. All projects will be underwritten according to Berkeley County HOME Underwriting Guidelines.
- Individual homebuyers must also be underwritten per the guidelines.
- Before monies are released, an agreement will be signed between the County and the recipient. The agreement will satisfy Federal requirements and establishes the terms under which the funding is being provided. Funds will not be released until a funding agreement is executed and all applicable regulations have been met (e.g. environmental review requirements.)
- Minimum amount of assistance: The minimum amount of HOME funds that must be invested in a project involving homeownership is \$1,000 times the number of HOME-assisted units in the project.
- Maximum HOME Investment: The maximum amount of funding that can be applied to a HOME assisted unit is based upon the Section 234 - Condominium Housing basic mortgage limits, for elevator-type projects, as published each year and can be found here: <https://www.hudexchange.info/resource/2315/home-per-unit-subsidy/>
 - *Actual funding levels will vary project by project and may be lower based on cost reasonableness and needs of project.

Program Income, HOME Receipts, & Other Proceeds

Income or proceeds may be generated as a result of investment of HOME funds and must be treated in accordance with HOME regulations.

Program income is the income received by a grantee directly generated from the use of HOME funds (or HOME Program Income funds). Program income can come from the following:

- Proceeds from the sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds.
 - In some instances, retention of proceeds may be permitted by the County based on a calculation of federal vs. non-federal investment. Consent is provided on a per-project basis, and expressly noted in the written agreement.
- Payments of principal and interest on loans made with HOME;
- Proceeds from the sale of loans or obligations secured by loans made with HOME;
- Interest on program income; and
- Any other interest or return on the investment of HOME.

Program income is not:

- Proceeds generated from a Community Housing Development Organization (CHDO) project (income generated from a project designated by the County as a CHDO set-aside project is called CHDO proceeds); or
- Funds recaptured as a result of a homebuyer property being sold within the HUD-imposed affordability period.

Use of Program Income

All HOME program income must be used in accordance with the HOME program rules. Program income never loses its identity as federal funds regardless of the number of times it is reinvested in projects.

All HOME program income must be returned to the County, unless the County expressly authorizes a CHDO to retain program income as CHDO Proceeds. The County will require a settlement statement (closing statement) be provided upon the sale of any HOME-assisted property to determine if program income is being generated that is subject to remittance to the HOME Local Account.

CHDO (Community Housing Development Organization) Proceeds

CHDO proceeds are the net proceeds of transactions involving CHDO set-aside funds. The County may require the funds to be returned as Program Income or allow the CHDO to keep the funds and reuse them for HOME or other low-income housing activities.

Proceeds might result from the following CHDO set-aside activities:

- The permanent financing of a CHDO project which is used to pay off a CHDO financed construction loan.
- The sale of CHDO-developed homeownership housing to eligible buyers.
- The principal and interest from a loan to a buyer of CHDO developed homeownership housing.

HOME funds that are recovered (either through recapture or repayment) when HOME assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full HUD-imposed affordability period are not CHDO Proceeds.

All CHDO proceeds must be returned to the County unless the County has specifically authorized retention by the CHDO in the HOME Written Agreement and has approved the reuse of funds.

Recaptured Funds

Recaptured funds are HOME funds recouped by the County when HOME-assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full HUD-required affordability period. The amount of the recapture is determined by the County's recapture requirements contained within this Policies & Procedures Manual.

Recaptured funds must be used in accordance with the HOME program rule and must be expended by the grantee before drawing down additional HOME funds.

In addition, the County and its grantees must track and report program income and recaptured funds separately. Recaptured funds can be used like program income with the exception that they may not be used for any administrative costs since they represent a return of the original HOME investment.

Projecting Program Income & Recaptured Funds

Because PI needs to be expended before new HOME funds can be drawn, it is important to (1) project the PI anticipated to be collected during a Program Year and (2) identify a pipeline of projects to fully utilize HOME allocations and available program income in a timely manner. The County budgets for anticipated recaptured funds and PI during its Annual Action Plan process.

HOME Match

The contributions must total not less than 25% of the funds drawn from the County's HOME Investment Trust Fund Treasury account in the fiscal year.

Matching contributions must be made from nonfederal resources and may be in the form of one or more of the following:

- Cash contributions from nonfederal sources
- Forbearance of fees
- Donated Real Property

The following funds are not required to be matched:

- CHDO Operating Expenses
- CHDO Capacity Building
- CHDO Special Project Assistance

The following are examples that do not meet the match requirements:

- Contributions made with or derived from Federal resources or funds, regardless of when the Federal resources or funds were received or expended. CDBG funds (defined in 24 CFR 570.3) are Federal funds for this purpose;
- The interest rate subsidy attributable to the Federal tax-exemption on financing or the value attributable to Federal tax credits;
- Owner equity or investment in a project; and
- Cash or other forms of contributions from applicants for or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for assistance for a HOME-assisted project. The prohibition in this paragraph does not apply to contractors (who do not own any HOME project) contributing professional services persons contributing sweat equity.

The County's HOME Match report must be included in the annual Comprehensive Annual Performance Evaluation Report (CAPER).

Community Housing Development Organizations (CHDOs)

At a minimum, the County must commit 15% of its HOME allocation to certain eligible activities to be undertaken by CHDOs. The CHDO set-aside provides equity for community-based organizations to undertake projects, build their capacity to serve a broad range of Affordable Housing needs, and provide guaranteed resources for Affordable Housing development.

CHDO Qualifying Criteria

A CHDO must meet certain requirements pertaining to its:

- Legal status
- Organizational Purpose & Structure
- Organizational Capacity
- Staff Experience

Legal Status

Organized under state/local law: CHDOs must be organized under state and local law.

Organizational Purpose & Structure

Purpose of organization: Provision of decent housing that is affordable to low- and moderate-income persons must be among the purposes of the organization. This commitment must be evidenced in the CHDO's:

- charter;
- articles of incorporation;
- bylaws; or
- a resolution of the CHDO's board of directors.

No individual benefit: No part of the CHDO's earnings (profits) may benefit any members, founders, contributors or individuals.

Clearly defined service area: A CHDO must have a clearly defined geographic service area.

Nonprofit status: CHDOs must have received a tax-exempt ruling from the IRS under Section 501(c)(3) of the Internal Revenue Code of 1986 in order to be designated by the PJ as a CHDO.

A CHDO is intended to respond to the community's needs. The structure of the board of directors of a CHDO is viewed as the main indicator of community control over the CHDO.

CHDO Board of Directors: The CHDO board must be composed as follows:

- At least one-third must be representatives of the Low-Income community.
- No more than one-third may be representatives of the public sector (including any Employees of the PJ). This limitation is intended to ensure that separation exists between PJs and CHDOs, and that CHDOs are indeed community-based and community-controlled organizations.
- The balance of the board is unrestricted.

Low-Income input: Input from the Low-Income community is not met solely by having Low- Income representation on the board. A CHDO must also provide a formal process for Low- Income beneficiaries to advise the CHDO on project needs. The process must be in writing and must be included in the organization’s by-laws or adopted by board resolution.

Organizational Capacity

A CHDO must demonstrate that it has, at a minimum, one year of experience serving the community where it intends to develop HOME-assisted housing. In addition, the PJ requires proof of the production (Acquisition/rehab/resale or rental, Acquisition/new construction of rental housing or Single-Family Housing for homeownership) of at least two units of housing between January 1, 2017 – July 31, 2018. Proof provided must be in the form of executed HUD’s and/or Certificates of Completion/Occupancy.

Newly created organizations, one year or less than one year 501(c)(3) status, wishing to become CHDOs can meet this requirement if the parent (or sponsoring) organization is a Non- profit and has provided services to the community for at least one year.

Staff Experience

To qualify as a CHDO, a Non-profit must have paid staff whose experience qualifies them to undertake CHDO set-aside activities. Capacity cannot be demonstrated by use of a consultant, except in the first year that a CHDO becomes certified. CHDOs must demonstrate the capacity of its key staff to carry out the HOME assisted activities it is planning. This means that CHDOs must have experienced key staff members who have successfully completed projects similar to those proposed by the CHDO.

CHDO Commitment Deadline

Per 24 CFR 92.300(a), the County must commit the CHDO set-aside within 24 months of the execution of the HOME Investment Partnerships Agreement each year. However, the 24-month commitment requirement for Community Housing Development Organization (CHDO) set-aside funds has been suspended through December 31, 2025. If CHDO set-aside funds are not committed within 24-months, they may be allocated to another eligible affordable housing activity.

Overarching Program Regulations and Requirements

Recordkeeping

Berkeley County, HUD, the Comptroller General of the United States or any of their authorized representatives, has the right to access the Project and any books, documents, papers or other records of a HOME assisted unit.

Developers/owners will maintain all books and records pertaining to HOME assisted units with the provisions of 24 C.F.R. § 92.508 for a period of not less than five (5) years after the affordability period ends and all matters pertaining to the project (e.g., audit, disputes or litigation) are resolved under applicable federal or state laws, regulations or policies.

Developers/Owners shall maintain records for inspection by NSD in the checklists included in the following pages. The developer/owner will make any additional records requested available to Berkeley County upon request.

Environmental Review

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

Any funds committed to a HOME activity or project will be conditional on 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. No HOME funds will be disbursed without the establishment of an Environmental Review Record and the appropriate level of Review completed.

Lead Based Paint Hazards

The HOME Program requires owners/developers to take actions to reduce lead-based paint hazards in HOME-assisted units. Owners must comply with 24 CFR 35, the regulations implementing the Lead-Based Paint Poisoning Prevention Act along with requirements for dealing with lead-based paint found in the Uniform Physical Condition Standards (UPCS). Current Part 35 requirements stipulate that all occupants receive and acknowledge notice of the possible presence of lead paint.

The Lead-Based Paint Poisoning Prevention Act applies to all units in a property assisted with HOME funds -- not only to HOME-assisted units. During the compliance review, staff will monitor to ensure that the owner has conducted all necessary activities and maintained appropriate documentation in their files. Owners/developers must be in compliance with 24 CFR 35 and Sections 302 and 401(c) of the Lead-Based Paint Poisoning Prevention Act. This subpart implements the provisions of 42 U.S.C. 4852d, which impose requirements on the sale or lease of housing. The seller or lessor of housing shall:

- Disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards;
- Provide available records and reports;
- Provide the purchaser or lessee with a lead hazard information pamphlet;

- Give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and
- Attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

In addition, any disturbance of a painted surface on housing constructed prior to 1978 requires additional testing, notices and remediation as specified by 24 CFR 35.

Davis Bacon Act

Any contract for the construction of Affordable Housing with 12 or more units will require that all laborers and mechanics who are employed to perform work on any project, or any contractor or construction work which is financed, in whole or in part, with assistance which is received under the Housing and Community Development Act of 1974 shall be paid wages at rates which are not less than those that prevail in the locality for similar construction and shall receive overtime compensation in accordance with the Contract Work Hours and Safety Standards Act.

The contractor and its subcontractors shall also comply with all applicable Federal laws and regulations, which pertain to labor standards, including the minimum wage law.

Developers of projects where Davis Bacon applies shall contact the Grants Administration department prior to bidding to obtain the current, applicable wage rate.

Further, recipients of HOME funds shall:

- Not discriminate against any employee or applicant for employment on the basis of religion and not limit employment or give preference in employment to persons on the basis of religion; and
- Not discriminate against any person applying for such services and housing on the basis of religion and not limit such services or give preference to persons on the basis of religion.

Section 3

Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701), requires that to the greatest extent feasible, opportunities for training and employment be given to low and very-low income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low and very-low income persons residing in the metropolitan area in which the project is located. A Section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards), or other public construction such as street repair, sewage line repair or installation, updates to building facades, etc. Section 3 applies to recipients of more than \$200,000 from housing and community development programs. 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.

Under the final rule at 24 CFR 75.25, grantees are required to report the total labor hours for three categories of workers on the project: all workers, Section 3 workers, and Targeted Section 3 workers.

Pursuant to 24 CFR 75.31, for a worker to qualify as a Section 3 worker, an employer must maintain one of the following records from the time the worker is certified as meeting the Section 3 worker definition for the five-year period or from the time of hire (if hired within the last five years):

- A worker's self-certification that their income is below HUD's income limit from the prior calendar year.
- A worker's self-certification of participation in a means-tested program such as public housing or Section 8- assisted housing.
- Certification from a PHA, or an owner or property manager of project-based Section 8-assisted housing, or an administrator of tenant-based Section 8- assisted housing that the worker is a participant in one of their programs.
- An employer's certification that a worker's income from that employer is below HUD's income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis.
- An employer's certification that the worker is employed by a Section 3 business concern.

A Targeted Section 3 worker for HOME and HTF is a worker who meets the definition of a Section 3 worker plus one of the following:

- A worker employed by a Section 3 business concern (defined below), or
- A worker who currently fits or, when hired, fit at least one of the following categories, as documented within the past five years:
 - Living within the service area or the neighborhood of the project (defined below)
 - A YouthBuild participant

The statute creates a contracting priority for businesses that provide economic opportunities for low- and very low-income workers. Grantees must certify that they are making efforts to prioritize contracting with Section 3 business concerns and are responsible for verifying that businesses meet the definition of a Section 3 business concern.

A Section 3 business concern is now defined in 24 CFR 75.5 as a business that meets at least one of the following criteria, documented within the last six-month period:

- At least 51% owned and controlled by low or very low-income persons
- Over 75% of the labor hours performed for the business over the previous 3-month period are performed by Section 3 workers, or
- It is at least 51% owned and controlled by current residents of public housing or Section 8-assisted housing.

The final rule at 24 CFR 75.25(a) requires grantees to report the following hours (including total hours worked by all contractors and subcontractors) for Section 3 projects:

- The total number of labor hours worked by all workers
- The total number of labor hours worked by Section 3 workers; and
- The total number of labor hours worked by Targeted Section 3 workers.

The benchmark notice establishes the current benchmarks that are applicable for a HOME Section 3 project which are:

- Benchmark 1: Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Section 3 workers
 $\text{Section 3 Labor Hours} / \text{Total Labor Hours} = 25\%$

AND

- Benchmark 2: Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Targeted Section 3 workers Targeted Section 3 Labor Hours/Total Labor Hours = 5%

Build America Buy America (BABA)

The County must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the HOME project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

Uniform Relocation Assistance

Berkeley County must adhere to Federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) that generally applies to the acquisition, rehabilitation or demolition of real property.

The Uniform Act, passed by Congress in 1970, is a Federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or that displace persons from their homes, businesses, or farms. The Uniform Act's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for Federal or federally funded projects. The County complies with [49 CFR Part 24](#), the government-wide regulations that implement the URA. [HUD Handbook 1378, Tenant Assistance, Relocation And Real Property Acquisition Handbook](#) provides HUD policy and guidance on implementing the URA and 49 CFR Part 24 for HUD funded programs and projects.

If a project includes the purchase of a building, an offer to purchase a building, or rehabilitation for a building which is occupied, the tenants are entitled to the benefits provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).

Conflict of Interest

No person who is an employee, agent, consultant, officer, or elected official or appointed official of Berkeley County or recipient which are receiving HOME funds of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Fair Housing

Recipients of HOME funds are held to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601 et seq.), E.O. 11063 20Title VI of the Civil Rights Act of 1964, P. L. 88-352 and the regulations of HUD with respect thereto, including 24 CFR, Parts 1.

Section 109 of the HCD Act of 1974, Title I, prohibits discrimination on the basis of race, color, national origin, disability, age, religion, and sex within Community Development Block Grant (CDBG) programs or activities. <http://www.hud.gov/progdsc/sec-109.cfm>

HOME recipients are prohibited from discriminating on the basis of:

- Race
- Color
- Religion
- National origin
- Disability Status (Including prior Alcohol & Illegal Substance Addictions)
- Familial status
- Ethnicity
- Gender
- Gender Identity
- Language(s) Spoken
- Literacy
- Sexual Orientation
- Veteran Status

Discrimination is prohibited in the assistance, tenant selection, sale, rental, and financing of dwellings. It is also prohibited in program administration and any enforcement mechanisms.

No person in the United States shall on the ground of race, color, national origin (or any of the other items listed above) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal funding and/or assistance. Assistance includes:

- Grants and loans of Federal funds,
- The grant or donation of Federal property and interests in property,
- The detail of Federal personnel,
- The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
- Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

Violence Against Women Act (VAWA)

Violence Against Women Act (VAWA, 34 U.S.C. § 12471 et seq.) provides housing protections for survivors of domestic violence, dating violence, sexual assault, and/or stalking. VAWA provides housing protections for people applying for or living in units subsidized by the federal government and who have experienced domestic violence, dating violence, sexual assault, or stalking, to help keep them safe and reduce their likelihood of experiencing homelessness. VAWA was reauthorized and amended in March 2022 to implement and enforce the housing provisions of VAWA consistent with, and in a manner that provides, the same rights and remedies as those provided for in the Fair Housing Act.

Affirmative Marketing & Minority Outreach

Each HOME developer must adopt affirmative marketing procedures and requirements for homebuyer projects containing 5 or more HOME- assisted housing units.

HOME developers shall use the Equal Housing Opportunity Slogan, logo, or statement must in all advertisements, public service announcements, press releases, and information mailings. The HUD Fair Housing poster must be displayed in offices where rental activity takes places for all properties with five or more units.

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

The affirmative marketing requirements and procedures adopted must include:

- Methods for informing the public about Federal fair housing laws and the affirmative marketing policy;
- Procedures to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);
- Records that will be kept describing actions taken to affirmatively market units and records to assess the results of these actions; and
- Developers to the maximum extent possible, will be inclusive of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction.

Promoting Small and Minority Businesses

The County will make a concerted effort to attract minority- and women-owned businesses as vendors to HUD-funded projects and activities.

A minority-owned business is defined as an entity in which minority group members own 51 or more percent of the company or the equivalent percentage of voting stock in the case of a publicly owned enterprise.

County staff will promote this effort by:

- Including an overview of minority- and women-owned businesses as presented in Executive Orders 11625, 12432 and 12138;
- Utilizing the networking resources within the community who have established relationships with minority- and women-owned businesses;
- Promoting the use of online bid opportunities dissemination and distribution;
- Ensuring review of that relevant section of the Sub-Recipient funding agreement addressing this: Contract Scope of Services, Applicable Federal Regulations, Employment and Contracting, Equal Opportunity;
- Collaborate with the Procurement Department to ensure that the database containing small businesses, disadvantaged businesses and LGBTQ businesses receives notification of open solicitations or Invitations to Bid or requests for goods and services.
- Ensuring all bid documents include Section 3 form and Income limits as requirements contractors and sub-contractors.

Housing Accessibility

Most housing properties fall under several different laws. Federal programs and the age of the property determine which laws apply.

- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) protects race, religion, sex, and national origin.
- The Fair Housing Amendments Act of 1988 (Amendments Act - FHAA) added disability and familial status
- The Americans with Disabilities act (ADA) of 1990 addresses public accommodations (property management offices and common areas are considered public accommodations)
- Section 504 of the Rehabilitation Act of 1973 (Section 504) applies to those receiving federal assistance

Disability Rights in Housing

Federal laws define a person with a disability as "Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment."

In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking and hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.

Disability Rights in Private and Public Housing regardless of whether you live in private or public housing, Federal laws provide the following rights to persons with disabilities:

- Prohibits discrimination against persons with disabilities. It is unlawful for a housing provider to refuse to rent or sell to a person simply because of a disability. A housing provider may not impose different application or qualification criteria, rental fees or sales prices, and rental or sales terms or conditions than those required of or provided to persons who are not disabled.

Example: A housing provider may not refuse to rent to an otherwise qualified individual with a mental disability because they are uncomfortable with the individual's disability. Such an act would violate the Fair Housing Act because it denies a person housing solely on the basis of their disability.

- Requires housing providers to make reasonable accommodations for persons with disabilities. A reasonable accommodation is a change in rules, policies, practices, or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common space. A housing provider should do everything they can to assist, but they are not required to make changes that would fundamentally alter the program or create an undue financial and administrative burden. Reasonable accommodations may be necessary at all stages of the housing process, including application, tenancy, or to prevent eviction.
- Requires housing providers to allow persons with disabilities to make reasonable modifications. A reasonable modification is a structural modification that is made to allow persons with disabilities the full enjoyment of the housing and related facilities.

Examples of a reasonable modification: would include allowing a person with a disability to install a ramp into a building, lower the entry threshold of a unit, or install grab bars in a bathroom.

Reasonable modifications are usually made at the resident's expense. However, there are resources available for helping fund building modifications. Additionally, if you live in federally assisted housing the housing provider may be required to pay for the modification if it does not amount to an undue financial and administrative burden.

For more information, see the Reasonable Accommodations section of the Section 504 Frequently Asked Questions page.

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504

Housing Accommodations

New multifamily housing be designed and constructed to be accessible. In covered multifamily housing consisting of 4 or more units with an elevator built for first occupancy after March 13, 1991, all units must comply with the following seven design and construction requirements of the Fair Housing Act:

- Accessible Entrance on an Accessible Route
- Accessible Public and Common-Use Areas
- Usable Doors
- Accessible Route Into and Through the Dwelling Unit
- Accessible Light Switches, Electrical Outlets, Thermostats, and Environmental Controls
- Reinforced Walls in Bathrooms
- Usable Kitchens and Bathrooms
- In covered multifamily housing without an elevator that consists of 4 or more units built for first occupancy after March 13, 1991, all ground floor units must comply with the Fair Housing Act's seven design and construction requirements.

For information on how to comply with the physical accessibility requirements of the Fair Housing Act, visit the Fair Housing Accessibility FIRST Web site: <http://www.fairhousingfirst.org/>

These requirements apply to most public and private housing. However, there are limited exemptions for owner-occupied buildings with no more than four units, single family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

If you live in federally assisted multifamily housing consisting of 5 or more units, 5 percent of these units (or at least one unit, whichever is greater) must meet more stringent physical accessibility requirements. Additionally, 2 percent of units (or at least one unit, whichever is greater) must be accessible for persons with visual or hearing disabilities. For more information, visit Section 504 Questions and Answers: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504faq

People with Disabilities in Federally Assisted Housing

Federal law makes it illegal for an otherwise qualified individual with a disability to be excluded, solely because of his or her disability, from programs receiving federal financial assistance.

For more information on the rights of persons with disabilities in federally assisted housing as well as the responsibilities of housing providers who receive federal financial assistance, visit our Section 504: Disability Rights in HUD Programs site:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504

Zoning and Land Use: It is unlawful for local governments to utilize land use and zoning policies to keep persons with disabilities from locating to their area. For more information, see the Joint Statement of DOJ and HUD on Group Homes, Local Land Use, and the Fair Housing Act:

http://searchjustice.usdoj.gov/search?q=crt%20housing%20final8_1&q=site%3Awww.justice.gov%2Fcrf&sort=date%3AD%3A%3Ad1&output=xml_no_dtd&client=default_frontend&proxystylesheet=default_frontend&site=default_collection

State and Local Laws: Many states and localities have fair housing laws that are substantially equivalent to the Federal Fair Housing Act. Some of these laws prohibit discrimination on additional bases. Some of these laws may impose more stringent design and construction standards for new multifamily housing.

The Americans with Disabilities Act

In most cases, the ADA does not apply to residential housing. Rather, the ADA applies to places of public accommodation such as restaurants, retail stores, libraries, and hospitals as well as commercial facilities such as office buildings, warehouses, and factories. However, Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public.

Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. This includes housing when the housing is provided or made available by a public entity. For example, housing covered by Title II of the ADA includes public housing authorities that meet the ADA

definition of "public entity," and housing operated by States or units of local government, such as housing on a State university campus.

For more information on the Americans with Disabilities Act, visit the Department of Justice ADA Home Page. <http://www.ada.gov/>

For information on how HUD processes housing discrimination complaints, see Fair Housing-It's Your Right: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/yourrights

US Department of Housing & Urban Development Office of Fair Housing & Equal Opportunity UFAS Accessibility Checklist: http://portal.hud.gov/hudportal/documents/huddoc?id=UFASAC_PHAs5708.pdf

Financial Management Requirements

Projects and programs receiving HUD funds must abide by the financial management requirements of the Federal Office of Management and Budgets which pertain to their particular type of organization, whether it is an institution of higher education, a hospital, other non-profit, a state, a local government, etc. For instance, a CHDO serving as a sub-recipient for the County and as a development organization has different requirements based on their activity.

Regulations governing financial management of HOME-assisted programs and activities can be found in 2 CFR Part 200: <https://www.law.cornell.edu/cfr/text/2/part-200>.

Some of the basic financial requirements include:

- **2 CFR 200:** Uniform Administrative Requirements for grants and Agreement with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations
- **2 CFR 200-Subpart E:** Cost Principles for Non-Profit Organizations Eligible costs, procurement
- **2 CFR 200-Subpart F:** Audits of States, Local Governments and Non-Profit Organizations

Audit Requirements for Non-Profit Organizations

Non-profit organizations subject to regulations in the part 200 and part 800 series of title 24 of the CFR shall comply with the audit requirements of 2 CFR 200-Subpart F. For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

Account Reconciliation and Management

The County will ensure that funds are expended in a timely manner and in compliance with applicable rules and regulations associated with the funds. While it is the responsibility of the HOME Program Specialist to ensure that awarded funds comply with the respective program rules, it is the combined responsibility of the HOME Program Specialist and Head of Finance to ensure that disbursed program funds are reconciled between the County's financial system and HUD's financial system (IDIS).

Protection of Personally Identifiable Information (PII)

Berkeley County will ensure the privacy of all Personally Identifiable Information (PII) obtained from participants and to protect such information from unauthorized disclosure. All parties must ensure that PII used during their grant has been obtained in conformity with applicable Federal and State laws and policies governing the confidentiality of information. All PII transmitted via e-mail or stored on external drives must be encrypted. All PII stored onsite must be kept safe from unauthorized individuals at all times and must be managed with appropriate information technology services. Accessing, processing, and storing of PII data on personally owned equipment at off-site locations (including, but not limited to employee's home, and non-grantee managed IT services, e.g. Yahoo mail, Gmail, etc.) is strictly prohibited. All parties who will have access to sensitive/confidential/proprietary/private data must be advised of the confidential nature of the information, the safeguards with which they must comply to protect the information, and that they may be liable to civil and criminal sanctions for improper disclosure. Access to any PII obtained through the grant must be restricted to only those employees of the grant recipient who need it in their official capacity to perform duties in connection with the scope of work in the grant agreement. All PII data must be processed in a manner that will protect the confidentiality of the records/documents and is designed to prevent unauthorized persons from retrieving such records by computer, remote terminal, or any other means.

Other Federal Requirements

The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include:

- Nondiscrimination and equal opportunity;
- Disclosure requirements;
- Debarred, suspended or ineligible contractors; and
- Drug-free workplace

Monitoring & Project Oversight

Berkeley County will review the proper maintenance, marketing, and affordability requirements 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
- Section 3, Davis-Bacon, Lead Based Paint, and other Federal Requirements as applicable
- Cost reasonableness and financial accountability
- Environmental Review

Berkeley County may withhold, reduce, or terminate funding to a developer or subrecipient where deficiencies have not been sufficiently corrected to Berkeley County and/or HUD's satisfaction.

Overall Approach and 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. The County will use the HOME Monitoring Tools provided by HUD.

Ongoing monitoring will be based primarily on the analysis of regular reports, reports from regular inspections and documents submitted for review as projects are developed and managed through the affordability period. In addition, periodic reviews of market data and cost data may be undertaken. This desk monitoring will be supported by field visits to funded organizations and examination of housing product.

The first line of approach for monitoring will be the maintenance of files and file checklists to assure that all required documentation is produced, reviewed and on hand as needed.

The selection and prioritization of documents, files and organizations to be monitored will utilize a risk reduction approach. The following priorities will be considered:

- The early part of a key project phase such as acquisition, construction or rent up will take priority over other efforts and all development projects will be monitored and inspected at these early phases.

Beyond that basic priority, the following factors will also affect priorities:

- New organizations and any organization with unresolved compliance issues,
- Particular functions being carried out by new staff.
- Any project that may have special compliance challenges or that is substantially different in terms of size, complexity, or other factors from other projects the PJ or the developer has undertaken.
- Because the HOME-assisted projects have ongoing affordability requirements, the HOME Program Specialist will also monitor and inspect a sample of units in completed projects.

Ongoing

All expenditure requests will be reviewed for proper documentation (see also attachment on payment processing procedures), completion of construction costs charged, if applicable, and reconciled with budget. (On some projects, construction completion payments may be based on certification by project manager.)

Project schedule and timeliness of progress will be monitored.

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