HOME
Rental Program Guidelines

Rev. 2021

Contents

1. Summary

The County of Oakland, Michigan (County) supports the rehabilitation and new construction of affordable rental housing for low-income, very low-income, and extremely low-income households with its annual funding allocation from the U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnerships Program (HOME). HOME was created under Title 11 of the Cranston-Gonzalez National Affordable Housing Act of 1990 with implementing regulations at 24 CFR Part 92.

In general, HOME is intended to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention on rental housing. HOME is focused on very low-income households at or below 50% of the area median income (AMI) and low-income households at 60% AMI.

The County's HOME funds will be used to provide financing and gap financing to projects located in Oakland County, Michigan. The County's HOME program will target housing in eligible areas that is affordable to people who are at or below applicable income limits. In exchange for low-cost permanent financing, property owners will agree to income, rent, and other restrictions for an affordability period of at least 15 to 30 years (depending on funding source and level).[1] Projects are monitored for compliance during the affordability period. Project developers, owners, and sponsors must coordinate funders' requirements when there are multiple funding sources.

2. Application and Evaluation Procedure

The County will issue a Notice of Funding Availability for Rental Housing Development (NOFA) on a periodic basis based, in part, on the availability of funds. The NOFA will outline specific application deadlines, any funding focus (e.g., by project type, population served, etc.), and other special considerations applied to a given funding round.

A. Funding Availability

Upon submission of a proposal for HOME funds, County staff will conduct a review and analysis of the project and developer(s) as presented in the proposal. Proposals will be scored based on criteria in the NOFA. Regardless of strict numerical ranking, the scoring does not operate to vest in an applicant or project any right to a reservation or commitment of HOME funds. The County will, in all instances, commit HOME funds consistent with sound and reasonable judgment, prudent business practices, and the exercise of its inherent discretion.

Projects seeking HOME funds prior to the receipt of all other funding sources, including federal tax credit reservations, may be provided with non-binding Letters of Intent. Further, the Letter of

[1] HOME regulations allow for an affordability period of 5 years (less than $15,000/assisted unit) or 10 years (less than $40,000/assisted unit) for rehab projects, but in practice most HOME rehab projects trigger a 15-year affordability period.

Intent may be contingent upon the 1) approval of the State's Annual Action Plan; 2) the County's receipt of HOME funds from HUD; 3) applicant's award from the State for Low Income Housing Tax Credits (LIHTC), if applicable; 4) the County's receipt of the HUD Authority to Use Grant Funds following completion of the Environmental Review process (as applicable); and other items noted in the Letter of Intent.

B. Submission of Materials

All HOME Rental Housing Program applicants will need to comply with the submission criteria set forth in the County's NOFA. The County reserves the right to require the submission of additional information as needed to complete project underwriting.

3. Project Funding Requirements

A. Eligibility Criteria

I. Eligible Applicants

Developers and owners of affordable rental housing – including for-profit developers, nonprofit developers, public housing authorities, and County-designated community housing development organizations (CHDOs) – are eligible to apply for HOME funding subject to the program-specific limitations noted below:

- While public housing authorities are eligible to apply, public housing units supported by Public Housing Capital or Operating funds authorized by the 1937 Act are not eligible for HOME funding. Non-public housing units owned and developed by a public housing authority are eligible.
- CHDOs are a specific type of community-based nonprofit organization defined by section 92.2 of the HOME Final Rule. The HOME program includes an annual set-aside of funds for projects owned, developed, or sponsored by CHDOs. Prior to committing funds, the County will review the status of any organization seeking funds from the CHDO set-aside to ensure that it meets all HOME requirements, that it has sufficient staff capacity to carry out the project, and that the CHDO meets the requirements of "owner," "developer," or "sponsor" as required by 24 CFR 92.300(a).

II. Project Location

Projects must be located in Oakland County, Michigan.

III. Project Types

Funds will be provided for acquisition, new construction, and rehabilitation of multifamily residential rental projects. While the County will entertain any proposals meeting its criteria, in practice most projects will also require other public investment to be economically feasible. This may include projects also funded with other federally regulated affordable housing programs such as, but not limited to, LIHTC, HUD Section 202, Section 811, Rental Assistance

Demonstration (RAD), Choice Neighborhoods, or United States Department of Agriculture Rural Development (USDA-RD).

IV. Parameters of HOME Funding

Typically, the County will also establish a maximum cap on its investment in a single development. Such a limit will be based on the availability of funding and other County priorities and will be addressed in any NOFA issued by the County. To qualify for HOME funding, a project must demonstrate the need for an investment of no less than $1,000 in HOME funding per HOME-assisted unit.

- In no case will the County investment exceed the maximum HOME investment allowed under 24 CFR 92.250. The maximum per unit subsidy in HOME is published each year by HUD and will generally be provided as part of any NOFA.

B. Eligible Costs

I. General

Costs funded with HOME funds must be eligible according to 24 CFR 92.206. The following additional limitations also apply:

- HOME funds shall not be used for luxury improvements according to 24 CFR 92.205.
- HOME funds may not be used to pay operating costs or to capitalize reserves with the exception that HOME may be used, subject to the County's approval, to establish a rent-up reserve to cover initial operating deficits allowed under 24 CFR 92,206(d)(5).
- HOME funds shall not be used for free-standing non-residential accessory structures such as free-standing community/leasing buildings, garages, carports, or maintenance structures.[2] HOME funds may be used for community space or common laundry facilities included in residential buildings.
- HOME funds shall not be used for off-site infrastructure costs, including any costs associated with extending infrastructure to the project site. The cost of connecting to public infrastructure located in an adjacent right-of-way (e.g. a water or sewer tap) is an eligible cost.
- HOME funds shall not be used for organizational costs such as partnership formation or syndication costs associated with transactions using equity from LIHTC, historic tax credits, or other similar tax incentives.

II. County Project-Related Soft Costs

The HOME program allows the County to include, as project costs, its internal soft costs specifically attributable to a HOME project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and overseeing the award of funds to the project. In its NOFA, the County will provide a budget allowance for "County Due Diligence &

[2] Note that attached garages or carports (e.g., those structurally attached to and integrated into a residential structure) are eligible.

Legal Costs" to be included in the project's total development costs. The project's estimated annual expense information will include a monitoring fee as specified by the County in its NOFA.

III. Cost Reasonableness

Per the requirements of 92.250(b), all project costs must be reasonable, whether or not paid directly with HOME funds. The County will review all project costs, including hard and soft costs, to evaluate their reasonableness and may, at its option, require applicants to obtain additional quotes, bids, or estimates of costs. The County may also require an applicant, at its own cost, to obtain a third-party cost review from a professional provider acceptable to the County. The County's staff, or its agents, must be allowed access to the property as necessary to evaluate the cost projections associated with a project's plans and specifications. Applications may be determined ineligible if access is not granted or costs are determined to be unreasonable.

Acquisition costs shall be supported by an independent appraisal of the property. Acquisition costs exceeding the appraised value of the property will be ineligible for HOME funding reimbursement. When a project's sources include USDA-RD or other HUD funding, the USDA-RD or HUD appraisal methodology will apply.

IV. Identity of Interest

Applicants must disclose any identity of interest situations that may occur when contracting with related companies during either the development or ongoing operation of the project.

C. Property Standards

To meet HOME program regulations and County goals, all projects must meet certain physical standards intended to provide quality affordable housing that is durable and energy efficient.

- Construction must meet all applicable local building and fire codes (including related electrical, mechanical, and plumbing codes).
- All projects must meet applicable Section 504/UFAS requirements. New construction or substantial rehabilitation projects with five or more total units must provide 5% of the project's units (but not less than one) for physically disabled occupants and another 2% of units (but not less than one) designed to be accessible to those with visual or hearing impairments. Other rehabilitation projects will be required, to the maximum extent feasible, to provide physically and sensory accessible units in the same percentage. Additionally, covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements required by the Fair Housing Act as outlined in 24 CFR 100.205.
- All buildings of five or more residential units in new construction or substantial rehabilitation HOME projects must include the installation of "broadband infrastructure" as defined by 24 CFR 5.100. In limited circumstances, the regulations allow the County to waive this requirement if the project's location makes such installation infeasible or creates an undue financial burden. In practice, this requires the developer to provide the wiring for high-speed internet but does not require the project to provide the internet

service itself. *The County does not anticipate circumstances under which it would waive this requirement.*

- All projects must also comply with the County's Multifamily Housing Minimum Design Standards, including the Universal Design Standards cited therein.

D. Unit Allocation

In general, HOME units will be "floating units" and evenly distributed among the unit types in the development based upon a cost allocation review. If the project's units are not comparable, "fixed units" must be designated. In the case of projects with comparable units, the County will designate units as HOME-assisted in proportion to the percentage of HOME investment in the transaction. For example, if HOME represents 10% of the project's total HOME-eligible cost, at least 10% of each unit type will be designated as HOME-assisted units.

HOME-assisted units shall be designated as either "High HOME units" or "Low HOME units". In projects with five or more HOME-assisted units, at least 20% of the HOME-units, rounded up to a whole number, must be designated as Low HOME units. Generally, the County will only designate the minimum number of Low-HOME units required unless the applicant requests that additional Low-HOME units be designated to coordinate income and rent restrictions with other project requirements.

E. Income and Rent Restrictions

To qualify as affordable housing, HOME units must be rented only to households with certain incomes at rents regulated to be affordable to low-income households.

Note that HUD releases updated specific income and rent limits annually for the HOME program, which the County will provide to owners. The "HUD Income Limits" used for Section 8 and other HUD multifamily programs, and upon which LIHTC income and rent limits are based, are released each year on a different schedule, usually about two months before the HOME limits. Until HUD releases the program-specific income limits, owners must continue to use the current HOME limits as applicable.

I. Income Limits

- High-HOME units must be rented exclusively to tenants with household incomes, at the time of move-in, at or below 60% of AMI for the county, as adjusted by family size, thereafter.[3] and
- Low-HOME units must be rented exclusively to tenants with household incomes at or below 50% AMI for the county both at initial occupancy and thereafter.

[3] In the future, the County may consider allowing High-HOME units, after turnover from the initial tenant, to accept applicants up to 80% AMI for LIHTC projects using the "income averaging" option.

II. Rent Limits

For all projects, the County must specifically approve the project's rent schedule annually, including utility allowances and any tenant fees as described in the sections below.

- High-HOME units must be rented at or below the High-HOME rent as published by HUD. In general, HUD calculates the High-HOME rent to be the lesser of the applicable Fair Market Rent or a rent equal to 30% of 65% of the adjusted area median income, adjusted for unit size.
- Low-HOME units must be rented at or below the Low-HOME rent as published by HUD. In general, HUD calculates the Low-HOME rent to be the lesser of the applicable Fair Market Rent or a rent equal to 30% of 50% of AMI, adjusted for unit size. The only exception is for those units receiving Federal or State project-based rental subsidy, and the very low-income family pays as a contribution toward rent not more than 30% of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

III. Utility Allowances

The HOME rent limits are gross rent limits. The actual rent collected from a tenant must be adjusted taking into account an allowance for tenant paid utilities. The County must approve the project's utility allowance (UA) annually.

HOME regulations at 24 CFR 92.252(d) require that the UA for the project be based on the type of utilities used at the project and updated annually. HOME further specifies that the UA is to be established using a project-specific methodology and based on actual utility usage at the property or estimates an allowance based on project-specific factors such as size, orientation, building materials, mechanical systems, and construction quality, as well as local climate conditions.

For HOME projects funded on or after Aug. 23, 2013, the Public Housing Authority area-wide UAs prepared for the housing choice voucher program are no longer an acceptable method of calculating UAs.

The following methodologies, used in other Federal housing programs, will meet HOME regulatory requirements and are generally acceptable to the County. The County's Neighborhood & Housing Development Division must approve the methodology selected by an applicant. The same methodology must be used for all HOME units within a single project, thereafter, approved by the County's Compliance Department.

- HUD Utility Schedule Model (HUSM): The HUSM enables users to calculate utility schedules by housing type after entering utility rate information (tariffs). This model is based on climate and survey information from the U. S. Energy Information Administration of the Department of Energy, and it incorporates energy efficiency and Energy Star data. This model is allowed for LIHTC projects per IRS regulations at 26 CFR

1.42-10(b)(4)(D). The HUSM and use instructions can be accessed on HUD User at https://www.huduser.gov/portal/resources/utilallowance.html. The HUSM is available as either a spreadsheet model in MS EXCEL or a web-based model on HUD User at https://www.huduser.gov/portal/datasets/husm/uam.html.

- Multifamily Housing Utility Analysis: In 2015, HUD published Multifamily Notice H-2015-4 to provide instructions to owners and management agents for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). This method is applicable for the following programs: Project-based Section 8, Section 101, Section 202/162, Section 811, Section 236, and Section 221(d)(3).
- Energy Consumption Model (Engineer Model) (26 CFR 1.42-10(b)(4)(E)) –UA based on an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner, and they specify the building factors that must be included in the model.

IV. Prohibition on Certain Fees to Tenants

Pursuant to 24 CFR 92.214, program participants may not charge fees to program beneficiaries to cover administrative costs related to the cost of administering the HOME program. Specifically, rental project owners may not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Owners may charge fees approved by the County for the following:

- Reasonable application fees to prospective tenants[4];
- Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are determined by the County to be customary for rental housing projects in the area and not excessive.
- Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and
- Fees for optional services such as supportive services for special needs tenants or general services such as bus transportation or meals, if the services are voluntary, and fees are charged only for services provided.

As part of reviewing the rent schedule each year, the County will review and approve fee schedules annually to ensure that any fees charged in addition to rent are permissible under the applicable HOME requirements and whether proposed fees are reasonable, and customary based on market comparisons.

[4] HOME allows "nominal" application fees only for the purpose of discouraging frivolous applications. Application fees are not intended to cover the cost of processing an application and should not be set with that in mind.

IV. Income Verification

All projects shall use the HUD Part 5 definition of income for determining income eligibility. Prior to signing a lease, income must be verified for all new tenants using at least two months of source documentation (e.g., pay stubs, account statements, etc.) in accordance with 24 CFR 92.203(a)(1)(i). When available, in addition to collecting source documentation, the County expects the use of third-party verification as the primary means of documenting income.

During the period of affordability, the income of in-place tenants must be recertified using source documentation at least every sixth year of the project's affordability period (e.g., in the sixth year, all in-place tenants must be recertified using source documentation even if a given tenant is only in his/her second year of occupancy). In other years, owners must recertify the income of existing tenants annually but may use one of the options in 24 CFR 92.203, unless the County requires that a project use one of the methods exclusively:

- Re-verifying income annually through source documentation.
- Obtaining a written statement from the household regarding annual household income; or
- Obtaining a written statement from the administrator of a government program under which the households receive benefits, and which examines each year the annual income of the household.

However, even when using the self-certification or certification from another government program, source documentation for all in-place tenants must be reviewed at least every 6th year of the Project's affordability period.

V. Rent Adjustments

HUD provides HOME income and rent limits on an annual basis. County staff will provide this information to owners annually. Utility allowances will also be reviewed and adjusted, as needed, annually. Owners must obtain approval before implementing HOME rent increases. Owners shall also provide not less than 30 days' written notice to tenants upon receiving County approval for HOME unit rent increases.

HOME-assisted units are considered to be compliant despite a temporary increase in income exceeding HOME requirements for existing tenants. However, in such cases there are detailed requirements about how to adjust the rent of such tenants and how to restore overall project compliance. These are outlined in the HOME Model Guide "Compliance in HOME Rental Projects: A Guide for Property Owners," which is available online at:

http://portal.hud.gov/hudportal/documents/hudoc?id=19760_2009homerentalpo.pdf

For projects with floating units, when an existing tenant's income increases beyond 80% AMI adjusted for household size, the tenant's gross rent will be increased to the lesser of the unassisted market rent for the unit or 30% of the tenant's adjusted household income. The next comparable (or larger) unassisted unit must then be rented to a tenant eligible to occupy a High-HOME unit. When the income of an existing tenant of a Low-HOME unit increases above 50% AMI but is below 80% AMI, the next available High-HOME unit must be rented to a tenant at or below 50% AMI at the Low-HOME rent. Following the replacement of the Low-HOME unit, rent for the tenant will be increased to the High-HOME rent.

Notwithstanding, over-income tenants of HOME-assisted units that have been allocated low-income housing tax credits must pay rent according to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

F. Environmental Review Requirements

Federally assisted projects are subject to a variety of environmental requirements. Developers should be familiar with these requirements and are strongly encouraged to discuss any questions they have with County staff ***prior to*** entering into a purchase agreement or submitting an application.

- All HOME-assisted projects shall be implemented in accordance with environmental review regulations as defined in 24 CFR Part 58.
- The County shall be responsible for conducting the environmental review and completing all necessary public notifications, and the request for release of funds (RROF), as applicable, from HUD. The applicant is responsible for cooperating with the County in the environmental review process and providing information necessary for the County to fulfill its responsibilities under Part 58 and other applicable regulations.
- Submitting an application for HOME funds triggers environmental review requirements under 24 CFR Part 58, including the National Environmental Policy Act (NEPA). Once an application for federal funds is submitted, a project proposal is now subject to the environmental review requirements and requires an environmental clearance and issuance of a Release of Funds (ROF), as applicable, by the U. S. Department of Housing and Urban Development.
- Developers are prohibited from undertaking or committing or expending any funds (including non-federal funds) to any physical or choice-limiting actions on the site prior to an environmental clearance as required by Part 58. Physical and choice-limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair or construction. This prohibition applies regardless of whether federal or non-federal funds are used and taking a choice limiting action prior to completion of the required environmental clearance process will result in the denial of any HOME funds from the County.

G. Other Federal Requirements

I. Nondiscrimination and Equal Opportunity

The following federal nondiscrimination and equal opportunity guidelines apply to all Rental Housing projects and affect both development and operation of assisted housing:

- The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958 B1963 Comp., P. 652 and 3 CFR 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

- The prohibition against discrimination based on age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146.

- The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8.

- The requirements of Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;

- The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting subrecipients, owners, developers, or their agents from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.

II. Uniform Relocation Act (URA)

All Rental Housing projects fall under requirements of the URA. Applicants must further document that any purchase of property meets the requirements of URA, including provision of notices to the seller identifying the transaction as a voluntary sale not under the threat of eminent domain.

Additionally, for properties occupied by commercial or residential tenants at the time of application, URA requires certain notices to tenants in place as of the application for federal funds. Failure to provide such notices may result in substantial compliance costs or render a project ineligible. To ensure compliance with URA, applicants should ***consult County staff prior to the submission of any application involving an occupied property*** to understand the requirements of URA.

III. Labor Standards

Labor standards, including Davis-Bacon federal prevailing wage requirements shall apply to all Rental Housing projects with 12 or more HOME-assisted units.

IV. Minority Business Enterprise and Women Business Enterprise (MBE/WBE) Plan

Developers must maintain a MBE/WBE plan that demonstrates marketing and solicitation of MBE/WBE businesses and contractors for the construction of the project.

V. Section 3

Developers must maintain a Section 3 plan that demonstrates a marketing plan to include Section 3 contractors and all tiers of subcontractors in the construction of the project.

VI. Excluded Parties

The County will not fund projects owned, developed, or otherwise sponsored by any individual, corporation, or other entity that is suspended, debarred, or otherwise precluded from receiving federal awards. Nor may the owner contract with any other entity (including but not limited to builders/general contractors, property management companies, or other members of the development team) that are suspended, debarred, or otherwise so precluded. Similarly, the general contractor will be required to determine that subcontractors are not so precluded.

The System for Award Management (SAM) database should be used by applicants to confirm that development team members are not excluded. The SAM database is available at www.sam.gov.

4. Ongoing Project Requirements

HOME projects must, at all times during the term of the HOME Loan or the applicable affordability period whichever is longer, be operated in compliance with the County's Rental Management Handbook, or successor publications, which may be updated from time to time to reflect new, revised, or clarified administrative procedures and practices. In the HOME Agreement for each project, the owner must agree to be bound by such updates which may include, but not be limited to, procedures for obtaining annual rent or utility allowance approvals, reporting and document submission requirements, use of updated form documents provided by the County, and the like.

A. Project Completion Deadline and Period of Affordability

The period of affordability will be based on the date of project completion as defined by 24 CFR 92.2 which, among other things, requires that all construction activity be complete, all HOME funds drawn from the U.S. Treasury, and project completion information be entered into the HUD Integrated Disbursement and Information System (IDIS). For rental projects, project completion occurs upon completion of construction and before occupancy, and units may be marked vacant in IDIS until complete beneficiary data is received. The County requires that project completion must occur within 2 years of the date of commitment of funds to the project.

If the Owner fails to meet this 2-year deadline, it must repay to the County any HOME funds disbursed for the project. In accordance with the minimum requirements of 24 CFR 92.252(e), rehabilitated and new construction rental projects funded with HOME shall maintain HOME affordability requirements for a period of up to 15 years for rehabilitation projects and at least 20 years for new construction projects.

B. Initial Occupancy Deadlines

In accordance with 24 CFR 92.252, HOME-funded rental projects must comply with the following deadlines and requirements as evidenced by occupancy of tenants with a written lease that complies with the requirements of 24 CFR 92.253:

- Within 6 months from the date of project completion, if a rental unit remains unoccupied, the Owner will provide to the County information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible.
- Within 18 months from the date of project completion, if efforts to market the units are unsuccessful and units remain unoccupied by an eligible tenant, the County will require repayment of all HOME funds invested in each vacant unit. A unit that has not served a low- or very low-income household, as applicable, has not met the purposes of the HOME program. Therefore, the costs associated with the unit are ineligible.

C. Marketing and Leasing

The owner/developer must establish a written tenant selection plan consistent with the requirements of 24 CFR 92.253(d). Among other requirements, the tenant selection plan must, insofar as is practical, provide for the selection of tenants from a project's waiting list in chronological order of their applications and provide written notification to any rejected applicant of the reason for their rejection.

An owner/developer, as part of the application for funding, may propose to restrict units to or provide preferences for identifiable portions of the income-eligible population, e.g., elderly/senior only projects, preferences for homeless and/or special needs populations, etc. Any such restriction or preference must be authorized in the Consolidated Plan and may not be in violation of any Fair Housing or similar requirements. The County may, as part of any periodic NOFA, provide scoring incentives or further priority for particular populations.

All HOME-funded projects must establish an Affirmative Fair Housing Marketing Plan (AFHMP) detailing procedures to attract eligible occupants without regard to race, color, national origin, sex, religion, familial status, disability, or sexual orientation. AFHMPs shall include all required aspects as stated in 24 CFR 92.351(a)(2). More detail on the County's affirmative marketing requirements, including instructions on completing the AFHMP using form HUD-935.2A can be found in the County's Rental Management Handbook.

Leases between the tenant and owner shall be for one year, unless by mutual agreement between the tenant and the owner. Owners are required to provide written notice prior to terminating or refusing to renew the lease with occupants of HOME-assisted units receiving at least 30 days' notice.

Owners are prohibited from including unfair provisions in HOME project leases. In accordance with the provisions of 24 CFR 92.253, the following terms are prohibited from HOME project leases:

- Agreement to be sued.
- Treatment of personal property.
- Excusing owner from responsibility.
- Waiver of notice.
- Waiver of legal proceedings.
- Waiver of a jury trial.
- Waiver of right to appeal court decision.
- Tenant chargeable with cost of legal actions regardless of outcome; and
- Mandatory participation in supportive services (note, transitional housing projects funded with HOME may be permitted to require service participation under limited circumstances; contact County staff for more detail).

Finally, projects must comply with the requirements of the Violence Against Women Act (VAWA) as required by 24 CFR 92.357. VAWA provides certain additional tenant protections to applicants and tenants who are victims of domestic violence, sexual assault, and/or stalking. In general, among other requirements owners must provide notices to all tenants of the VAWA provisions, may not deny an application or terminate or refuse to renew a lease as a result of a person's status as a victim or on the basis of criminal activity related to such status, and must allow for the bifurcation of a lease in order to evict the perpetrator of such criminal activity while allowing the victim to maintain occupancy.

In general, the County will provide a standard form lease-addendum for use by owners of HOME-assisted housing that will provide required tenant protections and eliminate any prohibited provisions from uses otherwise used by owners.

D. Reporting and Recordkeeping

To allow effective oversight of funded projects and document compliance with applicable HOME requirements, all projects must submit periodic reports to the County. While this section outlines standard reporting requirements, the County reserves the right to require additional reporting or to alter the reporting format or frequency based on future changes to HOME requirements or County policy. Additionally, the County reserves the right to require additional or more frequent reporting for projects with compliance deficiencies.

In general, report submission will be coordinated with Neighborhood & Housing Development supervision.

- Owners are required to report quarterly during the development phase and lease-up phase. Quarterly reports will be due on the 15th of the month following the end of the prior quarter (e.g., by April 15th reports on the first quarter are due).
  - During the construction phase, owners must provide monthly reports detailing construction progress and barriers to progress, copies of invoices being paid, and evidence of appropriate lien waivers.
  - During the initial phase of lease-up, the County may request owners to provide monthly or quarterly reports detailing the number of additional leases, total project leases, marketing activity, and monthly income and expenses. Once the owner has leased 100% of units, leasing and marketing reporting will be required annually.
- Annual Reports shall be required for all HOME projects, and shall include an Annual Occupancy Report, utility allowance documentation, and examples of marketing materials.
- The County may require more frequent reporting due to findings identified during annual monitoring, or findings identified during quarterly reports submitted during the development and lease-up phases.
- All HOME projects shall be required to submit annual budgets to the County for review and approval. Additionally, all projects will be required to submit an audit prepared by an independent Certified Public Accountant within 180 days of the end of its fiscal year. For small HOME-funded projects (generally defined to be projects with fewer than 20 total units not involving LIHTC) where the cost of a project-specific audit is deemed by the County to be burdensome, the County may accept a statement of financial condition with prior approval by the Manager of the Neighborhood & Housing Development Division.
- Owners and developers shall allow the County, HUD, State of Michigan, the Comptroller General of the United States (aka the GAO), and all other pertinent federal or State agencies or their designated representative the right to inspect records and property.
- Owners must annually (if applicable) submit any updates to their Tenant Selection Policy and AFHMP and must maintain records of annual efforts to affirmatively further fair housing in accordance with 24 CFR 92.351. Updates must clearly detail all changes.
- Owners must annually report to the County on compliance with the provisions of the Violence Against Women Act (VAWA) as applied through 24 CFR 92.359 including records related to any emergency transfer requests and their disposition.
- The County may periodically require owners to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by the County. Alternatively, the County may conduct a capital needs assessment using its own staff or contractors. Such capital needs assessments shall be used for the purposes of determining the adequacy of the Replacement Reserve, considering its existing balance, planned deposits, and anticipated future capital replacement costs for the Project.

If the capital needs assessment indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the Affordability Period, the owner must, at the County's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding. If an additional deposit is required by the County, the owner (or the Guarantors) must replenish the Replacement Reserve Account within six months.

E. Conflict of Interest

To comply with HOME requirements and to maintain a high standard of accountability to the public, conflicts of interest and perceived conflicts of interest must be avoided.

- Owners shall maintain compliance with all HUD conflict of interest provisions as stated in 24 CFR 92.356(f).
- Developers and owners with employees, family members, consultants, or agents that are otherwise eligible to occupy HOME-funded units must receive approval from the County before entering a lease with HOME eligible employees, family members, consultants, or agents.

5. Structure of Transaction

A. Loan Types and Terms

The County will provide HOME funds in the form of a loan to the entity that owns the property. No grants will be awarded, and funding commitments are not transferable without prior written County approval.

The County's HOME Loan is intended as construction/permanent financing. Proceeds of the HOME loan will only be released in conjunction with approved monthly construction draws and/or submission of invoices for approved soft costs and satisfaction of all requirements outlined below.

In all cases, the HOME loan will:

- Have a term equal to the project's Affordability Period (usually 15 to 30 years)[5];
- Be repayable in full upon sale, refinancing, or transfer of the property or upon maturity, whichever occurs first.
- Be secured with a mortgage, promissory note, and appropriate UCC liens. Mortgages will be recorded in the appropriate county and generally may be subordinate only to an amortizing permanent first mortgage and a temporary bank construction loan, all of which must be approved by the County, if applicable; and

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[5] When necessary for tax analysis purposes, County may consider a loan term *longer* than the project's Affordability Period.

- Be additionally secured by an irrevocable letter of credit in the amount of the HOME loan to be released by the County upon achievement of stabilized occupancy and approval of the final cost certification.

The County will offer one of two potential repayment structures:

- For projects without senior amortizing loans (e.g., a conventional mortgage or USDA financing), HOME will generally be structured as an amortizing loan with a term equal to the affordability period and an interest rate of 1%. Payments may be deferred for the first year following completion of construction. Based upon the County's underwriting evaluation, payments may be based on a longer amortization period with a balloon due at maturity if a project cannot be expected to fully amortize the loan; or
- For projects with senior amortizing loans, HOME will be structured as a surplus cash (aka "cash flow contingent") loan payable annually from 50% of surplus cash. For projects where the County has required the establishment of a preservation reserve, surplus cash payments on the HOME loan will be deferred for as long as preservation reserve contributions are required.

B. Reserves and Surplus Cash Distributions

To preserve the ongoing viability of projects, the County will require the establishment and maintenance of various reserves. In general, reserves must be held at financial institutions licensed to do business in the State of Michigan in accounts that the signature of the County and the owner for all withdrawals and transfers. Owners must also authorize the financial institutions in which reserves are held to provide to the County, when requested, verified statements reflecting account balances and transactions. Reserves must remain in place so long as the project's HOME loan is outstanding or for the duration of the affordability period, whichever is longer, and information on each account must be reported annually. Reserves will include:

- An operating reserve intended to protect against unexpected operating deficits.
- For projects where the County's underwriting anticipates operating deficits during the affordability period, an additional operating deficit reserve must be capitalized.
- A replacement reserve intended to fund future capital and rehabilitation needs. Initial reserve deposit requirements are noted in the underwriting standards below, and the County may modify reserve requirements during the affordability period based on periodic capital needs assessments.
- At the County's option, a preservation reserve account may be created and funded with annual deposits from surplus cash (i.e., cash flow). In general, deposits equal to 50% of surplus cash will be required. The preservation reserve is intended to assist in the future preservation, refinancing, or repayment of the transaction.
- As may be required based on specific or unique project features, additional specialty reserves may be required, such as for tenant services, abnormal security costs, etc.

The County must also approve any distributions of surplus cash, which among other items, will require that all reserves be fully funded, the project be in compliance with all federal requirements, the project not be in default, and that the project retain sufficient liquidity following the distribution.

C. Guarantees

Excluding the investor/syndicator partners or members of the ownership entity, all underlying individuals, corporate entities, partnerships, or limited liability companies with an interest in the project's ownership entity will be required to provide the following performance guarantees:

- Completion Guarantee including provisions guaranteeing construction completion of the project.
- Recovery Guarantee including provisions guaranteeing ongoing compliance with HUD HOME guidelines and indemnifying the County against any liability to HUD resulting from the project's non-compliance.
- Replacement Reserve Guarantee to ensure annual deposits to a Replacement Reserve for the project in an amount consistent with the loan documents and/or covenant running with the land.

Guarantees shall be joint and several and must remain in effect throughout the applicable affordability period.

D. Declaration of Restrictive Covenants

Each HOME-funded project must maintain restrictions and covenants running with the land enforcing HOME, and County guidelines, as applicable. The Declaration of Restrictive Covenants will be separately recorded and will remain in place for the affordability period even if the HOME loan is prepaid. Among other items, the Declaration of Restrictive Covenants will address:

- Restrictions on the transfer of title to the property or underlying ownership interest of the property owner.
- Restrictions on further encumbrances on the Property without the County's prior permission.
- Operational and performance requirements, including maintenance of various reserves, restrictions on the distributions of surplus cash, and property management and insurance expectations.
- Provisions to enforce ongoing requirements for project compliance through the HOME Affordability period, including:
  - The length of the period of affordability.
  - Income and rent restrictions on HOME-assisted units.
  - Property standards to be enforced.
  - Marketing and leasing requirements; and
  - Recordkeeping and reporting requirements.

While the County's HOME loan(s) will generally be subordinate to conventional debt, the HOME covenant(s) must be recorded <u>senior</u> to all liens and encumbrances associated with the project financing, including any loans senior to the County's HOME loan, and structured to survive any foreclosure by a senior lien.

HOME covenants will be separate from any required LIHTC covenant(s).

E. HOME Agreement

In addition to any financing documents, owners of HOME-financed projects must sign a HOME Agreement with the County. The Agreement will identify requirements for compliance with the HOME regulations and the County's Rental Housing Program requirements and will remain in effect in the event of any prepayment of the HOME loan.

6. Underwriting & Subsidy Layering Reviews

A. Project Underwriting

For all HOME project applications, the County will commission a professionally prepared market study from a provider on the County's list of approved market analysts. If more than 12 months old at the time of commitment, the County may require an updated market study. Proposed rent levels must be supported by the applicant's market study and within HOME regulatory limits, as applicable.

All HOME applications must include personal financial statements (audited if available) and the three most recent tax returns from all underlying developers, owners, and guarantors and will be subject to the County's evaluation of fiscal soundness as required by 24 CFR 92.250(b)(2).

Project Underwriting will also include:

- Vacancy factor of at least 7% for family developments and at least 5% for elderly developments, unless the market study indicates a higher vacancy factor is needed.
- County staff will use a maximum 2% inflation factor for all sources of income.
- All operating expenses will be underwritten with an inflation factor of at least 3%.
- All HOME projects must maintain a total project Debt Coverage Ratio (DCR) of at least 1.15 for the affordability period. Properties with a DCR that exceeds 1.25 may have rent increases reduced or denied.
- Proposals must include justification of operating costs that includes a comparison to similar projects in the local market. Whenever possible, comparable properties should be operated by the proposed management company. The County may establish minimum annual per unit operating costs as part of its annual NOFA.
- At a minimum, projects must make replacement reserve deposits of $300 per unit per year for family projects and $250 per unit per year for elderly projects. The Replacement Reserve must be funded and maintained for the full affordability period and reflected in

the operating expenses for the full 15-to-30-year projection of expenses, as applicable. Replacement Reserve deposits will be inflated at 3% annually.

- Projects must include a capitalized operating reserve equal to 6 months of underwritten operating expenses, amortizing debt service, and required reserve deposits. If drawn, the operating reserve must be replenished prior to distributions of cash flow. The operating reserve is intended to protect against unplanned operating deficits. If the County's underwriting projections anticipate deficits within the applicable affordability period, a separate operating deficit reserve must be capitalized as well.
- To substantiate LIHTC equity pricing, if applicable, applicants must submit documentation indicating that a syndicator or investor has reviewed the proposal and indicated preliminary pricing along with their interest in the project.
- Applicant must provide the amounts and terms for the construction financing, permanent financing, and if applicable, owner equity information**.** ***Amortizing permanent financing that will be senior to the County's HOME loan may not mature prior to the expiration of the HOME affordability period.***

B. Proforma Requirements

The County requires submission of a project proforma in a format provided by the County as part of periodic NOFAs and application instructions.

If not otherwise itemized, applicants must be able to separate the hard costs of any stand-alone accessory buildings, including leasing offices, community buildings, laundry facilities, free-standing garages or carports, or maintenance buildings so that the County can complete preliminary HOME cost allocation calculations.

Costs and fees are to be paid to the County as permitted by the HOME program. The HOME program allows the County to include, as project costs, its internal soft costs specifically attributable to the project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and monitoring award of funds to a project. Applicants must include allowances for the County's project-related soft costs in their development budget, the amount for which will be published in any NOFA.

Similarly, applicants must include, as part of the operating budget, an allowance for the County's ongoing monitoring fees as specified in the NOFA.

C. Cost Limitations

All project costs must be reasonable and necessary whether directly paid with HOME funding or another source. The County reserves the right to review any line-item cost to ensure that total project costs are not excessive. Additionally, HOME projects will be subject to the following specific cost limitations:

- The maximum developer fee is 15%[6] of net development costs approved by the County. Net development costs are total development costs less syndication related costs and the developer fee itself. Consultant fees are payable only from proceeds of the developer fee.
- Maximum allowable builder General Requirements, Overhead, and Profit are 6%/2%/6%, respectively. The builder line-item percentages are calculated on the construction contract price which cannot include construction contingency. If the County's Inspector approves a Change Order for use of construction contingency, the same percentages for builder line items apply.
- Generally, Architectural, including Engineering fees, may not exceed 6% of total project hard costs (excluding builder's line items) unless the County has approved a larger fee (e.g., in response to specific project characteristics such as a requirement for historic rehabilitation or unusual site conditions requiring additional engineering).
- Acquisition costs may not exceed the lesser of the appraised value of a property, the purchase price negotiated with an arms-length seller, or the cost basis of an identity of interest seller.

D. Other Public Funding Sources

Owners must disclose all other firm commitments for funding with the initial HOME Rental Housing application to the County at the time of application and upon receiving any additional commitments of funding. The County will conduct a subsidy layering review as part of the underwriting process for any project that includes other public subsidies. Using its underwriting criteria, the County will assess the project and may require changes to the transaction to ensure that cash flows to the owner/developer are not excessive. Changes may include a reduction in HOME funds awarded, reductions in the rents being charged to tenants, requirements that excess cash is deposited to an operating reserve or increases in annual payments on the HOME loan.

The County will consider adjusting its underwriting in consultation with other funders to the project. The County retains, at its sole discretion, the power to decide whether to accept alternative standards.

7. Construction Process

A. County Construction Inspections

The County will provide HOME funds in the form of construction and/or permanent financing only. The County must be provided with the AIA G-702/703 forms and supporting documentation and Developer/Owner must provide reasonable notice of any changes to scheduled monthly draw inspections during the construction period. County staff will

[6] The County recognizes that many applicants propose lower developer fees as a result of scoring factors in the Qualified Allocation Plan (QAP). To the degree an applicant has proposed a lower fee for LIHTC purposes, that lower fee limit will be observed for HOME purposes.

participate in all draw reviews and conduct inspections to ensure that the project is progressing, and that work completed is consistent with all applicable HOME requirements.

B. Federal Labor Standards (Davis-Bacon)

When federal labor standards (i.e., Davis-Bacon and Related Acts) apply to a project, the County must be provided with compliance documentation throughout the construction period even when HOME is provided as a permanent loan following the completion of construction. Prior to commencing construction, the County must approve current wage determinations applicable to the project. The contractor will be required to provide weekly payroll forms to the County and allow access to the site and workers for the purpose of completing worker interviews.

The County will accept Form WH-347 or acceptable internal forms from the contractor.

C. Drawing Funds

The County's HOME Loan is intended as construction and/or permanent financing. Proceeds of the HOME loan will only be released as reimbursement for eligible project costs.

I. Conditions of Construction Draws

Proceeds of the HOME loan will only be released to Owner for actually incurred HOME-eligible project costs. The obligation of the County to approve any draw or to make any disbursement of HOME funds is subject to the satisfaction of the following conditions at the time of making such disbursement:

- Draws will not be processed if the Owner is in default.
- The Project shall not have been materially damaged by fire or another casualty.
- The County shall have received evidence satisfactory to the County that all work and improvements requiring inspection by any governmental authority having jurisdiction have been inspected and approved by such authorities and by any other persons or entities having the right to inspect and approve construction.
- Owner shall have submitted at least 10 days prior to the date a disbursement is desired a completed disbursement request using AIA G-702 (Contractor's Application for Payment) and G-703 (Continuation) forms and such other appropriate source documentation as may be required by the County including, without limitation, the following:
    - Current Contractor Tracking Form and lien waivers, which are to be dated no less than 10 days precedent to the date of the requested disbursement.
    - Evidence satisfactory to the County that the Project and the contemplated use thereof are permitted by and comply with all applicable uses or other restrictions and requirements in prior conveyances, zoning ordinances, or regulations that have been duly approved by the municipal or other governmental authorities having jurisdiction; that the required building permits and other permits have been obtained as required; and that no environmental impact statement is required or that such environmental

impact statement has been properly filed and approved.
  - Appropriate certifications of compliance in all respects with labor standards and prevailing wage requirements applicable under federal law.
  - Such other supporting evidence as may be requested by the County or its agents to substantiate all payments which are to be made from the relevant disbursement and/or to substantiate all payments then made with respect to the Project.
  - The County shall have determined that all HOME requirements pertaining to the disbursement of funds have been met, including but not limited to monitoring of Davis Bacon compliance.
  - The County shall have received a current inspection report from a County inspector that verifies satisfactory completion of work to HOME standards.
  - No determination shall have been made by the County that the undisbursed amount of the loan is less than the amount received to pay all costs and expenses of any kind that reasonably may be anticipated in connection with the completion of the Project.

II. Conditions of Final Disbursement

In addition to the requirements set forth above, the County shall require the following prior to the final disbursement of funds, the request for which shall not be submitted before completion of the Project, including all landscape requirements and offsite utilities and streets and correction of defects in workmanship and/or materials:

- A certificate of occupancy, if applicable, or a final approved construction report from the County's HOME Department for the Project.
- Identification of the designated street address of the Project, including as applicable the street addresses assigned for the leasing office and each residential structure and the specific unit designations (e.g., unit number or lettering such as #12 or Apartment B-3) for all HOME units.
- Evidence satisfactory to the County that the Project has been completed lien free and substantially in accordance with the plans and specifications.
- Review and final settlement of the cost certification.
- Such other supporting evidence as may be requested by the County or its agent to substantiate all payments which are to be made from the final disbursement and/or to substantiate all payments then made with respect to the Project.
- A determination by the County that all HOME requirements pertaining to the initial development of the Project have been met, including but not limited to monitoring of Davis-Bacon compliance, as applicable.

III. Limitation on Draw Requests

- In all cases, Owner may not request disbursement of HOME funds until funds are needed for the payment of eligible costs, and all disbursement requests must be limited to the amount needed at the time of the request.
- No disbursements for materials stored will be made by the County unless Owner shall advise the County of its intention to so store materials prior to their delivery. The

propriety of disbursements for materials stored shall be determined in the County's sole discretion.

- If all or a portion of the developer's fee is not budgeted to be paid with HOME funds, 10% of total HOME funds will be held as retainage until submission and approval of all items required for final disbursement above.

D. Project Closeout

Owners are required to submit demographic data at lease up for all HOME-funded units. Data shall include elderly status, race, gender, female head of household, number of household members, and percent of area median income. Owners must be aware that the Affordability Period does not begin for HOME- funded Project(s) until all project costs are processed, all demographic data is verified by County staff, and the project is entered as completed in IDIS.

8. Monitoring During Affordability Period

Following project closeout, the County will monitor the project for ongoing compliance with HOME requirements, including but not limited to income and rent restrictions, property standards, tenant protections, and marketing and fair housing requirements. In addition to requiring periodic reporting as outlined in Section 4.D. above, the County will conduct on-site monitoring visits as required by HOME regulations at 24 CFR 92.504(d)(1). The purpose of these visits will include, at minimum, reviews of project records and inspection of the premises including common areas and residential units.

In most cases, the County conducts such reviews annually. However, the County reserves the right to conduct site visits more or less frequently based on changes to HOME regulations or County policy or based on evidence of compliance deficiencies in a prior monitoring visit.

As noted above, all projects must be operated in compliance with the County's most current Rental Management Handbook, or successor publications, which may be updated from time to time to reflect new, revised, or clarified administrative procedures and practices. The handbook provides additional detail on and updated/current descriptions of the County's guidance on property operations. This may include, among other items, procedures for obtaining annual rent or utility allowance approvals, reporting and document submission requirements, use of updated form documents provided by the County, and the like.