Oregon Housing and Community Services

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HOME INVESTMENT PARTNERSHIP PROGRAM 2014 MANUAL

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HOME INVESTMENT PARTNERSHIP PROGRAM (HOME)

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Introduction

Congress created The HOME Investment Partnerships Program (HOME) in October 1990. The HOME Program encourages partnerships among local governments, nonprofit and for-profit organizations, individuals, and the State to further the development of housing to meet the needs of low and very low-income individuals and families. Under the HOME program, each state must address housing needs consistently with the regional housing priorities outlined in Oregon's Consolidated Plan (CP). The proposed project must be consistent with Oregon's Consolidated Plan (CP). Applications for projects located in Medford or Ashland must include a letter from the appropriate city confirming CP consistency is required.

NEW HOME Program and Project Deadlines

In accordance with the new HOME Rule (updated February 26, 2014) HOME Program funds must be committed to eligible projects within 24 months of the HOME allocation. OHCS will prioritize projects that can move quickly in order to meet this deadline. Once HOME funding is committed, the project must be under construction within 12 months. OHCS will rescind reservations for projects that do not meet program deadlines.

OHCS now requires HOME recipients to ensure that HOME assisted rental units are occupied by income-eligible households within 6 months of Certificate of Occupancy. If any HOME assisted unit remains unoccupied for six months following completion, the recipient must develop an enhanced marketing plan and report this information OHCS. If HOME-assisted units remain unoccupied at 18 months after Certificate of Occupancy, the unit has not met the purpose of the HOME Program and the costs associated with the unit are ineligible. The recipient will be required to repay the HOME funding for each vacant unit.

NEW Forms of Assistance

HOME funding will be provided directly to the owner of the project. In the case of LIHTC funded projects, HOME funding must be provided to the limited partnership. HOME funds are awarded in the form of a grant or loan, and in an amount appropriate to the scope of a proposed project.

OHCS loans will be offered with either interest only or interest and principal annual payments, depending upon the debt coverage ratio (DCR) in the application for HOME funds. Projects with DCR greater than 1.15 (based on permanent loan after OAHTC plus HDGP loan) will be charged annual interest plus principal payments. Projects with DCR less than 1.15 will be charged only annual interest payments. Payments will be due 120 days after the calendar year end. Prepayments will be accepted with no penalty and any unpaid principal remaining at the end of the loan period will be immediately due.

HOME Loan interest rate shall be equal to the interest paid on U. S. Treasury long-term obligation in effect at the time the loan documents are created. The rate will be equal to the interest rate of the Treasury obligation closest to the term of the loan, but will not be greater than the Treasury rate.

HOME Loans must be included as debt on the Expense Statement of the operating budget.

HOME funding awarded as a permanent loan will require the execution of a Loan Agreement and Promissory Note and the execution and recording of a Trust Deed and Regulatory Agreement and Declaration of Restrictive Covenants.

HOME funding awarded as a grant will require execution of a Grant Agreement and execution and recording of a Declaration of Restrictive Covenants.

OHCS reserves the right to adjust the amount of HOME funds awarded to a project, and to negotiate modifications to the proposed work plan and budget prior to executing a grant agreement.

Eligible Projects

The proposed project must provide permanent or long-term transitional housing. Overnight shelters, public facilities, residential care facilities, student housing, or housing for workers on a seasonal basis are not eligible for HOME funding. Projects must be located within the boundaries of the State's HOME Program.

An eligible HOME project consists of one or more buildings on a single site or multiple sites, which is under common ownership, management and financing, and is part of a single undertaking. HOME assisted projects may be privately or publicly owned and contain any number of units, and any combination of unit sizes and styles. An eligible HOME project must meet the definition of housing in accordance with 24 CFR Part 92.2.

Special Needs Projects: In order to utilize HOME funding in projects planning to house special needs population, Applicants must certify to the following requirements:

- Lease Agreement: A one-year lease agreement must be offered to tenants in HOME assisted units. In addition to the one-year term, the lease must stipulate that termination or refusal to renew be served to the tenant in writing, specify the grounds for the action, and provide a minimum of 30 day notice before termination of tenancy. For more information on required and prohibited lease provisions, see 24 CFR 92.253.
- Services: While OHCS recognizes that appropriate supportive services must be available to help tenants with special needs live as independently as possible, services cannot be required as a condition of tenancy in a HOME assisted project providing permanent housing. Supportive services can be required in transitional housing.
- Affirmative Marketing Requirements: HOME assisted projects of five or more units must be affirmatively marketed to all persons within the special needs group. Referrals from a single social service agency cannot be used exclusively to fill the units. A good faith effort must be made to inform and solicit applications from members of the special needs group throughout the market area. (Group homes are considered to be “one” HOME assisted unit).

Please Note***:*** HOME assisted projects designated for persons with disabilities cannot be restricted to persons with specific types of diagnoses or subclasses of disabilities. Resident services may be specific to subclasses of disabilities, but the housing may not. HOME assisted housing for disabled persons must be open to qualified persons with any type of disability.

Transitional Housing Projects: Transitional housing must be designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless families and children, and homeless individuals with disabilities. The purpose of the housing is to move individuals and families to independent living within a reasonable time. HOME applicants undertaking transitional housing must submit a transitional plan with the application that describes the housing and supportive services that help tenants to independent living; the plan must include the estimated time it will take to transition the tenants. All HOME assisted rental housing, including transitional, must offer tenants a one-year lease.

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

Group Homes: Group homes are typically a shared residence where tenants have a private bedroom but share kitchen, bathroom, and common living space. A group home is considered to be a one-unit project. The HOME subsidy maximum is based on the actual number of bedrooms in the project, while rent limits are based on the actual number of tenants in the project (not including a bedroom for live-in care giver).

Ineligible Projects

HOME funds may not be used for:

- projects assisted under section 9 of the 1937 Act (annual contributions for operation of public housing);
- carrying out activities authorized under part 968 (Public Housing Modernization);
- providing assistance to eligible low-income housing under 24 part 248 (Pre-Payment of Low Income Housing Mortgages);
- providing assistance to a project previously assisted with HOME funds. Projects may only receive HOME funds once during the period of affordability. This prohibits applicants from applying for HOME funds for the first phase of a project and reapplying for HOME funds when developing the second phase of the project.
- emergency shelters or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities or student dormitories.

Applicants with projects located in Portland/Multnomah County/Gresham, Washington County, Clackamas County, Eugene/Springfield, Salem/Keizer, or the city of Corvallis should contact those jurisdictions for information on their local HOME program. Projects located in those jurisdictions are not eligible for OHCS HOME funding.

Debt Reduction is Ineligible: The proposed project must create and/or preserve affordable housing. Requests for funds to buy-down or refinance current debt are not eligible for OHCS HOME funding.

Construction Prior to Application: Projects that have started construction or rehabilitation or have executed contracts for construction work prior to submission of the NOFA application are not eligible for HOME funding.

Eligible Applicants

Eligible applicants include individuals, local governments, nonprofit and for-profit organizations including, but not limited to, cities, counties, housing authorities, nonprofit community-based organizations such as community housing development organizations (CHDOs), community development corporations (CDCs), and community action programs (CAPs).

HOME funding will be provided directly to the owner of the project. In the case of LIHTC funded projects, HOME funding must be provided to the limited partnership. HOME funds are awarded in the form of a grant or loan, and in an amount appropriate to the scope of a proposed project.

The HOME Program requires recipients to have the experience to administer the complex requirements of the HOME Program. The new HOME Rule (24 CFR Part 92.250(b)) requires established guidelines for examining the developer/recipient's capacity and fiscal soundness, and sufficient financial resources.

OHCS will examine the following:

- Developer organizational experience,
- Current staff capacity based on project size, scope, complexity and type of development;
- Liquidity,
- Net Worth.

Developer/Owners receiving a reservation of HOME funding will be required to respond to an assessment of their capacity to develop the HOME project, which includes the following:

- Description of experience and capacity to develop and own a HOME project;
- List of all projects developed in the last 10 years, including the sources of funding;
- Description of staff including names and experience level in housing development;
- List of projects currently under development and explanation of how multiple projects will be managed;
- Description of the Board or Principle Parties experience with regard to affordable housing operation.

In regard to liquidity and net worth, the Developer/Owner's financial condition must not contain unmitigated adverse conditions that might materially impair their ability to perform its financial obligations for the project during construction and stabilization of the project.

To determine this, OHCS will require the following information from Developer/Owners receiving a reservation of HOME funding for their projects:

1. Accountant prepared financial statements comparing two years of performance not more than two-years old.
2. Real Estate Holding Schedule with project contingent liability schedule not more than (6) months old.
3. Company Contingent Liability Schedule and Credit Report.

<u>Liquidity Guideline</u>**:** Based on the Developer's financial statements, the company must demonstrate sufficient Liquidity (Cash or cash equivalents) to meet its on-going operating

expenses and sufficient surplus resources to provide project support from time to time during construction.

Cash: The amount of Cash or Cash Equivalents on hand will vary depending on the size of the company and scope of the new project, but should be sufficient to meet the month to month operating needs of the company plus a surplus. A company with Cash resources less than or equal to zero is not acceptable.

Discretionary Cash Flow: Discretionary cash flow is the cash resource remaining after cash operating expenses, including mandatory debt service on loans, are paid from on-going cash revenues. A company with Cash Flow that is less than or equal to zero is not acceptable.

Net Worth: The Net Worth (Net Assets) of a company is only a measure of the accounting basis of a company, not the scale of its real estate mass. A company with Net Worth that is minimal or less than zero may not be acceptable on the surface due to depreciation deductions or only 1% GP interests in Limited partnerships. So a simultaneous review of the company's Real Estate Portfolio is necessary to provide a concrete Portfolio context in which to view the accounting values.

Portfolio Quality Guidelines: As disclosed in the Real Estate Holding Schedule, the Developer's existing real estate portfolio must be stable and self-supporting. Projects within the schedule and the total schedule should meet the following guidelines.

Problem Projects: If there are any significant problem projects, the Developer shall provide a detailed mitigation plan(s), which must be satisfactory to the Department in its sole discretion.

Leverage**:** Generally, the leverage of individual projects and the portfolio should not exceed 85% loan to debt ratio. This must include all mandatory debt totals that must be repaid from on-going operations.

Debt Service Cover: Generally, the debt service cover for all projects and the portfolio should not be less than 1.05:1. The debt service cover is the ratio of the debt payment(s) divided by net income(s). The debt Service cover should include all mandatory debt payments.

Credit Reporting: The credit report can be a useful tool in identifying problems that are outside the normal scope of information the department reviews. Identification of any previously undisclosed project or company concerns, such as past due payments on non-department loans, is generally not acceptable.

Determination of Financial Capacity Ratings: The overall financial capacity rating for a Sponsor should be based on the quantitative process of extracting core numbers, such as cash, cash flow, leverage and DSC, but the acceptability of those numbers should be tempered by the qualitative review of the Portfolio, the status of any unmitigated troubled assets and the potential impact of any issues on existing guaranties.

NEW

Community Housing Development Organizations (CHDOs)

CHDOs are specific types of nonprofit organizations defined exclusively for the HOME Program. CHDOs must demonstrate effective management control of projects, and must be organized and structured according to strict standards specified in the HOME regulations. In order to qualify as a CHDO, the entity must be organized under the Internal Revenue Code of 1986 (IRC) at 501(c)(3) or 501(c)(4).

CHDOs must demonstrate development experience with projects of the same size, scope and level of complexity as the proposed project. CHDOs must employ professional staff having the knowledge, skills, and experience necessary to undertake HOME funded projects. Volunteers, board members, or consultants are not considered to be staff and do not count toward meeting HUD's criteria for CHDOs.

In accordance with HOME program regulation, OHCS must commit up to 15 percent of the annual HOME allocation for investment in housing to be "owned", "developed" or "sponsored" by state certified Community Housing Development Organizations (CHDOs).

<u>CHDO as Owner:</u> Rental housing is "owned" when the CHDO is the owner in fee simple absolute of multifamily housing (or has a long term ground lease) for rental to low-income families. If the housing is to be rehabilitated or constructed, the CHDO hires and oversees the developer that rehabilitates or constructs the housing. At minimum, the CHDO must hire or contract with an experienced project manager to oversee all aspects of the development, including obtaining zoning, securing non-HOME financing, selecting a developer or general contractor, overseeing the progress of the work and determining the reasonableness of costs. The CHDO must own the rental housing during development and for a period at least equal to the period of affordability.

<u>CHDO as Developer</u>: Rental housing is "developed" by the CHDO when the CHDO is the owner of multifamily housing in fee simple absolute (or has a long term ground lease) and is also the developer of housing that will be constructed or rehabilitated for rent to low-income families. To be the "developer," the community development housing organization must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME financing, selecting architects, engineers and general contractors, overseeing the progress of the work and determining the reasonableness of costs. At a minimum, the CHDO must own the housing during development and for a period at least equal to the period of affordability.

<u>CHDO as Sponsor:</u> Rental housing is "sponsored" by a CHDO when rental housing "owned" or "developed" by a limited partnership of which the CHDO is the sole general partner, or a limited liability company of which the CHDO is the sole managing member. If the limited partnership or limited liability company agreement permits the CHDO to be removed as general partner or sole managing member, the agreement must provide that the removal must be for cause and that the CHDO must be replaced with another CHDO.

HOME-assisted rental housing is also "sponsored" by a CHDO if the CHDO "developed" the rental housing project and agreed to convey to an identified private nonprofit organization at a predetermined time after completion of the development of the project. Sponsored rental housing is subject to the following requirements:

- The private nonprofit organization may not be created by a governmental entity.
- The HOME funds must be invested in the project that is owned by the CHDO.
- Prior to commitment of HOME funds, the CHDO sponsor must select the nonprofit organization that will obtain ownership of the property.

In every case, the HOME funds must be provided to the entity that owns the project.

Tenant Participation Plan: CHDOs that receive HOME funding for their project must adhere to a fair lease and grievance procedure approved by OHCS. They must also submit a plan and follow a program of tenant participation in management decisions.

CHDO Operating Support Grants: CHDOs that receive assistance will also be eligible to apply for a CHDO Operating Support Grant to pay for the reasonable and necessary costs for the operation of the CHDO. The OHCS CHDO Operating Support Grant application is published and administered on an annual basis.

NEW Market Guidelines

New HOME regulations require each potential HOME assisted project be subject to an assessment of the current market demand in the neighborhood in which the project is proposed. OHCS has adopted a tiered system of market assessment based upon the size of the project and the amount of HOME funding requested. The tiered system is as follows:

1. Group Homes, *single family home up to 5 residents*
- 2 questions currently used in NOFA
- Submit with application as threshold item

2. Special Needs Projects, *up to 8 units* ***and*** *less than $750,000 in HOME*
- Special Needs market questions currently used in NOFA
- Submit with application as threshold item

3a. General Population Projects**,** *up to 6 units* ***and*** *less than $750,000 in HOME*
- General Population market questions currently used in NOFA
- Non-professional assessment
- Submitted with application as threshold item

3b. General Population Projects*, more than 6 units* ***and*** *more than $750,000 in HOME*
- Rent Comparable Survey Plus (RCS+)
- Professional assessment – required as reservation condition item

4. HOME Project with RD funding *but no LIHTC*
- Utilize the Market Analysis required by RD
- Make OHCS an intended user
- Incorporate OHCS market analysis requirements
- Required as reservation condition item

5. HOME Projects with LIHTC
- Follow OHCS policy for LIHTC projects
- Required as a reservation condition item

An "exemption request form" is available upon request that allows the applicant to request re-consideration of the Market Assessment requirements for their specific project.

Requirements are as follows:

Group Home Market Assessment

Generally, a project is considered a group home if it provides permanent housing for non-related residents with special needs where tenants occupy a bedroom in a house with shared kitchen, living areas and bathrooms.

Applicants only need to provide sufficient information to confirm the community needs the home and there will be an adequate population in the foreseeable future to support the project through the period of affordability. The Market and Rent Assessment section of the NOFA contains two questions for the applicant's reply. Provide specific data and sources of information. Be concise. Your response should be no more than two typed pages. Use 11 or 12-point font size with page margins of not less than 1 inch. DO NOT complete any part of the other assessments or analyses.

Special Needs Market Assessment

The Special Needs Market Assessment is brief and is a refinement of the standard general population format. It addresses specific special needs (SN) populations including, but not limited to:

- persons with the presence of a disability (people with a physical disabilities, people with developmental disabilities, people with traumatic brain injuries, and people with chronic mental illness)
- victims of domestic violence
- children
- previously incarcerated persons
- homeless individuals and families
- persons with HIV/AIDS
- persons recovering from alcohol and drug abuse
- other persons approved by the department

Applications for farmworker housing or for seniors (elderly) must include a General Market Analysis, not the Special Needs Market Assessment.

The Special Needs section of the application consists of essay questions and an Excel "Special Needs Workbook" (page 1 only). The assessment section of the Workbook links the specific project real estate to the special needs population. The conclusions should provide reasonable, credible, and verifiable market support for the proposed project. Marginal (unmet or surplus) demand and appropriate rents should be estimated for the specific target population. Find the Workbook on the OHCS web site.

Submit responses to the narrative questions and Page 1 of the Workbook with the application. Remaining pages in the workbook contain optional worksheets that can help in completing the section. The questions and the workbook are designed to be completed simultaneously, complement one another, reduce time/expense for the applicant, and produce credible results. However, because it is so short, the reliability of the data and conclusions become more significant.

Research and analysis of the market may include information from the city, county and state agencies, service providers, local housing authorities, onsite managers, and Census (American Community Survey) data. Cite the sources (include person and phone), dates, and methods used in the narrative responses. All sources and data are subject to verification.

General Population Market Assessment

This section of the application consists of essay questions and two tables. The section links the project's targeted population to the specific project real estate. The conclusions from this assessment section should provide reasonable and credible market support for the project at the NOFA application level. Assess general demand and estimate appropriate rents for specific income ranges and unit types for the proposed target population.

Research and analysis of the market includes information from market participants such as onsite managers, management companies, and brokers. Additionally, real estate reports from secondary data providers, U.S. Census data, Portland State University (PSU) population data, and demographic vendors provide added data as well. Cite the sources and methods used in the narrative responses.

OHCS has developed a Basic Market Analysis Handbook to assist applicants in completing the Need and Market Assessment. Find this tool on the OHCS web site. The Handbook is not part of the application process, but is only offered to provide research and analysis support.

Rent Comparable Survey Plus (RCS+)

The Rent Comparable Survey Plus (RCS+) includes two analyses in one report. The first part or RCS part is a standard rent comparable survey of both market and restricted rents. The second part or "+" part provides limited, but sufficient market research and analysis lending support to project market feasibility. The report must be completed by an analyst selected from the OHCS Approved Analysts List. The report must conform to Uniform Standards of Professional Appraisal Practice (USPAP).

The purpose Rent Comparable Survey is to provide professional estimates of both market (conventional) and restricted (affordable) rents applicable to the subject project unit types. Sections 17 and 18 of the LIHTC Market Analysis Guidelines provide a list of minimal expectations for rental analysis. Analysts on the OHCS approved list are already familiar with these guidelines as well as typical rent comparable survey requirements.

The purpose of the market feasibility part of the RCS+ is to provide limited general market data support for the subject project. Further rent comparable analysis can provide insight as to the current status and anticipated future trends in the market. Data obtained from comparables during the course of completing the report include occupancy/vacancy, concessions, absorption, wait lists and anecdotal data all contribute to trending the market. Pertinent information from secondary data sources should also be considered and included as necessary.
No in-depth market analysis is required. The report should include comments on growth trends in population, household income, and employment and unemployment. Any significant positive or negative market characteristics or trends should be presented, including trends in the characteristics of the target population.

Form a conclusion based on the limited data presented and trends analyzed, as to whether or not the market is supportive of the subject project.

Third-Party Market Analysis for LIHTC Projects

All applications for 9 percent LIHTCs must provide a complete third-party market analysis as a condition of award, if tax credits are reserved. Applications that target special needs populations and request LIHTCs must also provide the third-party market analysis.

OHCS will not consider funding an application with LIHTC without a third-party market analysis. OHCS reserves the right, at its sole discretion, to reject the third-party analysis, require additional information, require amendment to the original report based upon the third-party analysis, or accept the analysis.

A rental analysis and estimate of unit rents for a specific project is an appraisal under the Uniform Standards of Professional Appraisal Practice (USPAP) and ORS 674. A State Certified General Appraiser must complete the rental analysis sections (both market and affordable) of the market analysis. Contact the Oregon Appraiser Certification and Licensure Board for more information about certification.

Exceptions for Acquisition/Rehabilitation Projects
Applications for Acquisition/Rehabilitation projects do not need to include every item expected of new construction. See *EXCEPTIONS FOR AQUISITION/REHABILTATION PROJECTS* following the initial outline.

The Market Analysis can be no more than six months old at the time of reservation of funds. OHCS will review and evaluate the adequacy of the analysis and credibility of the conclusions reported in the analysis. The analysis should reflect current conditions and consider future trends. OHCS reserves the right, at its sole discretion, to reject the third-party analysis, require additional information, require amendment to the original report based upon the third-party analysis, or accept the analysis.

The following Market Analysis outline contains directions and guidance for the independent, third-party market analyst, and includes a report outline to assist the market analyst in meeting OHCS reporting requirements. This outline should not be considered a rigid format, but the analyst's report should follow the outline and include the requested information. The analyst should note where information is not available.

The OHCS outline is minimal guidance. The analyst is expected to exercise professionalism and include any additional information and analysis to producing creditable conclusions for the project.

A list of approved market analysts is available from OHCS via the web site at: www.ohcs.oregon.gov/OHCS/HRS_LIHTC_Program.shtml. The analysts on the list meet minimum requirements, but OHCS does not guarantee it will accept their market analysis reports.

Minimum Market Analysis Outline (To be completed by a third-party analyst from the approved OHCS list. This report must be submitted with the application.)

The following provides a market analysis outline to guide the independent, third-party market analyst in completing the required report. It contains the minimum requirements OHCS requests in the report. The analyst may include as much additional data and analysis as needed to produce a complete and credible report. The first portion of the report requires description and analysis of the region, PMA (neighborhood), site, and improvements. These components link the location and physical characteristics of the project to its surrounding market area and targeted population. Site and improvement analyses measure the productivity and marketability of specific characteristics, and provide a market-supported basis for approving or recommending any changes in the project for further consideration.

The next segment of the report is the analysis of the project's market and potential for marginal (unmet) demand. Rental surveys, adjustments to comparables, and conclusions identify appropriate unit rents, both conventional and affordable, for various scenarios of financial analysis. A demand/supply analysis will eventually conclude whether sufficient marginal (unmet) demand in the market will support construction, conversion, or rehabilitation of the project. Marginal demand can be quantified with demographic analysis. However, additional variables including occupancy/vacancy analysis, data regarding rent concessions, housing authority and specific comparable project wait lists, absorption data, and anecdotal data provide equally important facts and conclusions. The bulk of the data and analyses lead to a reconciliation of marginal demand for the project. The analyst's conclusions must make a compelling argument for the project's demand in the marketplace.

If the analyst includes grids and tables, they should provide sufficient detail to allow the reader to follow the narrative discussion presented in a specific section of the report.
The market analyst must report the sources (name and phone number if applicable) so that OHCS can independently verify the information. Provide enough detail so the reader can follow the analyst's calculations, logic, and line of reasoning.

Market Analysis Guidelines

1. Report Title Page

2. Letter of Transmittal
   Include:
   - The client's name, purpose and use of the report, intended users of the report, and the effective date of the analysis and conclusions.
   - State OHCS as an intended user of the report.
   - Analyst(s) must provide reports signed with original signatures.
   - Include analyst's Oregon state certification number and expiration date with signature if applicable.

2. Table of Contents

4. Executive Summary
   - Summarize significant conclusions from the primary sections of the report. Consider this as a short, concise section preferably of only two to four pages.
   - Summarize significant recommendations and/or suggested modifications to the project that will improve marketability, prevent potential obsolescence, or assist in decreasing construction costs or operating expenses.

5. Photographs of Project
   - Aerial photo of subject and surrounding properties
   - Color photos of project
   - Color photos of adjacent properties
   - Color photos of street scenes
   - Photos should be large enough for the reader to visualize the property, but no less than 2" x 3" in size.

6. Assumptions and Limiting Conditions
   - Clearly state any assumptions (including special or extraordinary).

- Clearly state any hypothetical assumptions in the report.
- Clearly state any limiting conditions of the report.

7. Scope of the Assignment
   - Discuss the scope of the assignment. Report and describe the process of collecting and analyzing the data, what data may be lacking, any difficulties with data collection or analysis, credibility of data and/or conclusions, analytical limitations, and any other factors significant to the assignment and conclusions.

8. Regional Analysis
   (Short and concise) This section discusses and analyzes the greater economic area influencing the project. Report the trends in population, employment, income and those variables that affect the project now and in the foreseeable future. Conclude with the positive and negative regional influences on the project. Answer the question “Does the current and forecast economy of the area support the proposed project?”

   - Provide map of region with the project location clearly marked on the map.
   - Population – region applicable to the project (i.e. state, metro, county); include a brief five-year history; five to 10-year projections; discuss trends impacting the project.
   - Income - regional with minimal 5-year historical and anticipated trends.
   - Employment – regional.
   - Employment structure and trends influencing the project and population.
   - Economic base and trends.
   - Largest employers and trends; reliance on single employer or industry.
   - Unemployment history (five and 10- year) and trends.
   - Discuss and analyze consumer price index and the market’s anticipated income/expense trends impacting the project.
   - Additional regional factors/trends impacting the project and market as needed.

9. Primary Market Area (PMA) Analysis
   Describe and analyze the project’s immediate PMA (neighborhood) and primary property uses. What are the trends and how do they influence the project’s marketability and potential success? Note: The neighborhood may or may not coincide with the PMA, which may be discussed in a later section when describing the market area.

   - Provide map of neighborhood (PMA) with the project location clearly marked on the map.
   - Discuss and support reason for selecting the defined PMA (neighborhood).
   - Population – trends in population, income, and employment. How do these trends impact the future of the project?
   - Analyze and discuss PMA income as it applies to the project.
   - Employment - if differs from regional, discuss differences and impact on the project.
   - Marketability of the neighborhood (positive and negative).
   - Relationship of project to its neighborhood.
   - Does the neighborhood provide an acceptable location and environment for the project?

10. Site Description & Analysis

This section should answer questions about the positive and negative characteristics of the site and conclude if the site is acceptable for the intended development or continued use for the existing development. The analyst must inspect the subject property.

- Include map of project location with the project located on the map.
- Include plat, zoning, and flood maps with project located on the maps.
- Identify the project site with a legal description, address, or tax parcel numbers outlined on a plat map. Preferably all three.
- Linkages (discuss and analyze) - proximity (blocks or miles) to local services and resident services for the target population, schools, transportation linkages and mass transit, parks/recreation, medical services, employment (linkages pertinent to the target population).
- Discuss and analyze site characteristics including: site size (gross and net), shape, access, availability of utilities, topography, flood zone, wetlands, easements and deed restrictions, zoning, real estate taxes, environmental concerns, etc.
- Is the project a legally conforming use? If not, discuss and conclude.
- Are there any site characteristics which would significantly increase site development costs?
- Discuss and analyze proximity to adverse or potentially adverse externalities (i.e. airports, railroads, high voltage lines, noise generators, major highways, visible uses, security, etc.).
- Discuss and analyze adjacent and surrounding land uses, both positive and negative.
- Conclude the productivity/suitability of the site for the project, both positive and negative.
- Make recommendations about site development.

11. Improvement Description & Analysis

This section should link the improvements to the site and the target population. Describe the improvement characteristics and discuss/analyze if each characteristic is acceptable to the market and population served. Recommend if something should be considered for change or redesign to improve the project, better serve the tenant, and/or reduce construction costs. The analyst must inspect the subject property.

- If available, analyze the site plan for improvement layout on the site.
- Include plan reductions if available (primarily new construction).
- Describe and analyze offsite improvements associated with the project.
- Describe and analyze onsite improvements associated with the project.
- If the proposal is part of a phased development, how will you allocate the on/offsite improvements between phases? Provide enough detail about the process to describe the relationship of this proposal to the whole development.
- Provide a complete inventory of project improvements including square footages of both units and common area improvements.
- Unit square footages (Are unit sizes appropriate for the target market? Do they exceed minimum/maximum Department sizes?). If unit sizes are reduced will the units remain functional and marketable?
- Are the unit types marketable and appropriate for the target population?
- Unit mix (Is it appropriate and supported by market evidence?)

- Unit amenities: identify what unit amenities such as patios/decks, dishwashers; in-unit washer/dryers, etc. are present or lacking in the project in comparison to the market. Discuss the impact of unit amenities on marketability.
- Project amenities: identify what project amenities such as onsite office, clubhouse, community room, laundry room, playground, and others present or lacking as compared with the market. How does this affect marketability? Do you propose additional onsite amenities to serve the targeted population?
- Parking: describe and analyze number of spaces, legally conforming to zoning, type (open, carport, garage, etc.), parking rents (if applicable), handicapped spaces, the relationship (distances) of the parking to the units. How does parking affect marketability?
- Analyze and discuss any potential physical, functional (super adequate or inadequate), or external obsolescence.
- Conclude and compare characteristics and suitability of the project as both a conventional market-rate complex and as a low-income project.
- Evaluate the marketability of improvements for both market-rate and affordable units. Assess the anticipated market response (positive or negative) to the improvements.
- Discuss what green building characteristics are present, the impact construction costs, and the influence on project marketability.
- Make recommendations for changes that could strengthen the project's marketability, reduce construction or operating costs, and/or better serve the target population?

12. <u>Target Market Identification</u>
    - Include a map of the Primary Market Area (PMA) with the project located on the map or reference the map in the prior section.
    - Define the PMA/geographic target market area and boundaries. Discuss and explain the reasoning how you define the PMA. Explain additional areas of capture only if pertinent, supportable, and not already included in the demographic data.
    - Identify the target market population (i.e. family, seniors, and special needs).
    - Identify the Median Family Income (MFI) ranges (bands) targeted for project (50 percent, 60 percent, etc.). Analysis of income bands above 30 percent MFI should be prepared in 10% intervals. Suggested, not required, income banding is:
      1) 0 to 30%
      2) >30 to 40%
      3) >40 to 50%
      4) >50 to 60%.

13. <u>Demand Analysis</u>
    - *Identify new demand. Residents at existing similar properties at similar rent levels to those proposed do not constitute new demand. Neither are those units (households) associated with normal turnover movement. Avoid consideration for "substandard units" unless market supported data is available. Avoid the simplistic use of census data for "rent burdened" households without qualifying the data and conclusions. New demand is also from existing tenants with additional unmet housing needs when supported.*

      1) Occupancy/vacancy (physical) analysis: Discuss and conclude an occupancy/vacancy rate applicable to the project from the market (submarket) data and rent comparables. Conclude by unit type if available. Conclude the indicated demand for the project unit types from the vacancy analysis.

Physical vacancy includes un-leased units. Any leased, but not yet physically occupied units are considered occupied.

2) Wait List Analysis: Discuss and analyze data obtained from wait lists such as housing authorities as well as from comparable complexes in the project's area. Verify the wait list has been recently updated and reflects current demand. If available, wait list data should include segregation by income ranges and unit types to compare with the proposed project and its target population. Describe how you treated duplicate households? Discuss housing vouchers if applicable. Conclude the estimated demand for the project from wait list data.

3) Rental Concession Analysis**:** Discuss local trends in rent concessions and assess how they affect demand and project rents.

4) Absorption Analysis: Discuss and conclude an absorption scenario (pre-leasing, absorption period, total time to stabilize) applicable to the project from the market (submarket) data, absorption comparables, and primary rent comparables from above. The conclusions should represent the most supportable absorption scenario from the market data. State whether this indicates demand for the project or not.
OHCS prefers absorption comparables from the past 12-months in Oregon. Comparables should represent absorption data from similar and/or comparable markets with any deviations explained.

5) Anecdotal Data Analysis: Report and discuss anecdotal data collected from primary surveys, such as the comparable rental surveys, during the assignment. What do market participants say about the current market and trends? Describe what your analysis predicts for demand.

6) Demographic Analysis: This is a data gathering, analytical, mathematical process, which can vary by analyst. Variations between analysts are expected. Analysis is typically directed at the PMA. At a minimum, analyze the target market by:

a) Population – households – household size – median incomes (in percent intervals described in Sec. 12 above) and eliminate any income crossover;
b) Age (if applicable),
c) Employment (if applicable),
d) Housing – tenure – structure types (single-family attached/detached, multi-family units, etc.) – unit types (studio, one, two, three bedroom units, etc.);
e) Demand not inflated by turnover demand, crossover, or unsupported vacancy.

This demographic demand analysis is only one portion of evaluating marginal demand for a project. Its importance and credibility should be considered in conjunction with the analyses of the preceding variables.

14. <u>Supply Analysis</u>

1) Existing Supply: Inventory the existing competitive supply by age, structure type, unit type, and income levels.

Note: OHCS maintains a continually updating existing and proposed list of affordable inventory in the state. The list is not considered complete and all data should be verified for accuracy. The list is available from the OHCS website.

2) Proposed Supply: Inventory the proposed (pipeline) supply competitive with the project by income band and unit type. Evaluate the probability and timing of each project's entry in the market.

3) RAD Contact: Contact the OHCS Regional Advisor to the Department (RAD) for more information about proposed projects.

4) Analyze and discuss building permit activity as applicable to the project.

5) Demolitions and conversions treated.

6) Housing Authorities: Discuss current and proposed supply with the local housing authority, various agencies and authorities such as HUD, RD, or OHCS who can assist in supply selection. Discuss supply by income range and unit types, and not just gross numbers.

7) Provide your conclusions about supply as they relate to the proposed project and are specific to project's household income and unit types.

15. Reconciled Estimate of Marginal Demand

Reconcile all of the above indicators of demand and supply into supported conclusions about marginal demand by unit type and income band. Consider and compare all of the indicators including occupancy/vacancy, wait lists, concessions, absorption data, anecdotal data from market participants, and demographic analysis. The bulk of the data should lead to a reasonable, credible, and supportable conclusion of marginal demand.

- Summarize this analysis by unit type and income band in a table. Provide a clear, concise, reasonable conclusion as to whether or not the project is demanded by the market.
- Discuss the project's impact on the existing market, both conventional and affordable.

16. Capture Rate Development:

- Estimate capture rate(s) applicable to the project. Does the capture rate fall within the established development parameters for construction?
- A capture rate estimate of 25 percent should be used as a maximum benchmark for project development. A rate less than 25 percent tends to indicate a stronger market. A rate above 25 percent tends to indicate a weaker market. Note that this 25 percent benchmark can change for various populations. Many special needs populations demand a higher capture rate, while a 50 to 60 percent MFI family project may indicate a lower capture rate is necessary in competitive markets.
- The analyst must make a clear, concise, concluding statement as to whether or not the data, analysis, and conclusions support development, acquisition, or rehabilitation of the project.

Rent Analysis

For both market and affordable rents, if the comparables offer concessions, deduct the concessions from the street (quoted or face) rent to estimate the effective rent. Use the effective rent in further income analysis if an "as is" rent is estimated.

17. Conventional Market-rate Market
- Provide an overview of the competitive conventional housing market (or sub market) applicable to the project. What are the trends? Discuss rents, rental trends (increases-decreases), concessions, vacancy, absorption, anecdotal data, and additional variables impacting the project and PMA.
- Insert a rent comparables map with the subject project identified.
- Research and verify a sufficient number of rent comparables to produce a credible analysis and include a summary grid.
- If applicable and if the project is new or proposed construction, research similar complexes built prior to 2000 and discuss rents as compared to the project. Discuss how these projects influence the marketability and rent levels for the proposed project.
- Include comparable detail sheets and photos in the report or addenda.
- Adjust comparable rentals, support and discuss adjustments, and conclude conventional market rents applicable to the project's specific individual unit types as if it were a market-rate complex.
- Clearly report market rent for each unit(s) or unit type.
- Include adjustment grids and supportive discussion leading to reasonable conclusions.

18. Affordable (low income) Market
- Provide an overview of the affordable housing market (sub market) applicable to the project. Discuss rents, rental trends, concessions, vacancy, absorption, any additional variables impacting the project and PMA.
- Include a rent comparables map with the subject project identified.
- Research and verify a sufficient number of appropriate low-income rent comparables and include a summary grid.
- Include comparable detail sheets and photos in the report or addenda.
- Discuss project rents and if these rents need adjustment compared to the comparables.
- Calculate project's applicable affordable (gross) rents; discuss and deduct the appropriate and applicable utility allowances; conclude the calculated gross allowable (net) rents for the project.

Extraordinary adjustments recognizing atypical premiums in the market such as floor height of unit, unit orientation, view premiums, adjacency to wooded areas or riverfront, and other similar premiums are not to be included in the conclusion of market rent estimate in this section of the analysis.

- Compare the market and affordable rents to the proposed project's rents and calculated gross allowable and net rents; adjust project net rents to at least 10 percent below market, or explain why this is not applicable.
- The appraiser must conclude an estimate of net allowable rents (what the tenant will actually pay the landlord) for each unit type in the proposed project.

19. Certification
- Both the market analyst(s) and/or appraiser must include a certification at least similar to the one following.

20. Addendum
- Title Report (if available)
- Legal Description (if available)
- Market Rent Comparables

- Affordable Rent Comparables
- Additional data as needed.
- Qualifications of Analyst(s)

SAMPLE CERTIFICATION:

I certify that to the best of my knowledge and belief:
The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

My compensation is not contingent upon the reporting of predetermined conclusions that favor the cause of the client, the attainment of a stipulated result, the occurrence of a subsequent event, the approval of a loan, or the awarding of funding.

State name of individual(s) who provided significant professional assistance to the person signing this report. (State name of analyst engaged) inspected the project and all comparables utilized in this assignment. Comparable inspections were interior/exterior.

I do not authorize the out-of-context quoting from or partial reprinting of this market analysis report. Further, neither all nor any part of this report shall be disseminated to the general public by the use of media for public communication without the prior written consent of the analyst signing this report.

______________________________ ____________________

Analyst's Name Date
Company
Oregon Certification (if applicable)
(Exp.) if applicable

Exceptions for Acquisition/Rehab Projects

The LIHTC Guidelines for Market Analyses apply to all projects and properties for NOFA applications. However, acquisition or acquisition/rehab projects do not always require the same level of detail for an adequate report. Applicants of Acquisition/Rehabilitation projects can submit a shorter analysis if the proposed project:

- The project is existing,
- Does not propose significant "new" construction improvements to the subject site,
- Does not propose any significant change in the tenant population or income levels,
- Will resume stable operations immediately following rehabilitation,
- Serves a stable or growing primary market area population,
- No significant adverse employment changes are anticipated.

If the project will continue to have project-based assistance (HUD, RD), additional credence for exception is evident.

The essence of the above bullets is that the overall risk level of the project will not change significantly from its current and known position. If the project displays the above applicable characteristics, the following guidelines do not have to be included in the LIHTC Market Analysis. All other guidelines remain in effect. If any uncertainty exists with the sponsor or market analyst regarding exceptions, please contact the OHCS market analyst.

8.<u>*Regional Analysis*</u> *– modify as follows:*

- Reduce the scope of the Regional Analysis to current data and projected trends supporting the points for previous exceptions. Answer the question "Does the current and forecast economy of the area support the proposed project?"

13. <u>*Demand Analysis*</u>

4) Absorption Analysis – except all
6) Demographic Analysis – except all

14. <u>*Supply Analysis*</u> *– except the following five points only:*

1) Existing Supply: Inventory of the existing competitive supply by age, structure type, unit type, and income levels.

Note: OHCS maintains a continually updating, existing and proposed list of affordable inventory in the State. The list is not considered complete and all data should be verified for accuracy. The list is available from the OHCS website.

2) Proposed Supply: Inventory the proposed (pipeline) supply competitive with the project by income band and unit type. Evaluate the probability and timing of each project's entry in the market.
3) Building permit data analyzed and discussed as applicable to the project.
4) Demolitions and conversions treated.
5) Conclusions are specific to project's household income and unit types.

15. <u>*Reconciled Estimate of Marginal Demand*</u> *– Modify as follows:*

- Provide a brief and concise reconciliation of supply and demand factors that illustrate continued demand for the subject property

16. <u>Capture Rate Development - except all:</u>

17. *<u>Conventional Market-rate Market</u>* – except only the following bullet:

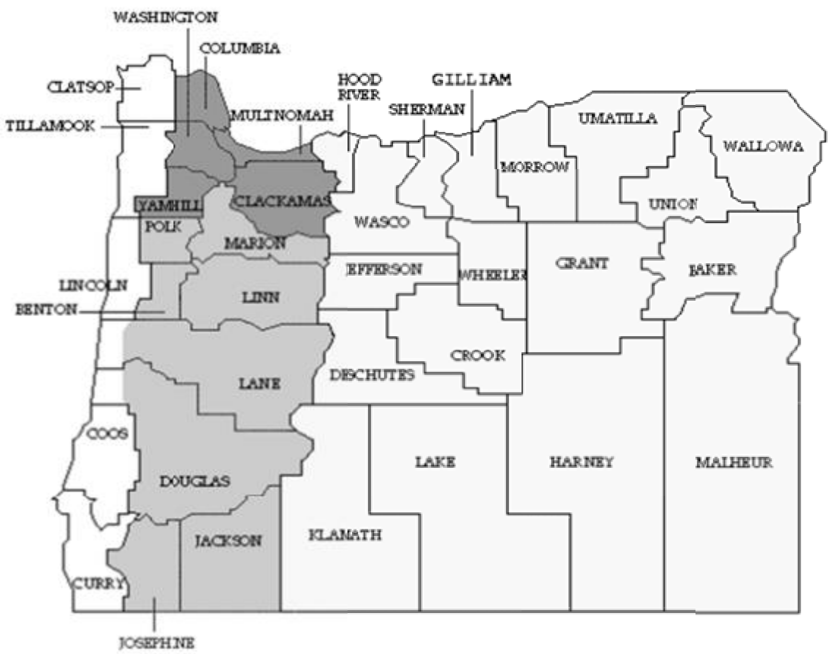
- If the project is new or proposed construction, research at least five similar complexes built prior to 1995 and discuss rents as compared to the project. Are the project rents at, below, or above this group of rents? Quantify the difference.

Minimum and Maximum Funding

The minimum investment of HOME funds is $1,000 per unit. The maximum amount of HOME subsidy cannot exceed the lesser of and is limited by:

- The total per unit development costs: HOME assistance cannot exceed the actual per unit development costs for the HOME assisted units in the project.
- The financial needs of the project: HOME projects may not receive more subsidy than is required to produce financially feasible projects.
- The number of HOME assisted units in the project: The HOME assistance cannot exceed the maximum subsidy allowed per HOME unit. The HOME maximum per unit subsidies, adjusted by bedroom size, as follows:

Maximum Per Unit Subsidy Limits by Regions



Regions (County breakdown)	Zero Bedroom	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom
Portland Region: Clackamas, Columbia, Multnomah, Washington, Yamhill	$132,814	$152,251	$185,136	$239,506	$262,903
Eugene Region: Benton, Douglas (East of coast range), Jackson, Lane (East of coast range), Josephine, Linn, Marion, Polk	$132,814	$152,251	$185,136	$239,506	$262,903
Coos Bay Region: Clatsop, Coos, Curry, Douglas (West of coast range), Lane (West of coast range), Lincoln, Tillamook	$132,814	$152,251	$185,136	$239,506	$262,903
Bend Region: Baker, Crook, Deschutes, Grant, Gilliam, Harney, Hood River, Lake, Jefferson, Klamath, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler	$132,814	$152,251	$185,136	$239,506	$262,903

HOME Assisted Unit Allocation

In most HOME funded projects (excluding group homes) not all units must be HOME-assisted. HOME funds may be invested in a mixed-income project to assist only a portion of the units in a project. Consequently, it is necessary to distinguish between HOME-assisted and other units. OHCS will determine the required number of HOME-assisted units for each funded project. HOME-assisted units must adhere to HOME Maximum Per-unit Subsidy Limits, plus rent and income guidelines. In addition, applicants should be aware that some HUD requirements may "taint" the entire project, i.e., even if only $1 of HOME funding is awarded to a project, many HOME requirements will apply to the entire project.

HOME may only pay actual costs of HOME-assisted housing. If the units in a project are comparable in terms of size, features, number of bedrooms, and amenities then the actual costs can be determined by pro-rating total (HOME-eligible) development costs. HOME funds could pay the pro-rated share of the HOME-assisted units. When units are not comparable, the HOME costs will be allocated on a unit-by-unit basis, charging only actual costs to the HOME Program.

Comparability of Unit Size: Comparability in size is defined by the bedroom count and square footage of individual units. Not all units with the same number of bedrooms are comparable in size. If there is a substantial difference in the square footage of two units with the same number of bedrooms, the units are not considered comparable.

Comparability of Amenities: Comparability in amenities means similar fixtures, appliances and other features. In many mixed-income projects, to demand varying rents, the quality and types of amenities may vary among units.

HOME-assisted units should be evenly distributed throughout the project. There should be an equal percentage of HOME units for each bedroom size in the project. For example: A 30-unit project contains 12 two-bedroom units and 18 three-bedroom units. Five of the units are to be HOME assisted. To assure equal distribution, then 2 of the two-bedroom units (or 16 percent and 3 of the three bedroom units (or 16 percent) should be HOME assisted.

To the extent possible, there should be HOME-assisted units in each building of the project. For projects where the number of HOME-assisted units proposed would be less than the number of buildings, OHCS may provide an exception.

Fixed or Floating Unit

HOME recipients may, on a project by project basis, choose to use either a “fixed” or “floating” designation for HOME-assisted units. A “fixed” designation means the applicant identifies at the onset which specific units are HOME-assisted, and these remain the same units for the entire period of affordability. “Floating” HOME-assisted units may change over time as long as the total number of HOME-assisted units remains constant. In “floating” Home-assisted units the HOME-units must remain comparable in terms of size, features, and number of bedrooms.

Allowable Home Rents

Every HOME-assisted unit is subject to rent controls designed to keep rents affordable to low- and very-low income tenants. Rents must be controlled for the period of affordability.

HOME rents are as follows:

Low HOME Rent: For projects containing five or more units, a minimum of 20 percent of the HOME-assisted units in a project must have rents that are the lesser of:

- The HUD published Low HOME Rents.
- The Section 8 Fair Market Rents (FMRs) or area-wide exception rents for existing housing minus tenant paid utilities; or

High HOME Rent: No more than 80 percent of the HOME-assisted units in a project shall have rents that are the lesser of:

- The HUD published High HOME Rents.
- The Section 8 Fair Market Rents (FMRs) or area-wide exception rents for existing housing minus tenant paid utilities;

Note: *If an applicant's housing authority has been granted an area-wide exception to the FMR's, then the applicant should contact OHCS for information on the HOME rents*

To determine the maximum allowable rents refer to the tables on the OHCS website, which lists the Fair Market Rents, High Home Rents, and Low HOME Rents for each county. Rents are adjusted based on the number of bedrooms in the unit and include the utility costs. The HOME rents must be reduced to include the amount of all utilities (except telephone and television cable) the tenant will pay. Applicants should coordinate with their local Public Housing Authority (PHA) to determine allowances for adjusting the maximum allowable HOME rents when the tenant pays some or all utilities.

Note: OHCS must approve utility allowances proposed by HOME applicants; therefore, documentation from the local PHA is important.

Group Homes and SRO Rent: Rents for group homes and single room occupancy (SRO) units are an exception to the above rent limitations. Group home rents should reflect the appropriate Fair Market Rent for the appropriate number of bedrooms. Do not count a bedroom for a live-in service provider when calculating the rent. For example: a four-bedroom group home where all bedrooms are used for tenants could have a maximum rent equal to the FMR for a four-bedroom unit. Or, if a four bedroom group home has a live-in service provider occupying a bedroom, then the maximum HOME rent would equal the FMR for a three-bedroom unit.

The maximum HOME rent for an SRO cannot exceed 75 percent of the FMR for a zero-bedroom unit. For an SRO unit with both food and sanitary facilities contained within the unit, the Low HOME and High HOME rents for zero bedroom units apply.
The Consolidated Plan priorities may dictate that lower income levels and lower rents are a priority need throughout the regions, and may require the applicant to reduce rents and target a lower-income population.

The HOME Program prohibits collecting more than the maximum HOME rents in HOME assisted units, unless:

Property - Based Subsidy:
The property is underwritten with a property-based subsidy program in place, and,

- Units are initially occupied by households making no more than 50% of AMI, and
- Households are paying no more than 30% of adjusted income for rent (which could

exceed the maximum HOME rent)

Property-Based Vouchers:

- Rent collected in a HOME-funded unit with a Property-based Voucher (PBV) occupied by a very low-income household may be up to the maximum PBV rent (even if above the FMR/HOME maximum). (See 24 C.F.R. 92.252(b) (2)).

Occupancy Restrictions of HOME-Assisted Units

HOME Program regulation requires the incomes of the tenants who reside in HOME-assisted units be limited for the period of affordability. At least 20 percent of the HOME-assisted rental units must be occupied by very low-income tenants who have annual incomes 50 percent or below median income. These very low-income tenants must occupy units with rental charges at or below the Low HOME Rents. At least 90 percent of all HOME funds must assist tenants who have annual incomes that are 60 percent or below area median income, HOME applications should show the HOME-assisted rental units occupied by tenants with the above income restrictions. The balance of HOME funds may be used to assist tenants with annual incomes between 60 percent and 80 percent of median income.

Oregon's Consolidated Plan requires HOME projects to be underwritten to house tenants with lower income levels than the HOME regulation requires. OHCS often selects projects with more than 20 percent of the units at 50 percent or below median income and requires the balance of HOME assisted units to house tenants at 60 percent or below median income.

NEW **Subsidy Layering**

In accordance with HUD regulation, OHCS will evaluate HOME projects to determine the following:

- Does the project provide a reasonable level of profit or return on owner's or developer's investment in a project?
- Is the HOME investment, alone or in combination with other governmental assistance, only the amount necessary to provide quality affordable housing that is financially viable for the program required period of affordability?

OHCS guidelines require the following review:

- 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; and
- Analysis of the experience of the developer including the financial capacity of the developer; and
- Firm written financial commitments for the project.

The Subsidy Layering Review can result in a reduction of HOME assistance, reduction in rents, or adjustment in operating expenses.

OHCS Underwriting Guidelines for HOME Projects

Sources / Uses	Parameters
Acquisition cost must be supported by an appraisal	Possible exception for HDGP and GHAP only project at the discretion of OHCS
Developer's Fee	Policy remains the same as in LIHTC Manual
Construction Inflation Factor / Cost Escalator (applies to separate line item above and beyond construction bid)	1% of total construction cost
Contingency - Target Percentages	5% New Construction 10% Rehabilitation 5% Soft Cost Contingency
Contractor Profit and Overhead – non Identity of Interest (does not include general conditions)	14% of total construction cost or less
Contractor Profit and Overhead – Identity of Interest (does not include general conditions)	10% of total construction cost or less
Soft Costs	30% of Total Project Cost or less
Operating Reserve	Limited to 6 months operating expenses or less
Lease Up Reserve	Submit cashflow analysis utilized to determine the amount
Reserve for Replacement (Capitalized)	Submit evidence of the partner lenders and/or investors to document their requirement
Operating Budget	Parameters
Affordable Rents begin at 10% below market	(before OAHTC rents start at program rents)
Operating Expenses – Total before Debt Service	Guideline: $4500 per unit per year
Total Management Expense	Guideline: $1300 per unit per year
Inflation factors	2% income 3% expenses
Vacancy Rate	7%
Repairs and Maintenance	Guidelines: $400 New Construction $450 Rehab (Submit justification for higher cost)
Replacement Reserve Target Amounts (non-RD and non-HUD projects)	Guidelines: $300 senior project $350 all other projects

**see below for requirement specific to rehabilitation projects*	Utilize the Reserve for Replacement Analysis form and the resulting amount specific to the project if different than target amounts, or utilize the "post rehab reserve for replacement" in CNA
Debt Analysis (procedure for loan officer)	If project is over-subsidized, corrective actions in priority order are: 1. Lower rents 2. Shorten the term of the loan 3. Increase amount of debt 4. Recover grant resources 5. Recover tax credits
Cash Flow	DCR (year one): 1.1 to 1.15 with OAHTC 1.20 to 1.25 without OAHTC Cash Flow Target: $500 per unit per year

*Reserve for Replacement in Rehabilitation Projects: OHCS requires that if the remaining useful life of one or more major building system in a rehabilitation project is less than the applicable period of affordability, the monthly payments made to the replacement reserve must be adequate to repair or replace the systems as needed.

Eligible HOME Costs

Soft Costs: Eligible project "soft costs" must be reasonable and necessary. Eligible "soft costs" include the following:

- lender origination fees;
- credit reports;
- title reports;
- recordation fees;
- appraisals;
- attorney fees;
- loan fees (except for OHCS programs);
- developer's fees;
- architectural and engineering fees;
- building permits and impact fees or system development charges;
- audits, and
- affirmative marketing and fair housing expenses.

Hard Costs: HOME funds may pay for usual and customary development hard costs, such as:

- costs to meet the HUD Section 8 Housing Quality Standards (HQS);
- costs to meet Fire Administration Act standards;
- rehabilitation and construction costs;
- essential improvements;
- energy related improvements;
- lead-based paint hazards;
- accessibility for persons with disabilities;
- correction or replacement of major housing systems;
- incipient repairs and general property improvements of a non-luxury nature;

- appliances (only those typically found in rental housing, i.e., stoves and refrigerators);
- site acquisition, and;
- laundry or community facilities which are located within the same building as the housing and used only by residents and their guests.

Acquisition Costs: Costs of acquiring improved or unimproved real property verified by an appraisal.

Site Improvements: Generally, HOME funds can pay for site improvements that are in keeping with improvements of surrounding projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located. HOME funds may pay for a utility connection including off-site connection from the property line to the adjacent street.

Relocation Costs: HOME funds may pay for the relocation costs of individuals, families, and businesses permanently or temporarily displaced by the project. HOME recipients should know that relocation costs will increase the total cost per unit. For more information on relocation, refer to the section titled Uniform Relocation Act.

Developer's Fee: Funding of a developer's fee with HOME funds is an eligible expense. The maximum amount of HOME funds that may be expended on a developer's fee will be limited based upon the current OHCS policy but in no circumstance shall exceed 15 percent. OHCS may release up to 50 percent of the applicant's portion of the developer fees upon 50 percent of project completion if the applicant can demonstrate there is a need for development fees in order for the project to proceed. Submit a request for developer fees in writing. OHCS will not release the balance of the developer fees until a Certificate(s) of Occupancy is in place and HOME close-out requirements have been met.

Any change in developer fees or request for an increased fee must be justified to the satisfaction of OHCS. OHCS will only consider a request for increase after certificate of occupancy or verification of substantial project completion. Regardless of amount of increase requested, total developer fee must be reasonable based on the type and complexity of the project and will be limited to a maximum of 15 percent of total project cost less the developer fee.

Costs Incurred Prior to HOME Grant or Loan Agreement: HOME funds cannot reimburse HOME recipients for costs incurred prior to execution of a grant agreement. Currently the understanding of "costs incurred" includes any obligations incurred due to contractual agreements to perform work. Therefore do not enter into an agreement or contract to be paid with HOME funds until a grant or loan agreement has been executed.

Incurring costs may also include entering into an earnest money or sales agreement for acquisition and such agreements should be contingent upon receipt of HOME funds. There is one exception. Some pre-development costs incurred prior to execution of the HOME Grant Agreement (and no earlier than 6 months before application) may be eligible for reimbursement with HOME funds. Reimbursement will be limited to the following costs: legal, consulting, environmental and other studies, engineering and design costs, zoning approvals, inspections and testing for hazards, costs related to obtaining site options, project financing and fees for loan commitments. These activities must not have a physical impact on the site. OHCS must pre-approve any use of HOME funds for pre-development costs. Reimbursement will only occur after execution of the HOME Grant Agreement.

Ineligible HOME Costs

- HOME funds cannot fund a project reserve account for replacement, a project reserve account for unanticipated increases in operating costs, or operating subsidies.
- HOME funds cannot be used to pay for application or loan fees of other OHCS programs.
- HOME funds cannot be used to pay for off-site improvements such as sidewalks, aprons, roadways, and sewer lines.

Period of Affordability

OHCS funded projects must provide a sixty year affordability period. HOME recipients cannot "buy out" of the affordability requirements regarding restrictions on tenant incomes and rent. Under all circumstances, including repayment of the HOME funding, the deed restrictions will stay in effect and run with the land for the full term of affordability.

NEW Readiness to Proceed

OHCS's HOME Program requires that projects receiving funding be ready to start construction within twelve months of reservation. It is important that projects be ready to proceed within this time frame in order to meet project completion deadlines as required in the new HOME Program regulation. It is also important to note that HOME funded projects not completed within 4 years of commitment will be terminated and HOME funding must be repaid to HUD. Repayment is also required for any HOME assisted unit not rented to eligible tenants within 18 months of project completion.

Site Control

Applicants must demonstrate legal control of the project site at time of application. Evidence of site control can include the following: purchase and sale agreement, option agreement, earnest money agreement fee simple title (warranty deed); documentation from the local government demonstrating its intent to transfer property and under what circumstances; an agreement or letter of intent between the landowner and application to enter into a ground lease. (NOTE: OHCS must approve a ground lease before it can be executed).

Acquisition Requirements

Application Requirement: Site control documentation. Submit a copy, signed by the seller, of the Notice of Disclosure to Seller with Purchase Offer or Notice of Disclosure to Seller after executing the Purchase Offer.

Requirements Subsequent to Application:

1) Property fair market value appraisal by a licensed appraiser or a real-estate broker (tax assessments are not allowable for appraisal purposes), **AND**
2) Signed Notice of Disclosure to Seller of Fair Market Value.

Due to the fact that involuntary acquisition can cause indefinite project delays and potentially increase project costs, OHCS requires HOME recipients to use voluntary property acquisition. OHCS shall not use its power of eminent domain to acquire properties under the HOME Program, and requires local governments and housing authorities sponsoring HOME projects to acquire property using voluntary acquisition procedures.

Under URA, HOME recipients are required to inform the seller of the property of the following:

- The power of eminent domain will not be in effect and, therefore, the buyer will not acquire the property if negotiations fail to reach an amicable agreement; and
- The buyer must inform the seller in writing of the property's fair market value as determined by an appraisal; and
- The seller has the opportunity to withdraw from the transaction at the time of notification of the fair market value.
- Provide the above information to the seller at the time that an option or purchase agreement is presented. If a current option or sales agreement is in existence, also provide the notice to the seller. The seller has the opportunity to withdraw from the current agreement after this notification. Submit copies of all signed seller notifications to OHCS. Find sample notices later in this part of the application.

Choice-Limiting Actions: Once you submit the NOFA application for HOME funding, do not undertake any action or activity that could limit the project to a specific site. Choice-limiting actions include, but are not limited to, acquisition, demolition, or construction. Doing so will result in the project becoming ineligible for HOME funding, regardless of what funding source is used to pay for the activity(s). Develop the project schedule to allow time for the NEPA review process to be completed prior to making any physical change to the site, including acquisition. The acceptable term of the sales agreement or option must be valid through March 1, 2015.

In accordance with 24 CFR Part 58 (HUD environmental review regulations), acquisition of land or land & buildings, as well as construction activities or the letting of contracts, are choice-limiting actions. HUD prohibits choice-limiting actions prior to the receipt of "environmental clearance". Environmental clearance includes completion of the NEPA Environmental Assessment, the subsequent publication of findings, the request for release of funds, and the issuance of an Authority to Use Grant Funds by HUD. The following scenarios apply to all projects receiving reservations of HOME funds from OHCS.

Purchase of Property after Environmental Clearance: This is the preferred method of acquisition.

- At time of application for HOME funds, applicant has a written option or earnest money agreement with the seller.
- The applicant must demonstrate that the purchase of the property is a voluntary transaction by providing notices of disclosure to be signed by the seller. Provide an appraisal of fair market value to the seller. The buyer must purchase the property at the lesser of the fair market value or the agreed upon sales price. The entire project is ineligible to receive HOME funds if these disclosure notices are not properly executed.
- No choice-limiting actions (acquisition, demolition, construction, awarding of contracts) can take place until Environmental Clearance has been received.
- The property can be purchased with HOME funds or non-HOME funds after receipt of Environmental Clearance.

NEPA Environmental Review

Application Requirement: Complete the HOME Environmental Review Checklist and contact the RAD for the project area to schedule an on-site visit. The on-site review of the project must be completed by the RAD prior to submission of the HOME application.

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 regulations in 24 CFR parts 50 and 58. It is OHCS' responsibility, in cooperation with project applicants, to complete the environmental review record. Use the HOME Environmental Review Checklist - no other format will be accepted. OHCS does not accept an environmental review checklist that is more than 6 months old. The applicant may be required to publish a notice indicating the results of the review and requesting release of funds.

Contact the Regional Advisor to the Department (RAD) serving the region where the proposed project is located and schedule a site visit. Before the RAD site visit, complete the Environmental Review Checklist. The RAD visit is an opportunity to determine if an applicant should proceed with the application based on the quality of the site.

If the project receives a Reservation of HOME Funding, OHCS staff will contact the applicant in order to continue the NEPA process. There may be specific information needed or requirements pertinent to the project. If there are environmental impacts, then mitigation measures must be completed if HOME funds are awarded. If the impacts are severe, OHCS may not award HOME funds.

Environmental Reviews for any project using HOME funds require complex documentation about endangered species, including a determination on the project's effect on endangered or listed fish, wildlife and plants on or near the site. The project's site plan may be reviewed by U.S. Fish and Wildlife Services (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) biologists and their recommendations may become conditions of the HOME funding.

NOAA's focus is storm water management. If endangered or listed fish are within a certain distance of the site, NOAA will require that the project include a system on-site (bio swale or dry well) to capture and process runoff water from the roof, parking lot, or any other impervious surfaces of the development. For a new construction project, NOAA will not approve connection of storm water drains to a municipal storm drain system under any circumstances. If the project consists of minor or moderate rehabilitation within the current footprint of the existing building(s), a new storm water system may not be required.

USFWS is interested in protecting endangered or listed wildlife and plants on or near the site. Applicants must provide documentation from professionally qualified persons or firms regarding the existence of these endangered or listed subjects. In the past OHCS has accepted determinations from local officials regarding endangered species on the Environmental Review Checklist form in the NOFA Application**.**

Department of State Lands (DSL) Wetlands Policy and Review

DSL will review all applications awarded funding for the possibility of regulated wetlands on the site. OHCS will submit documents to DSL. If DSL determines wetlands are present or likely to be present, applicants must get a qualified wetland consultant's wetland verification and boundary delineation for submission, review and approval by DSL. DSL may impose additional site or design requirements for the project. Applicants must provide tax lot numbers for the OHCS submission to DSL. OHCS has provided a space on the Environmental Review Checklist for this information. Include the tax lot number for every parcel of land in the project. A failure to provide the tax lot number(s) will delay the DSL review process.

Non-Federal Match

HOME Program regulations require a 25 percent nonfederal match for all HOME funds used for affordable housing. Applicants must have identified proposed sources of the required non-federal match in a minimum amount of 25% of the HOME request. Commitments of match are required prior to commitment of HOME funds.

OHCS realizes there are extraordinary circumstances that may prohibit an applicant from obtaining some or all of the match contribution. It is not the desire of OHCS to deny HOME funds for a viable and needed affordable housing project because the applicant cannot identify local resources for match. Currently OHCS has surplus match credited to the HOME Program. Therefore, OHCS will consider allocating HOME funds to projects that cannot obtain all or some of match contribution.

<u>Eligible HOME match includes:</u>

- A cash contribution from public or private entities (excluding the HOME applicant or project owner).
- The grant equivalent of a below market rate loan.
- The present value of waived taxes or fees. The present value of a granted property tax exemption can be credited towards the match obligation. However, if a HOME recipient has to apply for property tax exemption on an annual basis, then only the first year of the tax exemption is credited towards the match requirement. HOME regulations do not permit property tax exemption as an eligible form of match for properties owned by Housing Authorities.
- The value of donated land, not acquired with federal sources, as appraised by an independent, certified appraiser. The transfer of property ownership must take place after the HOME application has been submitted; otherwise, the donated value will be considered owner equity, which is not an eligible source of match.
- The cost of investment in on-site or off-site infrastructure (not made with federal resources) that is directly required for the affordable housing assisted with HOME funds. The completion of a project’s infrastructure investment must be completed within 12 months before HOME funds are committed or must be completed as part of the HOME project.
- Proceeds from multi-family affordable housing and single-family project bonds financing. Bond financing match is limited to 25 percent of loan amount for single-family projects (1 to 4 units) and 50 percent of loan amount for multi-family projects. HOME regulations further limit the amount of match funds that can come from bond proceeds.
- The direct cost of supportive services provided to families residing in HOME assisted units during the period of affordability. Services must be necessary to facilitate independent living or be required as part of a self-sufficiency program.

Ineligible HOME Match includes:

- Federal resources or funds
- Bank leveraging
- Cash or other forms of contributions from the HOME applicant, project owner, or developer
- Owner equity or investment in the project
- Sweat equity
- Interest rate subsidies attributable to the federal tax exemption on financing, or the value attributable to federal tax credits
- Projects where less than 50 percent of the units are HOME assisted will have the match credit prorated based upon the percentage of HOME-assisted units to total units. Projects with 50 percent or more HOME-assisted units are credited the entire match.

HOME recipients will be required to provide documentation verifying the commitment and disbursal of all match credits.

Duns Number

A DUNS number, received at registration in the Central Contractor Registry is a requirement of receiving federal funds. Verification of the registration is required prior to disbursement of HOME funds. Maintaining updated DUNS number through course of development is a requirement**.**

HOME Award and Legal Documents

OHCS will execute a HOME Grant or Loan Agreement when the recipient meets all of the reservation conditions, some of which are as follows:

NEPA

One of the conditions of reservation of HOME funding is Environmental Clearance, received at completion of an environmental review conducted in accordance with the National Environmental Protection Act (NEPA). Until receipt of Environmental Clearance, the recipient must not engage in any "choice limiting" actions on the project site. In other words, a HOME recipient cannot undertake any action or activity that could limit the project to the specific site or perform any physical development activities on the site until a release of funds is obtained from HUD. This includes, but is not limited to, property acquisition, demolition, or construction work. It does not matter whether HOME funds or another source of funding or the recipients' own resources pays for these activities. No choice-limiting activities can occur until Environmental Clearance is received. Doing so will jeopardize the HOME award.

Firm Commitment of All Funding

OHCS will execute a HOME Grant or Loan Agreement only after all other proposed funding is fully committed to the project. Once the recipient has submitted evidence of firm and final commitments from all other funding sources and has met all reservation conditions, they should allow four weeks to execute a contract and begin drawing down HOME funds. OHCS cannot advance HOME funds; the HOME recipient must incur costs and request reimbursement from OHCS after execution of the HOME documents.

Construction Start Deadline
HOME recipients will have 240 days from the date of the NOFA Reservation Letter to reach construction closing, which requires all conditions of award to be satisfied. OHCS may grant extensions to the 240 day deadline on a case-by-case basis, dependent on the progress the HOME recipient has taken to meet the conditions of award.

Pre-development Costs Incurred
Grant or Loan funds can be used for eligible HOME costs incurred after a grant agreement has been fully executed (i.e., signed by both the HOME recipient and OHCS). The only exception is when OHCS pre-approves the use of HOME funds for some eligible pre-development costs. These costs must have been incurred no earlier than 6 months before the application for HOME funding. Reimbursement for eligible pre-development costs will occur after execution of the HOME Grant or Loan Agreement.

Uniform Administrative Requirements

Recipients of HOME funding must comply with the requirements of Offices of Management and Budget (OMB) as follows:

- Governmental entities: The requirements of 2 CFR Part 225 (OMB Circular No. A-87) and the following requirements of 24 CFR Part 85 apply to the participating jurisdictions, State recipients, and governmental subrecipients receiving HOME funds: §§85.6, 85.12, 85.20, 85.22, 85.26, 85.32 through 85.34, 85.36, 85.44, 85.51, and 85.52.
- Nonprofit organizations: The requirements of 2 CFR Part 230 (OMB Circular No. A-122) and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are nonprofit organizations that are not governmental subrecipients: §§84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73.

Revocation of a Reservation

OHCS may revoke an existing HOME award, withhold unexpended HOME funds, require repayment of expended HOME funds, and bar a recipient from applying for future HOME assistance if the recipient breaches any deed restrictions.

OHCS may revoke a HOME reservation in the following instances:

- the applicant does not meet development milestones on time;
- the application misrepresented the project or included false information;
- after application, the purpose or scope of the project is substantially changed; or
- the applicant changes funding sources or amounts without prior approval from OHCS.

Bid Solicitation and Contracting

The HOME Program does not require formal competitive bids but does require evidence that bids be cost reasonable. To assure cost reasonableness OHCS highly encourages HOME recipients to get multiple bids for each contract (i.e. at least three bids). HOME recipients must document how they got bids and provide copies of the multiple bids.

HUD Requirements for the Selection of Contractor: Once the recipient has selected the general contractor for the project, the recipient must verify that the general contractor is eligible (not debarred) to participate in Federal programs. The U.S. General Services Administration maintains a list of debarred contractors (Excluded Parties List System) at: http://www.sam.gov. Submit a copy of the search result performed on the general contractor prior to signing the actual construction contract. Do not contract with a contractor who is ineligible under the provisions of any applicable regulations of the US Department of Labor.

The same rules apply when the HOME recipient acts as the general or prime contractor in the project. In this case, each subcontractor must be determined eligible (not debarred) for participation in Federal programs.

Minority Owned Business / Women Owned Business: Additionally HOME recipients must do outreach to encourage participation by minority and women owned business enterprises. When advertising for bids, HOME recipients must include a statement that says "minority and women owned businesses are encouraged to apply."

Find a list of all registered minority and woman owned businesses at: http://www4.cbs.state.or.us/ex/dir/omwesb/. Each recipient should offer these contractors an opportunity to submit a bid. The HOME recipient is required to document outreach efforts regarding MBE/WBE at completion of the project.

Section 3: The purpose of Section 3 of the Housing and Urban Development Act of 1968 is to ensure to the greatest extent employment and other economic opportunities generated by HUD financial assistance shall be directed to low and very low income persons, particularly the recipients of government housing assistance, and to business concerns that provide economic opportunities to low and very low income persons.

Contracts and subcontracts funded in whole or in part by HUD resources are subject to Section 3 requirements when the individual contract or subcontract exceeds $100,000 and the amount of HUD assistance for the project exceeds $200,000. Both conditions must be present. Contracts exclusively for supplies or materials are excluded unless the contract includes installation of the materials.

Section 3 requirements apply to housing rehabilitation (including reduction and abatement of lead-based affected: paint hazards, but excludes routine maintenance, repair and replacement), and to housing construction (including reconstruction, conversion), and other public construction assisted with housing or community development assistance.

Goals include a commitment to award the following to Section 3 businesses:

- 10 percent of the total dollar amount in contracts for building trades work arising in connection with housing rehab, housing construction;
- 3 percent of the total dollar amount of all other Section 3-covered contracts;
- Notify Section 3 businesses of the contracting opportunities covered by these requirements;
- Notify all potential contractors of the Section 3-covered contracting requirements, and include the required Section 3 clause in contracts;
- Assist and “actively” cooperate with HUD in obtaining contractor/subcontractor compliance with Section 3 requirements;
- Refuse to award contract to any contractor who has been found to have violated the Section 3 regulations;

- Take appropriate remedial action against contractors who fail to comply with the Section 3 requirements (e.g. termination); and
- Document actions (including results and impediments) taken to comply with Section 3 requirements.

OHCS will provide more details on Section 3 requirements, (including the required Section 3 contract clause and record keeping forms) to HOME recipients after grant reservation.

NEW HOME Program Property Standards

HOME assisted housing is required to meet OHCS construction and/or rehabilitation standards, plus any conditions required in order to satisfy the NEPA Environmental Review for the project. In addition, projects must meet all applicable local codes, standards, ordinances, zoning ordinances, and the Fire Administration Act, including installation of hard-wired or battery-operated smoke detectors according to standards required by the Fire Administration Act. In the absence of a local code, HOME assisted housing must meet the International Residential Building Code.

<u>New Construction Projects:</u> In addition to OHCS Architectural requirements, HOME assisted new construction projects must meet all State and local residential building codes, as applicable, or in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. All newly constructed housing must also meet the current edition of the Model Energy Code published by the Council of American Building Officials.

<u>Rehabilitation Projects:</u> A Capital Needs Assessment is required for all multifamily rental projects to determine a scope of work that addresses the following: health and safety, habitability and functionality, useful life or major systems, lead-based paint, accessibility, and other improvements. In addition, OHCS has established rehabilitation standards for all HOME assisted housing rehabilitation activities that must be met upon project completion. See "Architectural Design Requirements" for specific detail.

<u>Acquisition Only Projects:</u> Existing rental housing to be acquired with HOME assistance that is newly constructed or rehabilitated (less than 12 months before the date of commitment of HOME funds) must meet the HOME Program Property Standards. Submit for OHCS review the approved building plans and Certificates of Occupancy. An inspection to determine eligibility for HOME funding will be conducted 90 days before a commitment of HOME assistance.

<u>Accessibility:</u> HOME assisted housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

<u>Disaster Mitigation:</u> Where relevant, the housing must be constructed and/or rehabilitated to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or such other requirements as HUD may establish.

Uniform Physical Condition Standard (UPCS): Upon completion, HOME assisted projects and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703.

Construction Oversight and Inspections

HUD regulation now requires OHCS to implement a higher degree of construction and rehabilitation oversight of HOME funded projects. OHCS must review and approve all construction-related documents prior to construction and to monitor construction progress. OHCS is required to review and approve work write-ups (i.e., plans and specifications) and written cost estimates. Based on this review, OHCS must determine that the work write-up or plans are in compliance with OHCS architectural standards, and that the construction and rehabilitation costs are reasonable.

OHCS will ensure the construction contract(s) and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The written scope of work to be performed must be in sufficient detail to establish the basis for a uniform inspection of the housing to determine compliance with OHCS Architectural Requirements. OHCS will review and approve written cost estimates for construction and/or rehabilitation in order to determine that costs are reasonable.

OHCS will conduct an initial property inspection and progress inspections to monitor construction progress. OHCS will conduct progress inspections during construction and/or rehabilitation in order to ensure work is completed within established standards. Progress payments must be consistent with the amount of work performed. A final inspection will determine if work was done in accordance with the project's approved work write-up or plans, and final payment will not occur construction is satisfactorily completed in accordance with the applicable codes, the construction contract, and construction documents. OHCS may utilize qualified in-house staff or secure a qualified third party inspector.

Federal Labor Standards

Any contract for the rehabilitation or new construction of affordable housing with 12 or more HOME-assisted units must comply with the Davis-Bacon Act (40 U.S.C. 276a-5) and Federal Labor Standards. Davis-Bacon requirements apply to projects with eight or more units when the project utilizes both CDBG funds and HOME funds. These Federal laws require all laborers and mechanics employed in the development of affordable housing to receive federal prevailing wages, adjusted for the locality. Contracts are also subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).

Request a Wage Decision from HUD Labor Relations, which has the most recent Davis-Bacon Wage Rates for each project. The request can take up to 30 days to receive, so recipients should notify the loan officer assigned to the project as soon as the number of units and type of project has been determined. Re-verify all wage rates 10 days prior to bid opening and notify OHCS of bid opening date in time for OHCS to re-verify the rates.

Summary: Davis-Bacon Act & Related Acts:

- Davis-Bacon Act: All laborers and mechanics on a HOME project shall be paid wages at rates not less than prevailing wages at similar construction for the locality as determined by the U.S. Secretary of Labor, regardless of contractual relationship. Every employee on the job (including company owners) must be paid weekly.

- Contract Work Hours and Safety Standards Act: The wages for every mechanic and laborer on the job shall be computed on a standard workweek of 40 hours. Employees will be compensated at a rate of not less than one and one half times the basic rate of pay for all hours worked in excess of forty hours in any work week (base rate x 1.5 +fringe benefits = overtime rate).

No employee on the job site will be required to work in surroundings, or any other working conditions, which are unsanitary, hazardous or dangerous to the health and safety of an employee, as determined by the Construction Safety and Health Standards promulgated by the Secretary of the United States Department of Labor.

Liquidated damages for failure to pay overtime will be computed at the rate of $10 for each calendar day for each employee who was required or permitted to work in excess of the standard 40 hour work week without payment of the overtime wages.

- Copeland Act (Anti-Kickback Law): Whoever by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever, induces any person employed in the construction, prosecution, completion or repair of any public building, public work or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract or employment, shall be fined not more than $5,000 or imprisoned not more than five years, or both.
- Apprentices: The U.S. Department of Labor recognizes only apprentices registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The Department of Labor does not recognize a helper classification, unless it is on the wage determination, nor do they exempt from Davis-Bacon journeyman rates or, apprentices reported in excess of a program journeyman/apprentice ratio.

Summary of Lead-Based Paint Regulations for Rehabilitation Projects

HUD has issued a new regulation to protect young children (under the age of six) from lead-based paint hazards in housing that is financially assisted by the federal government or that is sold by the government. The new regulation addresses the requirements for notification, evaluation and reduction of lead-based paint hazards in federally assisted properties. The new regulation appears within title 24 of the Code of Federal Regulations (24 CFR 35). Find more information on the regulation and other educational materials at [www.hud.gov/lea.](http://www.hud.gov/lea)This summary addresses the lead base paint requirements for HOME program applicants.

<u>Notices That Must Be Issued To Occupants of Properties:</u> New regulations require four types of notices:

- Distribution of a lead hazard information pamphlet to all existing tenants and all new tenants. Tenants must sign last page verifying receipt of pamphlet (current EPA/HUD notice still in effect).
- Disclosure to occupants of all known lead hazards that exist in project.
- Notice to occupants of result of lead hazard evaluation within 15 days of completed evaluation. This notice can be posted in a public place such as lobby or mailroom.
- Notice to occupants of reduction activities undertaken within 15 days of completion. A notice posted notice in a public area is allowed.

Regulations and Affected Properties: The lead-based paint regulations affect acquisition and rehabilitation of housing projects constructed prior to 1978. All HOME grant agreements for pre-1978 projects must comply with the regulations. All units in the project must comply with these regulations not just the designated HOME-assisted units

Rehabilitating Properties Containing Asbestos
Most housing and buildings constructed before 1979 contain some form of asbestos. Undertaking rehabilitation actions where asbestos is present is subject to numerous and increasing regulation at all levels of government. Careless or illegal handling of asbestos-containing materials can subject rehab contractors, workers, and building occupants to health hazards, and can place the contractor, manager and owners in a position of serious civil and possibly criminal liability. If the property was built prior to 1979, contact the RAD for the area for more information.

Uniform Relocation Act
The HOME Program is subject to the Uniform Relocation and Real Property Acquisition Act (URA). Under the URA, all persons (families, individuals, businesses, nonprofit organizations and farms) displaced (forced to move) as a direct result of rehabilitation, demolition or acquisition (privately undertaken or public) for a HUD-assisted project are entitled to relocation benefits.

OHCS Anti-displacement and Relocation Assistance Policy: OHCS encourages applicants to pursue only those projects that will not permanently displace tenants, and reserves the right to prioritize funding to projects with no permanent relocation and/or reasonable temporary relocation. To the extent feasible, the HOME assisted projects' Relocation Plan must give residential tenants an opportunity to lease and occupy the same or another suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project. HOME recipients are encouraged to stage rehabilitation work to allow tenants to remain in their units as long as possible by working with empty units first.

Displacement not only includes the physical displacement of persons, it also includes "economic displacement" which means that as a direct result of the project, the existing tenant is not able to afford a new, higher rent for their current unit. If a HOME applicant intends to rehabilitate an occupied property, the issue of economic displacement needs to be of particular concern. Tenants who are economically displayed qualify for relocation benefits, so HOME recipients must modify future rent increase to ensure affordability.

URA Application Requirements:

1. Existing Tenant Survey: This survey identifies who currently occupies the property and potential URA problems. Survey all residential and commercial tenants. Use the Existing Tenant Survey form provided in the NOFA.

2. Develop a Relocation Plan: Provide a description of how the rehabilitation will impact existing tenants:
   - Will any existing tenants be ineligible to remain in the project and be required to move permanently?
   - Will any tenants need to move temporarily during the rehab?
   - How will temporary moves be accomplished?
   - Does overcrowding exist in any of the units?
   - Is there a way to phase the rehabilitation work to avoid moving tenants?

- Are there tenants who need specific accommodations such as accessible units?

3. General Information Notice: A General Information Notice (GIN) must be sent to all tenants (residential and commercial) prior to submission of a HOME application. The GIN must be sent certified receipt requested or hand-delivered, and a delivery receipt obtained. Copies of sample GINs are provided in the NOFA.

   There are several different types of GINs:
   1) intended for residential tenants who will be permitted to reside in the project after completion;
   2) intended for residential tenants who will be required to move or who may be displaced because of the project; and
   3) sent to commercial tenants. OHCS HOME Program staff can provide guidance.

4. "Relocation Assistance to Persons Displaced from Their Homes": Provide a copy of this HUD brochure to all residential tenants along with the General Information Notice. A copy of the brochure can be found in the NOFA. Contact OHCS for the appropriate brochure if the tenant in the property is a business in order to provide the business brochure with the General Information Notice.

5. Permission to Send Notices: Advise the owner / seller of the property of the noticing requirements for all tenants. Obtain agreement from the property owner that tenants will not be required to move, except for cause.

<u>URA Requirements Subsequent to the Application for HOME Funding</u>

1. New Tenants: Each new prospective tenant must receive a notice informing about the rehabilitation project before signing a lease or rental agreement. The tenant must sign a form acknowledging receipt of this notice. Failure to issue this notice can be very costly. A copy of the Notice to Prospective Tenants can be found in the NOFA.

2. Tenants Who Move: Each tenant who moves after the HOME application submission date must document the reason for moving in a Vacate Notice. A tenant may be evicted for cause, if properly documented, but not in order to avoid paying relocation assistance.

<u>Requirements on Date of Execution of HOME Grant Agreement</u>

1. Update Tenant Survey: Update the tenant survey to reflect tenants who have moved; new tenants, and other new information.

2. Notice of Displacement/Non-Displacement: As soon as possible after the date the HOME Grant Agreement is executed, a notice must be issued to each tenant who was in occupancy on the date the HOME application was submitted. The notice must either contain a specific offer of a suitable, affordable unit in the project, or provide a Notice of Displacement, if the tenant will be permanently displaced. The notice informs the tenant of their eligibility of any relocation benefits.

3. Temporary Moves: Arrange for temporary moves if necessary. Document temporary move notices and document all temporary moving costs. Tenants must receive reasonable advance written notice, notified of the terms and conditions of the move, and reimbursed for all reasonable out-of-pocket expenses.

4. Lead-Based Paint Disclosure forms: This disclosure form is in effect if the rental units were constructed prior to 1978.

URA – HUD's Seven Things to Know Now

1. HUD cares about this. The federal government takes the rights of tenants in rental rehabilitation properties very seriously.
2. So should we. Recipients and developers who are working on HUD-funded projects need to understand that the Uniform Relocation Act (URA) is basic consumer legislation that addresses "fairness" issues. Tenants whose living circumstances are changed by a project, either by higher rents or involuntary moves, should and will be protected and compensated.
3. The relocation rules are not all one-sided. The landlord can take actions to control costs and prevent displacement. These actions include informing tenants about the project, treating them fairly during the process, staging work if it is feasible and keeping their rents affordable. Tenants must continue to pay rent and comply with the lease during the process.
4. Mistakes can be costly. Planning for relocation and tenant concerns is critical because tenants can take actions that cause financial liability for the sponsor/developer. Displaced tenants are entitled to 42 or 60 months of rental assistance, depending on the situation. Many claims exceed $40,000 per household. Although some claims are unavoidable, there is no reason to incur these costs by failure to follow the rules.
5. Planning is critical. Thoughtfully consider relocation concerns early in the process so decisions about rents, construction timing and project feasibility can be considered before they are a crisis.
6. Cooperation is essential. All parties involved in the project must "do the right thing" in to make the process work.
7. There are five basic requirements for tenants in rental rehabilitation projects:
    - Give timely information to tenants about the pending application.
    - If HOME funding is approved, advise the tenants about any changes that could impact them. Without proper notification, they could claim they were displaced even if that was not the recipient's intension.
    - If displacement occurs, offer a comparable replacement unit that is decent, safe and sanitary. Owners must pay Moving expenses.
    - Tenants cannot be required to move without a 90 days' notice.
    - Offer tenants who will stay in the property after the work is completed, a suitable unit that is decent, safe, and sanitary, and affordable to them.

One-for-One Replacement

HOME funds may not be used to reduce the number of affordable housing units available in a community. All affordable occupied or vacant-occupiable dwelling units that are demolished or converted to a use other than affordable housing (including conversion to transitional housing) must be replaced on a bedroom-by-bedroom basis.

In addition to assuring replacement housing will be provided, there are specific public disclosure and submission requirements that must be met as a condition of the funding reservation prior to demolition of the structures and prior to the award of HOME funding.

If a project receives HOME funding, the recipient must submit the following as a condition of funding:

- A written description of the proposed project;
- The address, number of bedrooms and map location of the housing to be demolished;
- A time schedule for the commencement and completion of the demolition;
- The address, number of bedrooms and map location of the replacement housing to be provided. Replacement housing must be located in the same geographic area or neighborhood;
- The source of funding and schedule for the proposed replacement housing;
- The basis for concluding the replacement housing will remain lower-income housing for at least 10 years from the date of initial occupancy; and
- Information demonstrating that the replacement units are sufficient in number and size to house the same number of occupants that could have been housed in the converted or demolished unit.
- After OHCS approval of the packet, OHCS will provide recipients instructions to publish a public notice in a newspaper of general circulation. This notice will identify the replacement plan for the existing structures. This newspaper notice should not be located in the legal notice section, but rather as a public notice or a display ad. Recipients must submit a tear sheet of the published notice to OHCS immediately upon publication. OHCS will reimburse publication costs.

Architectural Standards

The Department has published Architectural Guidelines that include recommendations for site design, building design, unit design and other quality of life issues, including construction materials and practices affecting the life-cycle cost of buildings. The Department will review design team proposals to verify if their projects reflect these recommendations. If a project contains a design feature that is a material deviation from the Guidelines, the project Architect must provide a written explanation for the variance.

A registered architect currently licensed in the State of Oregon is required to design any new construction project. There may be cases where a project is deemed to be exempt from the Oregon Architects and/or Engineer’s Law. If someone other than a licensed architect designs a project, the applicant must request a pre-approval from the Department prior to the application deadline.

Architectural Standard

Affordable housing projects must be built using quality materials so they sustain themselves for a significant period of time. The project must be built with a replacement reserve analysis that adequately considers and addresses needed maintenance and rehabilitation of the Project without the use of additional public investment for a significant period of time, and in consideration to the affordability covenants. This requires careful design, material selection and oversight by project architects, contractors and owners. This type of oversight ensures the affordable housing project, including building envelopes and all structural components, have the necessary sustainability to last for a significant period of time with industry standard maintenance schedules.

Required Architectural Materials

The Architectural guidelines are in the General Policy and Guideline Manual under Addendum A, Architectural Guidelines. The following outlines the architectural materials that must be submitted with the application.

For All New Construction Projects and Rehabilitation Projects That Include Any New Construction

Submit the specific documents required for design review with the application. These must not be construction documents, but the schematic or early design development documents. The architectural submission should include the information listed below:

- **Vicinity map** indicating the location of the site and amenities important to the residents such as groceries, schools, parks, activities on adjacent properties (e.g. single family dwellings, commercial retail etc.), and public transportation. If appropriate, the same vicinity map required in the environmental review checklist may be used.

- **Context photos** showing the property and adjacent properties. Indicate on the vicinity map where the photographs were taken. If the site varies in slope, submit photographs showing the extent and nature of the sloped areas. If photocopy photos are taken, include original photos in the original application and copied photos in the application copies.

- **Preliminary site design and development plan** with topographic data and a schematic landscape concept (1”=40’ minimum scale). The site plan should include:
  - i. Site contours or, at a minimum, elevations on the corners of the property and each building; and preliminary grading including drainage away from buildings.
  - ii. Site features such as existing structures to be removed, trees or hedges to be retained and general areas of new plant materials, with other site features.
  - iii. All buildings with unit front entries indicated.
  - iv. All paved surfaces and site lighting, if determined.
  - v. Any fencing at perimeter of site and between units and buildings.
  - vi. Mechanical and electrical equipment such as transformers, if determined.
  - vii. Trash holding areas, if known.

- **Required site accessibility and visitability features**:
  - i. Preliminary building exterior elevations at 1/8”= 1’0” minimum scale that include size of building and rooflines. Include a visual indication of grade at the foundation wall of the site with each elevation when the site is sloped.
  - ii. Preliminary building floor plans at 1/8”= 1’0” minimum scale and unit plan(s) at ¼”= 1’0” minimum scale.
  - iii. Preliminary building sections at 1/8” = 1’-0”, when appropriate. These are required for sites where the grade slope exceeds ten percent (10%).
  - iv. Typical unit plans with furniture arrangements. Unit interiors shall be designed for maximum livability and utilization of space by residents.
  - v. List of applicable codes and regulations.
  - vi. Identify all federal, state and local codes and regulations that govern the project. If the work falls under code jurisdiction, provide a letter of intent, signed by the architect, to meet all applicable federal, state and local codes and regulations.

- **Codes and regulations may include, but may not be limited to:**
    i. HUD, National Oceanic and Atmospheric Administration (NOAA) and/or other federal regulations.
    ii. Current edition of the Oregon Structural Specialty Code.
    iii. Applicable local planning and building codes.
    iv. Accessibility and visitability requirements.
    v. HUD Fair Housing Accessibility Guidelines.
    vi. ADA Accessibility Guidelines.
    vii. Uniform Federal Accessibility Standards (UFAS) applicable to HOME and other federally funded programs.
    viii. Oregon Visitability Requirements (included in this document).

<u>For All Rehabilitation Projects</u>
The Department requires a thorough rehabilitation assessment for all rehabilitation grant, loan or tax credit applications. A thorough Rehabilitation/Capital Needs Assessment will help determine the appropriate rehabilitation scope of work and the estimate of probable rehabilitation cost. A Capital Needs Assessment (CNA) must have been conducted within twelve (12) months of this NOFA application submittal; if Project is awarded funds, the CNA may be updated to correspond to general policy by the time of construction closing.

The CNA must contain the following:

- Rehabilitation Scope of Work,
- Pest and Dry Rot Inspection Report,
- Roof Inspection Report,
- Estimate of probable rehabilitation cost,
- Replacement Reserve Schedule.

The assessment must examine the following major building components and describe the work necessary to bring each building component to the level of maximum expected life span:

- Roof and roof substructure,
- Accessibility features,
- Exterior walls (building envelope),
- Pest and dry rot inspection,
- Insulation,
- Interior spaces: appliances and structural elements,
- Foundation,
- Structure: basement, substructure, super structure, crawlspaces;
- Electrical systems,
- Plumbing systems,
- Heating systems,
- Site: parking, landscaping, common areas, lighting, security.

Applicants must meet the requirements of HUD 24 CFR 5.703 (uniform physical condition standards for public housing).

After reservation of funding is made, the Department may, at its discretion, complete a unit by unit inspection of developments with proposed rehabilitation to assure there is an adequate scope of work.

The Department also requires applicants of acquisition and rehabilitation projects to complete a thirty (30) year replacement schedule as part of the CNA.

<u>Rehabilitation Assessment Criteria</u>
The Rehabilitation Assessment must be in a narrative form that addresses the following major components:

- Critical repair items: All health and safety deficiencies, or violations of Housing Quality Standards (or Uniform Physical Inspection Standards), requiring immediate remediation.
- Two (2) year physical needs: Repairs, replacement and significant deferred and any other maintenance items that need addressing within twenty-four (24) months of the date of the RA.
- Include any necessary redesign of the project and market amenities needed to restore the property to a reasonable standard of livability. Include these repairs in the development budget and fund with construction-period fund sources.
- Long term physical needs: Repairs and replacements beyond the first two (2) years required to maintain the project's physical integrity over the next thirty (30) years, such as major structural systems that will need replacement during that period. These repairs are to be funded from the Replacement Reserves Account.
- Analysis of reserves for replacement: An estimate of the initial and monthly deposit of the Replacement Reserves Account needed to fund long-term physical needs, accounting for inflation, the existing Replacement Reserves Account balance, and the expected useful life of major building systems. This analysis should not include the cost of critical repair items, two (2) year physical needs or any work items that would be treated as normal maintenance or repair expense.

Applicants must adequately complete the following:

- Conduct site inspections of one hundred percent (100 %) of all units (a lesser percentage may be allowed at OHCS' discretion).
- Identify any physical deficiencies as a result of: a) visual survey, b) review of pertinent documentation, and c) interviews with the property owner, management staff, tenants, community groups and government officials.
- Identify physical deficiencies, including critical repair items, two (2) year physical needs and long term physical needs. These should include repair items that represent an immediate threat to health and safety and all other significant defects, deficiencies, items of deferred maintenance, and material building code violations that would limit the expected useful life of major components or systems.
- Explain how the project will meet the requirements for accessibility to persons with disabilities.
- Identify physical obstacles and describe methods to make the project more accessible, listing needed repair items in the rehabilitation plan.
- Prepare a rehabilitation plan, addressing all two (2) year and long term physical needs separately.

- Prepare a replacement reserve schedule, including an estimate of the initial and annual deposits, accounting for inflation and based on a thirty (30) year term.

The applicant should engage the services of independent third party professionals, currently licensed in the State of Oregon, to perform the property inspections and prepare the Rehabilitative Assessment. Applicants typically contract with a licensed architect or licensed residential property inspector* (CCB Lic# + OHCI Lic#) to provide most of the inspection services and write the Rehab Assessment. Additional support services including construction cost estimates, roof inspections, Pest & Dry Rot inspections, structural assessments, etc. can be provided by general contractors, roofing contractors, Pest & Dry Rot inspectors** and licensed engineers (structural, mechanical and/or civil).

*Home Inspectors providing rehab assessments should have an Oregon Construction Contractor's Board (CCB Lic#) and an Oregon Certified Home Inspector (OCHI Lic#) printed on the cover or first page of their inspection report.

**Pest & Dry Rot Inspectors should have an Oregon Department of Agriculture (ODA Lic#) and/or a Pest Control Operator (PCO Lic#) printed on the cover or first page of their inspection report.

<u>The premise for calculating the needs and capacity for the replacement reserve fund should be guided by the following:</u>

- The Department expects projects will be maintained at a level comparable with the condition at the time the project was placed in service (for new construction- at the completion of construction; for rehabilitation- at the completion of rehabilitation).
- Repairs and replacements must be accomplished when items are damaged or show excessive wear due to use or age.
- Replacements must be "as good as new" or at least up to the original quality. OHCS realizes in occupied units it may be more difficult to accomplish extensive repairs and replacements (this will be evaluated on a case-by-case basis).
- Projects must be comparable in appearance to non-subsidized multi-family housing in the area with similar rents.
- Inspections are performed by OHCS as required by program regulations and loan regulatory documents. These inspections are intended to provide OHCS a mechanism to address deficient findings.

<u>Construction Hard Cost Estimate</u>
Applicants must include the cost estimates used to develop the construction budget in the application. Acceptable cost estimates include: a contractor's or cost estimator's worksheet, rehabilitation assessment, scope of work, or any other documents that show how the construction costs were established.

<u>Visitability Exemption Request</u>
Use this form if the proposed project design cannot meet the state's visitability requirements, as described in the Architectural Standards section. If you need an exemption, you must include Visitability Exemption Request in the application.

<u>Green Building Standards</u>
Applicants must include green building requirements when developing the project plans. Applicants will be expected to follow through with the green building path they chose. If

applicants are unable to complete that path, they must request approval to choose a different path. The Department reserves the right to rescind resources if green building activities are not followed.

The Department has established a process that connects the applicant to three (3) existing green building paths available throughout the state. In addition, the Department has established a fourth green building path for those projects which cannot be served by any of other three (3) programs. The three (3) green building programs selected are Enterprise Green Communities, Earth Advantage Homes, and LEED for New Construction or Homes. Applicants must choose to work within one (1) of the four (4) processes. Listed below is contact and process information for each program. This is followed by a brief description of The Departments' green building criteria. The list of specific criteria is on the Green Building Checklist.

The Department has listed the following Enterprise Green Communities, Earth Advantage and LEED program information as a courtesy. **The Department takes no responsibility for the accuracy of the program material. Requirements or criteria may have been updated by any of the program providers. Applicants should confirm the provider's expectations before committing to a specific program.**

Enterprise Green Communities ("Enterprise GC")

- Addresses new construction and major rehabilitation (replacement of one (1) or more major systems).
- Project must have at least twenty-five (25) rental apartments occupied by households at or below sixty percent (60%) AMI to qualify.
- Rehabilitation projects must undergo an energy audit that identifies baseline energy performance of existing measures and anticipated energy improvement from proposed new measures.
- Applicants are strongly encouraged to engage a contractor to review design materials, walk the project site, discuss green building intentions and obtain a rough cost estimate of total and green building-related project costs.
- Applicants may also benefit from an early project brainstorm session or "Eco-Charrette" with a team of experts and stakeholders to help them identify approaches to achieve Green Communities certification.
- Enterprise GC has grants available to assist with costs from Eco-Charrettes and pursuit of certification.
- Projects not selected for funding may still pursue Enterprise GC certification and incentives.
- Successful applicants will be required to register the project with Enterprise within sixty (60) days of notification of a successful application.
- Signed verification of registration must be provided to the Department within seventy-five (75) days of that notification.
- All successful applicants will receive Enterprise's reporting and verification of green building certification requirements for the Department but will not exceed those already required by the Enterprise GC program.
- Enterprise GC certification requires the project architect and/or engineer sign a template to verify that each selected criteria has been implemented into the project. No additional supplemental documentation is required.
- Enterprise reviews and confirms the submitted materials and the project is then certified.
- The applicant is responsible to forward the proof of certification to OHCS.

Program requirements are available at:
www.greencommunitiesonline.org/tools/criteria/
or:
Enterprise Community Partners
520 S. W. Sixth Avenue, #700
Portland, Oregon 97204
Phone: 503 223-4848

Earth Advantage Homes ("EA")

Addresses single and multi-family new construction.

- Projects that pursue the EA compliance path must have an initial EA consultation.
- Applicants are strongly encouraged to engage a contractor to review design materials, walk the project site, discuss green building intentions and obtain a rough cost estimate of total and green building-related project costs.
- Successful applicants will be required to register the project with EA within sixty (60) days of notification of the successful reservation.
- Signed verification of registration must be provided to the Department within seventy-five (75) days of notification.
- All successful applicants will receive EA's reporting and verification of green building certification requirements for the Department but will not exceed those already required by EA.
- EA certification requires approximately two to three (2-3) total field inspections during and after construction and review of the final green building worksheet by an EA representative.
- No additional supplemental documentation is required.
- EA reviews and confirms the submitted materials and the project is then certified.

Program requirements are available at www.earthadvantage.org/ or:

Earth Advantage National Center
16280 S. W. Upper Boones Ferry Rd
Portland, Oregon 97224
Attn: Duane Woik
Phone: 503 968-7160, x-14

Earth Advantage (Southern Oregon)
715 Sunrise Street
Ashland, Oregon 97520-3349
Attn: Fred Gant
Phone: 541 840-8302

Earth Advantage (Central Oregon)
345 Century Drive, #20
Bend, Oregon 97702
Attn: Bruce Sullivan
Phone: 541 480-7303

Earth Advantage (Valley)
2695 Madison Street
Eugene, Oregon 97405
Attn: Eli Volem
Phone: 541 510-9310

LEED Certification ("LEED")
Applicants that pursue LEED for New Construction certification automatically comply with the CFC Green Building Standard. LEED projects are anticipated to meet or exceed the performance sought by the Earth Advantage and Enterprise Green Communities baseline compliance paths. These projects must submit a completed LEED scorecard, Green Building Worksheet, proof of project registration with the U.S. Green Building Council (USGBC) or a signed statement of intent to register the project with the USGBC for LEED for New Construction or Homes program within sixty (60) days of notification of a successful CFC application.

Program requirements are available at: www.usgbc.org/.

OHCS Path for Acquisition/Rehabilitation or Acquisition only projects
The OHCS Path addresses other projects not eligible for participation in the other three (3) programs. If a project is ineligible for Enterprise Green Communities, Earth Advantage or LEED Certification, applicants must work with the OHCS path.

Additional Requirements for the OHCS Path:

- Applicants must submit the Green Building Worksheet in the application,
- Successful applicants are required to provide a completed third party energy audit to the Department within seventy-five (75) days of notification of funding; and
- Submit specified evidence at project closing that verifies work was completed as stated.

Non-discrimination & Accessibility Standards

Three different sets of nondiscrimination requirements apply to the HOME Program: Section 504 of the Federal Rehabilitation Act of 1973; the Fair Housing Act of 1988; and the Americans with Disabilities Act (ADA). Both new construction and substantial rehabilitation of multi-family housing assisted with HOME funds are subject to and must meet the standards of Section 504. Section 504 standards apply to all units in a project and not just the HOME-assisted units.

Substantial Rehabilitation Project: defined as a project with 15 or more units where the rehabilitation cost will equal at least 75 percent of the replacement cost of newly constructed multi-family units. Applicants of such rehabilitation projects must meet the following Section 504 criteria:

- Five percent of the units in the project (not just HOME-assisted units) must be accessible to individuals with mobility impairments, and an additional two percent must be accessible to individuals with sight and hearing impairments.
- Distribute the accessible units evenly throughout the project buildings
- Distribute the accessible units evenly by bedroom size throughout the project.
- When designing a larger bedroom accessible unit.as in a townhouse with inaccessible living areas on the second floor, Section 504 recommends the unit be a single floor design.

- When designing an accessible bathroom, consider a roll-in shower in lieu of a shower/tub not easily accessed by some physically disabled persons.

When smaller projects are rehabilitated or when rehabilitation costs are less than 75 percent of the replacement cost then: every alteration to a unit must make the unit accessible to the maximum extent feasible until 5 percent of the units in the project are fully accessible to people with mobility impairments. Alterations to common spaces must always make the project accessible to the maximum extent feasible. Consult the Fair Housing Amendments for guidelines about rehabilitation of one to four unit rental properties.

Section 504 accessibility standards are further described in the Uniform Federal Accessibility Standards. HOME applicants should provide this information to their architects early in the process to insure the project meets the accessibility criteria as defined in Section 504.

New construction of certain multi-family housing projects is also subject to the accessibility requirements in the Fair Housing Act of 1988. The Americans with Disabilities Act (ADA) has a broader application than the Fair Housing Act or Section 504, in that it addresses employment practices, public services, transportation, and public accommodations. Although the ADA does not specifically address residential housing, since housing is covered by Section 504 and the Fair Housing Act of 1988, HOME recipients should be aware of the ADA's scope and requirements. HOME recipients will need to have the project architect verify that the plans/specifications meet the Section 504, ADA and Fair Housing standards prior to signing a grant agreement. Architects must verify at the completion of the project that the constructed/rehabilitated units have met these standards.

Affirmative Marketing

Affirmative marketing is required for HOME projects containing five or more units. Affirmative marketing consists of actions to provide information and otherwise attract eligible persons to the available housing from all racial, ethnic, and gender groups in the housing market area. Affirmative Marketing differs from general marketing activities because it specifically targets potential tenants who are least likely to apply for the housing, in order to make them aware of available affordable housing opportunities. OHCS will annually assess a project's affirmative marketing program to determine the success of affirmative marketing efforts and any necessary corrective actions.

HOME-assisted projects (five or more units) serving special needs populations must meet all HOME Program requirements regarding affirmatively marketing the units before renting them. The units must be marketed to ALL persons within the special needs group. The units MAY NOT be filled exclusively through referrals from a single social service agency. A good faith effort must be made to inform and solicit applications from members of the special needs group throughout the market area.

HOME-assisted projects designated for persons with disabilities cannot be restricted to persons with specific types of diagnoses or subclasses of disabilities (such as developmentally disabled, chronically mentally ill, or persons with only physical disabilities). Resident services may be specific to subclasses of disabilities, but the housing may not. HOME-assisted housing for disabled persons must be open to persons with any type of disability.

Affirmative marketing activities, at a minimum, shall include:

- Develop and submit HUD Form 935.2 Affirmative Fair Housing Marketing Plan.
- Insuring advertised vacant units include the Equal Housing Opportunity logo or statement.
- Posting the HUD Fair Housing poster in common area(s) of housing assisted with HOME funds.
- Soliciting applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts.
- Maintaining file records containing all marketing efforts (e.g., newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc.) These records shall be made available to OHCS staff for inspection during normal working hours.
- Maintaining listings of all tenants residing in each unit at the time of application submittal through the end of the HOME compliance period.

OHCS will annually assess a project's affirmative marketing program to determine the success of affirmative marketing activities and identify any needed corrective actions.

Fair Housing

HOME recipients are responsible for complying with Fair Housing Laws. Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination as follows:

In the Sale and Rental of Housing**:** No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent or sell housing,
- Refuse to negotiate for housing,
- Make housing unavailable,
- Deny a dwelling,
- Set different terms, conditions or privileges for sale or rental of a dwelling;
- Provide different housing services or facilities,
- Falsely deny that housing is available for inspection, sale, or rental;
- For profit, persuade owners to sell or rent (blockbusting); or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

In addition: It is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

There is additional protection for persons with disabilities. Tenants with physical or mental disabilities, including 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 are protected from landlords who Refuse to let disabled tenants make reasonable modifications to their dwelling or common use areas (at tenant's expense), if necessary for the disabled person to use the housing or Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.

HOME assisted projects are subject to HUD regulations intended to ensure equal access of LGBT persons, which includes the following:

- A general equal access provision which requires housing to be made available without regard to actual or perceived sexual orientation, gender identity, or marital status;
- Clarification that the terms "family" and "household" as used in HUD programs, include persons regardless of actual or perceived sexual orientation, gender identity or marital status;
- Prohibition on owners and operators from asking about an applicants or occupants sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available;

For additional information, search Fair Housing on the www.HUD.gov website.

Tenant Selection Criteria

HOME recipients must adopt tenant selection policies that:

- are consistent with the purpose of providing housing for low and very low income persons,
- are reasonably related to program eligibility and applicant's ability to perform the obligations of the lease,
- provide for selection of tenants from a written waiting list in the chronological order of their applications, and
- provides for the prompt written notification to any rejected applicant of the grounds for the rejection.

NEW **Student Rule**

The 2013 Rule specifically excludes certain students from participating independently in the HOME program. The HOME program adopts the Section 8 Housing Choice Voucher (HCV) program restrictions on student participation found at 24 CFR 5.612 (but is not consistent with the LIHTC student rule).

Determining Income Eligibility of HOME Tenants

Each household offered a HOME assisted unit must be certified as income-eligible before signing a lease. The income of all household members must be included, and the determination must be based on income that is expected in the next twelve months. For the initial income-eligibility determination, examine income source documents and complete 3rd party verifications to ensure the accuracy of the income information that the tenant reports on the application.

A fully completed Applicant/Tenant Questionnaire (OHCS.3) is required and critical to accurate determination of eligibility. After the household completes the Applicant/Tenant Questionnaire, the Owner/Agent must have all income and assets verified. The application, questionnaire, income & asset verifications, and lease are to be executed prior to move-in. All occupants in a HOME-assisted unit must be certified and have a valid lease on file. All household members age 18 and over must sign the documents.

Acceptable source documents include:

- Third party verifications from employers, banks or others with first-hand information about the applicant households' finances. These verifications should be in writing.
- Wage statements for approximately the preceding 3 months, if employment is steady;
- Interest statements,
- Unemployment compensation statements.

Unacceptable source documents include:

- An applicant's income self-certification,
- The certification from another program.

After all income and asset information has been obtained, verified and calculated, the Owner/Agent must prepare a Tenant Income Certification – [Form OHCS.2H for HOME only or form OHCS.2 for HOME and LIHTC mixed] for each household placed in a HOME unit. The Tenant Income Certification must be executed, along with the lease, on or just prior to the move-in date.

For more information regarding income eligibility of tenants, please see the OHCS HOME Compliance Manual.

Lease Conditions and Restrictions

The length of a lease for a HOME-assisted unit must not be less than one year, unless otherwise modified by mutual agreement between owner and tenant.

Termination of tenancy or refusal to renew a lease may only be for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the transitional housing tenancy period; or for other good cause. Landlords must give the tenant a 30 day notice of termination or refusal to renew. There is no exception to the 30-day notice for tenants residing in a HOME assisted unit, as this is a statutory requirement.

OHCS does not provide a model lease agreement. However, Owners/Agents must execute Lease Agreements with tenants that incorporate specific provisions that establish tenant responsibilities and avoid certain prohibited provisions.

In addition to the Owner/Agent required lease, OHCS requires the use of the HOME Lease Compliance Form (OHCS.22H).

<u>Lease Provisions Must Include</u>:

- The legal name of the parties to the agreement and all other occupants,
- A description of the unit to be rented,
- Term of the lease,
- Rent amount,

- Utility information,
- Permitted and restricted use of the premises,
- Amount of the security deposit and/or fees charged,
- Signatures of all parties,
- Any security deposit collected must be refundable,
- Non-refundable “fees” for the purpose of covering the cost of cleaning the unit at the end of tenancy are not permissible.
- Provision that upon a 24-hour written notice to the tenant, OHCS, accompanied by the Owner/Agent, shall be permitted to enter the dwelling unit during reasonable hours for the purpose of performing an inspection;
- Mechanism that will allow termination of the agreement and eviction for violation,
- Provision that to terminate tenancy or refuse to renew the lease of a HOME assisted unit, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before termination of tenancy;
- Provision that the tenant(s) must provide accurate information to determine HOME Program eligibility at move-in and required re-certifications, and failure to provide such information and cooperate with the re-certification process will be deemed a violation of the lease;
- Provision that the tenant must execute a release for verification of utilities on an basis, unless utilities are included in rent, or the property uses the PHA allowance rather than actual consumption;
- Clause that the tenant will receive a 30-day advance written notice of any increase in the monthly rent,
- Must clearly state that the Owner/Agent reserves the right to adjust tenant rents, in accordance with the HOME rent limits and in the event a tenant’s income increases above the low-income or very low-income limits for the unit type the tenant occupies;
- Provision that any material misrepresentation in the tenant’s application for the leased premises, whether intentional or otherwise, may be treated by the owner, at the owner’s sole discretion, as an act of default under the lease and all remedies available to the owner in the event of other defaults shall likewise be available to the owner in such case.

<u>Prohibited Lease Provisions Include:</u>

- Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- Agreement by the tenant that the owner may take, hold, or sell personal property of the household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved from the unit. The owner may dispose of this personal property in accordance with state law.
- Agreement by the tenant not to hold the owner or owner’s agents legally responsible for any action or failure to act, whether intentional or negligent.
- Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
- Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
- Agreement by the tenant to waive any right to a trial by jury.

- Agreement by the tenant to waive the right to appeal or otherwise challenge in court a court decision in connection with the lease.
- Agreement by the tenant to pay attorney fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. If the case is lost, the tenant, however, may be obligated to pay costs.

NEW

Compliance Responsibilities during Period of Affordability

OHCS Approval of Changes to Rent and Utility Allowances: HUD will publish the HOME Program Rents on an annual or periodic basis. Depending upon HUD's calculations, the HOME Program Rents may increase or decrease. The HOME recipient is responsible for recalculating HOME maximum monthly rents and utility allowances on an annual basis. OHCS must review and approve all recalculations of rent and utility allowances prior to any changes being implemented. Tenants must have at least 30 days written notice of any increase. All increases are also subject to other provisions of the lease agreements.

Financial Oversight during Period of Affordability: HOME funded projects with 10 or more HOME assisted units are subject to OHCS examination of the financial condition of the project. The purpose of this requirement is to identify financially troubled projects before the problems become severe. OHCS will take action if financial problems are identified.

NEW

Inspection Standards during Affordability Period

Uniform Physical Condition Standards (UPCS) are national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. These standards are now adopted for the HOME Program, and will be the basis for ongoing compliance monitoring of HOME funded projects.

During the period of affordability, the HOME recipient must ensure HOME-assisted units comply with all local housing code requirements as well as the Uniform Physical Condition Standards (UPCS). OHCS will conduct on–site inspections of HOME-assisted rental housing to determine compliance with property standards and to verify compliance with other applicable HOME regulations such as tenant income certifications and rental charges. OHCS will conduct onsite inspections every three years for projects containing one to four units; every two years from projects containing five to twenty-five units; and every year for projects with twenty-six or more units.

Conflict of Interest

No member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement. The Grantee shall incorporate, or cause to be incorporated, in all such contracts, a provision prohibiting such interest pursuant to the purposes of this section.

No person who is an employee, agent, consultant, officer, or elected or appointed officer of the HOME Grant recipient, who have exercised or currently exercise any functions or responsibilities with respect to activities assisted with HOME funds may obtain financial interest or benefit from a HOME assisted project. This includes themselves or those with whom they have family ties or business ties during their tenure and for one year thereafter.

No owner, developer, or Grantee of a project assisted with HOME funds (or officer, employee, agent, or consultant of the owner, developer, or Grantee whether private, for profit or non-profit, including Community Development Organizations, when acting as an owner, developer, or Grantee) may occupy a HOME-assisted affordable housing unit in the project. This provision does not apply to an employee or agent of the owner or developer of a rental housing project who occupies a HOME-assisted unit as the project manager or maintenance worker, if the employee or agent is otherwise qualified.

NEW **Terminated HOME Projects**

In accordance with 24 CFR Part 92.205(e)(1), when HOME funds are expended for a project that is terminated prior to completion, for whatever reason, the recipient must repay the HOME funds to OHCS, which will then repay them to HUD. OHCS is required by HUD to terminate any project that does not meet the HOME requirements for affordable housing (affordability provisions, income targeting, property standards, etc.)