

# HOME Investment Partnerships Program FAQs

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Description:

This document contains the HOME Investment Partnerships Program FAQs posted on the OneCPD Resource Exchange website (<https://www.onecpd.info/home/>). The FAQs are organized by topic.

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# **Community Housing Development Organization**

## CHDO Set-Aside Funds

### What types of activities qualify to use CHDO set-aside funds?

Updated: 11/22/13

CHDO set-aside funds may be used for projects that are owned, developed, or sponsored by a nonprofit that qualifies as a CHDO as defined at 24 CFR §92.2. Previously, these roles were limited to development activities—that is, projects that involved acquisition, rehabilitation, and/or new construction of housing for sale or rent to low-income families. However, the 2013 HOME Final Rule amended the definitions of these roles and now nonprofits can also own and manage HOME-assisted housing that it does not develop. CHDO set-aside funds may **not** be used for administering tenant-based rental assistance or downpayment assistance programs (except in combination with a development project in certain circumstances). HUD provides a detailed definition of the roles of owner, developer, and sponsor for rental and homebuyer projects in the HOME regulation §92.300(a).

### Can CHDO set-aside funds be used to provide downpayment assistance?

Updated: 11/22/13

Yes. When a CHDO provides downpayment assistance to a buyer of a property that it developed with CHDO set-aside funds, it can use additional CHDO set-aside funds to provide downpayment assistance to that buyer. The 2013 Rule limits this assistance to no more than 10 percent of the total amount of HOME development funds. The 10 percent limitation only applies when additional CHDO set-aside funds are used to provide the homebuyer assistance and to projects for which funds were committed on or after August 23, 2013. When a CHDO administers a downpayment assistance **program**, it is acting as a subrecipient, not a developer of affordable housing; this is not an eligible use of set-aside funds per §92.300.

### What does the change from CHDO *reservations* to *commitments* mean to a PJ?

Updated: 11/22/13

In the 2013 Rule, changes to the HOME regulations at §92.300(a)(1) require a PJ to **commit CHDO set-aside funds to a specific project** within 24 months of receiving its HOME allocation. The PJ must enter into a written agreement(s) with one or more CHDOs that the PJ certifies meets the definition a CHDO (as defined at §92.2) and has the capacity to undertake the proposed project in which a CHDO will own, develop, or sponsor an affordable housing project. There must be a written agreement with the CHDO that meets the requirements of §92.504(c). This requirement became effective on October 22, 2013 and applies to all projects that receive a commitment of CHDO set-aside funds on or after that date.

### Can a PJ provide CHDO set-aside funds to a CHDO that has the capacity to own and manage rental housing, but does not have the capacity to develop a project?

Updated: 11/22/13

Yes. The 2013 Rule codifies the definition of “**owner**” of rental housing to *clarify* that a CHDO may own and manage affordable housing in this way. The *change* to the definition of CHDO in 92.2 requires the PJ to determine and certify that the CHDO has the capacity to own and manage the rental housing. As an owner, a CHDO without development capacity can acquire an existing property that meets the HOME property standards (see §92.251) and then own and manage that property. Prior to the 2013 amendment, a CHDO could use set-aside funds to purchase a developed property that did not require rehabilitation however, that CHDO was nevertheless required to have capacity to develop affordable housing.

Alternately, in a sponsorship situation, a CHDO (or any other nonprofit) could be the ultimate owner and manager of a property that is developed by another CHDO that serves as “**sponsor**” of the project. The CHDO sponsor develops the property, and once development is completed, conveys the property to a pre-determined nonprofit entity that will own and manage the property during the affordability period. In this situation, the entity that develops the property as the project sponsor must be a qualified CHDO with development capacity; however, the entity that ultimately owns and manages the property could be any nonprofit, including another CHDO that has

the capacity to own and manage the project. Project sponsorship in this form has been a permissible use of CHDO set-aside funds and this has not changed with the 2013 Rule.

## **Has the definition of *developer* of rental housing changed under the 2013 Rule?**

Updated: 11/22/13

Yes. Effective August 23, 2013, a CHDO that serves as a developer of rental housing must be in sole charge of all aspects of the development of the property, and must own the property during development and throughout the affordability period. Previously, a CHDO could develop a property that it did not own, under contract with the property owner. This is no longer permitted under the developer definition in 24 CFR 92.300.

## **CHDO Deadlines**

### **What are the effective dates of the 2013 Rule changes related to CHDOs?**

Updated: 11/22/13

For the most part, the amendments to the definition of CHDO (found at §92.2) and other amendments related to CHDOs at §92.300 became effective on August 23, 2013. There are only two changes related to CHDOs with delayed implementation dates:

- The change in the definition of *commitment* at §92.2 that no longer permits PJs to *reserve* HOME funds for projects that will be identified at a later date became effective on October 22, 2013. This change requires PJs to commit CHDO set-aside funds to a specific project for a specific amount of HOME funds via a signed and dated written agreement within 24 months of the PJ's receipt of HOME funds. This provision will be implemented by HUD for all commitment deadlines that occur on or after January 1, 2015.
- The requirement that PJs must expend CHDO set-aside funds within 5 years of receipt of HOME funds [found at §92.500(d)(1)(C)] becomes effective on January 1, 2015.

# Cross Cutting Requirements

## Environmental Review

### **What effect does the changing definition of commitment at 24 CFR 92.2 have on the practice of utilizing a conditional HOME Commitment prior to the completion of a full environmental review?**

Updated: 1/27/2014

The 2013 HOME Final Rule revised the definition of commitment to ensure that participating jurisdictions could account for the use of HOME program funds. When a PJ commits HOME funds, it must execute a binding written agreement, ensure that all necessary financing has been secured for the project, establish both the budget and schedule for the project and complete the requisite assessment of market demand, underwriting and subsidy layering per the criteria established in the regulations at 24 CFR 92.2.

The HUD Environmental Review regulations, 24 CFR part 58, require that PJs shall not commit HOME program funds to a project prior to completion of an environmental review. It is possible however to make a “conditional commitment,” in which the PJ conditions the commitment of HOME funds on the successful completion of the environmental review. Therefore, while the 2013 Rule changes the definition and requirements for a valid commitment of HOME funds, a PJ may still enter into an agreement for the “conditional commitment” of HOME funds for a specific project prior to the completion of the environmental review process. A conditional commitment (i.e., pending environmental review) may be included when determining whether the commitment and CHDO reservation requirements of 24 CFR 92.500 (d) have been met.

# Homebuyer Housing

## Homebuyer Program Administration

**The 2013 HOME Final Rule imposes a requirement that any homebuyer that receives HOME downpayment assistance or buys a HOME-assisted unit must have housing counseling. What type of homebuyer counseling does the HOME program require?**

Updated: 11/22/13

Effective August 23, 2013, any homebuyer that enters into a written agreement for HOME assistance (i.e., downpayment or closing cost assistance) or enters into a sales contract for the purchase of a HOME-assisted unit must receive housing counseling. See §92.254(a)(3).

While the HOME regulation does not specify the type or duration of counseling that the homebuyer must receive, HUD recommends that PJs review and adopt the benchmarks for counseling established by the National Industry Standards for Homeownership Education and Counseling available at: <http://www.homeownershipstandards.com/Home/Standards.aspx>.

When implementing this requirement, PJs should consider:

- Duration of the housing counseling (minimum number of hours)
- Educational content of the counseling (pre or post purchase, credit counseling, introduction to homeownership, how to maintain a house, etc.)
- Form of counseling (one-on-one, small group, classroom setting)
- Who will provide the counseling (PJ staff, subrecipient, contractor, developer)
- How the PJ will ensure the counselors are qualified.

**Can the PJ use HOME funds to pay for required homebuyer counseling?**

Updated: 11/22/13

While the HOME statute prohibits PJs from using HOME funds to administer a homebuyer counseling program, costs related to counseling a HOME-assisted homebuyer may be charged as eligible project-related soft costs in accordance with §92.206(d)(6), or administrative costs in accordance with §92.207(b). Housing counseling expenses may only be charged as project-related soft costs if the counseled homebuyer ultimately receives HOME assistance, and the cost of housing counseling when added to the amount of HOME assistance does not exceed the HOME maximum per-unit subsidy limit. When housing counseling is provided to a homebuyer that ultimately is not assisted with HOME funds, the cost of counseling must be charged as administrative costs, subject to the ten percent administrative cost cap.

PJs may also choose to pay for required homebuyer counseling with other federal, local, or private funding, if available, or charge reasonable fees to homebuyers in accordance with §92.214(b)(1)(ii). Any fee charged to a potential homebuyer for the cost of housing counseling must be reasonable and not create an undue burden or impediment to low-income families seeking assistance.

**Is a PJ allowed to use a for-profit or nonprofit lender to administer its HOME homebuyer assistance program if that lender provides both the HOME financing and other mortgage financing to HOME-assisted homebuyers?**

Updated: 11/22/13

Yes, a PJ may allow a nonprofit or for-profit lender to provide both HOME homebuyer assistance and other mortgage assistance to a homebuyer as long as the PJ has implemented the following safeguards now required by §92.254(e):

1. The assistance is provided only as specified in a written agreement between the PJ and the lender. This agreement must specify the forms, amounts, and any conditions of homeownership assistance that the lender is authorized to provide.

2. Before any HOME assistance is provided, the PJ must either determine the family's income-eligibility for HOME assistance itself, or must verify the income determination done by the lender or another party. The PJ also must inspect the housing for compliance with applicable property standards in §92.251.
3. The for-profit or nonprofit organizations are not permitted to charge fees (such as origination fees or points) to the family for the HOME homeownership assistance that the organization provides. (Reasonable administrative costs may be charged to the HOME program as a project cost.) If the lender charges fees for the first mortgage (non-HOME funds), then the PJ must review these costs and deem them to be reasonable. These requirements are effective August 23, 2013:

These safeguards will ensure that there is not a conflict of interest, as the lender may have a financial incentive to provide HOME assistance to homebuyers potentially jeopardizing the lender's objectivity in assessing the qualifications of the buyer or the eligibility of a property for HOME assistance.

## Homebuyer Program Deadlines

### **Under the 2013 HOME Final Rule, in what timeframe must HOME homebuyer housing units be sold to income-eligible homebuyers?**

Updated: 11/22/13

Effective August 23, 2013, the 2013 Rule requires a ratified sales contract\* with an eligible homebuyer for HOME-assisted housing within 9 months of the date of completion of construction or rehabilitation. If a HOME-assisted homebuyer unit is not under a contract for sale within this timeframe, the unit must be converted to a rental housing unit and rented to an income-eligible tenant, or the HOME funds invested in the unit must be repaid. This requirement applies to all projects to which HOME funds are committed on or after the August 23, 2013 effective date. It does not affect units that are already built or to which HOME funds were committed before the effective date. When committing FY 2012 and FY 2013 funds, PJs must be cognizant of possible overlapping requirements related to the Consolidated and Further Continuing Appropriations Acts of 2012 and 2103.

Once converted to rental, the unit is subject to the HOME rental housing requirements in accordance with §92.252.

\*If the PJ has an established lease-purchase program and executes a lease-purchase agreement with an income-eligible tenant/homebuyer within the 9-month deadline, the property is considered to be under contract and in compliance with this requirement.

### **In what timeframe must HOME homebuyer housing units be sold to income-eligible homebuyers when the 2013 HOME Final Rule and the Consolidated and Further Continuing Appropriations Acts of 2012 and 2013 overlap?**

Updated: 11/22/13

The 2013 HOME Final Rule requires a ratified sales contract\* with an eligible homebuyer for HOME-assisted housing within 9 months of the date of completion of construction or rehabilitation, while the *Consolidated and Further Continuing Appropriations Acts of 2012 and 2013* establish a 6 month period for selling to an eligible homebuyer. HOME homebuyer projects funded with FY 2012 and FY 2013 HOME funds on or after the August 23, 2013 are subject to the more stringent provisions of the *Consolidated and Further Continuing Appropriations Acts of 2012*, Public Law 112-55 (Nov 18, 2011), and the *Consolidated and Further Continuing Appropriations Acts of 2013*, Public Law 113-6 (March 26, 2013) which establish a **6-month period** for selling HOME homebuyer units or converting them to rental.

Once converted to rental, the unit is subject to the HOME rental housing requirements in accordance with §92.252.

\*If the PJ has an established lease-purchase program and executes a lease-purchase agreement with an income-eligible tenant/homebuyer within the 6-month deadline, the property is considered to be under contract and in compliance with this requirement

**In a multi-unit homebuyer project, if some units do not sell within the 9-month deadline, and local zoning restrictions prevent the conversion to rental, is the PJ required to repay the entire HOME investment or just the HOME funds invested in the unsold units?**

Updated: 11/22/13

The PJ is required to repay only the HOME funds that were invested in the unsold units. In this situation, the PJ must amend the project in IDIS and in its local records to remove the unsold units from the project. The PJ must repay the costs associated with the unsold units based on the original cost allocation used for the project (e.g., actual cost per unit or pro-rata cost allocation). In IDIS, the repaid funds are used to reduce the draws and activity funding associated with the unsold units. Instructions for repaying funds can be found in HOME FACTS Vol.1, No.1 (<https://www.onecpd.info/resource/2978/home-facts-vol1-no1-repayment-to-pj-home-investment-trust-fund-treasury-account/>)

## Lease Purchase Programs

**Does the execution of a lease-purchase agreement meet the requirement to sell the HOME-assisted unit within 9 months?**

Updated: 11/22/13

Yes. Under the 2013 Final Rule requirements, if the PJ has an established lease-purchase program and an income-eligible tenant/homebuyer executes a lease-purchase agreement for a homebuyer unit within the 9-month deadline, the property is considered to be under contract and in compliance with this requirement. The agreement must comply with the HOME lease-purchase requirements specified at §92.254(a)(5)((ii)(A)(7). The unit must be purchased by the tenant/homebuyer within 36 months of signing the lease-purchase agreement with the PJ. The PJ has 42 months after project completion to transfer the property to a homebuyer or it must convert the unit to rental housing and follow the HOME rental housing rules under §92.252.

HUD will issue additional guidance on lease-purchase programs in the near future.

# Homeowner Rehabilitation

## Homeowner Rehabilitation Administration

**In an owner-occupied rehabilitation program, is it permissible for a PJ to provide HOME assistance to a homeowner who has a “living trust” or a life estate on the property?**

Updated: 11/22/13

Yes. In addition to traditional forms of ownership interest (defined under “homeownership” at §92.2), the 2013 Rule identifies four additional forms of ownership interest under which an owner can qualify for assistance for homeowner rehabilitation programs only, effective August 23, 2013. These include:

- Life estates
- Inherited property
- Inter vivos trust (i.e., a “living trust”)
- Beneficiary deeds.

For each of these new forms of ownership interest, the beneficiary must (1) be low-income and (2) use the property as his/her principal residence at the time of receiving HOME assistance. Homeowner rehabilitation activities are not subject to long-term affordability requirements under HOME; however, PJs may choose to require continued occupancy for some specified period of time when providing this type of assistance. For more information on these types of legal mechanisms and the requirements for each, refer to §92.254(c) of the 2013 Rule.

# Planning and Coordination

## Real Estate Market Analysis

### **Do *all* projects require a market assessment, including small rental or homebuyer development projects?**

Updated: 1/27/2014

The 2013 Rule requires that prior to committing HOME funds-the PJ must evaluate the feasibility of all rental or homebuyer development projects regardless of size (number of units) or activity type (i.e., acquisition only, acquisition/rehabilitation, rehabilitation, or new construction). One component of this evaluation is an assessment of the current market demand in the neighborhood in which the project will be located. The 2013 Rule makes two exceptions to this requirement - homebuyer downpayment assistance only projects (i.e., homebuyer projects that do not also include rehabilitation or new construction) and owner-occupied rehabilitation projects.

Small development projects are not exempt from this requirement because the purpose of the requirement is to ensure that every unit in which the PJ invests HOME funds results in housing that will be rented or sold as quickly as possible, in order to provide affordable housing for low- and very low-income families. HUD recognizes that the PJ may approach the market assessment of a small rental or homebuyer development project differently than the assessment of a large project. HUD will issue additional guidance for PJs on market assessment in the near future.

# Program Requirements

## Property Standards

### **The 2013 HOME Final Rule substantially revises property standards requirements for development projects. When do these requirements become effective, and how should the PJ approach implementation?**

Updated: 1/27/2014

Pursuant to §92.3(b), the new property standards requirements (see §92.251) apply to projects to which funds are committed on or after January 24, 2015. HUD delayed the effective date of the property standards requirements in order to have time to issue additional guidance and provide technical assistance to PJs and to give PJs time to consider how to implement these changes in a thoughtful and effective manner.

Initially, HUD plans to issue guidance regarding how to incorporate the Uniform Property Condition Standards (UPCS) into the property standards for rehabilitation and acquisition. Until this guidance is issued, PJs may want to update their property standards for new construction by reviewing applicable State or local property standards. If there are no State and/or local codes, PJs need to update the required property standard for new construction to the applicable ICC, or IRC codes.

In addition to evaluating and updating the property standards themselves, PJs need to evaluate their current **processes** for inspecting properties to ensure compliance with property standards. The 2013 Rule requires the following inspections and project reviews:

- An initial property inspection to determine the extent of work to be completed, for rehabilitation projects
- PJ review and approval of project plans (work write-ups) and cost estimates
- Construction progress and final inspections to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.

Once the property standards are updated and inspection procedures are adopted, in order to implement the requirements by January 2015, PJs will need to develop checklists and other tools to implement the new inspections and reviews; train staff and program partners in the new requirements and the inspection procedures; identify how the PJ will determine whether staff are qualified to review and approve plans, construction documents, and construction work. HUD plans to offer additional guidance, training and technical assistance for PJs to assist them in implementation of §92.251.

PJs will also need to incorporate these new requirements into its the written agreements with program partners, and ensure that its monitoring efforts include verifying compliance with these new requirements.

Note: The 2013 Rule also changes requirements to the ongoing property standards and inspection procedures for housing in the affordability period. See §92.251(d) and §92.504(d) related to project completion inspections and ongoing property inspections for additional information.

# Maximum Per Unit Subsidy

## Where can I find the 221(d)(3) limits for 2013?

Updated: 2/26/2014

Starting in 2013, Section 221(d)(3) program limits will no longer be calculated and published by HUD due to the elimination of the 221(d)(3) Mortgage Program. The HOME statute and the HOME regulation at 24 CFR 92.250(a) limit the amount of HOME funds that a PJ may invest in a HOME-assisted unit. The maximum HOME per-unit subsidy limit is set at the basic Section 221(d)(3)(ii) mortgage limit for elevator-type projects, by bedroom size (with adjustments up to 240% for “high cost” geographic areas).

Because HUD is no longer calculating 221(d)(3) limits, PJs must continue to use the **2012 published Section 221(d)(3) limits for all HOME projects, until further notice from the Office of Community Planning and Development at HUD**. These limits were published in December 2011, became effective January 1, 2012, and are available at <http://www.gpo.gov/fdsys/pkg/FR-2011-12-22/pdf/2011-32811.pdf>.

# Rental Housing

## HOME and Public Housing

### Can HOME funds be used for acquisition, rehabilitation or new construction of housing that is or will become public housing under Section 9 of the 1937 Act?

Updated: 1/27/2014

**No. HOME funds cannot be used in public housing units that receive Public Housing Capital and Operating funds under section 9 of the 1937 Act.** The HOME authorizing statute specifies that HOME cannot be used to provide assistance to units that receive funds authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds). For example, a PJ cannot provide HOME funds to a local public housing agency to rehabilitate a public housing project that it owns and operates with HUD Operating Funds.

### Can HOME funds be used in a project that is also receiving Capital Funds or Operating Funds?

Updated: 1/27/2014

**Yes. HOME funds can be used in an affordable housing project that also contains public housing units assisted under section 9 of the 1937 Act provided that the units are separately designated and HOME funds are not used in the public housing units.** No HOME funds can be used in a unit that receives public housing Capital and Operating Funds. Therefore, all development costs must be allocated to maintain the separation of units. This also means that the project must have fixed HOME units, and must have separate waiting lists and rent structures for the HOME and public housing units.

For example, in a 100-unit rental housing project funded with both HOME-assisted units and public housing units under section 9 of the 1937 Act, the PJ can designate 10 units as HOME-assisted and the remaining units as public housing. HOME can pay only for the costs of developing the ten HOME-assisted units. The units must be designated as fixed units. HOME rents limits apply to the HOME units. Public housing rents apply to the remaining units. A separate waiting list must be maintained for the two types of unit.

### Can HOME funds be used for HOPE VI-funded public housing units developed under section 24 of the 1937 Act?

Updated: 1/27/2014

**Yes. HOME funds may be used for HOPE VI-funded public housing units developed under section 24 of the 1937 Act, provided there is no Capital Fund assistance used.** Units developed with both HOME and HOPE VI funds may receive Operating Funds under section 9 of the 1937 Act. These units may receive Capital Funds for rehabilitation or modernization only if the 20-year period of affordability required by the HOME regulations has expired. HOME rent limits apply. [Note, this exception is clarified at §92.213(b).]

For example, consider a HOME-assisted rental project with 100 units of housing that involves acquisition and rehabilitation. The entire project can be funded with HOME and HOPE VI and **all 100 units** can be restricted by both programs (i.e., all the units are combined HOME/HOPE VI). However, no Capital Funds [under section 9(d)] may be provided in the development of the HOME-assisted units. After the 20-year HOME period of affordability has expired, Capital Funds may be invested for modernization or rehabilitation.

## Leases and Occupancy

### **What are the new lease-up and occupancy deadlines and associated marketing requirements for HOME-assisted rental units and how will HUD implement them?**

Updated: 1/27/2014

The 2013 Rule adds two specific deadlines for the initial lease-up/occupancy of HOME rental units:

- Within **six months** of the date of project completion, every HOME-assisted rental housing unit must be occupied by income-eligible tenants. If a unit is not leased up, the PJ must submit marketing information to HUD and, if appropriate, submit a new marketing plan.
- Within **18 months** of the date of project completion, if any housing unit is not yet rented to an income-eligible tenant the PJ must repay HOME funds invested in the unoccupied HOME unit(s).

Project completion, defined at §92.2, means that title transfer requirements and construction work have been performed, the project complies with all HOME requirements, and the final drawdown of HOME funds has been disbursed. For purposes of implementing this definition, HUD will track deadlines using the date that a project is completed in IDIS.

For example, consider a project with 20 HOME-assisted rental units. The project is completed and a Certificate of Occupancy is issued on April 1, 2014. On October 31, 2014 (six months later), five of the units remain vacant. The PJ will need to work with the owner to prepare and submit documentation to HUD on what marketing steps will be taken to rent these vacant units as soon as possible. The PJ may wish to impose a schedule on the owner for undertaking these steps. In the event any of these five units have not been leased a year later (by October 31, 2015), the PJ must repay the HOME funds invested in those units.

These occupancy deadline and marketing requirements apply to projects to which HOME funds are committed on or after August 23, 2013.

## Rental Housing and Utility Allowances

### **Section 92.252(d) requires the participating jurisdiction (PJ) to use the HUD Utility Schedule Model to determine a project's annual utility allowance or otherwise determine a project's utility allowance based upon the utilities used at the project. Is this requirement applicable to a PJ's entire rental housing portfolio?**

Updated: 11/22/13

No. HUD is making a technical correction to the 2013 HOME Final Rule which will delay the effective date of this requirement until January 24, 2015. When it becomes effective, PJs will only have to meet this requirement for projects that it funds on or after January 24, 2015. Also, HUD will issue further guidance on other models that can be used to determine a projects annual utility allowance.

# **Tenant-Based Rental Assistance**

## TBRA and Utility Allowances

**Section 92.252(d) requires the participating jurisdiction (PJ) to use the HUD Utility Schedule Model to determine a project's annual utility allowance or otherwise determine a project's utility allowance based upon the utilities used at the project. Is this requirement applicable to a PJ's HOME Tenant-based Rental Assistance (TBRA) Program?**

Updated: 11/22/13

No, the requirement to use HUD's Utility Schedule Model is only applicable to HOME-assisted rental housing projects. However, PJs administering a TBRA program must establish a payment standard which represents the rent plus utility cost of moderately priced units that meet HUD HQS in the jurisdiction. Therefore, when tenants pay their own utilities, the PJ must establish a utility allowance amount that is deducted from the tenants' rent payment to the owner. HUD recognizes that Public Housing Authorities (PHAs) often administer a PJ's TBRA program and in the interest of reducing the administrative costs to TBRA administrators, the HOME Program permits the PJ to use the PHA's utility allowance schedule for its HOME TBRA program. The PJ may also use other HUD-approved methodologies to establish utility allowances for its HOME TBRA program.

# **Underwriting and Project Selection**

# Underwriting and Subsidy Layering

## What are the HOME Program subsidy layering and underwriting requirements? Is underwriting required for both homebuyer and rental activities?

Updated: 1/27/2014

PJs are required to undertake a subsidy layering and underwriting analysis of all development projects to which they provide HOME funds, rental and homeownership alike, with some exceptions described below. These specific requirements described below are in the 2013 Rule, and apply to projects with HOME funds committed on or after August 23, 2013. HUD also plans to issue additional guidance in this area.

- **Subsidy layering and underwriting requirements for rental and homebuyer *development* projects (§92.250).** The PJ must adopt subsidy layering and underwriting guidelines to ensure that it does not invest any more HOME funds (alone or in combination with other funds) than are necessary to the project and to ensure that the owner's/developer's profit or return on his/her investment is appropriate and reasonable, given the size, type and complexity of the project.

When selecting projects to receive HOME funds, the PJ must then use these guidelines to evaluate all proposed HOME-assisted projects **prior to committing its HOME funds**. These guidelines must state how the PJ will:

- Examine the sources and uses of funds for the project to determine that the costs are reasonable to provide quality affordable housing throughout the affordability period. This is often referred to as "sustainable underwriting."
  - Assess, at minimum, the current market demand in the neighborhood in which the project will be located. The level of review in the market assessment may vary, depending on project scale and complexity.
  - Evaluate the qualifications of the developer, including experience and financial capacity.
  - Verify that there are firm written financial commitments for the project.
- **Exceptions to the above.** The subsidy layering and underwriting requirements do not apply as follows:
    - For owner-occupied housing rehabilitation projects, PJs are not required to conduct an underwriting review unless the HOME funds are provided in the form of an amortizing loan. Further, a market analysis and evaluation of developer capacity is not required. An assessment that the anticipated project costs are reasonable is required.
    - For downpayment assistance projects that do not involve development activity, a market analysis or evaluation of developer capacity is not required. Note, there are additional requirements in §92.254(f) for PJs to establish underwriting criteria for the purpose of determining a buyer's financial qualifications prior to providing HOME assistance to a buyer.

The PJ must conduct project underwriting **before** committing HOME funds to a project.