Revised, September, 2003

New York State
Housing Trust Fund Corporation

HOME Program

Monitoring Guide for
State Recipients and Subrecipients

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Contents

Introduction

Welcome to the New York State Housing Trust Fund Corporation's (HTFC) HOME Program. As a State Recipient or Subrecipient of HTFC's HOME Program, you are undertaking an important initiative to preserve and expand affordable housing for low-income households in your community. HTFC is pleased to assist you in this venture.

This Guide has been prepared to help you understand the monitoring and compliance requirements of the HOME Program. Please note: this Guide supplements, but does not replace or alter, the HOME Program Final Rule and your agreement with HTFC. Be sure to review and comply with those documents.

Who Should Use This Guide?

This Guide is designed primarily for public and not-for-profit organizations which have been provided HOME funds by HTFC to act as State Recipients and Subrecipients.

* State Recipients are local governments who are selected by the State to administer a local program with HOME funds.
* Subrecipients are not-for-profits selected for a similar program administration function.

Both State Recipients and Subrecipients will be collectively referred to as **"Local Program Administrators"** (or **LPAs**) in this Guide.

This Guide also may be useful to public, nonprofit, and for-profit developers who are funded by HTFC for a specific affordable housing project, rather than to run a local program. Project sponsors or developers, including community housing development organizations (CHDOs), will be referred to as **"Developers"** in this Guide. Not all sections of this Guide are directly relevant to Developers.

How To Use This Guide

This Guide organizes the major compliance requirements for the HOME Program in four parts:

I. Overview of Compliance Monitoring Issues
II. HOME Compliance Monitoring Procedures & Checklists
III. DHCR/HTFC Monitoring of LPAs

The first part of the Guide is a discussion of HOME Program requirements, including general monitoring and program requirements, occupancy requirements, property standards, other Federal requirements, and program administration standards. Each section includes

* Citation of the relevant sections of the HOME regulation;
* Reference to key source documents from HUD and HTFC, including HUD notices, memoranda, model series guides, HOMEfires, and other publications;
* Overview of the topic and the compliance requirements; and

* Advisory comments on compliance issues and file or recordkeeping recommendations that may help you to satisfy the requirements.

While regulations and notices are requirements and will be enforced, the recommendations and compliance forms in this Guide are advisory in nature and are not considered requirements. These comments and documents are offered to help you achieve a "safe harbor" for documenting compliance. You are encouraged, but not required to use them.

For HOME & HTFC Documents, Updates and Further Information

This Guide references a variety of HUD and HTFC publications that provide details about HOME Program requirements. HTFC recipients are responsible for obtaining copies of documents relevant to their activities.

The Statute governing HOME is the National Affordable Housing Act of 1990, Title II. The HOME Final Rule is published as 24 CFR Part 92 (Book 24 of the Code of Federal Regulations). Copies of the Statute, Final Rule, Notices, Model Guide series, and other HUD and HTFC documents can be obtained through one or more of the following sources:

* HUD's **HOME Program home page**: www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm -- Primary source for downloading the rule, program limits (income, rent, value limits), notices, HOMEfires, training materials and other HUD publications
* **Community Connections Clearinghouse**: www.comcon.org or **1-800-998-9999** - A HUD-funded service providing most HOME publications by mail or fax (only the publications list is downloadable), plus training schedules, weekly email broadcasts, and other HOME and HUD program information
* **HUDClips**: www.hudclips.org - source of HUD forms, handbooks and other documents
* **HUD USER**: www.huduser.org - source of major HUD publications and reports, some downloadable and some available at a cost
* **DHCR Office of Community Development home page**: www.dhcr.state.ny.us/ocd/ocd.htm - for DHCR manuals and HTFC HOME Program Disbursement Forms & Instructions for State Recipients and Subrecipients)

For downloading specific types of HOME documents, the key web bookmarks are:

HOME Regulation
www.hud.gov/offices/cpd/affordablehousing/lawsandregs/regs/home/homeregs.pdf
HOME Program Notices
www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/index.cfm
HOMEfires
www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm
HOME Forms
www.hud.gov/offices/cpd/affordablehousing/library/forms/index.cfm
DHCR/HTFC Publications
www.dhcr.state.ny.us/general/dhcrpub.htm

Most documents can be downloaded from one or more of the above web sites. To facilitate ordering of hard copies of documents that may not be downloadable from the websites, the reference document numbers or web sites are included in the Guide:

* Community Connections (ComCon) document number - generally these are in the format of "HO****", ending in a 4 digit number (other documents referenced begin with "RE" or "OT");
* HUD USER document number -- in the format of "HUD-****-CPD; and/or
* The web site bookmark.

If you see gray-highlighted text or blue hyperlinks, you can connect to the source with a CONTROL-CLICK (assuming you have an active internet connection.)

HUD Memoranda generally are not available from these sources, and must be requested from the HUD Office of Affordable Housing at (202)708-2684.

Federal programs are subject to changes and developments. The current rule was most recently amended on October 1, 2002 (for effect on October 31, 2002), and as of this publication date HUD is conducting consultation on several regulatory changes that are anticipated to be proposed over the next year, and new program limits, notices and other materials are issued annually. Therefore, it is essential to monitor these sources, particularly the HUD HOME Program home page, for any additional rule changes, notices and documents. Sign up for the HOME listserv or mailing list, which can be done at the HUD HOME Program home page listed above. This will provide emails notifying you of new documents and other information available on the website.

If you have any questions regarding the information contained in this Reference Guide or any other HOME Program questions, please contact HUD or your DHCR Regional Office.

* HUD Field Offices:

New York City	212-264-2885
Buffalo	716-551-5755

* DHCR/HTFC Regional Offices

Capital District	518-486-5012
New York City	212-480-7644
Syracuse	315-478-7179
Buffalo	716-847-7955

Part I

Overview of Compliance Monitoring Issues in the HOME Program

1. Overview of HOME Compliance Monitoring Requirements

Program Rule: **92.201(b)(3)** (State Recipients)
92.504(a) (Subrecipients & Developers)
92.504(d) (rental property inspections)

Documents	Source/Item No.
Monitoring HOME Program Performance: A Model Program Guide, 10/00	HO1198; HUD-2030-CPD
HUD Notice CPD-93-29, Field Office Monitoring of HOME Participating Jurisdictions, 9/9/93	HO1067 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9329.pdf
HOMEfires: PJ Responsibilities for Monitoring, 9/02; On-site Inspections, 2/01	www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm
HUD Memo, Tracking HOME Program Performance, 9/28/98	(202)708-2684

Overview:

Program rules permit States to use local governments as "State Recipients" and not-for-profits as "Subrecipients" to administer local programs on its behalf (hereafter referred to as Local Program Administrators, or LPAs.) However, HOME regulations hold the States responsible for ensuring that the LPAs comply with regulations. State Recipients must be reviewed as often as the State determines necessary to ensure compliance, while Subrecipients must be reviewed at least annually.

States also can award funds to public/private/nonprofit contractors and developers, including Community Housing Development Organizations (CHDOs), which will be referred to collectively as "Developers" herein. States must also review the performance of all Developers at least annually during the period of development and any applicable compliance period during occupancy.

In addition, rental housing projects also must be subject to on-site inspections to ensure compliance with property standards, rent limits and occupancy requirements. The rule requires a review of a "sufficient sample" of units and files to make a reasonable determination of compliance. The frequency of onsite file reviews and unit inspections is specified by the regulation:

* Projects with less than 5 ***total units*** (not HOME-assisted units) must be visited at least every three years
* Projects with 5 to 25 total units must be visited at least every two years
* Projects with more than 25 total units must be monitored annually onsite.

(Note: This schedule of on-site inspections does not relieve the jurisdiction (or any State Recipients or Subrecipients) of completing annual reviews, nor the owner of completing annual income certifications of occupants and maintaining the units to standards throughout the compliance period. It is merely the minimum frequency for reviews to be done on-site.)

When an LPA acts on behalf of the State in administering a local program with HOME funds, the LPA assumes the primary responsibility for monitoring on behalf of the State, and it must maintain records to demonstrate to the State that it is complying with those requirements.

Compliance/Monitoring Issues and Recommendations:

1. HTFC is required to monitor all LPAs and Developers. You should assume an annual visit, although in some circumstances the visit may be less frequent. A monitoring visit will generally consist of administrative interviews, file reviews, and sample unit inspections.

2. HTFC follows monitoring guides that are included later in this document, and will offer copies of the guides and occasional training to LPAs and Developers to help prepare for the monitoring visits.

3. Recordkeeping is a most critical aspect of monitoring. Files must be maintained and organized so that all documentation of compliance is readily available to the monitoring staff. Use of file checklists to organize files is highly recommended. See the recordkeeping section.

4. Any findings of noncompliance will be noted in the monitoring letter, and must be responded to in writing within 30 days, noting the corrective actions taken.

5. In addition to findings of non-compliance, monitoring staff may also make observations and recommendations intended to help you improve program administration. While these are not findings, you are urged to consider these recommendations.

6. Findings, observations and recommendations by HTFC on your local program may have an impact on future applications for financial assistance.

2. Compliance & Monitoring Obligations of Local Program Administrators

Program Rule: **92.504(c)(1) & 92.508**(b) (State Recipients)
92.504(c)(2) (Subrecipients)

Documents	Source/Item No.
Monitoring HOME Program Performance: A Model Program Guide, 10/00	HO1198, HUD-2030-CPD
Monitoring Checklists from Monitoring HOME Program Performance	www.hud.gov/offices/cpd/affordablehousing/library/checklists/index.cfm

Overview:

When a State selects a local government as "State Recipient" and/or a not-for-profit as "Subrecipient", that entity assumes responsibility for all administrative functions for implementing the HOME program activity and ensuring compliance, except for environmental reviews and inter-governmental review (for which the recipients are responsible for collecting and submitting the information to HTFC). Each LPA is required to:

* assemble and maintain the files specified in 92.508(a)(2) - (7) - except for the CHDO records listed in (a)(4) - to ensure records of compliance; and
* conduct the monitoring activities of the individual projects it administers as described in this guide.

These requirements should be defined in the written agreement with HTFC, and must conform to the above-referenced sections of the regulations.

Compliance/Monitoring Issues and Recommendations

1. Compliance is achieved by careful implementation and recordkeeping. Design your file structure to make certain that all of the items in 92.508(a) are accessible (either by direct file or cross-referencing.) Where possible, use the file checklists attached in Section II of this guide.

2. When monitoring individual projects, use the monitoring instruments in Section III of this guide, or the monitoring checklists from Monitoring HOME Program Performance, listed above in the reference documents.

3. Beyond program/project completion, major ongoing compliance activities are to:
   * manage program income (if applicable, see Section 25); and
   * monitor units for ongoing occupancy compliance (i.e., principal residence & resale/recapture for homeownership, income eligibility, occupancy and rents for rental units).

4 For any project or unit found to not be in compliance, a written notice should be sent to the owner, with a copy to HTFC, citing the specific violation and regulatory reference, and providing instructions for correcting the problem or responding within 30 days. Any finding should be

monitored until resolved. If a property owner refuses to respond or comply, contact HTFC for guidance.

5. Records should be kept of any monitoring activity, including field notes, data collection forms, and monitoring letters for HTFC inspection.

3. Eligible Activities

Program Rule: **92.206 - 92.214**

Documents	**Source/Item No.**
HUD Notice CPD 94-17, Field Guidance on Manufactured Housing under the HOME Program, 7/15/94	HO1100 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9417.pdf
HUD Notice CPD 94-01, Using HOME Funds for SRO and Group Housing, 1/4/94	HO1078 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9401.pdf
HUD Notice CPD 01-01, Guidance on Combining Program Funds of the McKinney Act Programs, the HOPWA Program, with the HOME Program, 1/17/01	HO1199 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd0101.pdf
HUD Notice CPD 96-07, Guidance on Tenant-Based Rental Assistance Under the HOME Program, 11/1/96	HO1143 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9607.pdf
HUD Notice CPD 97-8, Guidance on the Use of HOME Funds with HOPE VI and Public Housing Funds, 6/30/97	HO1155 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9708.pdf
HUD Notice CPD 96-09, Administrative Costs, Project-Related Soft Costs, and CHDO Operating Expenses, 12/20/96	HO1145 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9609.pdf
HUD Notice CPD-01-05, Use of HOME Funds for Projects to be Occupied by Children in Foster Care, 4/24/01	HO1203 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd0105.pdf
HUD Memo, LIHPRHA Eligible Projects & HOME, 7/30/95	(202) 708-2684
HUD Memo, Impacts of the 1999 Appropriations Act on HOME, 11/13/98	(202) 708-2684
Special Needs Housing and the HOME Program, May 2001	HO1206; HUD -2001-18-CPD

HOMEfires Eligibility of Back Taxes, 3/01 Using HOME Funds for Counseling, 6/97	www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm

Overview:

Eligible Activities. HOME funds may be used to develop and support affordable rental housing and homeownership through:

1. Acquisition of rental and/or homeownership housing (including assistance to home buyers);
2. New construction, reconstruction, or moderate or substantial rehabilitation of non-luxury ownership and/or rental housing with suitable amenities; and
3. Tenant-based rental assistance, including security deposits.

The housing must be permanent or transitional housing, and includes permanent housing for disabled homeless persons, and single-room occupancy housing. Emergency shelters are not permitted to be funded with HOME.

Manufactured housing is eligible under a variety of scenarios, including as replacement housing. [See HUD Notice CPD 94-17]

Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing. Land banking is not permitted with HOME funds.

Refinancing of homeownership properties is eligible to reduce the costs of ownership, but refinancing of rental housing is only permissible if identified as an activity in the jurisdiction's Consolidated Plan, subject to the requirements of 92.206(b)(2).

Loan guarantees are eligible, but are subject to certain limitations. [See 92.205(b)(2)]

Administrative funds are used to pay for program administration costs of the jurisdiction and its State Recipients/Subrecipients. In addition, project-related expenses can be charged to the project and reimbursed from project funds if the project goes forward. For example, rehab inspections may be charged to the individual projects rather than as an administrative cost.

Prohibited Activities & Costs. Some costs related to the provision of affordable housing are not eligible to be paid with HOME funds. These include reserve funds (except for initial operating deficits) and project-based rental assistance. These ineligible costs may be paid with other funds in the project, but not HOME funds.

HOME funds may also not be used for public housing. The 1998 Appropriations Act amended the HOME statute regarding use of HOME funds for Federal public housing (see Sections 519 & 522). It extended the prohibition of using HOME funds for modernization and operating subsidy to prohibit the use of HOME funds in new construction of Federal public housing with Public Housing Capital Funds as well. However, HOME may be used for other housing owned and operated by a local housing authority, including state-aided public housing, Section 8 housing and other publicly assisted housing.

HOME funds may not be used for HUD Rental Rehab projects under compliance agreements, or certain FHA-insured preservation projects.

HOME funds also should not be used to acquire property owned by the participating jurisdiction, unless acquired for the HOME project or as required by court settlements, nor can HOME funds be used to pay for delinquent taxes and fees on properties. [See 92.214]

There is also no "double-dipping." HOME funds may not be used to assist a previously assisted HOME project during its compliance period.

Compliance/Monitoring Issues and Recommendations:

1. While most costs related to acquisition and rehabilitation/construction are eligible, they are not without limit. Costs must be reasonable for providing housing of modest means in the community. The jurisdiction must determine the amount of assistance required, including a determination of reasonable costs, and place any documentation of that "underwriting" determination in the file.

2. Ineligible costs may not be funded with HOME funds, but they may be funded with other funds in the development. For example, while reserve funds are not an eligible use of HOME funds, they are considered critical to the long-term viability of rental and multi-family ownership projects. These should be funded with other sources, and the budget should document the allocation of the HOME funds to eligible costs.

3. If the project has previously received HOME funding, it is not eligible for additional HOME assistance until the original compliance period has ended. However, if the project has not yet been closed out, and additional funds are needed, they may be added to the HOME commitment. Because of the double-dipping restrictions, it is important that the level of rehabilitation be sufficient to ensure a useful life beyond the compliance period.

4. Do not plan to use HOME funds for anything related to Federal public housing without first consulting with HTFC and HUD. However, PHAs continue to be eligible for HOME funding for other housing activities not related to Federal public housing. State-aided public housing remains eligible.

4. Household Eligibility

Program Rule: **92.203**
92.2 definitions
92.252(h)

Documents	Source/Item No.
Technical Guide for Determining Income and Allowances Under the HOME Program, June 1999 (supercedes May 1994 version)	HO1180; HUD-1781-CPD
Sample Income & Verification Forms	www.hud.gov/offices/cpd/affordablehousing/library/forms/index.cfm
HUD Notice CPD-98-09, HOME Program Conflict of Interest Provisions, 7/14/98	HO1178 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9809.pdf

Overview:

Household Eligibility. All HOME-assisted units are required to be occupied by low income (LI) households. Low income is defined as 80 percent of the applicable area median income, adjusted for family size, as determined by HUD.

In the case of rental projects with five or more HOME-assisted units, at least 20 percent of the HOME-assisted units must be occupied by very low income (VLI) households. Very low income is defined as 50 percent of median.

In addition, the HOME statute requires that at least 90% of rental and rental assistance units initially serve households at or below 60% of median. As a result, rental programs and projects are expected to limit initial occupancy of (above 60 %) Low Income units to households meeting this standard.

Note: HOME regulations used adherence to Federal preferences, but Federal preferences were repealed by the 1998 Appropriations Act, and removed from the regulations as of 10/31/02.

Calculating Income. For purposes of determining eligibility for rental housing, HTFC requires the following:

* Rental Housing - LPAs and Developers of rental housing must follow the guidelines of the HUD Section 8 Program in computing a household's annual income as defined in 24 CFR Part 813.
* Homebuyer & Owner-Occupied Housing - LPAs and Developers may choose any one of the three methods permitted by HUD in 92.203(c). In addition to the Section 8 method, the IRS 1040 method or Census Long Form method may be chosen. However, one method must be chosen for each program, and that method must be used for all applicants.

LPAs should refer to the Technical Guide for Determining Income and Allowances for the HOME Program as referenced above for guidance on the differences among the three methods.

Annual income is based on the gross income of the household, or what is sometimes referred to as the "eligibility income" under Section 8. Section 8 adjusted income is not used for purposes of eligibility in HOME. Adjusted income is used in only four circumstances under HOME:

* determining rent payments for a VLI only when the option of having the tenant pay 30% of his or her income is used;
* calculating tenant contribution under the HOME Tenant-Based Rental Assistance Program;
* computing the rent of an over-income tenant occupying a HOME-assisted unit; and
* calculating certain relocation assistance payments under the Uniform Relocation Act.

One HOME exception to Section 8 rules is that, when determining the income of a homeowner for an owner-occupied rehabilitation project, the equity in the homeowner's principal residence is excluded from Net Family Assets.

Timing of Eligibility Determination. The determination of an applicant's income eligibility and eligibility as a family must be done within six months of the time at which the applicant receives assistance or occupies the unit. The statute was amended in 1998 to define the date of assistance for different homebuyer projects:

* *"in the case of a contract to purchase existing housing, at the time of purchase;*
* *in the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; or*
* *in the case of a contract to purchase housing to be constructed, at the time the contract is signed."*

For rental housing, family income and family size must be determined annually for the compliance period.

Verification. Income must be verified at time of application or certification. Verification can be done with third party written documents, written notes of third party conversations, or first-hand documentation provided by the recipient. Documentation should be maintained in the file.

For rental housing, verification of income is required when a tenant first occupies a unit, and every sixth year thereafter during the compliance period. In interim years, a tenant certification is sufficient. [See 92.252(h)]

Compliance/Monitoring Issues and Recommendations:

1. Make certain that you have the most recent income limits for the Program. These are issued by HUD annually, usually in the winter, and are available through the HOME web site or from the State. If your income limits are more than a year old, contact your DHCR Regional Office to obtain the most recent limits or check the HUD HOME web site at: www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/

2. To select the method of income calculation (rental housing and TBRA must use the Section 8 method, but homebuyer and homeowner programs may choose any of the three permitted methods under HOME), start with the Technical Guide referenced above. It explains all requirements and provides examples and cases for practice. If you have not previously conducted income certifications, consult with the local public housing agency or the State for guidance.

3. If you have the 1994 version of the Technical Guide (the "grey book"), it is still valid for using the Section 8 method, but it does not include the other methods now permitted by HUD (the IRS 1040 and Census Long Form methods).

4. You will need (1) an application that covers all required income sources, and (2) verification documents and procedures that comply with Section 8 rules. Sample application, release, and verification forms are provided in the Technical Guide referenced above, or online at: www.hud.gov/offices/cpd/affordablehousing/library/forms/index.cfm (look under Income Determinations). Use these forms or review your current forms to determine whether all required information is covered.

5. Decide when to certify that a family is eligible for HOME assistance - typically either are at time of application or at time of selection for assistance (see the notes above.) Certification at the time of application ensures that only eligible families are considered, avoiding disappointments to families that are selected but are determined to be ineligible. However, the time between application and delivery of assistance (e.g., a home purchase closing) could exceed the six-month "shelf life" of the certifications, requiring the income certification to be updated. Also, LPAs can face substantial work in certifying all applicants, even when only are few are likely to be selected for assistance. An alternative is to accept applications based on the applicant's representation that they are income eligible. Only those households that are selected for assistance are then put through the certification process. While this approach entails some risks of selected families being disqualified, it has the potential to yield significant administrative cost savings.

6. Eligibility is based upon gross income as defined by Section 8 and the HOME Technical guide. Do not adjust income for dependents or other deductions that are used for adjusted income. Adjusted income as defined by Section 8 is used only in four circumstances, noted above.

7. Make sure to obtain an applicant's written consent to verification and signed releases.

8. Set up files and checklists to collect and maintain the required documentation for all income sources. These files must be maintained for HUD/HTFC monitoring for the last five years, and 5 years after expiration of the compliance period or termination of tenancy.

9. While the income guidelines referenced above are used to compute family incomes for eligibility purposes (maximum eligible incomes), LPAs and Developers may also take into account other factors when providing the unit. For rental units, owners may use the screening procedures used for all tenants, provided these procedures do not violate fair housing laws. Differential treatment of applicants for assisted units (except for income certification requirements) is not

permitted. For example, landlord references or credit checks are permissible, provided they are done for all tenants.

10. For homeownership programs, loan underwriting criteria must come into play. Loan qualification should be coordinated with the timing of income certification to ensure that unnecessary certifications do not occur. The lending criteria may be established by participating lenders or the recipient, and should be reasonably related to the buyer's ability to undertake homeownership responsibilities and repay the loan. Again, fair housing standards apply.

11. Be sure to follow the conflict of interest provisions at 92.356 and in Notice CPD-98-11 if any party related to your organization wants to be considered for assistance under HOME. See Section 23 of this document. Consult with HTFC on procedures to follow.

5. Home Buyer Housing Requirements

Program Rule: **92.254**

Documents	**Source/Item No.**
Using HOME to Develop a Homebuyer Assistance Program, June 1999	HO1181; HUD-1782-CPD
Using HOME funds for Homebuyer Programs: Structuring Recapture and Resale Provisions, May 1997	HO1154; HUD-1674-CPD
Homeownership Options Under the HOME Program: A Model for Publicly Held Properties & Land Trusts, June 1999	HO1179; HUD-1781-CPD
Sweat Equity and the HOME Program , October 1993	HO1066; HUD-1425-CPD
Employer-Assisted Housing and the HOME Program, May 2000	HO1189; HUD-2019-CPD
HOMEfires: Repayment Obligations, 6/03	www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm
Housing Choice Voucher Program, 9/01	
Using HOME to Purchase 2-4 unit Owner-Occ. Projects, 9/97	
HOME downpayment assistance requirements, 8/98	
IDA Accounts, 7/98	
HUD Memo, HOME Promotes Homeownership, March 22, 1995	(202) 708-2684
HUD Memo, HOME and Fannie Mae, November 6, 1999	(202) 708-2684
HUD Mortgagee Letter 96-21, Using 203(k), April 26, 1996	(202) 708-2684

Overview:

HOME funds may be used to assist home buyers in the acquisition, construction, and/or rehabilitation of housing. All assisted home buyers must be low income; there is no very low income (VLI) requirement for homeownership.

In order to ensure that HOME is used to assist housing of modest means, the statute and rule impose a value limit of 95% of the median value of homes in the community (the FHA 203(b) limit). HOME-assisted units cannot exceed that value, after all HOME-assisted rehabilitation.

Beyond the value limit, low-income occupancy, and HQS at time of assistance, there is no ongoing compliance period or restrictions imposed by the rule.

The Rule states that home buyers are subject to use and resale restrictions for a minimum of 5 to 15 years, commensurate with the level of HOME assistance provided:

Amount of HOME Assistance to Unit	Minimum Compliance Period
Under $15,000	5 years
$15,001 - $40,000	10 years
Over $40,000	15 years

During this period, the home buyer must occupy the property, and must follow the either resale or recapture procedures imposed by the funding agency. HOME regulations permit the selection of the resale model or one of four recapture models, or some form approved by HTFC and HUD in advance. HTFC recommends that recipients adopt a model that lessens the amount repayable to HUD. Each LPA must have one approved method that applies to all the participants in its program; the choice should not be left to individual buyers. The principal legal documents that are used to enforce the resale restrictions are a promissory note and mortgage.

The HOME rules also permit lease-purchase, or rent-to-own, to be done following the homebuyer rules. **HTFC approval is required prior to use of this option**. HOME requirements are at 92.254(a)(5)(ii)(A)(7). Lease-purchase buyers need only be income qualified at the beginning of the lease-purchase period, and not at the time the purchase is completed. The full purchase must be completed within 36 months, or rental rules are triggered after 42 months. Please note that 92.255 permits the conversion of a HOME rental unit to ownership for the benefit of the current tenant at any time during the compliance period.

Compliance/Monitoring Issues and Recommendations:

1. For homebuyer programs, the purchase price must fall within the 203(b) limit. Documentation typically is a copy of the appraisal for the primary lender. For purchase plus rehabilitation, the property value after rehab (if applicable) needs to be compared to the current 203(b) limit published by HUD and documented in the file. The file must contain evidence that the home value has been determined according to one of the following four generally accepted methods:
   * Post-rehab appraisal;
   * In-house determination of values using a "comparables" method;
   * Current full market assessed value plus rehab cost; or
   * After-rehab assessed value estimate.
2. In the case of two-family houses or other buildings with rental units in addition to the owner-occupied unit, refer to the guidance in Section 7 below.
3. A signed and dated copy of the property standards (HQS) inspection certifying compliance should be in the file upon completion of construction/rehabilitation/acquisition.
4. Remember that LBP standards apply to homebuyer assistance programs as well as rehab, although standards are different. See Section 17 below.
5. A copy of the note and mortgage (or other HTFC-approved legal restriction) should be in the file. HUD guidelines permit exclusion of "development subsidies"; that is, the amount of HOME assistance that was provided to the project for costs over and above the fair market value of the

house, but require that any assistance amount within the value of the property be covered by the document. If you have questions regarding the amount of HOME assistance to include when HOME assistance exceeds value, contact HTFC for guidance.

6. LPAs should develop procedures for monitoring home buyer compliance. Two major requirements apply to the compliance period:

   * Resale or recapture provisions - These provisions should be self-enforcing if a note and mortgage (recapture method) or deed covenants (resale method) are recorded. If a sale occurs under the recapture method, the LPA should collect any recaptured proceeds and return them to HTFC as required. If a resale occurs under the resale method, the LPA is responsible for ensuring the new buyer is income-eligible, and that the sales price ensures affordability to the new buyer and a reasonable return to the seller. In either case, the LPA must notify HTFC prior to any sale or transfer of title. LPAs must also notify HTFC when foreclosure proceedings are begun against any assisted owner, by any other party.

   * Principal residency - The buying household certifies that it will use the unit as its "principal residence" for the compliance period. If it is not possible to do visual follow-up, a "do not forward" letter on an annual basis is probably sufficient. Phone calls should not be relied upon due to call forwarding.

7. Any "recaptured" funds from the prepayment of HOME mortgages prior to completion of the minimum Federal compliance period of 5 - 15 years are subject to the requirements in Section 25 below and ***must be returned to HTFC***. Repayments other than recapture are considered program income subject to the LPA's agreement with HTFC.

8. While lease-purchase is permitted with prior HTFC approval, LPAs are urged to use lease-purchase only when there are adequate counseling, credit repair assistance and other supports in place to ensure a high likelihood of success. Also, please be aware that both Freddie Mac and Fannie Mae have affordable lending products that are useful in a lease-purchase situation to streamline the financing requirements of lease-purchase.

9. During the period of affordability, the HOME mortgage can be subordinated to permit refinancing of the primary mortgage loan only under the following conditions:

   * the recipient must notify HTFC before a loan is subordinated to permit refinancing of the primary mortgage;
   * the new loan amount will not exceed the current balance of the existing first mortgage (no cash out);
   * the new loan can be used to repay all or a portion of the outstanding balance of the HOME loan, in addition to the primary loan, but can not be used to pay consumer or other non-housing debts;
   * the refinancing must result in a more affordable housing situation for the client;
   * all of the initial requirements for escrows, affordability, etc. must still be met.

6. Owner-Occupied Rehabilitation Requirements

Program Rule: **92.254**

Documents	**Source/Item No.**
Owner-Occupied Rehabilitation: A Direct Loan Model, January 1993	HO1025; HUD -1368-CPD
HOME Repair/Modification Programs for Elderly Homeowners, August 1993	HO1055; HUD -1408-CPD
Energy Conservation and Housing Rehabilitation Under the HOME Program, May 1994	HO1098; HUD-1469-CPD
Sample homeowner rehab forms & documents	www.hud.gov/offices/cpd/affordablehousing/library/forms/index.cfm

Overview:

HOME funds may be used to assist existing home owners in the rehabilitation of their housing.

The requirements for owner-occupied rehabilitation are similar to homebuyer, with one notable exception - the resale/recapture restriction for a 5 to 15 year period is not required. Otherwise, the requirements are the same:

* All assisted home buyers must be low income - at or below 80% of Area Median Income (AMI);
* In order to ensure that HOME is used to assist housing of modest means, the statute and rule impose a value limit of 95% of the median value of homes in the community (the FHA 203(b) limit). HOME-assisted units cannot exceed that value, after all HOME-assisted rehabilitation; and
* The home must meet Program property standards (HTFC requires Section 8 Housing Quality Standards) and compliance with lead-based paint standards in 24 CFR Part 35, Subpart J (for pre-1978 properties) after completion of rehabilitation.

Compliance/Monitoring Issues and Recommendations:

1. For owner occupied rehabilitation or purchase plus acquisition, property value after rehab (if applicable) needs to be compared to the current 203(b) limit published by HUD and documented in the file. The file must contain evidence that the home value has been determined according to one of the following four generally accepted methods:
   * appraisal;
   * in-house determination of values using a "comparables" method;
   * current full market assessed value plus rehab cost; or
   * after-rehab assessed value estimate.

2. Some LPAs have converted their elderly homeowner emergency repair program to HOME funding. There are several dramatic differences between HOME and CDBG rules, including the property standards and the value limit. If you adapting a local CDBG (or Small Cities) program, make certain that you examine how these rules will change the existing program design.

3. In the case of two-family houses or other buildings with rental units in addition to the owner-occupied unit, refer to Section 7 below.

4. Proof of ownership must be in the file for owner-occupied rehabilitation. Copies of deeds or local tax assessor documentation are acceptable.

5. A signed and dated copy of the property standards (HQS) inspection certifying compliance should be in the file upon completion of rehabilitation (or acquisition).

6. As noted, the regulation does not mandate that a resale/recapture provision be applied. However, given that public funds are being invested in a private structure, some performance requirements or repayment provisions should be considered. Generally, programs find it useful to impose a minimum five-year compliance period, usually secured by a note and mortgage. Other alternatives to a note and mortgage are permissible for owner-occupied rehab. Consult your DHCR regional office.

7. Since a compliance period is not mandated by the regulation, LPAs are not required to have monitoring procedures in place. However, it is recommended that LPAs have procedures for handling:

   * Recapture or repayment under the note/mortgage or other instrument;
   * Requests for prepayment or resubordination to refinancing (beware predatory lending); and
   * Workouts when assisted households encounter financial difficulties.

8. When subordination of the HOME lien is permitted, it must be subject to the following conditions:

   * the recipient must notify HTFC before a loan is subordinated to permit refinancing of the primary mortgage;
   * the new loan amount will not exceed the current balance of the existing first mortgage (no cash out);
   * the new loan can be used to repay all or a portion of the outstanding balance of the HOME loan, in addition to the primary loan, but can not be used to pay consumer or other non-housing debts;
   * the refinancing must result in a more affordable housing situation for the client;
   * all of the recipient's initial requirements must be met (for example, if the recipient requires that clients be current on their property taxes at the time of initial assistance, they should ensure clients are still current on property taxes.)

7. Owner-Occupied Homes with Rental Units

Program Rule: **92.254(a)(5)(ii)(A)(6)**

Documents	**Sources/Item No.**
HOMEfires: Using HOME to Purchase 2-4 unit Owner-Occ. Projects, 9/97	www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm
HUD Notice CPD 98-02, Allocating Costs & Identifying HOME-Assisted Units in Multi-Unit Projects, 3/18/98	HO1163 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9802.pdf

Overview:

HOME is permitted to be used to assist owner-occupied housing with rental units, such as a two-family house or a triple-decker. In such cases where both owner and rental units are considered HOME-assisted:

* The house is subject to the homebuyer resale/recapture restrictions as described in Section 5 (homebuyer) or Section 6 (owner-occupied rehab) as applicable; <u>and</u>

* The rental unit is subject to the tenant income eligibility, rent and lease restrictions, and property standards described in Section 8 of this Guide; Rental Housing Requirements.

In some circumstances where the HOME assistance is limited, it may be possible to designate either the owner or rental unit, but not both types of units, as HOME-assisted. Refer to CPD-98-02 for guidance in the cost allocation methodology to use in determining which units are to be designated as HOME-assistance. In such cases, whichever unit is HOME-assisted is subject to the applicable rules as described in Sections 5, 6 or 8:

* If the owner's unit is the HOME-designated unit, and not the rental unit(s), then the owner assumes the role of a typical homebuyer under HOME and is subject to HOME's income requirements, affordability, and resale/recapture requirements. The rental units are not be subject to the HOME rental requirements. This would be an appropriate strategy where rental affordability and income levels are not a concern, and the LPA wants to simplify the buyer's management obligations.

* On the other hand, if the rental unit(s), but not the owner-occupied unit, are designated as HOME-assisted, the rental units are subject to the typical HOME affordability and rent restrictions. The owner, however, is not subject to income limits, affordability, or resale/recapture requirements. This would be appropriate where the targeted buyers are not income-eligible.

HTFC requires the LPA to perform tenant income certifications in cases where the rental unit is considered HOME-assisted, and should provide or approve the ***written lease*** between the landlord and tenant.

Compliance/Monitoring Issues and Recommendations:

1. Work with local lenders to identify the programs that are most advantageous to homebuyers of multi-unit structures. In particular, examine lender requirements with respect to the inclusion of rental income or net rental income in income available for PITI. Some lenders include net rental income, while some include a percentage of the gross rental income.

2. If two-family or other comparable mixed structures are being used in homebuyer programs, be sure to include training/counseling in:
   * Management of real estate (maintenance, occupancy management, etc.)
   * Income eligibility, rent limits and file documentation required for HOME-assisted units; and
   * Compliance requirements - including inspections.

3. In some cases, it may be advisable for the LPA to assume the responsibility for certifying and recertifying the eligibility of tenants to ensure compliance. Some homebuyers might not be equipped to meet the certification and documentation requirements of the program.

4. Remember that you will be required to inspect the rental unit at least once during the compliance period (i.e., for a 5 year compliance period, the property will need to be inspected at the beginning and after 3 years). Maintain contact with the homebuyers to remind them of ongoing compliance obligations and the need to maintain the unit.

5. If the home is a pre-1978 home subject to the LBP rules, remind the owners of their obligations to do the required LBP disclosures to tenants.

6. Contact the owners annually with the new rent limits and offers of assistance or clarification. Consider whether to invoke the annual report requirement for the rental unit [see 92.252(f)(2)].

7. If you are designating only one unit in a two-family setting as HOME-assisted, be sure to document the calculation that resulted in the conclusion that only one unit is being assisted.

8. Rental Housing Requirements

Program Rule: **92.252**
92.253

Documents	**Source/Item No.**
HUD Notice CPD 98-2, Allocating Costs & Identifying HOME-Assisted Units, 3/18/98	HO1163 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9802.pdf
HUD Notice CPD 98-01, Layering Guidance for HOME Participating Jurisdictions When Combining HOME Funds with Other Governmental Subsidies	HO1162 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9801.pdf
HUD Notice CPD 96-07, Tenant Based Rental Assistance, 11/1/96	HO1143 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9607.pdf
HUD Notice CPD 94-01, Using HOME for SRO & Group Housing, 1/4/94	HO1178 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9401.pdf
HUD Notice CPD 01-01, Combining HOME with McKinney Act Programs, 1/17/01	HO1199 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd0101.cpd
HUD Notice CPD 94-20, Rent Exceptions for HOME-Assisted Projects, 7/25/94	HO1103 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9420.pdf
<u>Financing Rental Housing Under the HOME Program</u> (2nd Edition), 1/00	HO1187; HUD-1794-CPD
<u>From Rental Rehabilitation to the HOME Program</u>, 1/93	HO1024; HUD-1370-CPD
<u>Rental Housing Development & HOME: 4 Case Studies</u>, 4/96	HO1135; HUD -1584-CPD
<u>Using HOME with Low-Income Housing Tax Credits</u>, 11/98 (rev.)	HO1160
<u>Asset Management: Strategies for the Successful Operation of Affordable Rental Housing</u>, 5/00	HO1190; HUD-2018-CPD
HOMEfires Enhanced Section 8 Vouchers, 11/01 Exception Rents, 3/01	www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm
Sample Rental Housing Forms	www.hud.gov/offices/cpd/affordablehousing/library/forms/index.cfm

Overview:

Occupancy. While all HOME-assisted units must be low income, in rental projects with five or more rental units, not less than 20 percent of the rental units must be occupied by very low income households.

In addition, HTFC's overall HOME Program is subject to the regulatory requirement that at lest 90% of rental and rental assistance units initially serve households at or below 60% of median. As a result, you are asked to limit initial occupancy of (above 60 %) Low Income units to households meeting this standard.

The rents for HOME-assisted units in a rental project may not exceed the rent limits established by HUD. High HOME rents apply to all low-income units, while Low HOME rent limits apply to the units, if any, reserved for Very Low Income Occupancy.

Leases. While the program does not insist upon a standard lease, a list of prohibited provisions are stipulated to protect basic tenant rights and to prevent arbitrary termination of tenancy. The regulations require that the waiting list and selection process be written, comply with fair housing laws, and give reasonable consideration to tenants who meet the Federal preferences (homeless, displaced, and severe rent burden).

Property Standards. The regulations also require owners to maintain the units to HQS and local codes for the compliance period.

Compliance Period. Rental projects are subject to these rent, occupancy, and quality standards for a minimum of 5 to 20 years depending upon the amount of HOME investment.

Amount of HOME Assistance to Unit	Minimum Compliance Period
Under $15,000	5 years
$15,001 - $40,000	10 years
Over $40,000	15 years
Refinancing (rental only)	15 years
New construction (rental only)	20 years

Each year during this period, the incomes of the tenants in the HOME-assisted units must be verified, and the units inspected for HQS compliance annually (if there are more than 25 units in the project), every other year (if there are 5 to 25 units in the project) or every three years (for projects with fewer than 5 units.) The restrictions are recorded along with a note and mortgage (the form of which is approved by HTFC), and run with the property even if the property is retained or sold or transferred by the original owner/grantee. They may be extinguished in the event of a foreclosure or transfer in lieu of foreclosure. However, any HOME funds invested in the project are subject to return to HTFC if a foreclosure occurs. LPAs must negotiate rights or first refusal, purchase options, or other preemptive rights to preserve the housing affordability. LPAs should also negotiate agreements with first mortgage lenders so that they are notified if the lender institutes foreclosure actions against the owner.

Compliance/Monitoring Issues and Recommendations:

1. Rent limits are the maximum permissible rents. The most recent rent limits can be found at:
   * www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/

2. Project rents should be set in consideration of market, affordability, and project finances, and are recommended to fall below the maximum.

3. Remember that the rent limits are inclusive of contract rent plus tenant paid utilities. If there are tenant-paid utilities, the contract rent limit is limited by the HOME rent limit minus the utility allowance.

4. The maximum rent is also the total rent, regardless of rental assistance, unless the VLI unit (in a floating unit project) has Federal or State project-based rental assistance that limits tenant contribution to 30% of income. In such case, the VLI rent limit may be exceeded. No such exception applies to LI units.

5. For monitoring purposes, property managers/owners should keep the most recent five years of:
   * rent rolls, with an indication of units counting as the VLI and LI units;
   * applicable rent limits; and
   * utility allowance schedule (in use by the local PHA).

6. Given the initial requirement that 90% of the units be at 60% of median, it is wise to design the project and market the project for that income level. The availability of units for tenants between 60% and 80% of median is quite limited, and should be reserved for existing tenants and other unique circumstances (consult with HTFC). In addition, remember that this is a requirement for initial occupancy only. After initial occupancy, only the 50% and 80% standards apply (e.g., to recertifications.)

7. When HOME funds are combined with other Federal assistance, both sets of rules must be met. If the rules appear to be in conflict, remember that in most cases the most stringent rule applies, unless the assistance can be segmented so that some units are designated only as HOME, while the designation for the other program(s) is reserved for other units. Also remember that combination of Federal funds triggers layering analysis (CPD 98-01).

8. Be sure the project is adequately funded to ensure physical and financial viability at least for the compliance period, since no additional HOME funds can be delivered to the project during that time. Also, remember that the units will have to pass HQS standards during the compliance period, so repair and maintenance budgets should be adequate to ensure compliance.

9. Even though rent limits are adjusted annually by HUD, they are not guaranteed to go up. Rents may in some rare circumstances go down. Therefore, do not plan a project that requires maximum rents for viability. It is prudent to plan a project that starts out 10% or more below maximum rents.

10. Plan for modest rent increases annually of no more than 1 - 2%.

11. Although regulations provide for an exception to the rent limits, it is for viability problems that arise in future years due to unforeseen rent and expense gaps. Appeals may not be made for projects in the planning stage. Moreover, the process for exceptions has not yet been tested or proven.

12. If you are combining HOME with Tax Credits, consult the HUD Model Series Guide on meeting both program's compliance requirements.

13. LPAs should carefully consider the capacity of property owners and managers to comply with all of the documentation requirements, and in some cases might find it in the best interest of the program to conduct the annual income certifications of tenants themselves rather than the owners.

9. Tenant Based Rental Assistance

Program Rule: **92.209**

Documents	**Source/Item No.**
HUD Notice CPD 96-07, Guidance on Tenant-Based Rental Assistance Under the HOME Program, 11/1/96	HO1155 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9607.pdf
HUD Notice CPD-98-11, HOME Program Conflict of Interest Provisions, 7/14/98	HO1178 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9811.cpd
Tenant Based Rental Assistance: A HOME Program Model, January, 1997	HO1146; HUD-1658-CPD
Technical Guide for Determining Income and Allowances Under the HOME Program, June 1999 (supercedes May 1994 version)	HO1180; HUD-1781-CPD
Sample TBRA Forms	www.hud.gov/offices/cpd/affordablehousing/library/forms/index.cfm

Overview:

One type of assistance possible under the HOME Program is tenant based rental assistance (TBRA). Eligible tenants under a TBRA program receive direct rental subsidies that enable them to live in rental units of their own choosing, provided that the units meet basic program requirements. Within the bounds of certain HOME Program rules, participating jurisdictions (or their State Recipients or Subrecipients) decide who will receive subsidies, how much of a rental subsidy tenants will receive, where TBRA may be used, and to whom (the tenant or the owner) the payment will be made.

Jurisdictions providing TBRA must certify the immediate need for rental assistance, resources other than TBRA that are available to meet that need, the state of the local housing market and program administration concerns.

A HUD model guide provides guidance to participating jurisdictions in designing the subsidy component of a TBRA program. It walks step-by-step through an implementation process, starting with the development of a budget and proceeding all the way through the first rental assistance payment. It includes sample forms: sample home rental assistance applications and contracts, a sample housing quality standard inspection form, a HOME rental assistance coupon, an information brochure for TBRA participants, and a lease addendum.

Compliance/Monitoring Issues and Recommendations:

1. HTFC requires TBRA applicants/administrators to provide a strategy for addressing the needs of the beneficiaries after the two-year assistance has expired.

10. Amount and Form of HOME Subsidy

Program Rule: **92.205 Minimum Subsidy**
92.250 Maximum Per-Unit Subsidy

Documents	**Source/Item No.**
HUD Notice CPD 98-02, Allocating Costs and Identifying HOME-Assisted Units in Multi-Unit Projects, 3/18/98	HO1163 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9802.pdf
HUD Notice CPD 98-01, Layering Guidance for HOME Participating Jurisdictions When Combining HOME Funds with Other Governmental Subsidies, 1/22/98	HO1162 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9801.pdf
HUD Notice CPD 93-42, Community Land Trusts and the HOME Program	HO1074 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9342.pdf

Overview:

HOME may be invested in any HOME-assisted unit (excluding Tenant-Based Rental Assistance, or TBRA), subject to the following limitations on costs.

HOME funds may be designated to pay eligible costs for any particular unit. That unit is called a "HOME-assisted unit" and is subject to all occupancy requirements covered in Sections 5 - 8 of this Guide. Since designation of HOME-assisted applies unit by unit, HOME funds may be invested in mixed-income or mixed-use projects, provided no HOME funds are invested for costs of any non-HOME-assisted portions of the project.

The maximum amount of HOME funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established by HUD under the FHA 221(d)(3) program. However, LPAs should invest only as much as is needed to make the project viable and affordable. (Maximum HOME assistance under TBRA is calculated differently, following the requirements of 92.211.)

The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is $1,000 per HOME-assisted unit.

Assisted households, even under the same program or contract, may receive a varying amount of HOME assistance, based on the way in which HOME assistance is determined. Homebuyer assistance program administrators should develop underwriting procedures minimize the amount of assistance by maximizing private debt (mortgage financing) for each household. For owner-occupied rehab, HOME funds should be provided in sufficient amount to meet the property standard (HQS) and the rehab standard.

Generally, all forms of loans and grants can be used for providing the HOME funds to projects. The most common form of investment are soft mortgages subordinated to private and other lenders, with repayment only on resale subject to the resale restrictions discussed later. Loan proceeds, recapture or repayment are subject to Program Income rules described in Section 25 below.

If HOME funds are spent on a project that is terminated before completion, the funds must be repaid to State's HOME Investment Trust Fund, with the exception of project-specific pre-development loans to CHDOs.

Compliance/Monitoring Issues and Recommendations:

1. Generally, both the minimum and maximum subsidy limits are not approached by most local programs or projects, but these may be factors in the determination of how many units are considered HOME-assisted.

2. Jurisdictions are required to determine the amount and the terms of the assistance, based upon what is required to make the project viable and affordable. When another Federal source is being used in combination with HOME, HTFC is required to conduct a layering analysis to determine the maximum amount of assistance required. See the Notice CPD 98-01 and 92.250(b).

3. Furthermore, the amount of HOME assistance determines the length of the compliance period for rental and home buyer units. LPAs should particularly be aware that, by passing the $15,000 per unit threshold, the minimum compliance period increases from 5 to 10 years.

4. Mixed income projects are permissible, but require a determination that no HOME funds are being used in the non-low-income units. Where HOME funds are being used for common areas and systems, pro-ration of costs must be done following Notice 98-2. Consult with HTFC prior to making such determinations.

5. While HOME and other public funds are often the first to be advanced to a project, LPAs should be careful to provide funds only if there is a reasonable certainty of completion. If the unit is not delivered to low income occupancy meeting HQS standards, the funds must be repaid to the State's HOME account.

11. Written Agreements

Program Rule: **92.504**

Documents	**Source/Item No.**
Monitoring HOME Program Performance: A Model Program Guide, 10/00, pp. 20 - 22	HO1198, HUD-2030-CPD

The HOME regulations require that every recipient of HOME assistance have a written agreement. The purpose of the written agreement is to document the terms of the HOME assistance, and is a pre-requisite for the delivery of any HOME funds.

For a project to be set up in IDIS, there must be a legally binding "commitment", which must be in writing (see the definition of commitment in the Definitions at 92.2 in the regulation).

Before funds can be delivered to a project, there must be a full written agreement that meets all of the requirements at 92.504. HTFC has executed its agreement with you; you must execute written agreements with every project owner that meet the requirements of 92.504(c)(3) or homebuyer that meets requirements in 92.504(c)(5). (Also, see the list on p. 22 of HUD's Monitoring HOME Program Performance.)

Compliance/Monitoring Issues and Recommendations:

1. Is the written agreement just a regulatory requirement you have to meet to satisfy? Emphatically NO! It's actually one of the most important steps in managing your relationship with your recipients. You will execute a note and mortgage at the time of closing, and these documents will replace, amend or incorporate the written agreement, but the closing is too late to document the relationship. Much of the work in planning and preparing the project will have already occurred by the closing. Significant errors already may have been made by the time of closing, and delays and other performance problems are likely to have already surfaced. Without a written agreement, pre-closing problems may be difficult to address.

2. So what do you need in the written agreement? You can start with the regulatory requirements in 92.504(c)(3) rental property owners or 92.504(c)(5) for homeowners to make sure we're covered, but you can't stop there. Performance is not just about regulatory compliance; it's about delivering on time and on budget. Here are thoughts to keep in mind when developing written agreements:

   * Be specific. Don't just say in the agreement that "the owner must comply with Section so-and-so of 24 CFR Part 92". For example, if your program uses Section 8 for the property standard, the agreement should indicate Section 8 HQS rather than merely indicating compliance with 92.251.

   * Identify procurement requirements. As developers, CHDOs are only subject to any procurement standards that you indicate in your agreement. They are not automatically subject to either the PJ's standards at 24 CFR 85.36 or the nonprofit subrecipient standards at 84.41-.48.

* Identify conflict of interest requirements. 92.356(f) indicates that owners and developers may not occupy assisted rental units. Any other potential conflicts should be indicated, and the procedures established for exceptions to the conflicts. See Section 23.

* If other agreements will be executed later on (e.g., a mortgage and note), reference them in the initial written agreement, and describe any terms that owners or tenants will be subject to. Make it clear that repayment will be required if the unit longer qualifies as affordable housing, through sale, foreclosure, etc.

12. Relocation

Program Rule: **92.253**

Documents	**Source/Item No.**
Notice CPD-94-16, HOME Program: Residential Anti-Displacement and Relocation Assistance Plan, 5/25/94	HO1099 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9416.pdf
HUD CPD Handbook 1378, Chapter 8, Section 4	http://www.hudclips.org/sub_nonhud/cgi/hudclips.cgi?hudclips (enter "1378" in "Enter word or phrase" box)
Relocation "Just In Time" On-line Assistance Module	www.hud.gov/offices/cpd/affordablehousing/training/justintime/index.cfm
All The Right Moves: Tenant Assistance and Relocation in HUD Programs	RE1015
URA pamphlets	www.hud.gov/offices/cpd/library/relocation/index.cfm

Overview:

The HOME Program has a stated goal to take all reasonable steps to minimize displacement as a result of program activities. Nevertheless, in some cases, displacement is necessary in order to accomplish the project. For example, sometimes the level or rehab or the presence of an environmental hazard requires temporary relocation of an eligible household. Or, if a non-low-income household occupies a unit intended for HOME-assistance, that household would have to be permanently relocated in order to make the unit eligible for HOME.

The HOME Program is subject to the requirements of the Uniform Relocation Act and Section 104(f) of the Housing and Community Development Act of 1974 (commonly known as the Barney Frank Amendment). This entitles all occupants of properties to certain protections, including notice and assistance in the event of temporary or permanent physical or economic dislocation. The protections extend to non-low-income occupants and businesses. Low income occupants are given the additional protections and benefits of 104(d), including assistance for a longer period of time.

All occupants, including tenants, owners, sellers and businesses, are entitled to notice advising them that Federal funds have been applied for and received, as well as a notice of displacement or non-displacement when the final determination is made. Families who are required to be displaced, and those who claim economic displacement due to increased rents, are entitled to counseling and assistance, moving costs, as well as temporary assistance with increased rents.

Relocation benefits, if appropriate, are to be paid to all legal occupants, including those over income, and may be triggered by acquisition and rehabilitation actions. However, permanent relocation is not considered likely under owner-occupied rehabilitation, although temporary relocation may be needed in some circumstances.

HOME funds may be used to pay all required costs of relocation under Uniform Relocation Act and 104(d), and any additional benefits that a jurisdiction or recipient determines reasonable to pay. However, these funds count toward the total HOME funds for the unit, even when the relocated household is not the HOME-eligible household.

HOME funds also may be used to pay interim relocation costs, including any expenses incurred by the occupant during temporary relocation.

Compliance/Monitoring Issues and Recommendations:

1. Generally, it is best to avoid situations that will involve involuntary displacement because the potential time delays and costs. Where possible, select unoccupied properties or owner-occupied properties who voluntarily sell.

2. Before taking on an occupied property, survey the tenants to determine if they are interested in remaining and what their incomes are to determine the level of assistance that might be required. Use this information to estimate a relocation budget. Also, the information may influence the number of HOME-assisted units to be included in the project.

3. The recipient, rather than the owner, is responsible for making certain that the notice provisions are observed. The recipient should make certain that notice has been given to tenants upon application by the owner for financing. Samples of notices are in the Relocation Training Manual and Handbook 1378 referenced above.

4. If you are operating a home buyer program, bear in mind that even the owner-occupant of the home being purchased is entitled to a notice that Federal funds are being used. This letter is usually in the form of a waiver of relocation assistance wherein the seller acknowledges the applicability of relocation rules, but waives any rights to the assistance with the acknowledgement that the sale is voluntary and that the price is a fair price. Examples of this notice are in the All the Right Moves manual and Handbook 1378 (Appendix 18a).

5. If a low-income occupant is being displaced, HOME TBRA (if available) may be offered in lieu of the assistance payment (as can Section 8); however, note that TBRA may only be granted for two years while most occupants are entitled to 42 or 60 (if low income) months of assistance.

6. Relocation assistance counts toward to the per-unit HOME subsidy calculation, and is distributed across the assisted units. It may throw the assistance level into a longer-term compliance period (e.g., if relocation assistance, when added, raises the per unit subsidy from below $15,000 to above $15,000, the compliance period for the project increases to 10 years). However, relocation assistance can be treated as a project cost that need not be mortgaged to the assisted owner.

7. With the addition of LBP requirements, the likelihood of temporary relocation is increasing. If occupants will be displaced temporarily for rehab, then you should have a temporary relocation policy. If there are tenants or involuntary temporary displacement, then temporary relocation assistance is required, and might include moving costs, storage costs, incremental costs of the temporary living unit, and other related costs (e.g., utility hookups, phone forwarding, etc.) If the temporary relocation involves only owner-occupants who are participating voluntarily, then you could provide benefits or require self-relocation as a condition of participation (although you may want to consider hardship exceptions.)

13. Environmental Review Guidelines

Program Rule: **92.352**
24 CFR Part 58

Documents	**Source/Item No.**
HUD Notice CPD 01-11, Environmental Review and the HOME Program, 7/17/01	HO1208 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd0111.pdf
New York State HOME Program Environmental Review Procedures for Local Program Administrator Programs, 5/02	www.dhcr.state.ny.us/ocd/pubs/ocdeau0.htm
FAQs on the LPA Environmental Review	www.dhcr.state.ny.us/ocd/units/eau/eaufaq.htm
HOMEfires, Environmental review required prior to commitment, 6/02	www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm
HUD Environmental Review Guide for CDBG Programs	(HUD USER, out of print)

Overview:

HUD is required to determine whether any activities under the HOME Program trigger applicability thresholds for Federal environmental laws. For State-administered programs, HUD has delegated the authority for approval of the release of funds to the State. HTFC will conduct a Threshold Review of properties proposed to be acquired and rehabilitated under the program to determine if any of these thresholds apply. If one or more of these thresholds is exceeded, HTFC is required to conduct an environmental review, and determine mitigating measures if appropriate.

The Federal and State requirements and procedures are outlined in the DHCR/HTFC procedures guide noted above.

The environmental review must be completed prior to the recipient's commitment or expenditure of any HOME funds or match contributions for acquisition or rehabilitation. Please Note: **It is essential that LPAs not proceed with any acquisition or construction/rehabilitation activity prior to the release of funds, or the project or activity may be rendered ineligible for HOME funds.**

The recipient or awardee is required to provide HTFC any information necessary for this review and to implement the mitigating measures specified.

It is expected that most acquisition and rehabilitation activities under the HOME LPA programs will not be subject to the full NEPA environmental assessment requirements, since most of the single family and housing rehabilitation activities generally qualify for categorical exclusion. However, most activities are expected to be subject to the statutory checklist of non-NEPA statutes.

Compliance/Monitoring Issues and Recommendations:

1. HTFC will handle the initial review and the request for release of funds process to approve a local program. You will not be permitted to incur program costs until such release process is completed by HTFC. Furthermore, you (or your local recipients) should refrain from any "limiting actions", such as acquisition, construction, demolition and rehabilitation, until the release of funds is granted. If you or your recipient proceed with any such activities after application and prior to release of funds, these activities, and perhaps the project, will be considered ineligible to receive HOME funds.

2. If commitments of funds to your local recipients are to be made prior to the release of funds, they must be conditional commitments containing wording similar to the following:

    Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt of a release of funds from the State of New York Housing Trust Fund Corporation under 24 CFR Part §58. The parties further agree that the provision of any funds to the project is conditioned on the [participating jurisdiction, insular area or state recipient's] determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

   The agreement must also contain a provision prohibiting the state recipient, subrecipient or contractor from undertaking or committing any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, and must indicate that the violation of this provision may result in the denial of any funds under the agreement. The agreement should not contain provisions requiring the execution of a construction contract unless the provision requires prior completion of the environmental clearance and advice from the PJ, insular area or state recipient to proceed with the project and/or proceed with execution of the contract.

3. After the program release of funds request is approved, a local program administrator must review each property selected for the program for environmental considerations. For most local programs, environmental review requirements for individual properties will be limited. As a result of the changes to 24 CFR Part 58, the following activities are categorically excluded and consequently require only a non-NEPA checklist to be completed:

   * single-family (1 - 4 units) acquisition, rehabilitation, new construction (see 58.35(a)(7)
   * multi-family (5+ units) rehabilitation - if no change in density or use & rehab cost less than 75% of new construction cost (see 58.35(a)(4))

   The following activities are categorically excluded and require no non-NEPA checklist (see 58.35(c)):

   * tenant-based rental assistance
   * homebuyer assistance for acquisition only of existing housing

All other activities require an environmental assessment under Part 58, plus a review of the non-NEPA requirements under 58.5 and 58.6.

4. Even if your activities are exempt or categorically excluded, you must maintain an Environmental Review Record containing all relevant environmental documentation. ERR documentation would include any of the following if applicable: NEPA environmental assessment, other statutes checklist, publication, release of funds, and any subsequent environmental issues or correspondence occurring throughout the project period. See 24 CFR 58.38.

5. The non-NEPA checklist triggers a more detailed review if a property is:

   * located within designated coastal barriers;
   * listed on, or eligible for, the National Register for Historic Places;
   * located within a special flood hazard area;
   * located near hazardous industrial operations (handling fuels or explosive/flammable chemicals);
   * contaminated by toxic or radioactive materials; or
   * located within airport clear and military accident potential zones.

6. LPAs should incorporate these threshold criteria into their screening of properties to avoid selecting any properties that are at risk of incurring substantial delays and/or mitigation costs. If an eligible property does meet one or more of the threshold criteria, and requires a full review and mitigating measures, LPAs should consider the cost of the mitigating measures and the time required to complete, especially if these raise the cost of the property above the program limits and affordability standards. Where the time and cost impacts are significant, the recipient may wish to substitute other eligible properties.

7. The most time-consuming procedure may be obtaining a determination by the State Historic Preservation Officer (SHPO) that the property is not a historic property under relevant threshold criteria. SHPO should be asked for a determination for an entire neighborhood, if possible, so that separate determinations are not required on each property. Also, efforts by the recipient to develop a working relationship with the SHPO to ensure timely receipt of SHPO determinations are encouraged.

14. Federal Construction Requirements

Program Rule: **92. 350 - .359**

Documents	**Source/Item No.**
DHCR Guide to Local Resources:Section 3 Initiative	www.dhcr.state.ny.us/ocd/pubs/html/sec3toc.htm
Annual Section 3 Summary Report	Obtain from HTFC
A Contractor's Guide to Davis-Bacon Wage Requirements & Certified Payroll Reports	www.hud.gov/offices/olr/olrwrcp.html
HUD Letter, Application of Federal Labor Standards to HOME Projects, 8/21/1996	www.hud.gov/offices/olr/olr_9602.html

Overview:

Section 3 standards apply to HOME. The draft regulation at 24 CFR Part 135 require that preference be given to local residents for any jobs created by the award of contracts, and that local businesses be given preference on purchases and award of contracts. Therefore, LPAs and subrecipients should look to creating opportunities for the employment of local residents and the hiring of local M/WBE businesses.

The requirements are triggered at an award level in excess of $200,000, and for general construction contracts in excess of $100,000. See the DHCR Guide.

Davis-Bacon prevailing wage laws apply to any construction contract of 12 or more HOME-assisted units.

Compliance/Monitoring Issues and Recommendations:

1. Don't just think of Section 3 as another Federal requirement. It is an important opportunity to ensure that maximum financial benefits flow into and remain in your community. It gives you the opportunity to give preference to local firms and to require the hiring of local workers, and is the only permitted method under Federal procurement requirements. Take advantage of it.

2. Note that the 12 unit Davis-Bacon threshold applies to HOME-assisted units in a construction contract, not the total number of units. Through cost allocation, you may be able to stay below this assisted-unit threshold. Note that HUD looks carefully at dividing projects into multiple construction contracts, so be sure to document the project rationale if phasing or some other splitting of construction contracts is used.

15. Accessibility Standards

Program Rule: **92.251(a)(3)**
24 CFR Part 8 (Section 504)
24 CFR 100.200 - .205 (Fair Housing Amendments Act)

Documents	Source/Item No.
Notice CPD-00-9, Accessibility Notice, 12/26/00	OT1163 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/CPD00-09.PDF
HOMEfires Section 504 Requirements, 2/98	www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm
HOME Program - Accessibility Requirements page	www.hud.gov/offices/cpd/affordablehousing/lawsandregs/fedreq/a/accessibility.cfm
Section 504 Documents	www.hud.gov/offices/fheo/disabilities/sect504docs.cfm
FHAA accessibility guidelines	www.hud.gov/offices/fheo/disabilities/fhefhasp.html
FHAA accessibility standards Q&A	www.hud.gov/offices/fheo/disabilities/fhefhasp.html

Overview:

The HOME Program is subject to HUD accessibility requirements, which come from three Federal statutes:

1. Rehabilitation Act (1973) Section 504 -- The statute holds that no "qualified individual with disabilities" may be excluded from or denied participation in federally assisted program/activity. It applies to new construction multi-family rental of 5+ units and substantial rehab (greater than 75% of replacement cost) of 15+ units, requiring 5% of the units be modified for the physically impaired and an additional 2% for sensory impaired. Other situations are to be addressed "to the maximum extent feasible." This act also requires the program to be made accessible (e.g., applications, intake procedures, office accessibility, etc.) and affirmatively promoted. It also requires you to make all units "visitable" by persons with disabilities to the extent feasible.

2. Fair Housing Amendments Act (1988) - This amended the Civil Rights Act of 1968 to add disability as a prohibited basis of discrimination, and imposed general accessibility standards for newly constructed projects of 4 or more rental units and 5 or more for-sale units. The standards address public and common use areas, passageways, as well as all ground floor and elevator accessible units. It requires reasonable accommodations and allowing occupants to do reasonable modifications.

3. Americans with Disabilities Act (1998) - This Act extended to State and local programs the requirement that persons with disabilities have the equal opportunity to benefit. As such, it did not change the Federal requirements, but extended these requirements to local programs.

Compliance/Monitoring Issues and Recommendations:

1. Be sure to note the different thresholds for 504 and FHAA requirements. It is possible to trigger one and not the other.
2. Note that the 504 requirements are interpreted by HUD to apply only to rental housing, while the FHAA standards apply to both rental and for-sale housing.
3. While rehabilitation of less than 15 units or non-substantial rehabilitation over 15 units are not subject to the 5%/2% requirements, the "to the maximum extent feasible" standard applies. Be sure to review any rehab situation for cost-effective opportunities to make the units accessible. However, you are not required to do cost-prohibitive or physically infeasible modifications. Document such prohibitions.
4. Visitability requires entrances and routes to be accessible, along with interior doors of 32" or greater where possible.
5. For the 5% and 2% units, be sure to round up to whole numbers. Sensory impaired units are often overlooked in planning. These are in addition to the physically impaired units and have different standards. While a physically accessible unit might be useful for a visually impaired person (e.g., clear routes and the elimination of thresholds), these are not sufficient. Installation of sensory impaired equipment is not required unless the unit is to be occupied by a sensory impaired person, but the prep work should be included in the construction/rehab.
6. Special outreach must be conducted for the accessible units. Mention the availability in general marketing, but also reach out to service providers, interest groups and others with access to this population. Maintain a separate waiting list or priority system for these units. It is not necessary to hold the accessible units vacant indefinitely; if a unit is ultimately leased to a person without impairments, their lease should contain a provision requiring them to move within the development should the unit be needed.
7. Remember that you must make reasonable accommodation for persons with disabilities, and that also you must permit them to make reasonable modifications that are necessary for their disabilities even when you do not intend to provide the accommodation directly.
8. Keep in mind that your program must be accessible. If you haven't done a 504 accessibility review, you should examine: your applications and marketing materials, your intake process, your screening criteria, your program/agency office and equipment, and your connections to the providers for the population with disabilities.
9. Remember that ADA now extends accessibility standards to state and local programs, so the avoidance of Federal funds does not relieve you of this responsibility. Also keep in mind that legal enforcement by the advocacy community is perhaps a much more potent avenue of enforcement than HUD compliance monitoring.

16. Rehabilitation/Construction Standards

Program Rule: **92.251**
92.202 (Site & Neighborhood Standards)

Documents	Source/Item No.
Office of Community Development Design Handbook, 3/02	
24 CFR 983.6(b) - rental new construction site & neighborhood standards	www.hud.gov/offices/cpd/affordablehousing/lawsandregs/fedreq/s/site.cfm
Housing Quality Standards Inspection Form & Certification	www.hud.gov/offices/cpd/affordablehousing/library/forms/index.cfm
Cost-Saving Construction Opportunities and the HOME Program, December 1994	HO1115; HUD-1503-CPD
HOMEfires — Determining Suitable Amenities, 7/02; Written Rehab Standards, 1/01	www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm

Overview:

All housing assisted under the HTFC HOME must meet Housing Quality Standards upon completion of the project. (Accessibility standards in Section 15 and LBP requirements in Section 17 may also apply.)

If the housing is to be rehabilitated or constructed, then HOME rules require it to meet all applicable local standards, codes and ordinances. In addition, substantial rehabilitation and new construction projects are subject to DHCR Design Review. ***The application of these HTFC rehabilitation standards do not exempt projects from meeting any local codes that may apply to the project***.

Newly constructed housing also must comply with the CABO Model Energy Code. Also for new construction rental housing, Site and Neighborhood Standards were adopted to ensure that new rental housing developments that are federally funded would not be located in neighborhoods (census tracts) which were already areas of undue concentration of minority and poverty populations.

For rehabilitation, administrators are required to have a written rehabilitation standard to ensure fair treatment of participants. Beyond the minimum property and energy standards identified, HOME funds may be used to provide additional improvements and suitable amenities to bring the home to a level that reflects housing of modest means in the community. (Luxury items may not be paid for with HOME or match contributions but may be paid for with other funds if included.) Additional improvements could include those that extend the useful life of the building and its mechanical systems for at least the compliance term.

The standards apply upon occupancy or completion of the HOME-assisted rehabilitation. For home buyer assistance projects, health and safety defects must be removed prior to occupancy (and within 6 months of transfer to the home buyer), and the unit must meet HQS within two years.

Compliance/Monitoring Issues and Recommendations:

1. Each recipient or subrecipient that administers a rehabilitation program must have adopt a written rehabilitation standard to ensure that all applicants have access to a comparable level of improvements. In addition to addressing code items, these written standards should address cost-effective energy improvements, extending the useful life of the structure and mechanical systems for at least the compliance term, and other improvements that are in keeping with the local housing stock.

2. Remember that each unit must pass an HQS inspection upon completion to be qualified as a HOME-assisted unit. LPAs should compare local codes with HQS to determine which HQS standards need to be integrated into the typical scope of work. For example, local codes might not require treatment of lead paint.

3. Inspectors or rehabilitation specialists should be trained in HQS and any additional local standards (also note the training requirements of LBP in the next section). The local government or PHA may have trained inspectors that can be made available to the program, or can provide a training package that can be used to train the inspectors.

4. LPAs should examine housing stock generally available in the marketplace to low-income families to determine what kinds of amenities and improvements are generally required to make homes sellable or are considered highly desirable by low-income buyers. The objective is to make the homes readily marketable, but not to provide luxury improvements that would render the home unaffordable. Communities with Urban Homesteading programs and other low-income homeownership programs may have already determined such quality levels and necessary improvements.

5. Where a homeowner or home buyer is involved, make sure they sign off on the work write-up and agree to the full scope. (See additional guidance under Procurement).

6. LPAs should make sure that an HQS inspection form is completed and put into each project file upon completion of the rehabilitation.

7. While the Rule permits up to two years to meet housing standards for home buyer projects, LPAs may wish to design the program to ensure that rehabilitation is completed and the full standards are met at the time of initial transfer. Some local homeownership programs administrators have found it difficult to enforce standards after the home was conveyed to the family. This approach, however, will limit home buyer sweat equity.

8. If the project consists of **new construction rental** housing, site and neighborhood standards at 24 CFR 983.6(b) apply. These are designed to ensure that new construction of units does not further concentrate minority and poverty-impacted families. Consult with HTFC and HUD if you need clarification.

17. Lead-based Paint

Program Rule	**92.355** **24 CFR Part 35, 9/15/99**

Documents	**Source**
HOMEfires: Vol. 1 No. 7, HOME Program Lead-based Paint, 4/98	www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm
HUD Interpretive Guidance (Q&A format)	www.hud.gov/offices/lead/1012/1012QA_final_sept21.PDF
Pamphlet: Protect Your Family From Lead	www.hud.gov/offices/lead/outreach/leapame.pdf
Sample Seller & Lessor Disclosure of Information on LBP	www.hud.gov/offices/lead/1018/selr_eng.pdfwww.hud.gov/offices/lead/1018/lesr_eng.pdf
Statute: Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.)	www.hud.gov/offices/lead/regs/leatilex.pdf
Guidelines for the Evaluation & Control of Lead-Based Paint Hazards in Housing	www.hud.gov/offices/lead/GuideIns/ch**.pdf (download by chapter, inserting 01 thru 15 for **)
Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work	www.hud.gov/offices/lead/training/leadsafetybk.pdf
LBP Training	www.hud.gov/offices/lead/lbptraining.cfm

Overview:

On September 15, 1999, HUD published a Final Rule at 24 CFR Part 35 to implement the Residential Lead-Based Paint Hazard Reduction Act of 1992. DHCR elected to defer implementation (based on HUD's Transition Assistance Notices) until January 10, 2002.

The new Rule amended the HOME Program regulation at 24 CFR 92.355 to make all HOME-assisted housing subject to the Rule. It is applicable to all HOME-assisted projects committed after 1/10/02, i.e., for which a project-specific written agreement is entered into with the property owner subsequent to 1/10/02. This includes projects funded by earlier HOME LPA awards, HOME program income or recaptured funds. All HOME-assisted activities in housing built prior to January 1, 1978, are covered by the Rule, including:

* Housing rehabilitation (rental or homeowner)
* Acquisition assistance, for homebuyer or rental activities
* Tenant-based rental assistance

HOME-assisted projects for which a project-specific written agreement is executed with the property owner or buyer prior to 1/10/02 is not subject to the new rule, but must comply with previous LBP requirements.

The Rule pertains to housing for which construction was completed prior to 1/1/78, and is applicable to projects that receive Federal housing assistance (including, but not limited to HOME). If the property is subject to the rule, then the standards apply to the interior and exterior of the entire residential structure, including all residential units (whether or not assisted) and shared or common areas and egresses, and any outbuildings, including garages, that are used by the residents. The entire property is also subject to soil standards if risk assessment standards apply.

A summary matrix, describing the required level assistance based on project scope and amount of dollars used, is attached at the end of this section.

Properties or Activities Exempt from the Federal Rule:

While the rule broadly applies to pre-1978 units, Subpart B of the Rule (35.115) exempts certain pre-78 units from the requirements of this rule. Exemptions include:

* **Post 1/1/78 housing** - Recipients should have documentation that the original completion date of the structure (e.g., a Certificate of Occupancy or other legal document approving occupancy) was after 1/1/78.
* **Zero-bedroom units** - Including single room occupancy, boarding houses, rooming houses, efficiency apartments, dormitory, military barrack, individual room rental, or other dwellings that do not have sleeping areas separate from living areas.
* **Housing reserved exclusively for occupancy by the elderly or disabled** - This must be documented by deed restriction, covenant, or other formal restrictive document. However, units for which occupancy by children under the age of six is anticipated must comply with the Rule.
* **Housing which has been tested and found not to contain LBP, or for which any LBP was removed or replaced** - There must be a lead inspection by an EPA-certified inspector or assessor indicating that no LBP exists in the housing.
* **Unoccupied dwelling units that will remain unoccupied until demolished** - While the rule does not apply to these properties, demolition should be conducted in a safe manner consistent with EPA and OSHA rules to ensure worker protection, containment of dust, and proper removal and disposal of LBP debris from the site.
* **Non-residential spaces in residential or mixed-use properties** - However, all residential units and common spaces (including garages and outbuildings) that are used or shared by residential occupants, including means of egress, are covered.
* **Rehabilitation that does not disturb a painted surface** - The exemption applies only when no painted surfaces are being disturbed. While the rule provides an exception to safe work practices below de minimus levels, projects where disturbed painted surfaces fall below the de minimus levels are subject to the rule.
* **Emergency actions** - Immediate actions needed to make the unit habitable when there is an "imminent danger" may be done without complying with the rule. Examples include natural disaster, fire, imminent structural collapse, or absence of functional utilities. However, any longer-term rehab actions are subject to the rule.

In addition, the following apply not as exemptions but as conditions for achieving compliance.

* Exterior evaluations and compliance work can be deferred for any covered activity (generally from November - April) if weather prevents completion of the activity.
* If the State Historic Preservation Office (SHPO) requests interim controls in lieu of abatement activities on a property of historic significance, such interim controls can be followed even if the project would otherwise require abatement -- for example, paint stabilization of clapboards rather than vinyl siding or window repairs rather than replacement windows to meet historic standards.

Compliance/Monitoring Issues and Recommendations:

1. For purposes of determining whether a project had a HOME project commitment prior to the effective date of the rule (and thus is not subject to the new rule), "project commitment" means that a written agreement has been executed with the owner or buyer designating a specific property for assistance, the amount of the assistance, the scope of work to be performed (if applicable), and the compliance requirements. Set-up in IDIS is not required. Construction contracts, construction start dates, or acquisitions do not have to occur by this deadline.

2. If a property is exempt under one of the conditions listed above, the LPA should maintain the appropriate file documentation as evidence of the exemption. A sample form is included in a separate package of sample LBP documents.

3. Change orders or amendments may be made subsequent to 1/10/02 to any existing projects originally executed prior to 1/10/02 without triggering the applicability of the new Rule, provided such changes are minor in nature and do not alter the type of activity or the units covered by the agreement.

4. Since 1996, all occupants or purchasers of pre-1978 housing must receive and acknowledge receipt of a pamphlet and notice of the possible presence of lead paint. These notices may be downloaded at the web site listed at the beginning of this section.

5. When risk assessments and/or clearances are conducted, owners and residents are entitled to additional notices regarding the results of those activities. Samples are attached. No notice is required for visual assessment.

6. Only EPA-certified LBP Risk Assessors may conduct risk assessments. LPB Inspectors are not certified to do risk assessments, and a LBP inspection may not be done in lieu of a required assessment. The list of current certified assessors may be found at www.leadlisting.org.

7. Where lead-poisoned children are present, Department of Health may specify activities to be conducted beyond the requirements of this rule. Nothing in this policy memo is intended to compromise DOH's authority in such cases. HOME recipients are required to give full cooperation to health officials in such cases, and ensure full compliance by property owners with any DOH requirements.

8. The requirements for HOME-assisted housing rehabilitation depend upon the amount of Federal rehabilitation assistance. Calculation of the amount of Federal rehabilitation assistance should follow the dual-threshold procedures described in HUD's "Interpretive Guidance" Questions J3, J3a and J5. This requires the calculation of the Federal assistance per unit and the rehabilitation cost as two separate calculations, and using the lower of the two calculations: the Total Federal Assistance per assisted unit; and the Rehabilitation Cost per assisted unit. A Threshold Calculation Form is attached in a separate package of sample LBP documents.

9. Where abatement is required, only contractors listed with the EPA for abatement work in New York State may conduct the abatement activities. Lists of the currently certified contractors and workers may be found at www.leadlisting.org.

10. Interim control workers/contractors - Any interim control work (including standard treatments when LBP is presumed to be present) must be done either by workers who have attended a Safe Work Practices training course approved by HUD or workers working under the supervision of an EPA-certified abatement supervisor. Appropriate documentation of certifications must be in the contractor files. It is recommended that the general contractor for each funded project certify that all workers performing interim control activities (or enter the "work-site") have been properly trained. A sample certification form is included in the separate package of sample LBP forms.

11. Replacement of windows is typically considered an abatement activity to be done by abatement workers. However, HOME rehab projects that fall below $25,000 in Federal rehabilitation assistance qualify as interim control projects. When the replacement of windows is done as part of a less than $25,000 rehabilitation project for rehab purposes, such as energy conservation, the activity can be conducted as an interim control activity rather than an abatement activity, even though the windows may have subsequently been identified as a LBP hazard by a risk assessment and the activities may incidentally result in a reduction or elimination of lead-based paint hazards. This is consistent with the EPA /HUD memo issued 4/19/01.

    For interim control projects that include window replacement, the recipient should document that window replacement is consistent with the agency's rehabilitation standards (e.g., to address building component non-functionality, obsolescence, energy efficiency or useful life), and the base cost of windows should be included in the Federal rehab assistance calculation.

12. Only EPA-certified inspectors, assessors or clearance sampling technicians may do clearances.

13. Rehab specialists, inspectors, or other staff of HOME recipients that regularly enter lead hazard control worksites or supervise rehab work involving lead hazard control activities are encouraged to attend one of the interim control courses or other courses outlining safe work practices.

14. Local administrators are encouraged to secure liability insurance for LBP hazards as part of their general liability coverage. DHCR will work with trade associations to identify pools or umbrella purchase opportunities. LPAs are encouraged to provide rehabilitation contractors with access to program's liability policy, or, in the absence of a program umbrella policy, local administrators should grant a preference to contractors who have LBP hazard liability insurance.

15. Homebuyer and owner-occupied rehab program administrators may wish to consider whether the cost of hazard controls should be passed through to the homebuyer through HOME second mortgages, or whether the program will absorb the costs as "development costs" under HOME rules.

16. While HOME records must be maintained for a minimum of five years, it is recommended that recipients maintain documentation of appropriate LBP procedures (evaluation, disclosure, work practices, and clearance) in retrievable files indefinitely to address any legal or liability issues that may arise.

Summary of Required LBP Hazard Control by Type of Federally Assisted Activity (based on 24 CFR Part 35)

Requirement / Activity	Rehabilitation (Less than $5,000 Federal)	Rehabilitation ($5,000 - $25,000 Federal)	Rehabilitation (Over $25,000 Federal)	Non-Rehab Acquisition Assistance	Homebuyer Assistance
Applicable Regulation Subparts	Subpart B, J, R			Subpart B, K, R	
Evaluation	Test painted surfaces to be disturbed (or presume LBP & use Standard Treatments)	Risk Assessment	Risk Assessment	Visual assessment to identify defective paint surfaces	
Disclosure(beyond standard notice & pamphlet to occupants)	Disclosure of any paint test results & hazard control work to be performed	Disclosure of risk assessment results & hazard control work	Disclosure of risk assessment results & hazard control work	No additional disclosure triggered by visual assessment	
Work Requirements	Safe Work Practices above de minimus levels	Interim controls for any LBP hazards	Abatement of any LBP hazards	Paint Stabilization of defective surfaces	
Clearance(includes visual assessment & dust wipes for any required clearance)	Clearance of any hazard control work sites	Clearance of entire unit	Clearance of entire unit	Clearance of Paint Stabilization work sites	
Ongoing Maintenance	If rental housing with compliance agreement (e.g., HOME): annual visual assessment, paint stabilization, clearance				Owner responsible

18.Property Standards

Program Rule: **92.251**

Documents	**Source/Item No.**
Section 8 Housing Quality Standards (24 CFR 982.401)	www.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=24&PART=982&SECTION=401&YEAR=1999&TYPE=TEXT
Section 8 HQS Inspection Form	www.hud.gov/offices/cpd/affordablehousing/library/forms/index.cfm
Asset Management: Strategies for the Successful Operation of Affordable Rental Housing, May 2000	HO1190; HUD-2018-CPD

Overview:

In addition to the new construction and rehabilitation standards in Section 16 (and where applicable the Accessibility Standards in Section 15 and LBP Standards in Section 17), all housing assisted with HTFC HOME funds must at least meet Section 8 Housing Quality Standards. Beyond these minimum standards, a local program rehabilitation administrator may adopt standards to provide additional improvements and suitable amenities to bring the home to a level that reflects housing of modest means in the community.

As noted previously, home buyer units have two years after transfer or occupancy to fully comply with HQS. However, HTFC recommends that LPAs ensure that they comply with HQS prior to occupancy by the assisted household, or shortly after occupancy.

Compliance/Monitoring Issues and Recommendations:

1. LPAs should compare local codes with HQS to determine which standards are higher and apply to the HOME units. (See additional guidance under Rehabilitation/Construction Standards).
2. Inspectors or rehabilitation specialists should be trained in HQS standards. The local government or PHA may have trained inspectors that can be made available to the program, or can provide a training package that can be used to train the inspectors.
3. Make sure that a fully completed HQS inspection form is included in the property or tenant file to document compliance with the standards. There are short and long versions of the form, available from HUD and local PHAs. The long form has more guidance for inspectors with less experience.
4. Remember that the purpose of the annual inspections is not just for documenting compliance, but more importantly for ensuring decent housing and preserving the viability of housing units for at least the compliance period. While unit inspections might capture some deterioration, the importance of planned and preventive maintenance cannot be stressed enough.
5. Also keep in mind that pre-1978 rental properties that are HOME-funded and subject to the LBP requirements must also have an ongoing paint maintenance plan.

19. Fair Housing & Affirmative Marketing

Program Rule: **92. 350 - .351**

Documents	**Source/Item No.**
Fair Housing:	www.hud.gov/offices/fheo/FHLaws/index.cfm
Fair Housing Act (42 USC 3601-19) 24 CFR parts 100, 109, & 110 Executive Orders 11063, 12259 24 CFR part 107 Title VI of the Civil Rights Act of 1964 (42 USC 2000d) 24 CFR part 1 Age Discrimination Act of 1975 24 CFR part 146	
Fair Housing Planning Guide	http://www.hud.gov/fhe/fhplan.html

Overview:

All LPAs must comply with Federal equal opportunity, fair housing, and affirmative marketing requirements to inform and solicit applications from people who are least likely to apply for the program without special outreach. HUD regulations require an affirmative marketing plan for any rental or homebuyer project of 5 or more assisted units.

Compliance/Monitoring Issues and Recommendations:

1. LPAs should determine who among the protected classes covered by the above acts and regulations are least likely to apply for the program. The generally accepted HUD protocol is to compare the racial/ethnic representation of the immediate project area with the racial/ethnic composition of the jurisdiction as a whole, and to target any groups that are disproportionately under-represented in the project area. These are considered the "least like to apply."

2. Prepare a marketing plan for informing and soliciting applications from members of those groups of people who are lease likely to apply for the program. Usually these methods include a combination of advertising and direct outreach to organizations that serve the particular population targeted.

3. Systematically document all marketing efforts and maintain records of these efforts.

20. Financial Management Standards

Program Rule: **92.505**

Documents	**Source/Item No.**
24 CFR Part 84 (for not-for-profit subrecipients & CHDOs) (.pdf version)	http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=0621685479+66+1+0&WAISaction=retrieve
24 CFR Part 85 (for local governments) (.pdf version)	http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=061471120706+39+1+0&WAISaction=retrieve

Overview:

As is the case with all Federal grant programs, administration of the HOME program is subject to the uniform policies and requirements of the Office of the Management and Budget's (OMB) Circulars and Federal regulations implementing the Circulars. The Circulars set standards for the administration of grants, principles for determining what costs are allowable, and requirements for independent audits. The Circulars and implementing regulations also address many other management issues, including recordkeeping, procurement, bank accounts, and program income.

For public agencies, 24 CFR Part 85 applies. It is assumed that local government recipients are already complying with these provisions for CDBG and other Federal funds received.

For nonprofit subrecipients, HUD has adopted OMB standards of OMB A-110 and OMB A-133 (audit standards) as 24 CFR 84.26. In particular, the financial management standards being at 84.21, and specify adequate records, controls, written procedures, and reporting to ensure safeguarding all assets and funds.

These standards are not applied directly to nonprofit or for-profit project Developers. The award agreement with HTFC will specify financial management, procurement, repayment, recordkeeping, and close-out terms.

Compliance/Monitoring Issues and Recommendations (for nonprofits):

1. Nonprofit subrecipients who have not had prior experience and certification with A-110 standards should review Parts 84 and 45 with their accountants. Financial management standards are contained in 84.21. The CPA doing the audit will have to certify that the nonprofit meets these standards, but the audit is too late to correct procedures.

2. Regulations require a nonprofit subrecipient to include an independent audit or a certification by a CPA that the nonprofit's financial management system conforms to the requirements of 24 CFR Part 84.

3. The IDIS installs certain safeguards in the process, such as separation of duties between set-ups and drawdowns. Make certain that no one person has responsibility for both the drawdown and disbursement of the funds.

4. The IDIS system also has the potential to produce reports useful for monitoring progress as required in Part 84.

5. Funds drawn must be disbursed within 15 days of receipt. Make certain that procedures are in place to ensure timely disbursement, and that records can link invoices/vouchers to draws to disbursements.

6. All program financial records should be kept for 5 years after final disposition, unless litigation occurs.

21. IDIS Recordkeeping

Program Rule: **92.502**

Documents	**Source/Item No.**
HUD IDIS Documents & Guidance	www.hud.gov/offices/cpd/systems/idis/index.cfm
HTFC Disbursement and Reporting Instructions	www.dhcr.state.ny.us/ocd/progs/home/ocdhm15.htm
HTFC HOME Project Reporting & Disbursement Forms	www.dhcr.state.ny.us/ocd/forms/forms00.htm
HTFC Memoranda, Building Identification for HOME-assisted Projects, 11/29/01, & Reporting Building Information, 12/3/01	HTFC
New York State HOME Program State Recipient Quarterly Completion Report	HTFC
New York State HOME Program Annual Report Questionnaire	HTFC

Overview:

In order to ensure efficient distribution of HOME funds, HUD implemented the Integrated Disbursement and Information System (IDIS). The system is designed to manage disbursements and to collect and report information on program performance. The two elements are linked: LPAs need to report on activities to be able to continue to access funds. The systems provide HUD and the recipient with timely information on the status of the grant, and will reduce the amount of post-performance reporting by the recipient.

Procedures permitted States to give direct access to the system to certain State Recipients and Subrecipients; most must access the funds and submit infomation through HTFC.

All State Recipients, Subrecipients and Developers are required to keep adequate records that are sufficient to permit a full audit trail of transactions of all HOME funds drawn.

Compliance/Monitoring Issues and Recommendations:

1. Even if you have no direct access to IDIS, it is important that you understand the system and its data requirements so that you can submit the proper information to HTFC. HOME operates on a cost reimbursement system. Therefore, you should only submit those items that you have paid or intend to pay immediately. You may not hold the funds.

2. Federal internal control standards as reflected in 24 CFR Part 84 (which has replaced OMB Circular A-110 for nonprofits) and 24 CFR Part 85 (for public agencies) recommend separation of duties so that no financial transaction is controlled exclusively by one person. It is recommended that LPAs review their procedures for disbursement of funds on properties to ensure separation of requisition, drawdown and disbursement activities to the extent necessary for furtherance of internal control objectives.

3. HTFC receives regular reports from HUD. Errors can occur in data entry, so reports should be reviewed carefully and reconciled promptly. Failure to submit information may hold up funds.

4. HTFC is required to do annual reporting to HUD through the CAPER. To ensure timely reporting of complete data, LPAs are required to submit quarterly and annual reports as noted above. Please bear in mind that the information is linked to disbursements, and failure to provide the required information could jeopardize timely program funding.

22. Procurement

Program Rule: **92.505**

Documents	**Source/Item No.**
Procurement rules for Nonprofit Subrecipients	24 CFR Part 84.40 - .48
Procurement rules for Public Agencies	24 CFR Part 85.36
HUD Notice CPD-96-05, Procurement of Consulting Services, 10/11/96	CD1053 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9605.pdf

Overview:

Procurement standards from 24 CFR Part 84 (nonprofit subrecipients) and 24 CFR Part 85 (state and local jurisdictions) apply to purchases of services and materials under HOME. For project developers, these standards do not automatically apply, so the procurement requirements must be stated in the written agreement.

For nonprofit subrecipients, 24 CFR 84.40 - 49 contains the standards to be used in procurement with HOME funds, including:

- 84.42 Code of Conduct covering conflicts of Interest
- 84.43 Open and Free Competition
- 84.44 Written procedures required
  - Solicitations contain work scope & bidder requirements
  - Efforts to utilize S/W/MBEs
  - Responsible contractors
- 84.45 Cost/price analysis
- 84.46 Procurement records
- 84.47 System of contract administration
- 84.48 Contract provisions

These contain common sense guidelines about cost-effective purchases of goods and services, built around the concept of ensuring an adequate level of competition and fairness.

Public agencies acting as State Recipients follow Part 85 requirements, which are more prescriptive about the procurement methods to use.

Please note that Section 23 addresses conflict of interest. Also note in Section 14 later in this guide that Davis-Bacon requirements apply to HOME projects of 12 or more HOME-assisted units.

Compliance/Monitoring Issues and Recommendations:

1. As State Recipients or non-profit subrecipients, you are expected to follow Federal guidelines in the award of any contracts with the HOME funds. That would include any construction, professional or consulting contracts where the LPA is the procurer. Be sure to comply with the conflict of interest provisions discussed in the next section.

2. If public and nonprofit subrecipients award funds to individual owners and developers, the recipient must designate what procurement standards or requirements apply to any procurements by the owners/developers in the written agreement. It is not necessary to apply the same Part 84/85 standards, but it is essential that a minimum level of competition be imposed to ensure cost-effective use of HOME funds.

3. If you permit the property owner to select the contractor, then the owner is the "procurer and the Federal rules do not apply to their procurement. (You may advise the owner, provide technical services, evaluate the bids, and even limit your payment to the amount of the lowest responsible bid, but the owner has to have a choice of the contractor to be considered the procurer.) Nevertheless, you still have the overall responsibility for cost-effective expenditure of the Federal funds, and should impose sufficient guidelines to ensure competitive prices from qualified contractors.

4. Even though the standards apply only to Federally funded procurements, the nonprofit procurement standards represent good business practices, and nonprofits are urged to adopt procurement standards for all your agency procurements.

23. Conflict of Interest

Program Rule: **92.356**

Documents	**Source/Item No.**
HUD Notice CPD 98-9, HOME Program Conflict of Interest Provisions, 7/14/98	HO1178 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9809.pdf
HOMEfires, CHDO Board Conflict of Interest, 4/99	www.hud.gov/offices/cpd/affordablehousing/library/homefires/index.cfm
24 CFR Part 84.42 (for nonprofits)	
24 CFR Part 85.36 (for public agencies)	

Overview:

All public and nonprofit agencies are governed by general conflict of interest provisions in the administration of all Federal funds. However, HUD has imposed more specific conflict of interest standards for the HOME Program to address up front any potential conflict of interest situations. These standards are not designed to preclude or penalize individuals who are associated with the jurisdiction and its recipients and developers, but to establish procedures in advance to ensure a fair process whenever such persons are considered for financial benefits as a result of HOME funding.

Potential and actual conflicts of interest can arise from two events or circumstances:

* occupying a HOME-assisted affordable housing unit; and
* obtaining a financial interest or benefit from any contract, subcontract or agreement with respect to a HOME-assisted activity, or the proceeds thereunder, during their tenure or for one year thereafter.

Conflicts of interest occur when covered parties (see below):

* have ***access to inside information*** with regard to the award of a contract or unit assistance; or
* have ***undue influence*** on the policy or process by which a contract or unit occupancy is awarded.

Covered parties include officers, employees, agents or consultants of the jurisdiction, recipient or developer, including community housing development organization (CHDO) and their <u>immediate family members.</u>

As the rule currently stands, State Recipients and subrecipients are prohibited from awarding contract or unit benefits to any covered person until and unless an exception is granted by the State or HUD. For CHDOs and other developers, the only current prohibited conflict of interest situation is the award of rental units to covered persons, however, HUD has plans to amend and extent the conflict of interest prohibitions for developers. 92.356 contains the procedures for requesting and granting exceptions.

All potential and actual conflicts must be disclosed to HTFC in advance in writing, with the following information:

* full factual disclosure of the situation that gives rise to the potential conflict of interest, including the nature of the person's role and the financial benefit;

* the procedures that the recipient will establish to ensure that a fair process will be conducted with no inside information or undue influence to the party in question; and

* the basis for granting the exception under 92.356(e).

It is HUD's intent to use these standards to enable related parties to continue to have access to the benefits of the HOME Program as they might otherwise be eligible, while ensuring that they do not gain an unfair advantage in gaining access to the benefits.

Compliance/Monitoring Issues and Recommendations:

1. Conflict of interest situations are potentially very damaging to the credibility of the organization and the HOME Program in the community. The perception of conflict is as damaging as actual conflict.

2. "Immediate family members" are generally interpreted to include parents, siblings and children - that is the immediate ring of relationships around the individual.

3. HUD is intending to issue proposed amendments to the regulations that will further clarify CHDO conflicts of interest and non-financial conflicts of interest. These proposed amendments are expected in the latter part of 2003.

4. Apply for exceptions to the conflict of interest prohibition as soon as possible. Bear in mind that an employee or board member that participates in the development of contractor or beneficiary selection policy for the HOME project may already have exercised "undue influence". Therefore, it is essential to determine as soon as possible if any related parties might want to be considered for contracts or units under the program. Poll your board and employees to determine if any have interest in applying for contracts or unit assistance. If so, disclose them immediately to HTFC and ask for guidance in establishing appropriate procedures and documenting the request for an exception.

5. Maintain a record of the conflict of interest request, determination, and evidence that the approved procedure was followed.

24. Recordkeeping

Program Rule: **92.508**

Documents	**Source/Item No.**
File checklists in Part III of this Guide	DHCR/HTFC Monitoring of LPAs

Overview:

File maintenance is essential to documenting that the local program or project is meeting HUD rules and statutory requirements. It is important that LPAs and Developers maintain program and individual unit files so that HTFC can efficiently monitor for compliance.

* Recordkeeping requirements for Local Program Administrators are outlined in 92.508(a)(2) - (3) and (a)(5) - (7).

* Recordkeeping requirements for project Developers are outlined in 92.508(a)(3).

Compliance/Monitoring Issues and Recommendations:

1. General recipient rehab program files should include documentation of:
   Written Rehab Standards (if rehab is involved)
   Written Procurement Procedures
   Written Commitment Agreement with Property Owner

2. Individual property files should have documentation for:
   Eligible property (ownership, value)
   Eligible homeowner (income, principal residence)
   Procurement/contractor selection
   Rehab Supervision (incl. completion)
   Homeowner Restrictions (mortgage, etc.)

3. Disbursement records should be maintained for monitoring and audit purposes. Evidence that disbursements were made within 15 days of receipt of funds is critical.

4. HOME requires that records be maintained for at least five years after completion of an activity. For rental projects with extended compliance periods, occupancy and rent records for the most recent five years must be maintained.

25. Program Income & Homebuyer Recaptured Funds

Program Rule: **92.503**

Documents	**Source/Item No.**
HUD Notice CPD-97-09, HOME Program Income, Recaptured Funds, Repayments and CHDO Proceeds, 9/12/97	HO1158 www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/cpd9709.pdf
HTFC Notice 03-01, HOME Program Income and Home Buyer Recaptured Funds	HTFC

Overview:

Only state recipients and subrecipients can retain program income in their local HOME account. Any program income received by CHDOs from CHDO projects must be returned to HTFC within 15 days. No recipients may retain recaptured funds.

Program income and recaptured funds are defined below:

* ***Program Income***. Program income are funds that are generated from the investment of HOME funds by the Participating Jurisdiction and its State Recipients and subrecipients. The types of program income are defined in the Definitions in 92.2 and in the CPD-97-09. Program income must be reinvested in HOME-eligible activities and costs (92.205 - .206) in compliance with all HOME rules, and the management and reinvestment of the program income may be done by the jurisdiction, its State Recipients or subrecipients, at the option of the PJ. It is the policy of the New York State Housing Trust Fund Corporation that State recipients and subrecipients are **not** permitted to use program income for administrative costs.

* ***Recaptured Funds***. Recaptured funds are homebuyer assistance funds that must be repaid by a homebuyer who does not complete the minimum term of owner occupancy required by the rule (5 - 15 years). HUD requires these funds to be repaid to the PJ and reinvested, without permitting the PJ or its recipients to take administrative costs from the new investment. State Recipients, subrecipients and CHDOs are not permitted to retain these funds. They must be returned to the PJ, and HUD does not permit the jurisdiction or its recipients to charge administrative funds in the reinvestment of recaptured funds.

The HOME regulations at 24 CFR 92.502 stipulate that all HOME funds in a local account must be used before any additional HOME funds are drawn from the US Treasury, and 24 CFR 92.504 also stipulates that program income must be disbursed before the state recipient or subrecipient requests additional HOME funds from the State. If regular HOME funds (drawn from the US Treasury,) are being used in a project, any program income on hand must be committed first. In the case where no regular HOME funds are being used in a project, and the amount of program income on hand is $1,000 or more, the funds must be committed to an eligible project or returned to HTFC within 90 days.

If program income is used in a project that also includes regular HOME funds, those funds must be shown on the "Other Funds" line of the Project Set-Up Report, and must be identified as program income or recaptured funds. If only program income is used in a project, a Project Completion Report (form HUD-40096 or HUD-40097) must be submitted. In such case, Part A, Line 1, enter the words, "Program Income" or "Recaptured Funds," as appropriate. Part B, Line 4 should list the dollar amount. State Recipients directly reporting to HUD on IDIS must submit a completion report to HTFC when using program income, regardless of whether regular HOME funds were used. All state recipients and subrecipients must also report the receipt and expenditure of program income on their Annual Performance Report.

Rules on the use and reporting of program income are in effect until the end of the regulatory period.

Upon expiration of written agreements with subrecipients or state recipients, or at the discretion of the Housing Trust Fund Corporation, any program income on hand and any future program income received must be returned to HTFC, unless approved in writing by HTFC. Expiration of a written agreement is defined as the expiration of the term of the agreement, or satisfaction of all indebtedness required to be repaid, whichever occurs later, but in any event not prior to the end of the period of affordability specified in 24 CFR 92.252 or 24 CFR 92.254, and not before the recipient relinquishes control over any HOME funds provided pursuant to the agreement.

Compliance/Monitoring Issues and Recommendations:

1. Program income must be managed carefully. It needs to be disbursed before any additional new HOME funds are drawn. Therefore, it is imperative that recipients who are permitted to keep program income anticipate the income and plan for enough activities that can utilize the program income in addition the new award. For example, if 10 units are funded in the new award, but program income from old awards will produce enough to support 1 additional unit during the contract term, then the LPA should plan for 11 units to be assisted during the contract term.

2. Program income must be tracked and reported to HTFC as noted above. HTFC will need timely information on the amount of program income generated and used during the program year.

3. "Recaptured" funds represent homebuyer assistance funds that did not meet the original intention, and therefore HUD considers if funds that never constituted a legal expenditure of HOME funds in full compliance with the statute. Recaptured funds are only the HOME funds that subsidized the effective price of the unit below fair market value for the minimum compliance period stated in the regulation and are required to be included in the HOME note. It does not apply to amortization or interest collected during the term, recovery of "development subsidies", or other funds mortgaged outside of the HOME note/mortgage. And it does not apply to funds recaptured over longer periods than the minimum required by regulation.

Part II

Compliance Monitoring Procedures & Checklists for LPAs

Compliance & Monitoring Responsibilities of LPAs

This section contains guidance to LPA on how to ensure compliance of their programs and projects with HOME regulations. It consists of 2 essential compliance tasks:

1. Maintaining appropriate program and project-level file documentation to ensure compliance with regulatory requirements; and

2. Conducting ongoing monitoring of projects upon completion.

File Checklists

Maintaining appropriate project file documentation will be facilitated by the use of file checklists. While these checklists are not required, they are recommended. If you choose not to use these, review your file checklists to ensure that you have all of the necessary documentation.

The file checklists that follow are:

* LPA Owner-Occupied Rehab Program Checklist
* LPA Owner-Occupied Rehab Project Checklist - for use with each project that is funded
* LPA Home Buyer Assistance Program File Checklist
* LPA Home Buyer Assistance Program Project/Buyer File Checklist
* LPA Home Buyer Assistance Program Annual Review Checklist
* LPA Rental Rehab Program File Checklist
* LPA Rental Rehab Program Owner/Property File Checklist
* HOME Rental Project Status Summary
* HTFC HOME Rental Project Unit Review Checklist
* Individual Tenant File Review Checklist

Program checklists pertain to the critical files necessary to have sufficient documentation of overall program compliance, while project checklists reflect the file documentation required for each individual house, building or project funded with HOME funds.

Ongoing Monitoring Responsibilities of LPAs
Home Buyer Assistance Programs

The ongoing monitoring requirements for owner-occupied rehab and home buyer assistance programs are to ensure that:
1. the owner maintains the home as his/her principal residence during the compliance period, and
2. if the home is sold, that any HOME funds are recaptured as required by the note and mortgage.

A properly recorded note and mortgage stipulating the terms of repayment of the HOME funds will be discovered by the closing attorneys or title company at time of sale, and to this extent it is self-enforcing. If the documents are not recorded, annual contact with the family as prescribed below (preferably with receipt of a mortgage statement or utility bill) and a review of local tax records is necessary to verify that they still own the home.

To ensure ongoing occupancy, the LPA may annually contact the family or send a non-forwarding certified letter to the family requesting them to certify that they still live there.

Files should be kept of the annual review activities recommended above, showing that each assisted household has been contacted, and that resales have been properly handled.

If a resale occurs and funds are recaptured prior to completion of the minimum compliance period, the funds should be returned to HTFC. If funds are received outside of the minimum compliance term, they will be treated as Program Income under the terms of your written agreement with HTFC. The Program Income file should document the receipt, and the funds should be deposited and reused for eligible HOME activities, or transferred to HTFC if required by your agreement. Recaptured funds and program income received after an agreement is closed out should be handled following the terms of the close-out agreement.

Owner-Occupied Rehab Programs

Under HOME regulations, there is no minimum ongoing compliance period for owner-occupied rehab. However, if the LPA has chosen to impose a compliance period, then it should follow procedures similar to those identified for homebuyer assistance.

If a resale occurs and funds are recaptured under an optional note and mortgage, these are considered Program Income, and not Recaptured Funds. Document the receipt of funds the Program Income file, and deposit and reuse of the funds as Program Income, or transfer to HTFC as required by your written agreement with HTFC.

Rental Rehab Programs

The ongoing monitoring requirements for rental rehab are to ensure that:

1. the project owner maintains the appropriate mix of VLI and LI tenants throughout the compliance period;
2. the owner properly collects the required information and annually determines the income eligibility of tenants in the assisted units;
3. the owner collects rents that do not exceed the HOME maximum rents, when adjusted for tenant-paid utility allowance;
4. the owner maintains the units to HQS standards; and
5. if the project is sold, the new owner complies with the same requirements (unless a foreclosure occurs).

LPAs should consider the capacity of the property owner/manager to meet all of these obligations, and determine when it might be in the best interest of smooth operation and timely compliance to assist the owner or directly conduct some of these duties.

Regulations require that each project be reviewed at least annually to determine that the owner is meeting the occupancy and rent obligations. This may be done through onsite review or offsite review of reports and files. An owner's occupancy report is permissible, and a recommended version of that report can be found at the HOME Program web site at: www.hud.gov/offices/cpd/affordablehousing/library/forms/rentalcomplianceproject.pdf.

In addition, on-site unit inspections for HQS compliance be conducted only every 1 to 3 years. For the annual review (other than HQS), the LPA should contact the owner, obtain rent rolls, and income certification documents to determine that the owner is complying with items 1 through 3 above. This can be done on-site (which is recommended) or by the owner submitting documents to the LPA for review. The LPA should collect such documentation and also record notes of its review. Data collection forms and checklists are attached to assist the LPA with this review.

On-site inspections are required:

Projects with more than 25 total units	Annually
Projects with 5 to 25 units	Every other year
Projects with fewer than 5 units	Every third year

The inspection should be done by the LPA or contracted persons, using a HUD Section 8 HQS inspection form, noting violations of the rules. If the property is pre-1978 and is subject to the LBP rules, then the inspection must include visual assessment, and the inspector must have taken the visual assessment course online at HUD (www.hud.gov/offices/lead/training/visualassessment/h00100.htm).

If violations are found that appear to be tenant-caused, and there is evidence that the owner has been making a good faith effort to maintain HQS standards (documented by annual HQS inspections forms in the file), then the LPA may use discretion in obtaining the owner's consent to correct minor violations without citing it as a finding. However, if the violations are major and widespread, appear to be long-standing, and there is no evidence of ongoing efforts to maintain HQS standards (such as the absence of any HQS inspection documentation in the files), then the LPA should cite the HQS violations as part of the annual monitoring letter (below).

Any findings of non-compliance must be in writing to the owner, with a copy to HTFC, noting the findings and specifying the actions and time frame required to remediate the violation. The monitoring file should also contain any owner responses or follow-up, including notes of phone conversations and meetings.

HTFC HOME Program
LPA Owner-Occupied Rehab Program File Checklist

	Yes	No	Comments
PJ Contract/Agreement			
Lender Agreements (if any)			
Administrative Plan Documents File			
Marketing/Outreach Plan			
Application Processing Procedures			
Written Rehab Standard			
Procurement Policy			
Owner Agreement			
Note & Mortgage (if applicable)			
Processing Documents			
Affirmative Marketing Record			
Advertisement file			
Record of Owner Outreach efforts			
M/WBE Contractor Outreach Record			
Section 3 Outreach Record			
Beneficiary Data			
Appeals by Applicants			
Environmental Review Record			
Public Comments and Complaints			
NOI/RROR			
Conflict of Interest Determination Records			
Financial Records			
Project Set-Up Reports			
Invoices, Vouchers, Disbursement Trail			
Monitoring Records			
LPA monitoring of projects			
HTFC monitoring letters/response			
Resales/Foreclosures			
Program Match Documentation			
Administrative Cost Documentation			
Program Income			
Program Audits & Response to Findings			

HTFC HOME Program
LPA Owner-Occupied Rehab Project File Checklist

Project Identifier (project no., location, name)____

	Yes	No	Comments
Owner application			
Owner income verification			
Verification of ownership			
After-rehab/construction value determination			
Pre-construction HQS Inspection report			
Environmental checklist & record			
Relocation determination/records			
Work write-up/specifications			
LBP Checklist Addendum (if pre-1978)			
Cost estimate			
Contractor bid package/proposals			
Proposal Document Form			
Contractors Invited to Bid			
Bids Received/ Reviewed			
Contractor Selection			
Construction Documents			
Certificate of contractor insurance			
Construction contract			
Building permits & Notice to Proceed			
Change orders (if applicable)			
Progress inspections for draws			
Contractor Affidavit/Waiver of liens			
M/WBE contract report			
Certificate of final inspection/HQS			
IDIS/Financial documentation:			
Project set-up form			
Contractor invoice(s)/vouchers			
Evidence of contractor disbursement			
Payment certification vouchers			
Project completion report			
Note and mortgage (if applicable)			

LBP Addendum to Project File Checklists

LBP Compliance Item	**Complies: Yes/No**	**Notes**
Project commitment after 1/10/02		
Project Exemption Documentation (if applicable)		
LBP Pamphlet given		
Disclosure given to buyer/occupant		
Visual assessment or risk assessment conducted & in file		
Risk Assessment Disclosure to owner		
Scope of work addressed LBP hazards		
Contractor qualifications/certification		
Occupant protections implemented		
Clearance report		
Clearance Disclosure to Owner		
If rental, ongoing maintenance procedures		

HTFC HOME Program
LPA Home Buyer Assistance Program File Checklist

	Yes	No	Comments
PJ Contract/Agreement	______	______	______
Lender Agreements (if any)	______	______	______
Administrative Plan Documents File			
Marketing/Outreach Plan	______	______	______
Processing Procedures	______	______	______
Rehab Standards (if rehab)	______	______	______
Procurement Policy	______	______	______
Owner Agreement	______	______	______
Note & Mortgage	______	______	______
Processing Documents	______	______	______
Affirmative Marketing Record			
Advertisement file	______	______	______
Record of Owner Outreach efforts	______	______	______
M/WBE Contractor Outreach Record	______	______	______
Section 3 Outreach Record	______	______	______
Beneficiary Data	______	______	______
Appeals by Applicants	______	______	______
Environmental Review Record			
NOI/RROR	______	______	______
Public Comments and Complaints	______	______	______
Conflict of Interest Determination Records	______	______	______
Financial Records			
Project Set-Up Reports	______	______	______
Invoices, Vouchers, Disbursement Trail	______	______	______
Monitoring Records			
Self-monitoring of projects	______	______	______
HTFC monitoring of program	______	______	______
Resales/Foreclosures	______	______	______
Program Match Documentation	______	______	______
Administrative Cost Documentation	______	______	______
Program Income & Recaptured Funds Documentation	______	______	______
Program Audits & Response to Findings	______	______	______

HTFC HOME Program

LPA Home Buyer Assistance Program Project/Buyer File Checklist

Project Identifier (project no., location, name)____

	Yes	No	Comments
Buyer application			
Buyer income verification			
After-rehab/construction value determination			
HQS Inspection report			
Environmental checklist			
Relocation notice to seller			
Buyer loan commitment/agreement			
Note and mortgage recorded			
IDIS/financial documentation:			
Verified project set-up form			
Evidence of disbursement			
Project completion report			
If rehab/new construction funded by HOME:			
Plans & Specifications			
LBP Checklist Addendum (if pre-1978)			
Cost estimate			
Contractor bid package/proposals			
Proposal Document Form			
Contractors Invited to Bid			
Bids Received/Review Documentation			
Contractor Selection			
Construction Documents			
Certificate of contractor insurance			
Construction contract			
Building permits & Notice to Proceed			
Change orders (if applicable)			
Progress inspections for construction draws			
Contractor Affidavit/Waiver of liens			
M/WBE contract report			
Certificate of final inspection/HQS			
IDIS/financial documentation:			
Contractor invoice(s)/vouchers			
Evidence of contractor disbursement			
Payment certification vouchers			

HTFC HOME Program
LPA Home Buyer Assistance Program Annual Compliance Review Checklist

Name/Unit Address				Date Occupancy Verified	Date Ownership Verified Or Resale

HTFC HOME Program
LPA Rental Rehab Program File Checklist

	Yes	No	NA/Comments
PJ Contract/Agreement			
Lender Agreements (if any)			
Administrative Plan Documents File			
Marketing/Outreach Plan			
Application Processing Procedures			
Written Rehab Standard			
Procurement Policy			
Owner Agreement			
Note & Mortgage			
Processing Documents			
Affirmative Marketing Record			
Advertisement file			
Record of Owner Outreach efforts			
M/WBE Contractor Outreach Record			
Section 3 Outreach Record			
Beneficiary Data			
Environmental Review Record			
NOI/RROR			
Public Comments and Complaints			
Conflict of Interest Determination Records			
IDIS Records			
Project Set-Up Reports			
Invoice, Voucher Disbursements Trail			
Monitoring Records			
Self monitoring of projects			
HTFC monitoring of Program			
Resale Approvals			
Program Match Documentation			
Administrative Cost Documentation			
Program Income Documentation			
Program Audits & Response to Findings			

HTFC HOME Program
LPA Rental Rehab Program Owner/Property File Checklist

Project Identifier (project no., location, name)____

	Yes	No	Comments
Owner application			
Inspection report			
Environmental checklist			
Real estate taxes current at time of funding			
Evidence of property insurance			
LPA/Owner agreement			
LBP Addendum (if pre-1978 property)			
Work write-up & specifications			
Cost estimate			
Contractor bid package/proposals			
Bid Documents			
Bids Received			
Contractor Selection Documentation			
Construction Documents			
Certificate of contractor insurance			
Construction contract			
Building permits & Notice to Proceed			
Change orders			
M/WBE Contracting report			
Progress inspections for construction draws			
Contractor Affidavit/Waiver of liens			
Covenants, Note and mortgage recorded			
Certificate of final inspection/HQS			
IDIS/financial documentation:			
Verified project set-up form			
Invoice, vouchers, disbursement trail			
Project completion report			
Occupancy			
Tenant Selection Plan			
Waiting List			
Affirmative Marketing Plan & Records (if 5+HAUs)			
Monthly Rent Rolls/Unit Turnover List			
Lease w/ Addendum Provisions			

HOME Rental Project
Status Summary

Date of Status Check ________________

HOME Assisted Unit (HAU) Count:

	Required	Occupied	Over-Income/ Vacant
VLI	______	______	______
LI	______	______	______

Are Project Files Complete?	**Yes**	**No**
Do Rent Rolls reflect HOME limits?	**Yes**	**No**
Are Tenant Files Complete?	**Yes**	**No**
Are Recertifications current?	**Yes**	**No**
Do Leases meet HOME requirements?	**Yes**	**No**
Are Unit Inspections current?	**Yes**	**No**

HTFC HOME Rental Project
Unit Review Checklist

Unit No.	VLI	LI	OI/ Vacant	Contract Rent	Last Income Certification Date	Last HQS Inspection Date
TOTAL						
Required						

HOME LPA Rental Project
Annual Monitoring Review: Individual Tenant File Review Checklist

Summary

Unit No.________
Date of Most Recent Certification_________________
Income status (circle 1)

	VLI	LI	Over Income

Maximum Allowable Rent	$_____
Utility Adjustment	$_____
Actual Contract Rent	$_____

File Document Checklist	**Document In File**
Rental Application/Income Disclosure Form	_____
Eligible Income Calculation Form	_____
Income Verification Documents	_____
Executed Lease	_____
HQS Inspection Form	_____

HQS Inspection Results (circle 1)	**Pass**	**Fail**

Conditions to be corrected:
____
____
____

Part III

HTFC Monitoring of State Recipients & Subrecipients Procedures & Checklists

Overview

In compliance with HOME regulations, HTFC will monitor LPAs annually to determine compliance with the regulations in implementing the HOME Program. In most cases, this will be an on-site review as described below, but HTFC reserves the right to conduct a phone and desk review. The reviews will be scheduled in advance by the DHCR Regional Office.

Prior to coming on site, monitoring staff will review HTFC files, prior monitoring findings and IDIS information. The LPA may also receive in advance a set of questions to review and prepare to answer.

The on-site review will consist of:

* an interview;
* review of program files;
* review of a random sample of individual project/owner files; and
* a visit to several sites for visual confirmation of work.

LPA preparation for this annual visit should include the following activities:

1. Review of <u>program files</u> for completeness using file checklists & these interview instruments;
2. Review of <u>owner/project files</u> for completeness using file checklists & interview guides; and
3. Preparation for interview using these guides and questions (if any) sent in advance by HTFC.

LPA staff should also review the HOME Program Monitoring Guide for additional checklists and information regarding HOME compliance.

DHCR/HTFC Staff Instructions & Procedures

The instructions below lay out a general protocol to follow when scheduling and conducting a monitoring site visit to an LPA.

While the regulation requires annual review of recipients (and rental inspections and file reviews every 1 - 3 years), it is important to take into account risk factors in the frequency of monitoring. Some LPAs may benefit from more frequent visits based on certain risk factors or prior performance problems. Refer to the risk factors on p. 10 of HUD's <u>Monitoring HOME Program Performance</u> guide. Where possible, consider more frequent visits to those LPAs that reflect high risk factors.

Also, keep in mind that these protocols and instruments focus on compliance, and that productivity and performance are also important concerns that should be emphasized during the visit, and any other interactions with LPA staff.

1. **Schedule the Visit**
   Schedule the visit well enough in advance to give the recipient time to prepare and ensure appropriate people will be available on site. Review this Guide and the HUD Monitoring HOME Program Performance guide.

   Be sure to make enough copies of the appropriate **<u>file checklists in Part II of this Guide</u>**, as needed, in order to conduct file reviews for at least 5 project files or 10 percent of the total, whichever is greater.

2. **Pre-visit Desk Audit**
   HTFC staff should complete the desk audit, **Section I**, as part of visit preparation to summarize the grantee's program basic information, program status, and any known difficulties and concerns. Then, mail **Section II**, sponsor's program design and operation questionnaire, with a letter confirming the date of the monitoring visit. Request that this form and any related exhibits be returned to DHCR/HTFC prior to the visit.

3. **Opening Conference**
   Review the topics to be covered during the visit and the status of known problems or issues. Determine if the grantee completed **Section II**, and review it or conduct the interview.

   Draw a file sample early in the day; ask the contact person to set up project visits for the afternoon.

4. **Administrator Interview(s)**
   Begin with **Section III**, which deals with selected specific HOME rules and regulations for three subrecipient project types, as appropriate: rehabilitation of owner-occupied housing, rental rehab and first-time homebuyer assistance. (Tenant-based assistance will be added in the future).

   Complete **Section IV**, on "other" requirements and policies. These very general questions are intended to uncover additional compliance problems that warrant further review or technical assistance.

   Space on the forms are limited. Attach field notes as appropriate to document the interview.

5. **Project Files Review**
   Refer to the project list on IDIS reports, and select files for review. It is recommended that 10 percent of the files (a minimum of 5 files) be selected for review. To the extent feasible, include a range of projects at various stages of completion (application stage, in progress/under construction, completed, occupied).

   Use the file checklists in the previous section of this document to review the completeness of the file. Verify the adequacy and accuracy (not just the existence) of the appropriate file documentation and whether file information corresponds with IDIS reports. The key issues of the file review include the following:
   * Are the required documents in the file?
   * Is property eligibility documented?
   * Is occupancy/income eligibility documented?
   * Does the project meet property standards?
   * Is there evidence of required compliance documents and ongoing compliance monitoring?

6. **Project Inspections**
   Using the brief **Section V** along with HQS inspection formats as appropriate, visit three to five projects, also at various stages of completion. Look generally for evidence that work has been completed as reported, and that the project meets HQS guidelines (or reasonably would have met HQS guidelines at time of completion for owner-occupied units). If the property is pre-1978, look for evidence that lead hazards have been addressed using safe work practices.

   If time permits, interview project owners and tenants to verify file information and determine their satisfaction with the program.

7. Exit Conference

If time permits, conduct an exit conference with key staff to give preliminary reactions and identify issues that are likely to be raised in the monitoring letter. Provide guidance on how to resolve any issues or concerns.

8. Monitoring Letter and Follow-up

After the site visit, review and summarize the monitoring visit and any further actions needed. Among the key topics to reconsider (beyond the basic regulatory compliance issues):

* Is the program design (including type and level of subsidy) appropriate for the locality?
* Has the sponsor done what was proposed? Do the activities and procedures correspond to the proposal, agreement and administrative plan? If not, do changes pose any regulatory compliance problems?
* Have there been any significant changes to activities, procedures, and units/beneficiaries that would constitute contract compliance issues beyond regulatory compliance? Specifically, are the actual results of any of the following (which were directly related to scoring factors) significantly different from what was originally proposed:
  * Average income of households served;
  * Timetable for commitment, disbursement, project completion and closeout;
  * Target area served;
  * Average per unit amount of HOME assistance; and
  * Leverage of other funds.
* Were activities implemented according to schedule and in a reasonable period of time?
* Were program objectives achieved in a productive, cost- efficient manner?
* Are files maintained to demonstrate compliance with requirements, including project and cost eligibility?
* Were procurement and conflict of interest records kept to demonstrate reasonable and cost-effective award of contracts?
* What actions or technical assistance would improve the program?

The monitoring letter is the summary of all findings and concerns. It should not be limited to regulatory compliance issues, but also cover contract compliance issues, productivity and program effectiveness. Separate findings and matters of regulatory compliance from those matters of advice that reflect suggestions or recommendations for the recipient to consider.

The letter should be sent within two weeks of the monitoring visit. Establish a clear time frame for the recipient to respond to any findings or required responses. Usually, 30 days is reasonable.

Follow-up with the recipients during the response period to address any questions regarding the findings. Also, contact the recipient after the response period has elapsed without response, or if the response is inadequate.

Keep in mind the availability of TA to all HOME recipients through DHCR and through other TA providers under contract to HUD.

New York State HOME Program Monitoring Guide

PART I. PRE-VISIT FILE REVIEW

1. **Grantee**: ______________________________

   Address: ______________________________

   Contact person: ______________________________

   SHARS number: ____________________ Telephone No: ____________

2. Monitoring visit for Federal Fiscal Year __________ Visit date: ____________

   HTFC reviewer: ______________________________

3. **Desk review checklist:**

   ______ Original application
   ______ Current administrative plan
   ______ Current HUD IDIS report
   ______ Notice of visit

4. **Type of recipient**

   ______ State Recipient
   ______ State Recipient with subrecipient
   ______ Subrecipient
   ______ Community Housing Development Organization

5. **HOME funding history**

Fiscal Year	**Awarded**	**% Committed**	**% Expended**

6. **Implementation** (List key milestones from administrative plan and contract):

Milestone	**Target Date**	**Completed Date**

7. **Activities funded** (from IDIS and other DHCR reports):

Activity	Units Planned	Committed	Completed
Owner-occupied Rehabilitation - one family			
Owner-occupied Rehabilitation - 2-4 family			
Rental Rehabilitation			
Home Purchase assistance - new construction			
Home Purchase assistance - rehabilitation			
Home Purchase assistance - no rehab			
Tenant-based rental assistance			

8. **Problems Identified** (Note any previous monitoring Findings on this or other programs, and any problems that were identified during application review or subsequent contacts):

Problem	Exists in this grant?	Comments
Selection process not clear or not followed		
Delay between commitment and initial draw		
Projects committed then canceled		
Inadequate or inappropriate subsidy mechanisms or program design		
Construction monitoring process not clear/not followed		
Final drawdown/closeout delay		
Other		

9. **Scoring Factors** (Review the proposal/scoring sheets for the following items, and examine actual results for changes that might have affected the scoring factors):

Scoring Factor Item	Basis for Score from Application
Average HH income proposed	
Timetable proposed	
Target Area proposed	
Ave. Per Unit HOME Subsidy proposed	
Leverage of Other Funds proposed	

10. **Resales/Foreclosures/Program Income/Recaptures**. Have there been any resales/foreclosures or other events related to projects funded in this or previous grants that were reported this period and may have produced recaptured or program income funds?

11. **Other questions or concerns suggested by file review:**

PART II. GRANTEE QUESTIONNAIRE

1. Grantee	2. SHARS ID
3. Contact Person	
4. Staff assigned to program	
Name/function	
Name/function	
Name/function	
Name/function	
5. Describe any changes in your HOME program activities from those indicated in the application and administrative plan:	
6. Describe any changes in criteria for selecting recipients indicated in your HOME application and administrative plan:	
7. Describe any changes in HOME administrative plan procedures as indicated below: a. Procedures for determining the amount of funds for each assisted unit: b. Methods of determining project feasibility: c. Means for ensuring that minimum funds needed to maintain affordability were invested in each unit:	

8. Have any of the following procedures for soliciting and processing applications changed from those described in your administrative plan? If so, describe
Program outreach/marketing
Application intake
Maintaining wait lists
Determining income eligibility
Determining property eligibility
Initial inspection
Work write-ups
Review of plans and specifications
Contractor selection
Drawdown
Are there written materials for these procedures?
9. Outline your general procedures for contractor procurement.
10. Describe your mechanisms/procedures for ensuring project completion.

11. Summary of applications for the year being monitored:	
Number received	
Number withdrawn	
Number rejected	

What were the primary reasons for applicants dropping out?	
What were the primary reasons for rejecting applications?	
12. Outline your general procedures for contractor procurement. Are these procedures in writing?	
13. Have funds other than HOME been used in HOME projects?	
14. If your program involves rehabilitation:	
a. Do you have a written rehabilitation standard? (review copy)	
b. Have any units exceeded HOME after-rehabilitation property value limitations? Explain circumstances.	
c. Indicate any other problems encountered in qualifying properties for eligibility.	

PART III. HOME REQUIREMENTS FOR SPECIFIC PROJECT TYPES
A. REHABILITATION OF OWNER-OCCUPIED HOUSING

1. Income Eligibility/Targeting. Were there any problems related to income eligibility or targeting? Is there file documentation of all owners meeting income limitations?

2. Affordability Provisions. What local requirements were imposed to preserve the affordability of units or provide for recapture of funds?

3. Per-Unit Costs.
   a. Have you exceeded the DHCR $30,000 subsidy limitation?

   b. Were local cost limitations exceeded?

4. Property Valuation. What method was used for property valuation?

5. Financing.
   a. Form(s) of assistance provided with HOME funds:
   _____ Loans _____ Deferred-payment loans _____ Grants
   (If loans, summarize the terms).

   b. Is an owner match or contribution required?

   c. Where have owners typically received financing?

   _____ Private lending institutions _____ Other:

   d. Have private lenders been formally involved, as through a leveraging agreement?
   _____ Yes _____ NoDescribe:

6. Program Income. Was the program designed to generate program income? Has there been any generated? What are your procedures for tracking/reporting/disbursing program income?

7. Resales/Foreclosures. Have you had any resales or foreclosures in the past year? How were they handled? Did you have any recaptured funds?

PART III. HOME REQUIREMENTS FOR SPECIFIC PROJECT TYPES
B. MODERATE REHABILITATION OF RENTAL PROPERTY

1. Income Eligibility/Targeting. Has the program met the requirement that 90 percent of units initially occupied after rehabilitation were occupied by households with incomes at or below 60 percent of median area income?

2. Affordability Provisions. What requirements were imposed to preserve the affordability of units? What legal documents were used?

3. Rent Limitations/Leases.
   a. Rent schedule used (date):

   b. Utility allowance schedule used (date):

   d. Are approved, standardized leases used?

4. Per-Unit Costs
   a. Have you exceeded the DHCR $30,000 subsidy limitation?

   b. Were local cost limitations exceeded?

5. Financing
   a. Form(s) of assistance provided with HOME funds:
   _____ Equity invested _____ Amortizing Loans _____ Deferred loans _____ Grants

   b. Is an owner match required?

   c. Where have owners typically received financing? Have private lenders been formally involved, as through a leveraging agreement?

6. Program Income. Was the program designed to generate program income? Has there been any generated? What are your procedures for tracking/reporting/disbursing program income?

7. Ongoing Compliance Monitoring. How do you monitor the project or ensure ongoing compliance with occupancy, rent and property standards?

PART III. HOME REQUIREMENTS FOR SPECIFIC PROJECT TYPES
C. HOME PURCHASE ASSISTANCE

1. Income Eligibility/Targeting
   a. Are specific types of households targeted (and included in selection criteria)?

   b. Were the HOME income requirements a problem?

2. Homebuyer Counseling. Is counseling provided for homebuyers participating in the program?

3. Per-Unit Costs
   a. Have you exceeded the DHCR $30,000 subsidy limitation?

   b. Were local cost limitations exceeded?

4. Property Valuation. What method was used for property valuation?

5. Financing
   a. Where have buyers typically received financing?

   b. Have private lenders been formally involved, as through a leveraging agreement?

   c. How do you qualify buyers and determine the amount of HOME subsidy and terms?

6. Affordability Provisions
   a. What resale/recapture method was selected to preserve affordability?

   b. What legal documents were used/recorded?

   c. Have any resales occurred? Any problems?

7. Program Income. Was the program designed to generate program income? Has there been any generated? What are your procedures for tracking/reporting/disbursing program income?

8. Resales/Foreclosures. Have you had any resales or foreclosures in the past year? How were they handled? Did you have any recaptured funds?

PART IV. OTHER REQUIREMENTS AND POLICIES

1. Equal Opportunity/Fair Housing
   a. Do the policies for meeting equal opportunity and fair housing requirements correspond to those described in the HOME administrative plan?

   b. Have there been problems or complaints relating to equal opportunity or fair housing?

2. Affirmative Marketing/MWBE Outreach. Have policies and procedures for affirmative marketing and minority- and women-owned business enterprise participation corresponded to those in the HOME administrative plan?

3. Displacement/Relocation/Acquisition
   a. Have HOME activities resulted in tenant relocation?

   b. Did policies and procedures for assisting displaced persons correspond to those in the HOME administrative plan?

   c. Were any lower-income tenants displaced without benefits outlined in the written tenant assistance policy?

4. Labor Standards. Did Davis-Bacon requirements apply? Do records support compliance?

5. Lead-Based Paint. Has the LPA adopted LBP procedures in compliance with the new rule?

   a. Have LPA staff received adequate training in: LBP rules? Safe Work Practices?

   b. Does the LPA have access to an adequate number of:
      * Risk assessors (or visual assessors)?

      * Interim control contractors?

      * Abatement contractors?

      * Clearance professionals?

   c. If rental properties, has the LPA ensured that owners are implementing ongoing maintenance procedures? Is the LPA conducting visual assessment as part of its rental property standards compliance monitoring?

   d. Are there any impediments to full implementation of the LBP rule for this program? What additional TA/training is needed?

6. Environmental Review
   a. Is there an approved environmental review record for all HOME program sites?

   b. Have program sites triggered any of the following regulatory areas?

______ Environmental quality ______ Historic preservation

______ Flood plain/wetlands ______ Coastal zone management/waterfront

______ Other environmental issues ________________________________

7. Scoring Factors. Compare the actual results of the program as implemented to date to what the applicant proposed originally. These are factors that affected the scoring and selection of this application. Compare the actual results to those proposed in the application. If the applicant had proposed what the program actually achieved, would the project still have been selected?

Scoring Factor Item	***Actual Results of the Program***
Average HH income proposed	
Timetable proposed	
Target Area proposed	
Ave. Per Unit HOME Subsidy proposed	
Leverage of Other Funds proposed	

PART V. PROJECT VISITS

1. Project Address:
   Identification number:__________________________
   Number of units: __________
   HOME funding: $__________ Total cost: $__________

2. Project type: _____ Rehabilitation of owner-occupied housing
   _____ Moderate rehabilitation of rental property
   _____ First-time homebuyer assistance
   _____ Tenant-based rental assistance

3. Description of property and status of project:

4. Are site observations consistent with data in the IDIS (with respect to level of completion)?

5. Are site observations consistent with file materials? Does the construction or rehabilitation work reflect the scope as contained in the files and contract?

6. (For projects underway or completed) Comment on the quality of the rehabilitation work.

7. If pre-1978 property, is there evidence that LBP hazards were/are being addressed with proper methods?

8. Is it reasonable to conclude that the unit meets HQS standards (or did so at the time improvements were done and the file inspection was completed, allowing for occupant changes since that time)? If a rental unit, does it currently meet HQS standards?

9. (If time permits) Notes from interview with project owner or tenants to assess program satisfaction and verify income and rents information:

Part IV

HTFC HOME State Recipient/Subrecipient Closeout Procedures

Close out procedures for New York State HOME Program State Recipients and Subrecipients ("recipients") that have expended all funds and completed all program activity include the following:

1. Verify that IDIS and SHARS reports show that grant is 100% completed (project completion reports submitted for total value of grant).

2. Recipient must have been monitored, and all monitoring findings resolved, with letters exchanged.

3. Verify that amount of funds disbursed to recipient equals amount of funds drawn by State from HUD as reported by IDIS system.

4. Verify that all buildings associated with project are entered in SHARS and linked to the project.

5. Determine whether latest recipient audit that was submitted reports on all HOME funds disbursed. If not, determine scheduled date for audit submission.

6. Issue closeout letter with latest IDIS report.

7. Verify return of letter, signed by recipient.

8. Close out contract and project in SHARS.