



Community Land Trust Homebuyer Assistance Program (CHAP) HOME Program



Community Housing and Grants Management Division

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Summary of Changes

Date	Section	Description of Changes
10/2022		Original Version
08/19/2024		Revised Homebuyer Underwriting section 2.02.6 Maximum Front End ratio 31% and Back End 43% to align with FHA Program Ratios.
10/22/2024		Added Inspection form HUD 52580A to section 2.03.2 Property standards.
11/20/2024		Section 2.02.6 added conforming mortgage language for safe harbor DTI ratio allowances.
11/26/2025		Sections 2.02.6, 2.02.7, and 3.11.2: 92.254(f) was renumbered to 92.254(g).
11/26/2025		Sections 2.01.2 and 2.04.2 the POA thresholds were changed to \$25,000 and \$50,000 per 2025 Final Rule.
11/26/2025		Section 2.03.2 UPCS was replaced with 24 CFR Part 92.251.
11/26/2025		Section 3.11.4 the single audit threshold was updated to \$1M.

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SECTION 1: INTRODUCTION

1.01 Program Description and Funding

The State of North Dakota is a Participating Jurisdiction (PJ) under the federal HOME Investment Partnerships Program, receives an allocation of HOME funds from the US Department of Housing and Urban Development (HUD) that is used to support affordable housing activities in the community. The State's HOME Program is administered by the North Dakota Housing Finance Agency (NDHFA.)

As part of the State's HOME Program, NDHFA provides funding to community land trusts as local Program Administrators (referred to in the HOME Final Rule as "subrecipients") to assist Low-Income (LI) homebuyers to achieve homeownership that is affordable and sustainable.

With implementation of the homebuyer assistance through these policies, NDHFA intends to ensure that participating buyers will be successful homeowners by providing the assistance each buyer needs to make the home affordable while serving as many households as possible with limited HOME funds.

1.02 Assistance to be Provided

The Program provides direct assistance (including down payment assistance, closing cost assistance, and purchase assistance) to eligible low-income households seeking to purchase single-family homes meeting HOME requirements.

Eligible homebuyers must:

- Be Low-Income (LI) with an annual income does not exceed 80 percent of the median income for the area as determined by HUD, with adjustments for smaller and larger households;
- Meets program buyer underwriting guidelines; and
- Has a first mortgage that meets the Program's Responsible Lending guidelines.

Eligible single-family properties must:

- Be located with the boundaries of the Program service area;
- Comply with the State's property standards at time of purchase; and
- Meet environmental review standards.

Up to \$70,000 in direct assistance is available to eligible buyers, inclusive of down payment assistance, closing cost assistance, and direct purchase financing.

Assisted buyers must sign a written agreement and declaration of lien interest securing NDHFA's CHAP investment over the period of affordability required by 24 CFR 92.254, ranging from 5 – 15 years depending on the amount of buyer assistance. Buyers agree to occupy the property as their principal residence for the period of affordability, and to repay some or all the direct assistance if they fail to occupy or the unit is sold during the period of affordability.

1.03 Program Administration

NDHFA is the administering agency for the HOME Program on behalf of the State as the HOME Participating Jurisdiction (PJ). To administer the CLT Homebuyer Assistance Program (CHAP) on its behalf, NDHFA designates local community land trusts as "Subrecipients" under federal rules. For purposes of this manual, the community land trusts will be referred to as the "Program Administrator".

This program is currently operated as a pilot program through Grand Forks Community Land Trust (GFCLT) but may be made available to other qualified community land trusts.

1.03.1 NDFHA Role & Responsibilities

While assigning most day-to-day administrative responsibilities to the Program Administrator, NDHFA is ultimately responsible to HUD for the entire HOME Program to ensure full compliance with applicable HOME requirements outlined in 24 CFR 92.2. In this role NDHFA is responsible for:

- Program Design – Establishing and approving the CHAP Policy Guidelines and furnishing the Program Administrator with information regarding CHAP requirements, including any changes to HOME regulations or HOME Program guidance issued by HUD affecting the CHAP;
- Environmental Review – Completing necessary environmental reviews and/or determinations pursuant to 24 CFR 92.352 and 24 CFR 58;
- IDIS Setup, Drawdown, and Completion – Entering project-by-project setup, drawdown, and completion information along with associated reporting in HUD’s Integrated Disbursement and Information System (“IDIS”);
- Program Administrator Monitoring – Completing remote and on-site monitoring reviews of the Program Administrator’s operation of CHAP;
- Principal residence monitoring – Conducting regular checks to determine if the homebuyer is still in occupancy;
- Refinancing and Prepayment – Approving any refinancing and resubordination of the HOME debt as consistent with the policies in Section 2.07.
- Sale/Resale Approvals –
 - Non-CLT (recapture) properties – Approving homebuyer and preparing upon request a declaration of lien release document and providing to the closing agent and/or the Program Administrator for recording;
 - CLT properties – Approving the homebuyer and sale price, and approving ground lease addendum; and
- Technical Assistance – Serving as a technical resource to the Program Administrator for HOME-related regulatory or policy questions that may arise during Program Administrator’s operation of the program.

1.03.2 Program Administrator Role & Responsibilities

The CLT as Program Administrator will be responsible for the day-to-day operation of the CHAP, including interaction with low-income applicants and their realtors, mortgage lenders, and the like.

In all cases, the Program Administrator will implement the program in compliance with the Homebuyer Assistance Program Guidelines published by NDHFA. In its role, Program Administrator will:

- Marketing – Market and advertise the program through multiple channels, including but not limited to Program Administrator’s website, homebuyer counseling program, and other such means, and develop and implement an affirmative marketing plan that i) identifies those portions of the low-income population of the State that are least likely to apply, ii) establishes specific marketing actions (e.g. advertising in specialty publications, native languages, etc.) intended to reach such populations, and iii) records the results of such activities;
- Application Intake – Develop needed application materials and establish and implement an application process;
- Screening – Complete necessary reviews of individual applications, including income documentation, to establish applicants’ eligibility for CHAP and notify applicants of their status;
- Homebuyer Underwriting – Apply NDHFA’s published CHAP Policy Guidelines in creation of organizational homebuyer program policies including buyer underwriting and first mortgage requirements, ensuring that individual transactions meet all program requirements or that NDHFA has provided prior approval of an exception;
- Counseling – Ensure all homebuyers are provided pre-purchase homeownership counseling using an approved homeownership counseling organization;

- Inspections – Complete inspections of properties identified for purchase by qualified applicants to ensure that such properties meet NDHFA’s property standards, including conducting visual assessments of potential lead-based paint hazards in any properties constructed prior to 1978, and reinspect properties that failed an inspection and were subsequently repaired by the seller or properties where the inspection was conducted more than 90 days before the closing;
- Homebuyer Orientation – Provide individual orientations to applicants explaining the program requirements, including affordability period requirements relating to ongoing owner-occupancy and recapture of assistance in the event assisted buyers sell or otherwise transfer title;
- Closings – Prepare and execute all documents required for closing, ensure that documents are recorded, and provide original documents as required to NDHFA;
- Resales – Administering all CHAP transfers during the HOME period of affordability, including:
 - Recapture: Providing payoff (i.e., “recapture”) information to assisted buyers and/or their closing agents, requesting lien releases from NDHFA and recording lien discharges for fully forgiven HOME loans;
 - Resale (CLT properties) – Providing resale requirements and formula sales price to sellers, determining income eligibility of subsequent buyers, requesting resale and buyer approval from NDHFA, executing and recording new ground lease with HOME addendum, and providing documentation to NDHFA; and
- Monitoring – Following the provision of CHAP assistance, conduct annual monitoring reviews to ensure that assisted buyers continue to occupy their properties for the duration of the affordability period and report to NDHFA on any identified instances of non-compliance.

The Program Administrator (the subrecipient of the HOME program funds) is responsible for program implementation in accordance with HOME Regulations at 24 CFR 92.254(gf) and the guidelines in this Manual. HOME regulation requires the HOME-assisted homebuyer program to have policies and procedures including standards for underwriting HOME-assisted homebuyers, responsible lending standards, and standards for refinancing and subordination of HOME liens. The purpose of these standards is to maximize the likelihood that homebuyers assisted with HOME funds will be successful and sustain homeownership. The required standards are included in this manual.

1.04 Applicability of Federal and State Regulations

The HOME Program Rule is located at 24 CFR Part 92. References are made in this Manual to the HOME Rule requirements, and sections of the Rule are indicated throughout by the number of the section of the Rule, such as “92.254.”

The uniform administrative requirements for federal grants at 2 CFR Part 200 also apply to the State and its Program Administrators.

1.05 Manual Organization; Changes and Modifications

This manual contains the program policies and procedures. The Manual is designed to assist NDHFA staff and Program Administrators in compliance with the various requirements and regulations that govern mortgage lending, as well as those regulations specific to the use of HOME funds. This manual does not replace the HOME Rule but does contain NDHFA policy guidelines determined within its authority as the HOME Participating Jurisdiction (PJ) for the State.

This manual is subject to revision or amendment without notice to any person, but with the approval of NDHFA. If a change in Federal law or regulation requires the update of this manual, such a change will be made, and those changes will become effective as of the effective date of the new or modified law or regulation. If any portion of this manual conflicts in any way with any law, regulation, or official guidance or commentary in interpretation thereof, the law or regulation will control.

This manual is organized into the following Chapters:

- Chapter 2 contains program requirements and NDHFA policies pertaining to household and property eligibility, and the underwriting and lending parameters for the HOME funds.
- Chapter 3 outlines the program procedures for marketing, application intake and processing, eligibility and underwriting, closing and ongoing compliance and loan administration.
- Chapter 4 contains standard program documents. The Housing Incentive Fund (HIF) provides financial assistance for the development of new multifamily rental units for the benefit of low- and moderate-income households. Initially authorized by the North Dakota Sixty-second Legislative Assembly, the program was amended and expanded during the Sixty-third Legislative Assembly.

SECTION 2: HOME PROGRAM POLICIES & REQUIREMENTS

2.01 Overview of Homebuyer Assistance

2.01.1 Amount and Terms of Homebuyer Assistance

The program provides homebuyer assistance subject to the following terms and limits:

- Maximum amount of \$70,000 per unit; individual assistance to be determined by underwriting
- HOME Period of Affordability (POA) – 5 – 15 years based on the amount of homebuyer assistance (see Section 2.01.2)
- If non-CLT property subject to recapture:
 - Loan terms
 - No interest accruing
 - Repayment deferred until sale or compliance violation
 - Full recapture during the term of the loan, subject to the limit of net proceeds, in the event of sale, transfer or non-compliance
 - Legal documents
 - HOME agreement (executed by the Program Administrator & the homebuyer)
 - Declaration of lien interest recorded
 - Recapture on resale or default due to non-compliance
 - Full recapture subject to sales proceeds
 - Remaining term of the loan and the HOME loan balance are assumable if purchased by eligible Low-Income buyer
 - Non-compliance – full repayment of original note
- If CLT property subject to resale restrictions
 - Subject to HOME occupancy and resale requirements during HOME POA
 - Legal documents
 - HOME rider to CLT ground lease
 - HOME addendum to CLT purchase agreement
 - Resale to another LI buyer following ground lease and HOME rider during POA

2.01.2 Period of Affordability

The period of affordability is based on the amount of HOME subsidy provided to the homebuyer as follows:

HOME Down Payment Assistance to Homebuyer	Minimum Period of Affordability
Less than \$25,000	5 yrs.
\$25,000 - \$50,000	10 yrs.
More than \$50,000	15 yrs.

The minimum HOME subsidy is \$1,000 per unit.

2.01.3 Commitment of Funds

A commitment of HOME purchase assistance funds can be made (and the project set up in IDIS) only after the following has occurred:

- A purchase offer has been accepted and executed by the seller and the homebuyer;
- The proposed property has received Tier 2 environmental approval;
- Homebuyer underwriting has been completed;
- The first mortgage has been determined to meet program responsible lending guidelines;
- The property has been inspected and meets HOME property standards; and
- The Program Administrator and homebuyer have executed a written legally binding agreement.

2.02 Applicant Eligibility

2.02.1 Eligible Homebuyers

To be eligible for homebuyer assistance, the prospective purchaser beneficiary must be low-income (LI) and must occupy the property as his/her principal residence upon purchase.

The household must qualify as low-income (LI) within six months of the following events:

- At the time of purchase in the case of a contract to purchase existing housing; or
- At the time the contract is signed in the case of a contract to purchase housing to be constructed.

1.02.2 Homebuyer Income Eligibility

Assistance may only be provided to homebuyers whose income does not exceed 80 percent of area median income (AMI.) Income should be calculated using the criteria outlined in HUD 24 CFR 5.609 (referred as “Part 5” or “Section 8” method (HOTMA Final Rule applies 01/01/2026).)

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

The Program Administrator will utilize the CDP Income Eligibility Calculator to calculate income, and qualification documentation must be obtained to support the income calculator output.

2.02.3 Conflict of Interest

The Program Administrator, including its officers, board members and employees, are subject to the presumption of conflict of interest as stated in 92.356(a) – (c). As such, all such covered persons of the Program Administrator may not receive either program assistance or any contract without the prior written exception granted by HUD.

Pursuant to 24 CFR 92.356, no employee, agent, consultant, officer, or elected official or appointed official of NDHFA or the Program Administrator, individually known as a “Covered Person,” is eligible to receive HOME assistance under the CHAP or to have a financial interest in any contract, subcontract, or other agreement with respect to the HOME-funded activities contemplated in this Agreement. This provision shall also apply to both Covered Persons and those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a Covered Person.

In the event an individual who is otherwise eligible applies to the program, Program Administrator will immediately notify NDHFA. State, in its sole discretion, may pursue a waiver from HUD under the provisions of 24 CFR 92.356(d) to allow participation notwithstanding the conflict of interest. Only HUD may grant such a waiver; neither NDHFA nor the Program Administrator may grant such a waiver on its own.

2.02.4 Program Preferences & Priorities

Assistance can be limited to units within the identified service area of the program in the application and contract, but assistance **cannot** be limited to current or prior residents of the jurisdiction of the target area.

Priorities or preferences for certain types of households is subject to NDHFA approval and is only permissible to the extent that:

- The priority housing and household type has been identified in the application;
- The type has been identified as having disproportionate housing needs in the State’s Consolidated Plan and is approved by NDHFA at contract execution;
- The priority or preference does not violate nondiscrimination and fair housing requirements; and
- The priority or preference is fully disclosed in all program documents, advertising and presentations.

2.02.5 Homebuyer Counseling & Education

Prospective home purchasers must complete an approved home buyer education curriculum prior to entering into a purchase agreement for a home to increase the prospective purchasers’ awareness about loan terms and how to estimate the cost of credit.

Homebuyer education can also involve one-on-one counseling sessions, where a prospective homebuyer will review their credit report and income with a certified counselor, who can advise them about how their other debt obligations will impact their ability to afford the initial purchase of the home, and the cost of maintaining it.

Beginning 8/1/2021, homebuyer education must be provided by a counselor who has passed the HUD certification examination and is employed by a HUD-approved housing counseling agency.

Each buyer must receive housing counseling prior to executing the written agreement for HOME assistance. NDHFA requires completion of the counseling within the past 12 months by all adult household members who will hold title and be party to the senior loan.

Counseling expense for an assisted homebuyer may be charged to the HOME project as a project delivery cost. However, if a person receiving counseling ultimately is not assisted with HOME funds, the cost of counseling can only be paid by HOME as an Administrative cost.

2.02.6 Homebuyer Underwriting

92.254(g)(1) of the HOME Final Rule requires the PJ to have homebuyer underwriting standards that evaluate housing debt and overall debt of the family, the appropriateness of the amount of HOME assistance, monthly expenses of the family, assets available to acquire the housing, and financial resources to sustain homeownership.

Underwriting Income

The income used for homebuyer underwriting income may differ from the income calculated under Homebuyer Income Eligibility. **For underwriting purposes only** (that is to determine the appropriate level of assistance), the following adjustments to eligibility income may be made:

- The income of adult members of the household who will not have an ownership interest in the property may be excluded from underwriting income. For example, the income of an elderly parent that is part of the household but is neither being listed on title to the property nor included on the loan documents will not be included in calculations of the income available to make the mortgage payment. This exclusion for “non-purchasing” adults is not intended to optionally exclude the income of a household member with marginal credit. In the case of married couples, the income of both spouses will always be included for underwriting purposes.
- Significant sources of income such as social security benefits, child support payments, or the like that will not continue for three (3) years may be excluded. For example, child support received for a 16 ½ year old is included in the Part 5 definition of income because it will continue over the upcoming 12 months but will not be counted in buyer underwriting as the income will cease when the child turns 18.
- Any imputed income from assets that was included in the eligibility income determination may be excluded for underwriting purposes.

These adjustments to income are used only for homebuyer underwriting purposes and do not apply to eligibility income.

Housing and Overall Debt to Income

The homebuyer underwriting policy must define acceptable front-end ratio and back-end ratios that will be used in evaluating a homebuyer’s housing and overall debt. This includes:

- Definition of income for purposes of calculating the front-and back-end ratios – Unless requested by the Program Administrator and accepted by NDHFA, the Underwriting Income as described above will be used.
- The ratios that will be used to determine the assistance necessary for the homebuyer – Unless alternative ratios are approved by NDHFA, the ratios that will apply to homebuyers are:
 - Maximum front-end ratio – The monthly housing expenses (i.e., front-end ratio) do not exceed 31% of the buyer’s monthly underwriting income;
 - Minimum front-end ratio – The monthly housing expenses (front-end ratio) is at least 20% of their monthly underwriting income OR the first mortgage is limited by the loan-to-value ratio and not the buyer’s payment capacity; and
 - The total debt burden (i.e., back-end ratio) is not more than 41%.
- It is acceptable to have a policy that allows ratios to exceed the above maximums so long as the primary loan is a Fannie Mae or Freddie Mac conforming loan product or a governmental insured loan such as USDA, FHA, or VA.

Monthly Expenses

92.254(g)(1) specifies that the underwriting policy must consider Monthly Expenses of the family beyond the housing and debt expenses included in the ratios. This is to accommodate any unusual recurring expenses that might affect the homeowner's ability to meet housing expenses, such as unusual transportation costs. NDHFA has not identified any unusual living expenses that must be considered throughout the State. The Program Administrator can propose any recurring monthly expenses that it will include in its underwriting.

Downpayment and Post-Closing Cash Requirements

Assets and Cash Reserves must be evaluated. The homebuyer underwriting policy must reflect the following:

- Minimum homebuyer cash contribution of \$500 toward closing costs and downpayment.
- Minimum cash reserves available post-purchase – The homebuyer must have sufficient cash resources (including savings, checking, money market, or other non-retirement accounts) such that after closing there are financial resources of at least 2 times the total monthly housing expenses, including principal, interest, taxes, insurance, and any association fees.

2.02.7 Responsible Lending Standards

92.254(g)(2) requires the PJ to have responsible lending standards that ensure that the homebuyer's primary mortgage is affordable and sustainable and contains appropriate terms. To ensure that homebuyers receive high quality loans that are sustainable over time, NDHFA requires that any buyer receiving HOME assistance obtain a senior loan (i.e., first mortgage) meeting the following criteria:

- The loan must be:
 - A "Qualified Mortgage" under the requirements of the Consumer Protection Financial Bureau (CFPB) outlined at 12 CFR 1026.43(e); or
 - A mortgage exempt from Qualified Mortgage standards, including: NDHFA, USDA Rural Development, or a land trust or nonprofit loan approved by NDHFA.
- The interest rates must be competitive and must NOT be a "Higher Priced" loan.
- The loan should be a fixed rate loan.
- The loan should be fully amortizing over a 30-year term and not include negative amortization, interest-only periods and balloon payments. Shorter-term or longer-term loans must be underwritten and approved by NDHFA as an exception in writing.
- The loan product must generally allow loan-to-value (LTV) ratios of at least 96.5%. While assisted buyers are not required to be approved for loan amounts equal to 96.5% of the purchase price, buyers who use more restrictive lending products (such as those limiting the LTV to 80%) will not receive HOME assistance toward their purchase if they could otherwise afford the monthly payment on a larger loan consistent with these underwriting guidelines. Buyers are expected to obtain the largest loan they can reasonably afford, and the Program will not subsidize purchases more deeply just to avoid mortgage insurance on higher LTV lending products.
- Points and origination fees cannot exceed 2%. Other closing costs cannot exceed 2% (excluding pre-pays.)

The Program Administrator will approve the senior loan as meeting these responsible lending requirements as part of buyer underwriting or obtain NDHFA approval for exceptions.

2.03 Property Eligibility

2.03.1 Eligible Properties

Eligible properties must meet the following regulatory requirements and program standards:

- The property must be located within the program target area as approved by NDHFA.
- The property must be owner-occupied or vacant with no tenant occupancy during the 90 days prior to an accepted offer to purchase.
- The property must be a single-family dwelling (detached or attached), condominium, cooperative, or manufactured home on its own lot and affixed to permanent foundation.
- The property must be determined to have no substantial adverse environmental factors as determined by an environmental review and may not be located within a FEMA designated 100-year floodplain.

If the project is on land owned by a Community Land Trust, the ground lease must be approved by NDHFA and be for a term of at least 50 years.

Right to possession under a contract for deed, installment contract, or a land contract (pursuant to which the deed is not given until the final payment is made) are not ownership and are not eligible for HOME assistance under this Program. See 92.254(c) for definitions.

2.03.2 Property Standards

Under this Program, homes are being acquired with HOME assistance without housing rehabilitation. The Program Administrator must ensure that the property meets the property standards of 24 CFR Part 92.251(c)(3) upon purchase. Housing inspections must be performed by the Program Administrator no earlier than 90 days before the commitment of HOME assistance. The completion of HUD Inspection form HUD 52580A will satisfy the inspection requirements.

The housing must be decent, safe, sanitary, and in good repair. At a minimum, the housing must meet the standards of 24 CFR Part 92.251 and all applicable State and/or local housing quality standards and code requirements. NDHFA minimum property standards are at: www.ndhousing.nd.gov/sites/www/files/documents/Plans/MinimumRehabilitationPropertyStandards.pdf.

(Note: HUD has deferred the implementation of the UPCS deficiencies list identified in the Final Rule, but any HUD guidance on this will apply to the Program when issued.)

If housing rehabilitation is required to meet the property standards, the property is not eligible under this program. Minor repairs required prior to purchase to meet program property standards are not considered rehabilitation and can be made without triggering rehabilitation standards.

2.03.3 Lead-Based Paint

Properties built prior to 1978 are subject to 24 CFR Part 35 for lead-based paint. Unless previously inspected to be lead free, Subpart K (35.1000 - .1030) applies to acquisition-only activities. NDHFA has a Lead Based Paint Policy at: www.ndhousing.nd.gov/lead-based-paint.

As part of the property standards inspection by the Program Administrator, any deteriorated paint must be identified and repaired prior to purchase. If it is known to be LBP or is unknown (i.e., was not tested), then repairs should be done using paint stabilization techniques and worksite clearance.

The Rule also requires notices from the seller to homebuyer.

2.03.4 Accessibility Modifications

If a prospective buyer requests modifications to make a unit accessible, the program will work with the buyer to provide the specific features that meet the need(s) of the buyer. If the design features are covered in the accessibility standard (UFAS), those features will comply with the standard, unless otherwise requested by the buyer.

A reasonable accommodation/modification is a change, exception, or adjustment to a rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling. A reasonable accommodation can be denied if providing the accommodation is not reasonable or would impose an undue financial or administrative burden on the program or if it would fundamentally alter the nature of the services provided.

The Program Administrator will determine if such accessibility modifications can be made by the program within Program resources or at additional expense to the buyer. Physical modifications made to accommodate a buyer with accessibility needs are eligible to be reimbursed with HOME funds without being considered rehabilitation.

2.03.5 Homeownership Price Limits

Maximum purchase price will be limited to the lower of:

1. The current HOME Homeownership Value Limit as published by HUD (accessed at: www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/); or
2. The as-is market value as determined through an appraisal by a certified appraiser, including an appraiser retained or required by the first mortgage lender.

Note: The HOME Homeownership Value Limits are listed by metro area or county. There are multiple limits for each County applicable to 1 – 4 units for both existing homes and newly constructed homes.

2.03.6 Environmental Review

Homebuyer assistance (financing only without rehab) is generally considered categorically excluded from NEPA and not subject to 58.5 Authorities (referred to by the acronym CENST.) Such financing activities are subject only to 58.6, which limits the review to items concerning Flood Disaster Protection Act, Coastal Barriers Resource Act, and the Airport Runway Clear Zones and Clear Zones Disclosers.

Environmental clearance of homebuyer assistance programs is done in two tiers:

- Tier 1 is the program-wide clearance that occurs as part of the release of funds for the State's HOME Program; and
- Tier 2 occurs for individual properties as they are identified for purchase.

The Program Administrator must prepare an CENST environmental review through HUD's Environmental Review Online System (HEROS) for each property and assign it to NDHFA for approval prior to making a commitment of HOME funds to a homebuyer. The Program Administrator must register for HEROS as a Partner User and complete the steps required for a CENST review. Registration for HEROS can be done on the HUD Exchange: www.hudexchange.info/programs/environmental-review/heros/.

When registering for HEROS, please ensure that “North Dakota” is specified as the Responsible Entity organization. A preview of the requirements for an CENST review can be found here:

www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or-censt-format/.

For questions concerning completing an environmental review, please contact the HOME Program Administrator at NDHFA.

2.03.7 Flood Insurance

Homebuyer assistance may not be used in Federal Emergency Management Agency (FEMA) flood hazard zone, unless the community in which the area is situated is participating in the National Flood Insurance Program and flood insurance protection is obtained by the homebuyer and maintained during the period of affordability as a condition of the approval of financial assistance.

2.03.8 Acquisition and Relocation Requirements

All home purchases are required to qualify as voluntary acquisition under the application regulations of 49 CFR 24.101(b).

The program will ensure that the owner is informed in writing of what the subrecipient believes to be the market value of the property, and that acquisition will not proceed if negotiations fail to result in an amicable agreement (see 49 CFR 24.101(b)(1) & (b)(2)).

At the time of purchase contract execution, the seller will receive a Voluntary Acquisition Notice Form and be asked to sign and acknowledge the notice. A copy of the signed notice will be included in the final file documentation.

If the property is not owner-occupied, the file will include documentation that the property is vacant.

Documentation will include a signed and dated inspection report, photos, and notes from interviews with neighbors (if available) indicating the approximate last date of occupancy. If information from neighbors is not available, documentation should include data from a utility company or the Post Office indicating the date of service termination for the prior occupant.

The seller must complete a Seller’s Occupancy Certification form stating that the property is either owner-occupied or vacant and has not been tenant-occupied in the past 90 days.

2.04 Period of Affordability Requirements & Documents

2.04.1 Written Agreement

All households receiving assistance must execute a written agreement for HOME program assistance that is consistent with HOME requirements at 92.504(c)(4). The written agreement must be enforceable for the HOME POA and must contain the following provisions to disclose the use of HOME funds and the affordability restrictions that apply:

- Amount and form of the HOME assistance (for each type of assistance to the buyer)
- Use of HOME funds (i.e., downpayment, closing costs, development subsidy), including a description of all the assistance to the buyer
- Time by which the housing must be acquired
- Duration of the agreement (must be the same as duration of the affordability period)
- Affordability period (start and end dates)
- Property value

- Purchase price
- Principal residence requirement
- The resale or recapture provisions that apply

The homebuyer written agreement template(s) are available on NDHFA's website.

The written agreement cannot be executed until environmental clearance is approved by NDHFA and must be executed with the homebuyer prior to closing and setting up the unit in IDIS.

The program is designed to utilize either resale or recapture requirements. Resale restrictions are used when the property being assisted is a Community Land Trust property. In all other cases, recapture provisions will be used as described below.

2.04.2 Resale & Recapture Provisions

Resale will be required for CLT properties that are subject to ground lease controls. (Note: The HOME Final Rule also requires Resale restrictions to be used when there is no buyer assistance, which would only occur in development projects and not in a DPA-only program.) Recapture will be used for all other non-CLT properties.

Resale Provisions

The HOME resale requirements are established in the HOME rule at §92.254(a)(5)(i). Under HOME resale provisions, the PJ (and Program Administrator) is required to ensure that, when a HOME-assisted homebuyer sells his or her property voluntarily or involuntarily during the affordability period:

- The property is sold to another low-income homebuyer who will use the property as his or her principal residence;
- The original homeowner(s) receives a "fair return" on their investment, (i.e., the homeowner's share of the value of the property, including the value capital improvements made to the house); and
- The property is sold at a price that is "affordable to a reasonable range of low-income buyers."

Under resale, §92.254(a)(5)(i) of the HOME rule states that the period of affordability is based on the total amount of HOME funds invested in the housing. In a DPA-only program, this would include the assistance directly provided to the buyer plus any project delivery costs that are charged as project costs rather than as Administrative Costs.

HOME Project Funds	Minimum Period of Affordability
Less than \$25,000	5 yrs.
\$25,000 - \$50,000	10 yrs.
More than \$50,000	15 yrs.

Calculation of Resale Price and Fair Return

When the homeowner sells, the following procedures and calculations will be used to determine the Fair Return to the seller as required by the HOME Final Rule:

1. **Homeowner's Initial Ownership Interest** – The homeowner's ownership interest at time of original purchase is the percentage of the Initial Appraised Value that the homeowner provided, as defined and calculated below.

- a. **Homeowner's Base Price:** The price paid by the homeowner upon the execution of the Program Administrator Ground Lease. (Homeowner's Base Price equals the Homeowner's Ownership Interest at time of purchase.)
 - b. **Initial Appraised Value of Home and Leased Land:** The fee simple value of the home and the leased land based on an independent appraisal at time of original purchase.
 - c. **Homeowner's Initial Ownership Interest (%):** The Homeowner's Initial Ownership interest is the ratio of Homeowner's Base Price to Initial Appraised Value, expressed as a percentage.
2. **Homeowner's Ownership Interest at Resale** – The ownership interest at time of resale is determined through appraisal to include the value of homeowner capital improvements and the homeowner's share of the appraised value of the property at resale.
 - a. Appraised Value at Resale: An independent appraisal determines the appraised value of Home and Leased Land at resale.
 - b. Value of Homeowner's Capital Improvements (if applicable): If the homeowner has submitted Capital Improvements, the appraised value of the improvements will be identified in the appraisal, and the homeowner will be credited with 100% of the appraised value of the Improvements.
 - c. Appraised Value of Homeowner's Ownership Interest at Resale: The Appraised Value of the Homeowner's Ownership Interest is calculated by adding:
 - i. The Appraised Value of Homeowner's Capital Improvements plus
 - ii. The "net" Appraised Value at Resale (with Value of Capital Improvements subtracted) multiplied by the Homeowner's Initial Ownership Interest percentage.
3. **Formula Resale Price** – The resale price at time of resale is defined and calculated below.
 - a. **Appraised Value of Increased Homeowner's Ownership Interest at Resale:** This equals:
 - i. The Value of Homeowner's Capital Improvements (if any) plus
 - ii. The Homeowner's Share of the Increase in Appraised Value, which is the "net" increase in Appraised Value multiplied by 40%.
 - b. **Maximum (Formula) Resale Price** – The maximum price at which the home can be resold is determined by Formula Resale Price, which is calculated as:
 - i. The Homeowner's Base Price plus
 - ii. The Appraised Value of Increased Homeowner's Ownership Interest at resale (which includes 100% of the Value of Homeowner's Capital Improvements plus the Homeowner's Share of the Increase in Appraised Value.)
4. **Purchase Option Price** – The Purchase Option Price will be used if the Program Administrator elects to exercise the Purchase Option. If elected, the Purchase Option Price is the lesser of:
 - a. The Appraised Value of Homeowner's Ownership Interest at Resale (calculated in 2c above); or
 - b. The Formula Resale Price as defined in 3b above.

Capital Improvements

When a homeowner completes an eligible capital improvement to their community land trust home post-purchase, they are eligible for 100 percent of the improvement value and appreciation deemed attributable to improvement. Eligible Improvements include:

- Increase in legal bedroom size;
- Increase in legal bathroom size;
- Addition of or substantial rehabilitation to garage;

- Other substantial modifications approved by the Program Administrator, which are anticipated to increase value by a minimum \$2,500 and increase functionality of the home. Improvements made solely for cosmetic purposes or considered routine maintenance will not be considered.

Improvements must comply with the ground lease, and documentation of completion must be submitted. Upon refinancing or resale, the homeowner must submit a request for capital improvements calculation. The Appraisal will indicate a monetary value of improvements, and the Formula Resale Price calculation will be modified to incorporate the capital improvements calculation.

Purchase Option Price and Formula Price Example

The following are examples of the calculations specified above, one for an appreciating value and one for declining value:

Calculation Step	Appreciating Value - Sample Calculation
1.a. Homeowner's Base Price	\$150,000
1.b. Initial Appraised Value	\$200,000
1.c. Homeowner's Initial Ownership Interest	$\$150,000 / \$200,000 = 75\%$
2.a. Appraised Value at Resale	\$240,000
2.b. Appraised Value of Capital Improvements	\$10,000
2.c. Value of Homeowner's Interest at Resale	$\$10,000 + (\$240,000 - \$10,000) * 75\% = \$182,500$
3.a. Value of Homeowner's Increased Interest at Resale	$\$10,000 + (\$172,500 - \$150,000) * 40\% = \$19,000$
3.c. Maximum (Formula) Resale Price	$\$150,000 + \$19,000 = \$169,000$
4. Purchase Option Price	Lesser of \$182,500 & \$169,000 = \$169,000

Calculation Step	Declining Value - Sample Calculation
1.a. Homeowner's Base Price	\$150,000
1.b. Initial Appraised Value	\$200,000
1.c. Homeowner's Initial Ownership Interest	$\$150,000 / \$200,000 = 75\%$
2.a. Appraised Value at Resale	\$180,000
2.b. Appraised Value of Capital Improvements	\$8,000
2.c. Value of Homeowner's Interest at Resale	$\$8,000 + (\$180,000 - \$10,000) * 75\% = \$135,500$
3.a. Value of Homeowner's Increased Interest at Resale	$\$8,000 + (\$135,500 - \$150,000) * 40\% = \$2,000$
3.c. Maximum (Formula) Resale Price	$\$150,000 + \$2,000 = \$152,000$
4. Purchase Option Price	Lesser of \$135,500 & \$152,000 = \$135,500

Resale Requirements. During the period of affordability, the home must be resold to another Low-Income buyer approved by the Program Administrator. The Program Administrator may repurchase the home and convey it to an eligible LI buyer using the Purchase Option or permit the homeowner to find an eligible buyer, as described below.

Upon notice by the homeowner of intent to sell, the Program Administrator shall have the option to purchase the home at the Purchase Option Price as defined above in step 4.

If the Program Administrator elects to purchase the home, it may exercise the purchase option by either proceeding to purchase the home directly or assigning the Purchase Option to a HOME-eligible low-income person.

If the purchase (by Program Administrator or its assignee) is not completed within 120 days as stated in the executed Program Administrator Ground Lease, the homeowner may sell the home and homeowner's rights to the leased land for a price no greater than the then applicable Purchase Option Price, to any party if that party is a *HOME-eligible low-income person*.

If the Program Administrator does not exercise its option and complete the purchase of the homeowner's property as described above, and if the homeowner (a) is not then residing in the home and (b) continues to hold the homeowner's property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Notice of Intent to Sell, then the Program Administrator may appoint its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purpose of the Program Administrator Ground Lease, sell the property, and pay to the homeowner the proceeds of the sale, minus the Program Administrator's costs of sale and any other sums owed to the Program Administrator by the homeowner.

Recapture Provisions

In all projects that are not CLT properties, the Recapture method will be used. The HOME recapture provisions are established at §92.254(a)(5)(ii). Unlike the resale approach, recapture permits the original homebuyer to sell the property to any willing buyer during the period of affordability and the PJ recaptures all or a portion of the HOME-assistance provided to the original homebuyer.

The HOME Final Rule permitted four models or options for recapture. NDHFA has elected the “full recapture” option. Under this option, the PJ (or Program Administrator) recaptures the entire amount of the direct HOME subsidy, subject to the net proceeds available from the sale, as defined below.

- The original direct HOME subsidy is the amount of HOME assistance that enabled the homebuyer to buy the unit. The direct subsidy includes downpayment, closing costs, interest subsidies, or other HOME assistance provided directly to the homebuyer. In addition, direct subsidy includes any assistance that reduced the purchase price from fair market value to an affordable price.
- Net proceeds are defined as the sales price minus superior loan repayment (other than HOME funds) and any closing costs incurred by the seller. Under no circumstances can the PJ (or Program Administrator) recapture more than is available from the net proceeds of the sale. Seller Costs must be supported by the Settlement Statement.

For HOME-assisted homebuyer units under the recapture option, the period of affordability is based upon the direct HOME subsidy provided to the homebuyer that enabled the homebuyer to purchase the unit.

HOME Down Payment Assistance to Homebuyer	Minimum Period of Affordability
Less than \$25,000	5 yrs.
\$25,000 - \$50,000	10 yrs.
More than \$50,000	15 yrs.

Subsequent Sale of Home to an Income Eligible Homebuyer

The HOME Final Rule at 92.254(a)(5)(ii) permits PJs to allow the subsequent homebuyer to assume the HOME assistance if:

- the homebuyer is low-income;
- no additional HOME assistance is provided; and
- the new buyer agrees to be subject to the HOME requirements for the remainder of the original period of affordability.

This option is authorized for this DPA program. If the Program Administrator determines through underwriting that the subsequent Low-Income homebuyer needs additional HOME assistance beyond the amount of the original HOME assistance, additional HOME homebuyer assistance may be provided and will be combined with their assumption amount of the existing note to determine the new POA and execute a new (replacement) written agreement and declaration of lien interest for the total assistance.

2.04.3 Closing

The Program Administrator will execute and record the applicable closing documents.

- If the property is a non-CLT property subject to recapture, the closing documents will include a Declaration of Lien Interest.
- If the property is a CLT property subject to resale restrictions, the closing documents will include a Declaration of Lien Interest and be a HOME Program rider to the ground lease.

A project is considered completed when:

- The unit has been sold to the HOME eligible Low-Income (LI) (defined as below 80% AMI) buyer;
- The final drawdown of HOME funds has been disbursed for the project; and
- Declaration of Lien Interest has been recorded and documents forwarded to NDHFA.

2.05 Eligible Costs and Fees

Costs may be reimbursed with HOME funds in the following categories:

- Direct Buyer Assistance Costs
- Project Soft Costs
- Project Delivery
- Administrative Costs

Specific allowable charges and budget line items are included on the individual budget worksheets by activity.

2.05.1 Direct Buyer Assistance Costs

Direct assistance to the homebuyer to assist with the purchase of an eligible property, including:

- Downpayment or purchase assistance funds that cover part of the acquisition cost of the property;
- Assistance to the buyer to cover closing costs and fees incurred by the homebuyer in the purchase transaction.

For recapture projects, all direct homebuyer assistance will be included in declaration of lien interest and will determine the period of affordability.

2.05.2 Project Soft Costs

Third party costs incurred by the Program Administrator to approve a specific homebuyer that receives assistance for a qualified HOME assisted unit, as defined in 92.206(d), including but not limited to:

- Counseling costs of the assisted homebuyer (if not charged to the homebuyer or paid with other funds);
- Legal costs incurred by the Program Administrator to prepare agreements and legal documents required for closing and to record documents;
- Third party property inspection costs incurred by the Program Administrator; and
- Costs for an appraisal required by the Program Administrator and
- Other closing and recording costs incurred by the Program Administrator.

Project soft costs must be documented with contracts, invoices or receipts. All project soft costs are required to be identified for a specific address. Project soft costs are added into the per-unit total of HOME funds invested in the unit, but these costs may not be charged to the homebuyer or included in the homebuyer note and mortgage.

Counseling costs may be charged to only one of the following (as permitted in the approved budget):

- To HOME administrative funds (if applicant does not purchase a home);
- As a project cost charged to the HOME project (if applicant purchases a home);
- To the homebuyer, if the fee is cost-based and reasonable and not charged to the HOME program; or
- Paid with other non-HOME funds provided by the Program Administrator (if paid with other non-federal funds, it may be counted as HOME match) or by the HUD-certified counseling agency and not charged to the HOME program.

2.05.3 Fees Charged to Homebuyers

The Program Administrator may not charge homebuyers servicing, origination, or other fees for the purpose of covering costs of administering the HOME program, except that the Program Administrator may charge:

- A nominal application fees to discourage frivolous applications – the amount of application fees must be appropriate to the type of application and may not create an undue impediment to a low-income family's participation in the program; and
- Housing counseling fees – only to the extent that such costs are not paid by HOME or other funds.

Any such fees collected must be treated as applicable credits under federal cost guidelines (see 2 CFR 200.406.)

2.05.4 Project Delivery Costs of the Program Administrator

In-house costs that a Program Administrator may incur for staff and/or services to process a specific homebuyer that receives HOME assistance. Eligible Project Delivery costs may include:

- Staff Costs incurred for processing specific assisted units/households – Staff costs (including salary and fringe benefits) and contractual services costs of the Program Administrator related to processing a specific assisted unit, including (but not limited to):
 - Income qualification and underwriting of assisted households;
 - Inspections;
 - Loan processing, closing and administration; and
 - Housing counseling (if the homebuyer is not charged for the service.)

Indirect rates as specified below under Administrative Cost is permitted on staff costs charged to Project Delivery.

- Relocation Costs – While displacement is not anticipated under this Program, if relocation costs are incurred with NDHFA approval, the cost of relocation payments and other relocation assistance services to persons displaced by a HOME-assisted project are eligible Project Delivery costs.

Project Delivery is required to be tied to a specific address and added into the per unit total of HOME funds invested in the unit. Costs charged as Project Delivery may not be charged as Administrative Costs.

Staff costs pertaining to relocation must be documented by timesheets, Personnel Activity Reports, or other means for documenting time spent on the specific project(s), consistent with the requirements of 2 CFR 200.430(i) - Standards for Documentation of Personnel Expenses. All other costs must be documented with contracts, invoices or receipts.

2.05.5 Administrative Costs

Currently, Program Administrator costs are reimbursed only as Project Delivery costs as described above, and the Program Administrator is not eligible for general administrative costs as described in this section.

Administrative costs are costs related to administering the overall program – i.e., general administration and oversight. Administrative Costs are not directly tied to a particular unit or project but can be allocated to the program in general.

Administrative Costs include:

- General management, oversight and coordination – Staff costs (salary plus fringe benefits), contractual services, travel, office costs (rent, utilities, and supplies) directly related to administration of the program, as defined in 92.207(a).
- Staff cost related to processing of units/households not assisted – Salary and fringe benefits for time spent processing applications, cases and projects that were not assisted and therefore not eligible for Project Delivery may be eligible if consistent with 92.206(d)(6) and approved by NDHFA.

Program Administrator costs incurred for processing projects that are uncommitted or incomplete – such as inspections, work write-ups, cost estimates, eligibility determinations, underwriting and other such project qualification costs – may be eligible to be charged to the Program Administrator’s administrative line item, if there are sufficient funds in the Program Administrator’s administrative budget line item to cover the costs, and appropriate documentation of project status and costs are maintained.

- Public information, program marketing, fair housing and environmental costs – Staff costs and expenses related to marketing, affirmative marketing and providing general information to the public regarding the program, for promoting or responding to fair housing requirements, and for environmental clearance of the program or projects.
- Indirect Costs – Indirect costs are the organization’s general costs of facilities and administration as defined in 2 CFR 200.414 that are not directly chargeable to the program.
 - If the Program Administrator has a cost allocation plan approved by a cognizant federal agency under 2 CFR 200.414, the Program Administrator may charge the negotiated indirect rate on the direct costs noted above.
 - Otherwise, the Program Administrator may charge the 10% de minimis indirect rate on all direct costs as provided in 2 CFR 200.414(f)

Note: Costs charged as Administrative Costs may not be charged to project soft costs or Project Delivery, and vice versa.

Staff costs must be documented by timesheets, Personnel Activity Reports, or other means for documenting time spent on the program, consistent with the requirements of 2 CFR 200.430(i) - Standards for Documentation of Personnel Expenses. All other costs must be documented with contracts, invoices or receipts.

2.06 Other HUD Regulatory Requirements

Beyond the specific rules for HOME, there are federal requirements that apply to the administration of all federal funds. These are commonly referred to as the “uniform administrative requirements”. The following are applicable to the homebuyer lending activities of the Program Administrator:

2.06.1 Environmental Review

24 CFR Part 58 applies to HOME. Generally, homebuyer assistance is considered a categorically excluded under §58.35(b), which requires only compliance with the requirements of §58.6, as applicable:

- It is not the intent of the program to assist homebuyers to purchase property within a 100-year flood plain, but if such purchases are approved, the property must be insured under FEMA's National Flood Insurance Program;
- The property is not in a Coastal Barrier Resources Area – none are in North Dakota; and
- The buyer of the property was advised and signed a disclosure statement concerning the location of the property in a runway clear zone/clear zone.

Prior to contract execution, NDHFA conducted a programmatic Tier 1 review, which generally approved that the program activities would not harm the environment in the service area. As individual homes are identified for purchase, review of the 58.6 requirements using HEROS must be conducted by the Program Administrator and approved by NDHFA.

24 CFR 58.22 prohibits the commitment or expenditure of HOME funds or other funds (other than for administration and planning cost exempt under 58.34) until the environmental review process is completed and the environmental clearance and subsequent release of funds has been received. If prohibited activities are undertaken by the Program Administrator or the homebuyer prior to receiving the approval by NDHFA, the project may be subject to denial of assistance and repayment of HOME funds.

2.06.2 Civil Rights, Equal Opportunity and Fair Housing Provisions

The Program Administrator is responsible for complying with all civil rights and equal opportunity provisions of federal law. In accordance with Sections 24 CFR 92.350 and 92.351, no person shall on the ground of race, color, religion, sex, disability, familial status, national origin, or age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program activity funded in whole or in part from HOME funds. In addition, Program Administrator shall develop and operate the program in accordance with the following:

- The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958 B1963 Comp., P. 652 and 3 CFR 1980 Comp., P. 307) (Equal Opportunity in Housing) and the implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and the implementing regulations issued at 24 CFR Part 1;
- The prohibitions against discrimination based on age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
- The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting subrecipients, owners, developers, or their agents from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity;

- The requirements of Executive Order 11246 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60; and The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). In the event of subcontracting for services under this Agreement (e.g., for a property inspector), Program Administrator must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. Program Administrator will cooperate with NDHFA in its minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the procurement of property and services including, without limitation, real estate firms, construction firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services.

Homebuyer assistance is subject to general non-discrimination and fair housing requirements, along with the affirmatively furthering fair housing requirement applicable to Consolidated Plan programs.

- Affirmative marketing – Affirmative marketing is required for projects and programs that assist 5 or more HOME units. Awardees must follow the NDHFA Affirmative Fair Housing Marketing Plan Guidance published on the NDHFA website for HOME & HTF: www.ndhousing.nd.gov/compliance.
- Accessibility – Program accessibility and reasonable accommodations/modifications for homebuyers with accessibility needs is required.

2.06.3 Acquisition and Relocation

Whenever federal funds are used in a project involving the acquisition, rehabilitation or demolition of real property, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) applies. For property acquisition, voluntary acquisitions require an appraisal and a notice of voluntary sale signed by the owner.

NDHFA homebuyer lending policies do not permit involuntary acquisitions or acquisitions with tenants in occupancy – in these cases, additional URA requirements would apply. The Program Administrator will operate the program in compliance with the CHAP Guidelines such that no assistance will be provided to purchase a property occupied by commercial or residential tenants within the last 90 days, except instances in which a tenant is purchasing the property in which he/she already lives.

All home purchases are required to qualify as voluntary acquisition under the application regulations of 49 CFR 24.101(b). The Program Administrator will ensure that the owner is informed in writing of what the subrecipient believes to be the market value of the property, and that acquisition will not proceed if negotiations fail to result in an amicable agreement (see 49 CFR 24.101(b)(1) & (b)(2)).

2.07 Post-Closing Loan Administration Policy

2.07.1 Refinancing and Voluntary Prepayment

If the homeowner elects to refinance during the period of affordability, the following standards will apply.

NDHFA has ongoing interests in the success of its HOME-assisted homebuyers, limiting the loss of HOME funds, and avoiding the impact of foreclosures on the jurisdiction's residents and neighborhoods. Refinancing of senior (first) mortgages will be permitted, and the HOME loan will be subordinated to the new senior loan only under the following conditions:

- No cash out refinancing – New loans for the sole purpose of improving the rate and/or extending the term of the existing loan that result in a low monthly payment for the homeowner and no cash out will be permitted. The proposed new loan must result in a lower monthly payment for the assisted owner.
- The new loan may allow the assisted homeowner to finance their closing costs without being considered cash out. Nominal cash back at closing of less than \$500 resulting from last-minute adjustments to payoff figures, closing costs, tax/insurance escrows and the like will not be considered “cash out.”
- Cash out refinancing – The PJ will not subordinate for “cash out” refinancing, except for the following conditions and limitations:
 - To complete needed repairs to the home; or
 - To pay for a family or medical emergency approved by NDHFA.

Any cash out refinancing must:

- Be affordable to the assisted owner within the lending ratios in the Homebuyer Underwriting guidelines in Section 2.02.3 based on the then-current income;
- Meet all requirements in the Responsible Lending policy in Section 2.02.4;
- Result in a monthly payment that does not exceed the original monthly payment by more than 10%; and
- Result in a total loan-to-value ratio (including the HOME loan) of 90% or less.

Any new loan must and be approved by the PJ. Income eligibility is not required for any refinancing. If the owner’s income has risen above 80% AMI, there is no violation of HOME.

If the homeowner elects to repay or prepay the HOME assistance during the period of affordability, it does not terminate the affordability period. Should the homeowner remain in the unit but elects to pay off the outstanding balance of the HOME loan, the owner is still subject to principal residence requirements for the remainder of the POA.

2.07.2 Repayment in the Event of Noncompliance

Under recapture provisions, the homeowner is noncompliant, if any of the following events occur during the POA:

- The homebuyer does not occupy the home as their primary residence without a sale,
- The homeowner Vacates the home; or
- The homeowner sublets and rents the home to another household.

If such non-compliance is not corrected on notice, the Program Administrator must then enforce full repayment of the original amount of the direct home subsidy as provided in the Homebuyer Agreement and the Declaration of Lien Interest.

2.07.3 Foreclosure or Transfer in Lieu of Foreclosure

Under the HOME Rule, a foreclosing lender can extinguish the use restrictions and the unit and HOME funds can be lost in the foreclosure process. HUD expects HOME PJs to take effort to avoid foreclosure and loss of the investment. If the homeowner defaults on the senior debt and the senior lender is proceeding with foreclosure or deed in lieu, the Program Administrator will notify NDHFA and work with the lender to try to preserve affordability of the unit through workout or resale to another LI household willing to assume the assistance for the remainder of the POA.

2.08 Other HOME Program Administration Requirements

2.08.1 Program Income, Recaptured Funds and Repayment

All funds that are recovered or not disbursed by the Program Administrator will be returned to NDHFA.

The program design does not provide for the receipt of “Program Income” by the Program Administrator. Likewise, because the HOME loans will be directly in the name of NDHFA, the Program Administrator will not collect “Recaptured Funds,” as defined in 24 CFR 92.254(a)(5)(ii) or Repayments by homebuyers. Notwithstanding, if any Program Income, Recaptured Funds are received by the Program Administrator, it will immediately remit same to NDHFA.

2.08.2 Uniform Administrative Requirements

Pursuant to 24 CFR 92.505 and §92.506, units of local government & non-profit organizations acting as HOME subrecipients must adhere to 2 CFR Part 200 and the Uniform Administrative Requirements, Cost Principals and Audit Requirements and as described in 24CFR Part 92.205, as applicable and as may be amended from time to time.

The Program Administrator’s financial management systems must meet uniform federal administrative requirements (at 2 CFR 200.302 - .303) that:

- Provides effective control over and accountability for all funds, property and other assets;
- Identifies the source and application of funds for federally sponsored activities including records and reports that verify the eligibility, reasonableness, allowability and allocability of costs;
- Permits the accurate, complete and timely disclosure of financial results in accordance with HUD and NDHFA reporting requirements; and
- Minimizes the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by the grantee or sub recipient.

2.08.3 Other Administrative Requirements

The Program Administrator will operate a Drug-Free Workplace as required by 2 CFR 2429.

The Program Administrator will comply with the requirements of 24 CFR 92.358 regarding Consultant Activities.

SECTION 3: PROGRAM PROCEDURES

3.01 Program Marketing

The Program Administrator will market and advertise the program through multiple channels, including but not limited to Program Administrator’s website, homebuyer counseling program, and other such means.

The Program Administrator will submit an affirmative marketing plan as described below for review and approval by NDHFA prior to implementation of any program marketing.

3.02 Affirmative Marketing

Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.

The Program Administrator must develop and implement an affirmative marketing plan consistent with the HOME regulations at 24 CFR 02.351 and the NDHFA Affirmative Fair Housing Marketing Plan Guidance published on the NDHFA website for HOME: www.ndhousing.nd.gov/compliance.

The plan must define the affirmative marketing procedures that will take place to provide information and otherwise attract eligible persons in the program service area to the available housing or assistance without regard to race, color, national origin, sex, religion, familial status or disability. Required elements of the plan include:

- Identification of those persons across the protected classes that are expected to be least likely to apply” within the local market;
- Description of how the Program Administrator will inform potential participants about fair housing and affirmative marketing policy;
- Delineation of the records that will be kept documenting the affirmative efforts; and
- Description of how the Program Administrator will assess the results of the affirmative actions and make corrective actions if necessary.

If the program is targeted to a special need or population, the Plan should describe how the program will be marketed across all protected classes within the special need preference. If the program targets persons with disabilities, the Plan should describe how the program will be marketed to all disabilities (however, advertisements can identify the specific services available based on the targeted disability).

3.03 Application Intake

The following procedures apply to the receipt and initial processing of applications.

3.03.1 Application

The Program Administrator will develop and utilize an application form and instructions that has been approved by NDHFA and is available on NDHFA’s website.

3.03.2 Intake

Applications must be taken in a manner that ensures fair access, including reasonable time periods and methods of submission. Acceptable methods include processing in the order of applications received or conducting a lottery of applications received during an application window. The method for establishing the queue and waiting lists must be approved by NDHFA and disclosed in application materials and briefings.

Assistance must be offered to any household requesting assistance in completing the application.

3.03.3 Waiting List

Applications will be placed on a waiting list according to the order of applications received.

If any priorities or preferences are approved by NDHFA, the preference households may be placed on a separate waiting list and processed according to the priority.

Waiting lists will be maintained throughout program implementation. The Program Administrator must contact households every year to confirm the applicant continues to want to be on the waiting list. The waiting list must be available for inspection by NDHFA and HUD.

3.03.4 Notification of Status

The Program Administrator will contact each applicant to confirm receipt and to notify the applicant of the status of the application – whether it is being processed or placed on a waiting list.

3.04 Application Review

3.04.1 Income Determination and Verification

All households assisted must be under 80% of median income as defined by HUD HOME income limits. Limits are published annually at HUD (for effect 30 days after publication). The Program Administrator must use the applicable Low Income limits for the county or jurisdiction posted at: www.hudexchange.info/manage-a-program/home-income-limits/.

Income must be determined using the Part 5 method (also known as the Section 8 method), defined at 92.203(b).

Income will be calculated using the HUD CPD Income Eligibility Calculator at: www.hudexchange.info/incomecalculator/.

Income certifications must be printed and signed and dated by the homebuyer and the Program Administrator.

All income sources must have at least two months of source documentation (92.203(a) (2)).

The closing and delivery of assistance must occur within 6 months of the income certification, or the certification must be updated.

3.04.2 Legal Residency

The assisted homebuyer must be legal a resident of the United States.

3.04.3 Homebuyer Underwriting

Every buyer must meet the homebuyer underwriting guidelines as described in Section 2.02.4.

The Program Administrator must determine that financial resources are available to sustain future homeownership, which includes:

- Review of the expected income and job stability;
- Ability to absorb future adjustments to property taxes, fees to the municipality, homeowners' insurance, estimate average monthly cost of utilities,
- Review liquid assets to ensure the homebuyer will have a minimum of __ months housing payment in personal savings following the purchase.

The Program Administrator will document the underwriting in the homebuyer's file with the underwriting Excel worksheet tool available on NDHFA's website.

3.04.4 Responsible Loan Determination

The Program Administrator should review the homebuyer's proposed first mortgage to determine consistency with the Responsible Lending policy in Section 2.02.5.

3.04.5 Assistance Amount Determination

Before committing funds to a project, the Program Administrator must conduct and document the underwriting and responsible lending analyses described above and make a determination of the

appropriate amount of HOME assistance in consideration of all funding, including other public funding, and a determination that all costs are necessary and reasonable.

The HOME funding amount should be sufficient to make homeownership sustainable throughout the POA and not excessive and should be within stated program guidelines.

The buyer must have sufficient post-closing cash and income to be able to manage all obligations with respect to homeownership – including mortgages, taxes, insurance, utilities and maintenance – for at least the POA.

Evidence and documentation of this analysis must be maintained in the project file.

3.04.6 Counseling

HOME requires each homebuyer to receive pre-purchase homeownership counseling. Each buyer must receive housing counseling prior to executing the written agreement for HOME assistance. The Program Administrator is responsible for ensuring all homebuyers who receive HOME assistance to receive counseling from a HUD-approved housing counselor. Beginning 8/1/2020, homebuyer education must be provided by a counselor who has passed the HUD certification examination and is employed by a HUD-approved housing counseling agency.

Proof the homebuyer received housing counseling must be obtained prior to executing the written agreement with the homebuyer. The applicant must receive a Certificate of Completion for pre-purchase homeownership counseling from a HUD-Certified Counseling Agency. The Applicant must be deemed by the counseling agency as “ready to proceed” to purchase a home. A copy of the Certificate of Completion must be included in the project file.

3.04.7 Determination of Property Eligibility

Upon selection of a property for purchase, the Program Administrator will review and determine the eligibility of the property for assistance based on the following:

- Single family property – Assisted housing may be either a single-family dwelling, condominium, cooperative unit, or manufactured housing. The property to be acquired may be privately or publicly owned prior to the sale and may be owned by the Program Administrator prior to sale the approval of NDHFA.
- Occupancy – The property may be either vacant or occupied by the seller but may not be occupied by a tenant within the last 90 days unless the tenant is also the homebuyer. Displacement of tenants is not permitted.
- Environmental review – The Program Administrator should review the CENST requirements in the HUD HEROS system.
- Property inspection – A satisfactory inspection of the property conducted prior to commitment of HOME funds.
- Appraisal – A satisfactory appraisal must occur within 60 days of the final offer documenting the market value of the property. The Program Administrator must document the purchase price and appraisal are within the HOME Homeownership Value Limit. A bank-required appraisal is acceptable with the approval of the lender.

The determination of property eligibility should be documented in the file.

Applicants should not execute purchase agreements prior to the funding decision by the Program Administrator. Any purchase offer made by a program participant after selection must be contingent upon the conditions noted above. The Program Administrator may make no representations or commitment prior to the property being determined to meet all program requirements as described in this Manual.

Property Price/Value. Maximum purchase price will be limited to the lower of (1) the current HOME Homeownership Value Limit or (2) the as-is market value as determined by an appraisal. The appraisal must be completed by a certified appraiser. Use of the appraisal required by the first mortgage lender is permissible with approval of the lender. If not permitted, it is eligible as a Project Delivery cost and not charged to the homebuyer.

Download the most current HOME Homeownership Value Limits at: www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/. The limits are by metro area or county, and there are multiple limits for each County, including 1 – 4 units for existing homes and for newly constructed homes.

Property Inspection. The Program Administrator will conduct and document an inspection of the property for compliance with the standards identified in Section 2.03.2, and Section 2.03.3 if built prior to 1978.

The housing must be inspected and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance.

If the housing does not meet these standards, the housing must be rehabilitated to meet the standards it cannot be acquired with HOME funds.

The Program Administrator should document the inspection (signed and dated) in the file.

Property Environmental Review

Homebuyer acquisition assistance activities are considered categorically excluded from NEPA and not subject to 58.5 Authorities – typically referred to by the acronym “CENST”. See 24 CFR 58.35(b). Such financing activities are subject only to 58.6, which limits the review to the items described below. A Tier 2 Site Specific Project Review is still required for each property prior to commitment of funds. The Program Administrator will prepare a CENST form for each property and submit the form to NDHFA. The CENST form is available at: www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or-censt-format/.

The homebuyer written agreement committing HOME funds can be executed only after notice from NDHFA of clearance, and completion of the requirements of this section.

3.05 Determination of Eligibility

When the Program Administrator has determined the homebuyer and the purchase is eligible or ineligible, the following procedures will apply to notifications of approval or denial.

3.05.1 NDHFA Approval

The Program Administrator will transmit documentation of the eligibility of the homebuyer and the property to NDHFA for approval. No written agreement or other commitment of funds may occur until NDHFA has approved the project.

3.05.2 Notification of Approval

The Program Administrator will notify the applicant in writing of the determination of eligibility and assistance and provide instructions for closing.

3.05.3 Denial of Assistance & Appeals

The Program Administrator will notify the applicant in writing if the application is being denied or rejected, identifying the reasons for denial and the opportunity to appeal the decision. Appeals will be reviewed by senior officials of the Program Administrator, and the applicant will be notified in writing of the appeal decision. NDHFA will be notified of all appeals and their disposition.

3.06 Written Agreement

The Program Administrator will ensure that assisted buyers execute a written agreement and declaration of lien interest, which shall be prepared by the Program Administrator using templates provided by NDHFA.

The written agreement will address all applicable requirements of 24 CFR 92.504(c)(5) prior to or simultaneously with the provision of any direct assistance that is to be reimbursed with HOME funding under this Agreement.

3.07 Project Set-Up and Draw

Project Set-Up

A Homebuyer Set-Up Report Form should be submitted when a project commitment is ready – that is:

- A written agreement has been executed by the Program Administrator, homebuyer and contractor (if applicable).
- The unit has been inspected within the last 90 days
- The closing is imminent.

The set-up form and instructions are available on NDHFA's website.

Draw Procedures

The Program Administrator may not request the disbursement of any HOME funds until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed and may only be for costs incurred after this agreement.

To request payment of project expenses (i.e., direct buyer assistance and any project-specific soft costs), the Program Administrator shall submit documentation required by NDHFA, including:

- Copies of the buyer's closing statement,
- Signed copies of the HOME written agreement, and
- Program Administrator's check (or other similar proof of payment) to the closing agent.

All requests for project-specific soft costs must be supported by:

- time-sheet documentation for any costs associated with Program Administrator staff
- invoices for any third-party costs.

3.08 Closing

The Program Administrator will monitor the closing and ensure that all HOME-required documents are executed, and the Declaration recorded. Documents should be collected and forwarded to NDHFA as noted below.

- Non-CLT properties (Recapture) – executed written agreement and declaration of lien interest
- CLT Properties - executed written agreement, declaration of lien interest and ground lease with HOME Program Rider

3.09 Project Completion

A project is complete (as defined in 92.2 of the Final Rule) when:

- The unit complies with all regulatory requirements including property standards;
- The unit has been sold to the HOME eligible buyer;
- The final drawdown of HOME funds has been disbursed for the project; and
- The project has been reported as complete in IDIS.

3.09.1 Project Completion Report

The Program Administrator should forward the following items to NDHFA:

- The homebuyer income certification;
- The property inspection report;
- The underwriting analysis;
- The original signed homebuyer written agreement; and
- The original recorded declaration of lien interest (or restrictive covenants and ground lease, if applicable.)

Note: Based on the Final Rule and HUD guidance, the period of affordability does not commence until completion is recorded in IDIS. To ensure timely start to the POA, the Program Administrator must provide all necessary information to NDHFA for entry into IDIS as “completed” within 14 days of the closing on the individual project.

3.09.2 Project File

The file records required for each project include the following:

- Application
- Buyer income qualification certification
- Buyer underwriting & responsible loan review
- Documentation of Homeownership Value Limit compliance
- Property inspection, signed & dated, for compliance with property standards
- Copies of the written agreements with homebuyer
- Copies of the recapture note & recorded Declaration of Lien Interest (and ground lease with rider, if land bank property), including filing receipts
- Homebuyer insurance policy naming NDHFA as Additional Insured or Loss Payee.

3.10 Ongoing Homebuyer Monitoring

The Program Administrator has responsibility for monitoring homebuyers for ongoing principal residency, and for processing refinancing requests and resale/recapture in the event of sale during the period of affordability.

3.10.1 Insurance and Property Taxes

The Program Administrator is responsible for ensuring that the homebuyer maintains valid homeowners' insurance and that property taxes are paid and current.

The Homeowner's Insurance policy must include the NDHFA as a loss payee during the POA. Annual documentation of principal residency and insurance requirements must be maintained in the project file.

3.10.2 Principal Residence Verification

The Program Administrator is responsible for confirming the homebuyer is using the property as his or her principal residence for the Period of Affordability. The Program Administrator must notify NDHFA of its procedure for ongoing verification of principal residence. Alternatives include verification of the homebuyer's name and address on the utility/water company records and/or property insurance records, local tax records or mailing a "DO Not Forward" letter to the homebuyer requesting verification that the home is occupied by the HOME assisted applicant.

3.10.3 Non-Occupancy and Repayment

The homeowner is noncompliant, if during the POA, any of the following events occur:

- The homebuyer does not occupy the home as their primary residence without a sale,
- Vacates the home; or
- Sublets and rents the home to another household.

If the homebuyer fails to occupy the property as his/her/their principal residence, the Program Administrator will:

- Issue notice of noncompliance to the homeowner requiring re-occupancy within a reasonable period or full repayment;
- Provide a copy of the notice to NDHFA;
- Monitor the property for re-occupancy;
- If that homeowner fails to re-occupy the property, notify NDHFA to issue legal notice under the note and Declaration of Lien Interest for the homeowner to repay the full original amount of the HOME assistance; and
- Forward any funds repaid to NDHFA.

3.10.4 Resale/Recapture

If a homebuyer intends to sell, the Program Administrator will forward notice of intent to sell to NDHFA and work with the original homebuyer (now seller) and the new homebuyer to ensure compliance with home requirements.

- Recapture - Subsequent Sale of Home to an Income Eligible Homebuyer. If the subsequent homebuyer is low-income and is willing to assume the remainder of the POA in effect and the principal residence requirement, the Program Administrator will work with the homebuyer to process income eligibility and submit to NDHFA.
 - If additional assistance beyond the assumed note is required and the Program Administrator has available funds, the Program Administrator is permitted to assist the subsequent low-income homebuyer in purchasing the housing. The additional HOME homebuyer assistance must be treated as an amendment to the original project and will be combined with their assumption of the existing note to determine the new POA and execute a new written agreement, declaration of lien interest for the total assistance amount.
- Recapture – Subsequent Sale of Home to a non-income qualified Homebuyer. Should the homeowner sell the home to a subsequent homebuyer that is not low-income and not approved by the SUBRECIPIENT, the Program Administrator will notice NDHFA and work with the seller to determine recapture amount required and will forward the recapture funds to NDHFA.
- Resale of CLT Property during POA – The Program Administrator will:

- Calculate the Resale Price per the Resale Formula as described in Section 2.04.2 and the CLT documents;
- Determine the income qualification of the subsequent buyer;
- Forward the qualification and resale documentation to NDHFA for approval; and
- Oversee the property transfer and execution of the new written agreement, declaration of lien interest, and ground lease with HOME Program rider.

3.10.5 Refinancing

In the event an assisted homebuyer notifies the Program Administrator of intent to refinance, the Program Administrator will:

- Review the proposed refinancing to determine compliance with:
 - NDHFA refinancing policy to qualify for resubordination, including new loan consistency with the program's responsible lending policy; and
 - Advise the homeowner whether resubordination will be approved or the required recapture payment to pay off the HOME Note.
- Notify NDHFA and:
 - If the homebuyer is eligible for resubordination, submit the required information to NDHFA for approval and processing subordination documents; or
 - If the HOME Note is required to be repaid on refinancing that does not meet the requirements for resubordination, notify the homeowner and new lender and secure the recaptured funds and forward to NDHFA.

3.11 Ongoing Program Administration

3.11.1 Applicability of Uniform Administrative Requirements

During the performance period of the Program Administrator's contract with NDHFA, the requirements of 2 CFR part 200 apply to the Program Administrator as a Subrecipient of HOME funds, except for the following provisions: §200.306, §200.307, §200.311 (except as provided in 24 CFR 92.257), §200.312, §200.329, §200.333, and §200.334. The provisions of 2 CFR 200.305 apply as modified by 24 CFR 92.502(c). The requirements of 2 CFR 200 include compliance with:

- Procurement – Standards and procedures related to the procurement of goods or services with HOME funds;
- Audit – The requirement to obtain a single- or program-specific audit if, during any given Subrecipient fiscal year, Subrecipient expends more than \$750,000 in federal funds;
- Cost principles – The cost principles included in 2 CFR 200 Subpart F, including that any costs charged to HOME be supported by adequate documentation, allocable to the program, necessary, and reasonable.

If there is a conflict between definitions in 2 CFR 200 and 24 CFR 92, the definitions in 24 CFR 92 govern.

3.11.2 Records

Program Administrator shall maintain detailed records of all its activities under this Agreement, including records on all persons served pursuant to this Agreement. Representatives of NDHFA, HUD (including HUD's Office of Inspector General), the Comptroller General of the United States (aka the U.S. Government Accountability Office or "GAO"), or their designees may examine any records or information accumulated pursuant to this Agreement. All confidential information shall be treated as such by all State, HUD, or GAO representatives or designees.

Program Administrator will maintain administrative and financial records as required by 24 CFR 92.508, applicable to the activities to be carried out under this Agreement, including but not necessarily limited to:

- Property description and location;
- Records regarding project requirements that apply for the duration of the period of affordability (all of Subpart F of 24 CFR 92), including monitoring records related to ongoing owner-occupancy by assisted buyers;
- Information about contractors, vendors, and other lenders to include, but not necessarily be limited to, verification of non-debarment and suspension, verification of qualifications and experience, legally binding contracts and agreements, invoices and payment records, and related correspondence (see 24 CFR Part 24 and 2 CFR 2424);
- Financial information including, but not necessarily limited to, audits and related correspondence, accounting and financial records, indirect cost analyses, and internal controls and reconciliations;
- Financial records identifying the source and use of funds in each HOME-assisted project as well as underlying documentation (e.g., timesheet records, invoices/receipts, proof of payment, etc.) for all costs charged to HOME;
- Records demonstrating compliance with the Uniform Administrative Requirements of 2 CFR 200, as applicable;
- Project records in accordance with 24 CFR 92.508(a)(3) that demonstrate that each HOME-assisted buyer met the requirements of the HOME program, including but limited to:
 - Full descriptions of each project assisted with HOME funds, including the location (address of each unit), form of HOME assistance, and the units;
 - The source and application of funds for each project, including supporting documentation in accordance with 2 CFR 200.302; and records to document the eligibility and permissibility of the project costs; records demonstrating that each homeownership project meets the minimum per-unit subsidy amount of §92.205(c), the maximum per-unit subsidy amount of §92.250(a), and the subsidy layering and underwriting evaluation adopted in accordance with §92.250(b) and §92.254(gf);
 - Records (e.g., inspection reports) demonstrating that each project meets the property standards of §92.251 at project completion;
 - Records demonstrating that each buyer is income eligible in accordance with §92.203;
 - Records demonstrating that the purchase price for each homeownership housing project does not exceed the HOME Homeownership Value Limits established in accordance with §92.254(a)(2);
 - Records demonstrating that each homeownership project meets the affordability requirements of §92.254 for the required period; and
 - Copies of written agreements, mortgages, notes, and associated documents executed by assisted buyers.
- Other records that include documentation of compliance with other federal requirements in accordance with 24 CFR 92.508 that includes the following requirements to the extent applicable to the funded activity or project:
 - Documentation of Program Administrator's efforts to affirmatively further fair housing, including both marketing efforts and records on the extent to which each racial and ethnic group and single-headed households (by gender of household head) applied for, participated in, or benefited from the program;

- Records documenting compliance with federal law regarding displacement, relocation and property acquisition in accordance with the URA;
- Records concerning lead-based paint set out in 24 CFR Part 35; and
- Records supporting requests for waivers of the conflict-of-interest prohibition set out in 24 CFR 92.356 (as applicable).

Program and individual project file checklists are available on NDHFA's website.

All program records shall be maintained by the Program Administrator for a minimum of five (5) years beyond the final payment under this Agreement. Further, all project-specific records and files shall be retained for at least five (5) years beyond the end of the project-specific affordability period. Notwithstanding, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have commenced before the expiration of the retention periods outlined, such records must be retained until completion of the actions and resolution of all issues, or the expiration of the retention period, whichever occurs later.

3.11.3 Reporting

The Program Administrator will submit all reports required by NDHFA or HUD.

During implementation of the Program, NDHFA will require the Program Administrator to provide updates on program implementation on a quarterly basis. While such reports may be submitted informally, including via email memorandum, the content should include information on the marketing and startup of the program, number of applications received, challenges or concerns about implementation, and estimates of the timing of upcoming commitments and expenditures of HOME funds.

NDHFA reserves the right to unilaterally alter, supplement, or otherwise modify the frequency or content of required reports as needed to maintain adequate oversight of the program, address changes to HOME regulations, or to address findings related to noncompliance by the Program Administrator.

3.11.4 Audit

Program Administrators that expend more than \$1,000,000 in federal funds (not limited to HOME) are subject to the audit requirements at 2 CFR 200.501 - .512 (formerly A-133.).

The Program Administrator must notify NDHFA within 60 days of the end of its fiscal year whether it is subject to this requirement using the Federal Assistance Expenditure Form available on the NDHFA HOME Program website.

3.11.5 NDHFA Monitoring

Program Administrators are responsible for developing policy and procedures outlined within this manual.

NDHFA monitoring and file sampling will occur on an annual basis.

NDHFA will utilize CDP Monitoring Handbook exhibits 7-25 Guide for Review of Program Oversight, Financial Management, and Cost Allowability and 7-28 Guide for Review of Homebuyer Down payment Assistance Projects and/or Policies and Procedures to review the policies of the subrecipient.

3.12 Contract Closeout

A contract is eligible for closeout when:

- All program funds for HOME assisted units have been disbursed;
- All units have been reported as completed in IDIS;

- All required reports have been submitted, except for the most recent audit if it is not yet due;
- Any program income or other HOME funds on hand have been returned to NDHFA; and
- The Program Administrator has been monitored and all monitoring findings resolved.

Program Administrator shall submit a final payment request within 90 days following the end of the program term as defined in the Subrecipient Agreement. Due to federal HOME program commitment and expenditure requirements, NDHFA will de-obligate committed HOME funds for non-compliance with the terms of the contract. All remaining program funds not expended at contract close out will be de-obligated and reallocated for future HOME eligible activities according to the State's Action Plan.

The Program Administrator is required to maintain all program files and documentation, including financial information, for a period of at least five years after the close out of the contract and throughout the POA.