**New York State HOME**
**Homebuyer Development Project and Homebuyer Underwriting Guidelines**


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The HOME Final Rule requires Participating Jurisdictions (PJs) to adopt homebuyer development project underwriting guidelines in 24 CFR 92.250(b) and homebuyer underwriting and responsible lending guidelines in §92.254(f). These guidelines apply to all homebuyer development projects funded by Office of Community Renewal (OCR) with HOME funds.

These guidelines should be used by applicants in conjunction with the Request for Applications (RFA) to inform responses to application questions and prepare successful proposals. Both sections of this document will be used by OCR in its project underwriting to determine project risks and viability as well as homebuyer eligibility, and Developers of homebuyer projects must adhere to the homebuyer underwriting and responsible lending guidelines in the selection and assistance of homebuyers.

While underwriting prepared by another funder may be submitted for review, applications will be evaluated independently using these criteria specific to the proposed project.

Projects, markets, and acceptable standards and assumptions differ throughout NYS and at different points in time. OCR reserves the right to deviate from these guidelines when it is deemed appropriate to consider taking on higher risk to carry out affordable housing projects that will achieve program goals or to decline assistance to projects with unacceptable overall risk levels.

## Applicability

Please note that Part 1: Underwriting Guidelines for Homebuyer Development projects will apply to the underwriting of submitted application materials to determine eligibility for HOME funding. Part 2: Homebuyer Underwriting and Requirements for Homebuyer Sale is to be used by the developer to underwrite the eventual buyer of the completed homes. Both guidelines should be consulted to inform the completion of an application for funding, but Part 2, if awarded, will come into play once marketing of homes and buyer eligibility determination has begun.

## A. Part 1: Underwriting Guidelines for Homebuyer Development Projects

The following represents how OCR will determine that a project meets HOME requirements, is compliant with the NYS HOME's written underwriting and subsidy layering standards, is a reasonable investment without over subsiding, and is likely to remain financially viable throughout the HOME period of affordability (POA). OCR staff will be responsible for reviewing and documenting compliance, along with assistance from the project Developer as needed.

### 1. Threshold Eligibility

Prior to conducting the underwriting analysis, proposals will be evaluated to ensure they meet all HOME regulatory requirements, including but not limited to the following minimum requirements.

- The minimum per-unit HOME subsidy is not less than $1,000 per unit.
- The maximum per unit subsidy limits set forth in the Request for Applications are not exceeded.
- HOME funds will be expended, and the project is expected to be completed within the following deadlines:
    - Construction or rehabilitation must begin within twelve (12) months of commitment
    - The project must be completed within the three (3) year contract term and
    - Completed homes will be sold or under ratified sales contract to eligible buyers within twelve (12) months of construction completion and meet the definition of homeownership at 24 CFR 92.2.
- Home sales prices will not exceed the HOME Homeownership Value limit according to construction type (new construction (new homes) versus rehabilitation (existing homes)) HOME Homeownership Value Limits - HUD Exchange
- If rehabilitation is involved in a project, the after-rehabilitation value must not exceed HOME Homeownership Value limit for Existing Homes HOME Homeownership Value Limits - HUD Exchange
- The project scope is no more than 4 single family properties. Rental units are generally not allowed or must be cost allocated out.
- Projects of more than 4 units will be referred to other resources as this program is not meant to be a gap filler for larger and/or high-cost projects.
- Developer has documented site control, in the form of deed or purchase agreement, of the proposed property/properties. Property title must be clear of any deed restrictions or restrictive covenants that limit usage or resale. Evidence of clear title will be required for properties held via Quit Claim Deed or Bargain and Sale Deed.
    - *Please note the timeline of Choice Limiting Actions related to pending site control and other actions:*
        - *All work on project sites MUST STOP upon application submission. Submission of the Project Workbook is the first step toward formal approval of federal HOME funding. The date of formal consideration for federal HOME funds will be when the submission is fully complete and approved by the HOME Program Director. This also starts the Choice Limiting Action Prohibition Period. No funds may be committed or cost incurred related to the project regardless of funding source once this period starts with the exception of some administrative and pre-*

*development activities. HUD's environmental review rules prohibit all participants in the development process for a project from taking certain actions including but not limited to: real property acquisition; demolition; disposition; rehabilitation; repair; new construction; site preparation or clearance; ground disturbance; and including entering into any binding legal contract to commit these activities that is not conditioned on successful completion of the environmental review process. HUD's prohibition on taking choice-limiting actions ranges from the date the application is approved by the HOME Program Director and remains in effect until the project has received its environmental clearance.*

- Site control documentation cannot contain any right of first refusal or similar language that would restrict the resale of the improved property.

- Applicant does not have current or past unresolved performance, compliance, monitoring and/or audit issues with OCR.
- Applicant demonstrates at least one year of experience providing recent and relevant residential housing services in the proposed area.
- The Vendor Responsibility Questionnaire does not indicate unresolved concerns that would prohibit funding the application.
- All application certifications satisfactorily answered
- The applicant's Unique Entity Identifier (UEI) must be verified in compliance with the Federal Funding Accountability and Transparency Act prior to award.

OCR reserves the right to request clarification or supplemental information from the applicant to make the threshold determination and may require the applicant to adjust the proposed project to align with these requirements to be considered for funding.

A project that cannot meet these threshold requirements is ineligible for funding and will not be underwritten.

**2. Market Demand**

Applications must demonstrate demand for housing that supports sales and occupancy of the proposed project within the 12 month sale regulatory requirement as well as a realistic plan for achieving that goal.

Market assessments and sales plans will vary based on the project size and types of units, locations, and area demographics. All market assessments, regardless of project size should:

- Be dated not more than six (6) months old at the time of application;
- Use current recognized sources of reliable data, including US Census, real estate information, independent market studies, waiting lists/counseling pipelines, other recent project results, or others that make sense;
- Assess and document the demand for all types and number of housing units being developed, not just the HOME-assisted units; and
- Sales plan must comply with 24 CFR Part 92.351 Affirmative Marketing requirements. Upon award developers will be required to submit an Affirmative Fair Housing Marketing Plan (AFHMP Long Form) to the Fair and Equitable Housing Office for review and approval.

A market assessment or study prepared for other funders or similar projects is acceptable as long as it meets all HOME requirements set forth below.

Market assessments will be reviewed to identify risks and should generally:

- Evaluate general demographic, economic, and housing conditions in the community.
- Delineate the primary market area by identifying the geographic area from which the majority of a project's buyers are likely to come. This may or may not coincide with census tract or neighborhood boundaries.
- Quantify the pool of eligible buyers (< 80% AMI) in terms of household size, age, income, tenure (homeowner or renter), and other relevant factors. Not all residents of the market area are potential or likely buyers of any given project.
- Analyze the competition by evaluating other housing opportunities with an emphasis on other affordable sales opportunities in the market area, including those financed through either the HOME program or other federal programs.
- Estimate the absorption period. This may include a plan of how many units can be successfully sold each month and how long it will take to achieve sale of the HOME units and could be demonstrated by real estate days on market data.
- Examine the pipeline the Developer will draw from, including the pool of Homebuyers that have completed the required Homebuyer counseling.
- Propose sales that are within regulatory limits and are reasonable for the market area and/or proposed population, taking into account any known sales trends at the time.
- Inform the data entered in the Net Proceeds Analysis and Affordability Range Analysis.

Sales Plans must align with the demand exemplified in the market assessment, and will be reviewed for feasibility, including:

- Realistic timeline of events covering all units.
- Strategy outlining how and when units will be sold (i.e., buyer pipeline, marketing etc.) including how specifically the homebuyer will be selected if there is a pool of eligible homebuyers
- Identification of the use of rollover proceeds if sales revenue from a unit sold is needed to fund development of a subsequent unit.
- Sale Plans must identify the proposed sale prices of the completed homes. The Sales Price must be at Fair Market Value, not to exceed HOME value limits, and be based on market assessments or appraisal.

**3. Developer Experience and Capacity**

Applicants must demonstrate relevant direct experience to develop affordable housing by demonstrating prior affordable housing development experience, by being a Community Housing Development Organization (CHDO) or through partnerships (other non-profits) and financial soundness appropriate to the project. Development team members and partners will be considered in the evaluation.

Prior and current standing and experience with HCR and non-HCR funded projects will be considered.

Developers and development teams will be evaluated for the following:

EXPERIENCE – Specific skills and experience related to Homebuyer Development must be demonstrated, including but not limited to rehabilitation, new construction, marketing, real estate knowledge, and low-income household mortgage qualification. OCR will review:

- Recent, ongoing, and successful experience with development, sales, and marketing of similarly sized and regulated housing; and
- The presence of adequate staff with specific skills and experience appropriate to their roles in the project.
- The collective capacity of the development team including, but not limited to, the general contractor, architect, engineer, realtor, market analyst, housing counseling agency, accountant, attorney, and any other specialized professionals or consultants, *and* the individual experience of team members will be evaluated.
    - The development team must have the technical and managerial experience, knowledge, and skills to successfully complete the project. Consideration will be given to:
        - Capacity to market and sell the units. This may be demonstrated by the addition of a realty professional to the team, or evidence that in-house staff have the capability to oversee the advertising, unit showing, intake, and processing of potential buyers.
        - For CHDO projects, OCR must certify that the CHDO has paid staff with experience relevant to the proposed project and role of the CHDO.
        - The corporate or organizational experience of the development entity.
    - The experience of the staff assigned to the project and overall quality of the development team.
    - The experience of the individuals compared to their roles in the proposed project.
    - New entities, new development team members, and new staff will be considered higher risk than those with successful past experience working together.

FINANCIAL CAPACITY - Projects are funded on a cost-reimbursement basis according to HOME regulations. Developers must demonstrate financial capacity and liquidity to support the proposed project during construction and throughout the marketing and sale period. OCR will not fund a project where liquidity needs exceed the Developer's net or liquid assets. Part of the application requires the applicant to submit audits and financial statements must not be more than 1 year old and evidence 2-3 years of finances. All will be reviewed to determine whether the Developer has:

- Adequate financial management systems and practices.
    - CHDOs and nonprofit Developers must have financial accountability standards consistent with 2 CFR 200.302 ("Financial Management") and 2 CFR 200.303 ("Internal Controls").
- Sufficient financial resources to carry the project to completion based on financial statements and audits.
    - Net Assets should be substantially positive.

- Current liquid assets should be sufficient to cover the costs in advance of reimbursement. As a general rule, the Current Ratio or the Quick Ratio should be greater than 1.5, or Current Assets minus Current Liabilities should be greater than 10% of proposed project cost.
- The change in cash or liquidity should not have deteriorated substantially over the last year through review of year-to-year balances or significant changes in receivables or payables.
- There should be no unresolved issues/concerns noted on audit compliance letters.
- Lines of Credit are identified and secured if needed.

PORTFOLIO RISK – The current portfolio and other development activities the Developer is committed to delivering within the timeframe of the proposed contract will also be assessed to determine if other obligations create a distraction or diversion of staff and/or available liquid assets and ultimate risk to the completion of the proposed project.

- For existing properties in operation, audit notes on outstanding debts will be considered and asset management history reviewed. Revenue and expense statements for individual properties may be requested.

**4. Sources**

Sources should be sufficient to cover but not exceed uses and must be firmly committed for OCR to commit HOME funds.

- All sources must be sufficient to cover development costs.
- Firm commitment letters must document terms and conditions for all mortgages, grants, bridge (interim) loans and investment tax credits (ex. historical, if applicable).
- If Developer equity advances are committed by the Developer or owner(s) to the development phase, evidence of available equity funds in the form of a letter stating what will be contributed toward the project is needed.
- Planned reimbursement of Developer advances must be reflected in the Analysis of Sales Proceeds.
- Some costs such as realty fees, closing costs and a portion of the Developer fees will not be incurred until the closing and may be paid out of closing proceeds. These costs need not be covered by development sources but should be reflected in the Analysis of Sales Proceeds.
- Subsidy Layering is required if any other public funding source beyond HOME is included in the project. OCR will assess:
  - If total funding sources, including all public sources, are adequate but not excessive, and are timely in their availability to cover development costs at all phases of the development – acquisition, construction/rehabilitation, and permanent loan.
  - If other funding sources are compatible with HOME – conflicting or differing requirements that affect the structure of the project, including pricing and/or eligible households must be accommodated in the project plan.

5. **Uses**

Development costs must be fair and reasonable given the current market, necessary to complete a quality homeownership project, and offset by funding sources. All costs including non-HOME funds must be reasonable, as all costs affect the need for HOME subsidy.

Documentation of costs must be provided at application:

- Acquisition costs must be supported by a purchase agreement, purchase option, or closing statement. Acquisition costs should not exceed the as-is market value of the property based on a submitted appraisal, plus documented closing costs.
- Construction costs for the entire project must be documented by scopes of work and estimates provided by an engineer, architect, or other appropriate professionals, construction contracts, or preliminary bid(s) substantiating key professional costs and the basis for estimating other soft costs. All scopes of works, plans and specifications must be in compliance with NYS and Local Code and meet the requirements of HCR's Homeownership Design Standards.

When reviewing costs consideration with be given to the following:

- Construction contingency of 10% for rehabilitation and 5% for new construction must be based on project hard costs unless special project circumstances warrant additional contingency. Contingency must be paid for with non-HOME sources.
- Proposed costs must be sufficient to achieve:
    - All program requirements, including cross-cutting federal requirements;
    - HCR property design standards and the HOME property standards of §92.251 to provide quality housing for at least the POA; and
    - Interim financing interest and project carrying costs.
- Costs must be reasonable based on comparable projects in the same geographical area or costs published by recognized industry cost index services.
- Costs to be paid with HOME funds must be eligible under HOME regulations at §92.206.

6. **Project Schedule**

The project schedule should be realistic and achievable within the program deadlines listed above under threshold requirements.

In addition, the following will be considered in the assessment of whether the proposal can support the proposed schedule:

- Development team members, including the contractor, have been identified or the process for solicitation has been identified in the schedule, including marketing;
- All other sources are firmly committed or reasonably expected to be firmly committed;
- Site control is sufficient to ensure timely availability of the property for development;
- Work scopes/building plans and specifications are sufficiently developed to produce reliable cost estimates and support obtaining building permits to meet project start. Please note – during the application review process HCR's Design Unit will evaluate the scopes, building plans, and specifications to ensure they adhere to HCR's

Homeownership Design Standards. The more developed the plans are, the faster Design Unit's review process will be.

- Environmental review timeline is appropriately planned for. Federal HOME funds are subject to National Environmental Policy Act ("NEPA") Review as part of HUD's final approval. The NEPA process can take approximately 3-6 months to complete and cannot begin until all required items are submitted to complete the environmental review record. The timeline for environmental review can vary significantly based on site locations/activities/conditions. The following is a list of items required for most projects. Depending on the type of project and location more items may be needed. Please review this list to plan for the environmental review phase of your project. None of these items are required to apply but if any of the materials listed below are in hand at application, please submit along with your application.
    - Grading/Site Plan
    - SEQR documentation if conducted by the municipality or going to be conducted by the municipality.
    - NYS Smart Growth documentation that describes whether the project involves the acquisition, new construction, expansion or reconstruction of infrastructure.
    - Local approvals (zoning/planning/variances/etc.) if needed.
    - SHPO Section 106 Final Determination Letters.
    - All projects involving ground disturbance must submit their project site parcel to NYSDEC to receive a Parcel Jurisdictional Determination (JD) https://survey123.arcgis.com/share/be5c071ff72d4876986b18488721e55f.
    - Site contamination reports (Phase I Environmental Site Assessments).
    - Asbestos Containing Material (ACM) and Lead-Based Paint (LBP) surveys.
    - Testing including Lead-Based Paint, Mold, Radon (at completion), as applicable.

**7. Sales Affordability Range Analysis**

All homes must be sold to low-Income Homebuyers at a fair market value while being within the Homeownership Value Limits of the HOME Program as published by HUD (see below.)

For application review purposes, all sales projections must:

- Propose sales prices that are within the HOME limits, and if not at fair market value, provide justification; and
- Demonstrate that the home can be made affordable to a reasonable range of Low Income ("LI") buyers (at a minimum 80% AMI) with reasonable down payment, market-rate mortgage, and an appropriate amount of HOME pass-through assistance.

Final sales must meet the underwriting guidelines below and documentation must be reviewed and approved by OCR staff prior to sale.

**8. Net Sales Proceeds**

Net Sales Proceeds are funds available after sale and all approved costs and fees associated with the sold property have been paid. For projects that produce units for sale sequentially or in phases, the net proceeds for each sale can be retained and reused as rollover funds to subsidize subsequent units that are part of the total project with the approval of OCR. These rollover funds are subject to the max subsidy limit.

All cumulative or final net sales proceeds after all units have been sold must be returned to OCR as Program Income.

The Estimated Net Proceeds Analysis at application should correlate with the data provided in the Market Demand Assessment and present scenarios that are feasible and realistic based market demand presented.

**9. Conflict of Interest**

Applicants must disclose all real or perceived conflicts of interest for review and approval. A conflict of interest is detailed below, but it is generally any relationship based on family ties or financial interests between or among two or more entities involved in a project-related transaction that could reasonably give rise to a presumption that the entities may not operate at arms-length.

Conflicts of interests (COI) are strictly prohibited by NYS and HOME regulations. The developer, including its officers, board members, consultants, and employees, are subject to the presumption of conflict of interest as stated in §92.356(f). All covered persons may not receive either program assistance or any contract without the prior written exception granted by NYS and (if required) HUD.

See the NYS HOME Program Homebuyer Development Administrative Plan for details on OCR's Conflict of Interest Policy. https://hcr.ny.gov/nys-home-program

**10. Disqualification**

In addition to organizational changes that impact the responses to the application certification questions and/or Vendor Responsibility Questionnaire during the contract term, OCR may disqualify an application or require replacement of a development team member based on substantive evidence of any of the following:

Making a misrepresentation or providing materially false information in an application
Having been found to be directly or indirectly responsible for any other project within the past five (5) years in which there is or was uncorrected noncompliance with state or federal rules, regulations, or standards; or
Being debarred, suspended, or otherwise excluded from any federal contract.

All project work MUST STOP upon application submission including real property acquisition, leasing, demolition, disposition, rehabilitation, repair, new construction, site preparation or clearance, ground disturbance work, such as clearing, grading or grubbing, and/or entering into any binding legal contract to commit these activities that is not conditioned on successful completion of the environmental review process.

Federally funded projects are subject to review under the National Environmental Policy Act (NEPA). All HOME assisted projects are required to complete an environmental review before any funds, regardless of source, are committed to a project or costs incurred. Submission of this application constitutes consideration of federal funds and therefore Choice Limiting Actions (CLA) are prohibited.

A CLA is any activity concerning the proposal that would have an adverse environmental impact and/or limit the choice of reasonable alternatives that would avoid or minimize environmental impacts. This prohibition on CLAs prohibits physical activity as well as contracting for or committing to any of these actions.

Actions started prior to application must pause until the environmental review is complete. An applicant that started a project in good faith as a private project, is not precluded from later deciding to apply for federal assistance. Upon application for federal assistance, further CLAs on the project must cease until the environmental review process is complete.

**Making a CLA will permanently disqualify a project from receiving any federal financial assistance. Please consult with HOME staff if you have any concerns regarding compliance with NEPA or CLAs.**

## B. Part 2: Homebuyer Underwriting Guidelines and Requirements for Homebuyer Sale

Below summarizes OCR's standards to minimize mortgage risks and maximize sustainable homeownership.

Project Developers will be required to exhibit compliance by providing documentation to HOME Project Managers for review and approval at different milestones throughout the process. Documentation varies depending on each criterion below but could include:

- Purchase sales agreement
- Closing cost statement
- Homebuyer income documentation
- Homebuyer budgets
- Homebuyer mortgage qualification documents from housing counseling agency and/or lender
- Homebuyer bank statements
- Counseling certificates
- Mortgage approval or estimates

Each Homebuyer must be separately underwritten to determine eligibility.

Typically underwriting is performed and documented by a combination of Developer, lender, and housing counselor or knowledgeable homeownership professional assessments.

Developer will be required to submit completed underwriting of the eligible homebuyer to HOME Project Managers. HOME Project Managers must review all documentation prior to the purchase to ensure compliance with HOME rules and regulations. At least three weeks prior to closing, Developers must submit terms of private Homebuyer mortgage(s) and note(s) along with completed closing documents to their Project Manager for review.

NYS HOME funds are generally in the form of Developer subsidy, not down payment or closing cost funds for the borrower, although homeowner assistance provided by other sources is allowable. If warranted, assistance to the buyer can be in the form of a "sales price write down". The difference between the fair market value and the affordable sales price is considered a write-down and can be provided to the homebuyer by selling the property at the write-down price.

### 1. Sales Price – Homeownership Value Limits

The sales price of the property cannot exceed the HOME Homeownership Value Limits here HOME Homeownership Value Limits - HUD Exchange (maximum purchase price value limit) as published annually by HUD. The after-rehab or new construction value should be considered prior to development during the scope of work and not to exceed the HOME limits.

There are different limits for existing housing versus new construction listed according to the number of units in the structure. Generally rental units are not allowed or must be cost allocated out. For rehabilitation, the limit for Existing Homes HOME Homeownership Value Limit is used. For new construction, the New Homes HOME Homeownership Value Limit is used.

Sales prices (contract price) must be based on Fair Market Value (FMV) not to exceed HOME limits. FMV is the negotiated final sales price as agreed upon to by a willing seller and a willing buyer and is usually determined through property sales appraisals however the following methods may also be used:

- Property Valuation / Comparative Market Analysis (must be completed by an independent licensed realtor familiar with local market conditions); or
- Brokers Price Opinion (must be completed by an independent licensed broker familiar with current local market conditions).

**2. Homebuyer Eligibility**

The prospective purchaser must be low income, meaning gross annual household income that does not exceed 80% of the area median, adjusted for family size, as defined by HUD HOME income limits posted at https://www.hudexchange.info/programs/home/home-income-limits/.

Income must be determined using Part 5/Section 8 method, defined at §92.203(b). Developers must use the HUD CPD Income Eligibility Calculator at: https://www.hudexchange.info/incomecalculator/ to determine income. Income certifications generated by the CPD calculator must be signed and dated by the CHDO/Developer and head(s) of household and saved in program files.

All income verifications must have at least two months of source documentation in accordance with 24 CFR 92.203(a)(2) and project anticipated household income for the next 12 months. CHDO/Developers are strongly encouraged to obtain more than 2 months of income source documentation if the household member(s) weekly or biweekly pay fluctuates. Collecting more source documents will allow the CHDO/Developers to more accurately project the applicant's anticipated income. All certifications must be completed prior to the purchase of an existing house or entering into a contract to purchase a house to be constructed (see §92.254(a)(8) and are valid for 6 months. Verifications older than 6 months must be re-certified.

CPD Income Eligibility Calculator User Manual:→CPD Income Eligibility Calculator User Manual (hudexchange.info)

Determining Income for HOME Program Training:→Determining Income for the HOME Program - HUD Exchange

Visit → https://www.hudexchange.info/programs/home/topics/income-determination/#policy-guidance for further guidance.

**3. Homebuyer Underwriting Standards**

Homeownership must be affordable and sustainable for the low-income buyer (household income at or below 80% of AMI) throughout the POA. Underwriting standards for homeownership assistance evaluate housing debt and overall debt of the family, the appropriateness of the amount of assistance, monthly expenses of the family, assets available to acquire the housing, and financial resources to sustain homeownership based on 'recurring' monthly expenses budget.

Front- and Back-End Ratios

Lending ratios are generally the percentage of gross monthly income used for certain debts, depending on the ratio. Gross monthly income is the total of any recurring income earned whether through active employment, investments, or other sources such as social security, SSD, SSI. A full review of the Homebuyer's front and back-end ratios must meet the following:

- The maximum front-end housing debt to income ratio must be 33%, compensating factors can be taken in consideration. Housing debt should include monthly mortgage payment, property taxes, homeowners' insurance premiums, and homeowner association fees, if applicable.
- The maximum back-end ratio for total debt to income ratio is 45%. Debt should include other housing expenses, plus credit cards, auto loans, child support, student loans. The file must contain supporting documentation on how the front and back-end ratios were calculated.

Financial Resources and Other Monthly Expenses

Homebuyers should be able to demonstrate that the proposed mortgage payment fit into to a regular monthly budget that includes ongoing expenses such as utilities, groceries, child care expenses, Wi-Fi/internet, electricity, gas, phone, and various other expenses that recur monthly but are not necessarily on a credit report.

Post-Closing Liquid Assets

A review of expected income and job stability, estimate future adjustments to property taxes, fees to the municipality, homeowners' insurance, estimate the average monthly cost of utilities, and liquid assets must ensure the Homebuyer will have the minimum equivalent of 1 month of housing payment in personal savings following the purchase and show finances can be maintained at least through the POA must be documented.

Homebuyer Contribution

No minimum buyer contribution is required, although a $1000 down payment in addition to the earnest deposit is suggested. Units may not be purchased with cash. Households with adequate liquid assets to pay for the unit without the need for a mortgage loan or the ability to provide substantial down payment from assets may be denied due to inability to demonstrate need for federal financial assistance. Retirement, investments, or other Homebuyer contributions (assets) must be verified.

Credit History

Credit adequate to obtain a responsible private mortgage is required. Refer to Responsible Lending Policy below.

**4. Homebuyer Counseling**

The Homebuyer must receive customized homeownership counseling from a HUD-Certified counselor working for an agency approved to participate in HUD's Housing Counseling program. Counseling must be individualized for the buyer and cover HUD specific curriculum including intake, financial and housing affordability analysis, and an action plan to address the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including financing, refinancing, default, and foreclosure, and other financial decisions) and the sale or other disposition of a home. Counseling can be delivered in-person or virtually and some topics may be provided in a group setting to set the foundation for individual sessions.

The prospective Homebuyer must be deemed by the counselor as "ready to proceed" to purchase a home and verify compliance with the above requirements via a letter, certificate, or email which the counseling agency must submit directly to the Developer. This must be completed and presented prior to signing the Written Agreement between the Developer and Homebuyer and is valid for a period of 10 months from the date of certification. New certification is required if older than 10 months before closing.

The counseling agency may charge the Homebuyer a reasonable fee for counseling. The Developer may opt to pay for the services with HOME funds from project related soft cost *only if the buyer ultimately purchases the unit and receives HOME assistance.* Charges and payments must be reasonable and related to actual costs incurred and may not be paid for by both sources (no double dipping).

**5. Responsible Lending Policy**

Mortgages senior to the HOME loan must be reasonable and sustainable. If they contain terms and conditions that are predatory or harmful (such as excessive fees or interest rates, balloon payments, adjustable interest rates, etc.), the Homebuyer must obtain alternate financing or will not be eligible to purchase the home.

Mortgage documents must be reviewed according to the following:

- The interest rate of the permanent mortgage should not exceed the prevailing mortgage rate as published by Freddie Mac: https://www.freddiemac.com/pmms by more than one (1%) percentage point at the time of pre-approval.
- Mortgage cannot exceed a 30-year term and must require periodic payments without risky features and terms (e.g., balloon payments, negative amortization, or interest-only periods). Specialized mortgages with longer than 30-year terms, such as USDA mortgages, may be allowed subject to OCR approval.
- All loans must have a fixed interest rate and be fully amortizing over the term of the loan. There can be no pre-payment penalty for early payoffs or balloon payments.
- The total household debt, including the new housing payment, must not exceed 45% of the gross monthly income (back-end ratio).
- Closing costs and prepaid items must be reasonable according to industry standard and generally should not exceed 6% of the purchase price of the home.
- Taxes and insurance must be escrowed.
- Cash back to the Homebuyer at closing is not permitted.

**6. Written Agreements**

A Written Agreement must be signed and dated by both the Developer and Homebuyer once homebuyer eligibility has been determined, the buyer has met all requirements, and underwriting is complete. Failure to execute a valid Written Agreement will result in the recapture of HOME funds.

Developers must use the HTFC Written Agreement Template which is located on the HOME Program website → https://hcr.ny.gov/nys-home-program. Developers can use any of their own project (internal) contract documents, in addition to the HTFC Written Agreement as long as they are not conflictual and meet the requirements of 24 CFR 92.504(5).

## 7. Security Instruments

The HOME funds will be secured by a security instrument in favor of HTFC with restrictions placed on the unit to ensure compliance with the HOME resale and recapture requirements described in 24 CFR 92.254(a)(5) and the NYS HOME Local Program Recapture-Resale Policy, found at https://hcr.ny.gov/nys-home-program.

The home(s) must remain the buyer's primary residence throughout the POA for up to 15 years depending on the total HOME funds invested. In the event that the Homebuyer does not occupy the HOME-assisted unit as their primary residence for the duration of the POA, depending on the type of assistance received, all or a portion of the HOME assistance must be returned or the home must be sold to a HOME eligible buyer. The POA is enforced through a security instrument to be determined at sale to the homebuyer to include a Restrictive Covenant or Note or Mortgage Security Instrument. When pass-through assistance to the homebuyer *is not* required, a Restrictive Covenant will be placed on the property for the period of affordability. When pass-through assistance to the homebuyer *is* required, a Note and Mortgage will be placed on the property for the Period of Affordability.

All security instruments will be provided by OCR. The security instruments used to secure the affordability of the HOME assisted unit must be recorded in accordance with State recordation laws.

## 8. Refinancing/Resubordination Policy

Refinancing guidelines are designed to ensure that first mortgages obtained through refinancing are reasonable and do not place subordinate HOME financing at risk.

During the HOME POA, subordination of the HOME loan to a new mortgage loan will only be considered for a lower interest rate and/or longer term, with no cash out allowed except to cover approved:

- Closing costs;
- Major home repair expenses;
- Major education expenses; and/or
- Major medical expenses.

All subordination requests must be approved by HOME staff. Developers should assist with submitting requests on behalf of the homeowner ensuring the request meets one of the qualifying refinance criteria and is within HOME Program regulations §92.254(f)(3).