

HOUSING DIVISION – HOME Program

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TO: Persons Interested in the HOME Program
FROM: Maureen Martin, Bureau Chief, Housing Assistance Bureau
DATE: November 15, 2011
SUBJECT: HOME Program Newsletter, Volume 11, Issue 5: HOME Investment Partnerships Program Plan Year 2012 Changes

Copies of the HOME Program newsletters are published on the [HOME Happenings](http://housing.mt.gov/HM/hmhappenings.mcp) web page: <http://housing.mt.gov/HM/hmhappenings.mcp>

COMMENT PERIOD

The HOME Program sought comments on the proposed changes listed below for the 2012 Program Year. Written comments were accepted through October 31, 2011.

APPLICATION DUE DATE – COMPETITIVE GRANTS

PROPOSAL: The proposed application due date for the 2012 HOME Program competitive grants: **Friday, February 10, 2012.**

Adopted as proposed.

COMPETITIVE GRANTS

PROPOSAL: The HOME Program is seeking comments on a proposal to require, rather than encourage, enhanced accessibility features for **HOME-assisted units. All HOME-assisted new construction, including single family (homeowner) developments, and major rehabilitation** (“gut” rehabilitation that includes replacing interior walls and doors) will incorporate the following:

- 36-inch doors (32 inches of clear passage space) for all living areas (except pantry, storage, and closets)
- Levered handles for exterior and interior doors (except exterior swing doors)
- Outlets mounted not less than 15 inches above floor covering
- Light switches, control boxes and/or thermostats mounted no more than 48 inches above floor covering

- Walls adjacent to toilets, bathtubs and shower stalls require reinforcement for later installation of grab bars
- Lever style faucets for laundry hook-up, lavatory and kitchen sink
- A minimum of a **ground level half-bath** with a 30 x 48 inch turn space (also required in rehab unless waived by HOME staff for structural limitations or excessive cost, etc.)
- At least one no-step entry to all **ground floor units**

Exceptions to “Visitability” requirements must be requested by the Applicant/Grantee and may be granted by the HOME Program if adequately justified by the Applicant and only if the Applicant meets the applicable accessibility requirements at 24 CFR Part 8 and the design and construction requirements at 24 CFR 100.205.

❖ **Comments:** A number of comments were received supporting this proposal; however, some concerns were expressed:

- Significant additional costs would be added to construction of **single-family-homeownership units**, especially the cost of a “no-step entry”
- In favor of the “no-step” entry requirement for HOME (and CDBG) subsidized homes, so long as the requirement is for only **one** no-step door (others can be “stepped”), the door between an attached garage and the home can be the site of the no-step entry, and the no-step entry can be achieved with landscaping or a ramp.
- To require accessibility requirements beyond what is already required by existing laws and codes for **multi-family rental projects** would place an undue burden on Grantees by tremendously increasing the cost per unit and thus potentially creating the unintended consequence of decreasing the number of units that could be built.
- Questions were raised about the affected units – Applicable to every HOME-assisted unit? Only to ground floor HOME-assisted units (in a multi-story building)? What if the building has an elevator? Is an elevator required for multi-story units?

Adopted, as revised.

▪ **NEW CONSTRUCTION, HOMEOWNERSHIP UNITS WITH ONE-TO-FOUR UNITS:**

Applies to one-, two-, three- or four-unit buildings (i.e., single-family unit and/or duplex, tri-plex, four-plex attached units and/or townhomes). For the HOME-assisted units,

- All HOME-assisted units must meet the visitability requirements as listed unless otherwise specified below.
- For a multi-story **building** with **no elevator**, all HOME-assisted units must meet the visitability requirements as listed, except for the “no-step” entrance requirement.

- The “no-step” entry requirement is for **one** no-step door per unit; other entries into the unit can be “stepped”. The no-step entry can be between an attached garage and the home and the no-step entry can be achieved with landscaping or a ramp.
- For a multi-story **unit**, the visitability requirements apply to only the ground floor of the HOME-assisted **unit**.
- Waiver can be requested from the HOME Program for “good cause”.
- For projects that are not 100% HOME-assisted (i.e., not all the units in the project are HOME-assisted), the visitability requirements apply only to the HOME-assisted units
- **NEW CONSTRUCTION, HOMEOWNERSHIP UNITS WITH FIVE OR MORE UNITS (for example condominium buildings):**
For the HOME-assisted units:
 - All HOME-assisted units must meet the visitability requirements as listed unless otherwise specified below.
 - For a multi-story **unit**, the visitability requirements apply to only the ground floor of the **unit**.
 - In a multi-story **building** with elevators, **all** HOME-assisted units must meet the visitability requirements as listed.
 - In a multi-story **building** with no elevators, **all** HOME-assisted units must meet the visitability requirements as listed, except for the no-step entrance requirement.
 - For projects that are not 100% HOME-assisted (i.e., not all the units in the building are HOME-assisted), the visitability requirements apply only to the HOME-assisted units.
- **NEW CONSTRUCTION AND MAJOR REHABILITATION, MULTI-FAMILY RENTAL PROJECTS WITH ONE-TO-FOUR UNITS**
For the HOME-assisted units:
 - All HOME-assisted units must meet the visitability requirements as listed unless otherwise specified below
 - For a multi-story **unit**, the visitability requirements apply to only the ground floor of the **unit**.
 - In a multi-story **building** with elevators, **all** HOME-assisted units must meet the visitability requirements as listed.
 - In a multi-story **building** with **no elevators**, **all** HOME-assisted units must meet the visitability requirements as listed, except for the no-step entrance requirement.
 - For projects that are not 100% HOME-assisted (i.e., not all the units in the building are HOME-assisted), and are not 100% visitable, the visitability requirements apply only to the HOME-assisted units, which must be “fixed”, not “floating”
 - Waiver can be requested from the HOME Program for “good cause”.

- **NEW CONSTRUCTION AND MAJOR REHABILITATION, MULTI-FAMILY RENTAL PROJECTS WITH FIVE OR MORE UNITS**
 - All HOME-assisted units must meet the visitability requirements as listed
 - For a multi-story **unit**, the visitability requirements apply to only the ground floor of the **unit**.
 - In a multi-story **building** with elevators, **all** HOME-assisted units must meet the visitability requirements as listed
 - In a multi-story **building** with **no elevators**, **all** HOME-assisted units must meet the visitability requirements as listed, except for the no-step entrance requirement.
 - For projects that are not 100% HOME-assisted (i.e., not all the units in the building are HOME-assisted), and are not 100% visitable, the visitability requirements apply only to the HOME-assisted units, which must be “fixed”, not “floating”

- **NOTE: All housing must meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973**
 - For new construction of **multi-family projects**, with five or more units, Section 504 requires that 5% of the total units in the project (but not less than one unit) be accessible to individuals with mobility impairments, **and an additional 2%** of the units (but not less than one unit) be accessible to individuals with sensory impairments
 - The Section 504 definition of substantial rehabilitation **multi-family projects** includes construction in a project with 15 or more units for which the rehabilitation costs will be 75% or more of the replacement cost. In such developments, 5% of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2% (but not less than one unit) must be accessible to individuals with sensory impairments
 - When rehabilitation is undertaken that is less extensive, alterations must, to the maximum extent feasible, make the units accessible to and usable by individuals with handicaps, until 5% of the units are accessible to people with mobility impairments. Alterations to common spaces must, to the maximum extent feasible, make the project accessible
 - Accessible units must be, to the maximum extent feasible, distributed throughout projects and sites and must be available in a sufficient range of sizes and amenities so as to not limit choice
 - Owners and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps. They also must take reasonable non-discriminatory steps to maximize use of such units by eligible individuals

- When an accessible unit becomes vacant, before offering the unit to a non-handicapped individual, the owner/manager should offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features
- The usual standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS)

□ POINT OF CLARIFICATION: Since there has been some confusion regarding the eligibility of site improvement costs, the HOME Program is providing additional information regarding site improvements. According to HUD guidance, site improvements must be in keeping with improvements to surrounding standard projects. They include new, on-site improvements (utility connections, sewer and water lines, etc.) where none are present. They are **essential** to development or repair of existing improvements. Building new, off-site utility connections to an adjacent street is also eligible. Off-site infrastructure is not eligible as a HOME expense.

*Example: Infrastructure, such as sewer and water lines in a public street in front of a HOME-assisted property, cannot be paid for with HOME funds. However, the connections that run from the HOME-assisted property to the street are eligible HOME costs since they are **essential** to the property.*

The HOME Program recommends that the HOME funds be prioritized for use in the actual units rather than for site improvements. For rehabilitation projects, eligible site improvements include only those improvements necessary to meet accessibility requirements such as handicapped parking spaces, curb cuts, etc.

In no case will the HOME Program pay for more than the proportionate share of the cost for eligible site improvements, e.g., if 20% of the units in a multi-family rental project are HOME assisted, HOME funds can only be used to pay for up to 20% of the eligible site improvement costs.

Incorporated as written.

□ POINT OF CLARIFICATION: If an Applicant is proposing to develop an occupied project in which over-income tenants occupy some of the units, it may not invest HOME funds in those specific units. Therefore, Applicants proposing to acquire and/or rehabilitate an occupied multi-family property, manufactured home park, etc. must verify the incomes of each of the tenants/occupants to determine if the occupants are HOME qualified before submitting the application. A “survey” of tenant information is not adequate.

Example 1: An Applicant wishes to acquire a building with 20 comparable units, 10 of which are currently occupied. The Applicant certified the incomes of each of these occupied units and found the following:

- 5 units have tenants whose incomes are above 80% of the area median income (AMI)
- 1 unit is occupied by a tenant whose income is at 74% of AMI
- 14 units have tenants whose income is below 60% of AMI

The Applicant may not invest any HOME funds in the five units occupied by tenants who are not low-income (incomes are above 80% of AMI). It may invest HOME funds in all of the remaining 15 units. Since 15 HOME-assisted units is 75% of the total units, 75% of the total HOME-eligible development costs may be paid with HOME funds, not to exceed the HOME maximum per unit subsidy limit.

Example 2: An Applicant wishes to acquire a manufactured home park with 40 lots of comparable size, all of which are currently occupied. The occupants own their own homes and rent the lots upon which the homes rest. The Applicant certified the incomes of each of these occupied units and found the following:

- 10 lots are rented by homeowners whose incomes are above 80% of the area median income
- 2 lots are rented by homeowners whose incomes are between 61% and 80% of AMI
- 28 lots are rented by homeowners whose incomes are below 60% of AMI

The Applicant may not invest any HOME funds in the 10 lots rented by homeowners who are not low-income (incomes are above 80% of AMI). It may invest HOME funds in all of the remaining 30 lots (provided the manufactured homes on those lots met code requirements). Since 30 HOME-assisted lots is 75% of the total units, 75% of the total HOME-eligible acquisition costs may be paid with HOME funds, not to exceed the HOME maximum per unit subsidy limit.

Additionally, the Applicant must ensure the occupants/tenants of the HOME-assisted units know they will need to continue to provide income and asset information annually for the entire period of affordability (5, 10, or 15 years).

Incorporated as written.

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POINT OF CLARIFICATION: HOME funds may only pay for HOME-assisted housing units.

If the units in a project are comparable (in terms of size, features, and number of bedrooms), then the actual costs can be determined by prorating total HOME-eligible development costs. HOME funds can pay the pro-rated share of the HOME-assisted units. The units can be either floating or fixed. Because units in rental projects with the "floating" HOME designation must be comparable, costs should be pro-rated in these projects.

When the units are **not** comparable (in terms of size, features, and number of bedrooms), the HOME-eligible costs must be allocated on a unit-by-unit basis,

charging only actual costs to the HOME Program plus a pro-rata share of common costs. The units **must be fixed**.

- **Pro-rating Cost Allocation Method:** To use the pro-rating method of allocating costs, there must be comparability between the total inventory of HOME-assisted and non-assisted units in a project. For example, in a 12 unit building in which half the units are one-bedroom and half are two-bedroom and the units of each bedroom size are approximately the same square footage, there should be an equal proportion of one- and two bedroom units in the assisted and non-assisted units. Similarly, if one-third of the units are HOME-assisted, designation of two 1-bedroom units and two 2-bedroom units would be required to achieve comparability in the distribution of units.

When assisted and non-assisted units are comparable, total eligible development costs (including acquisition, development hard costs to construct or rehabilitate the unit, and project soft costs excluding relocation costs) may be pro-rated in order to determine the HOME share of the total costs. Thus, all eligible project costs may be distributed between the HOME Program and other funding sources, **if** the HOME share does not exceed the maximum per unit subsidy limit. When the assisted and non-assisted units are comparable in size and distribution, a prorated share of the cost of common elements attributable to the HOME-assisted units may be paid with HOME funds.

Example: An Applicant/Grantee proposes to replace a heating system, install new water and waste lines, and replace the roof in a 24-unit building, which will bring the building up to code. Since there are eight HOME-assisted units that are comparable to the non-assisted units in the building, HOME may pay one-third of the total HOME-eligible common costs because one-third of the units are HOME-assisted.

The ratio of the HOME investment to the total eligible development costs is equivalent to the ratio of the minimum number of units that must be HOME-assisted to the total number of units.

- **Unit-By-Unit Cost Allocation Method:** When the HOME-assisted and non-assisted units in a project are **not comparable** in terms of distribution or size, the Grantee must determine and charge the HOME Program for the **actual costs** incurred for the acquisition and development of the HOME units, plus any common costs that can be attributed to the HOME portion of the project.

To allocate these costs, the Grantee must designate the HOME-assisted units, develop a pro-forma for the assisted units, and track the costs for each unit.

Common costs attributable to HOME-assisted units are determined by calculating the total square feet in HOME units as a percentage of the total square feet in the project. HOME funds can pay for that percentage of the common costs.

The actual cost for each unit is charged to the HOME Program, provided the actual cost does not exceed the maximum per unit subsidy. The actual cost is

charged, regardless of whether it is more or less than the pro-rated cost would be.

Example 1: An Applicant will construct a new 30-unit, mixed-income development. Ten of the units will be luxury units, with a total development cost of \$2,000,000. Ten units will have somewhat fewer amenities and will be marketed to middle-income households with incomes between 80 and 120 percent of the area median income. The total development cost of these units will be \$1,500,000. The remaining ten units will have even fewer amenities and will be rented to low- and very low-income households. The total development cost of these units will be \$750,000. Because the units in this project are not comparable, the Grantee may use HOME funds only for the cost of the units that will meet the HOME requirements. Therefore, it may invest up to \$750,000 in HOME funds to construct the 10 units for income-eligible families, provided that the per unit subsidy limit equals at least \$75,000. Ten (10) units will be designated as HOME-assisted.

Example 2: An Applicant will use \$200,000 of HOME funds and \$100,000 of local funds to rehabilitate a 15-unit building it already owns. Five of the 15 units are 2-bedroom units and will not be HOME-assisted. The remaining ten units are efficiencies (occupied by income-eligible households) and will be HOME-assisted. The total rehabilitation cost is \$300,000. HOME can pay the actual rehabilitation costs, up to the per unit subsidy limit, of the units designated as "HOME-assisted."

Incorporated as written.

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POINT OF CLARIFICATION: Any substantial changes to the HOME budget and/or scope of activities after tentative award of funds will require a full review of the application and reconsideration by the MDOC HOME program. For example, a substantial change to the budget would be moving more than 10% of the HOME funds from the "construction" line item to the "acquisition". Minor changes (less than 10%) between line items in the HOME budget may be acceptable with HOME Program approval. (The HOME Program reserves the right to determine what constitutes a "major" change.) Grantees must also take care that changes do not affect the allocation of eligible costs to HOME-assisted units (see previous discussion regarding allocating costs to HOME-assisted units).

Incorporated as written.

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PROPOSAL: Eliminate the noncompetitive set-aside for TBRA Security Deposit Assistance Program and return the \$500,000 set-aside in 2010 and 2011 to the 2012 competitive pool of funds. Tenant Based Rental Assistance will no longer be an eligible activity under the Montana Department of Commerce HOME Program.

Discussion: Administering a TBRA Program is very labor intensive and time consuming and the HOME Program does not have adequate resources to adequately administer this type of program. Additionally, HUD regulations prohibit the HOME Program from providing soft costs to Grantees to run a TBRA program. The non-reimbursable costs of running a TBRA program at the local level are **not** eligible as matching contributions. TBRA vouchers cannot be used for overnight, emergency, or temporary shelter; a TBRA subsidy would need to be sufficient to enable a person to rent a transitional or permanent housing unit that meets housing quality standards (HQS). TBRA must have been identified as an essential part of a community's housing strategy and the market conditions in the community must support TBRA as a viable option. This means that an assessment of market factors has been undertaken and an ample supply of rental housing meeting HQS is available in the community.

❖ **Comment:** Some concerns were expressed concerning this proposal:

- Do not eliminate TBRA. TBRA should remain an option if a community's housing strategy indicates they have an *inadequate* supply of affordable housing that meets HQS. (*emphasis added*)

▶ **MDOC Response:** At the local level, administering a TBRA program to ensure compliance with all of HUD's rules and regulations is very complex, labor intensive, and time consuming. The cost for a grantee to administer a \$500,000 TBRA program can run \$50,000 or more.

If a community's housing strategy indicates the community does *not* have an adequate supply of affordable housing meeting HQS, the HOME Program cannot fund TBRA assistance in that community. An adequate stock of affordable housing that meets HQS is necessary for a TBRA program to be successful

Adopted. However, the HOME Program will incorporate re-evaluating the TBRA issue into its Strategic Plan.

POINT OF CLARIFICATION: Applicants of rental or new construction projects must provide firm evidence of site control in the form of fee simple title or deed to the property, a minimum 75-year lease, or an option (buy/sell) agreement signed by both the buyer and seller before the application is submitted. However, federal environmental regulations prohibit a HOME applicant from committing HOME or non-HOME funds until the environmental review has been completed and approved by MDOC or HUD. This restriction includes acquisition **using any source of funds** in advance of application to the HOME program if HOME funds are intended to be invested in the project. Applicants that intend to acquire land in advance of application and/or award must complete an environmental review and have it approved by MDOC or HUD, as applicable, before the land is acquired, regardless of the source of funds used for acquisition. An **option agreement** for a proposed site is allowable prior to the completion of the environmental review **IF, and only IF, the option agreement is contingent on**

a favorable environmental review determination and the cost of the option is a nominal portion of the purchase price. The option agreement must be executed before the application is submitted. **APPLICANTS NEED TO ENSURE THAT ADEQUATE TIME (A MINIMUM OF 60 to 90 DAYS) TO ACHIEVE ENVIRONMENTAL CLEARANCE IS BUILT INTO THE TIMEFRAME IN WHICH THE OPTION AGREEMENT MUST BE EXECUTED.**

Incorporated as written.

POINT OF CLARIFICATION: The *Capacity Determination* ranking measures the ability of an Applicant to meet the housing purposes and goals presented in its application. If the Applicant is partnering or working with another entity, the HOME ranking team will take into consideration the partner's abilities and past experiences, especially with HOME-funded projects.

In addition, the Applicant, and the partner, if applicable, must demonstrate the availability of dedicated, experienced staff to oversee the project and carry out the responsibilities of administering the grant.

Incorporated as written.

HOMEOWNER (OWNER-OCCUPIED) REHABILITATION

POINT OF CLARIFICATION: Regardless of whether owner-occupied rehabilitation is accessed through the Single Family Noncompetitive Program or through the competitive application process, a qualified appraiser must establish an after rehab value of the house, incorporating the rehab items, before the rehab starts.

For rehab under the Single Family Noncompetitive Program, the appraisal cannot be conducted until the code deficiencies have been identified and the scope of work has been prepared. The actual rehabilitation of the housing unit must begin within 90 days of the appraisal. A complete set-up package, including the Setup Report, must be submitted prior to any rehab work starting. The activity must be completed within 180 days of the setup, draws must be submitted no less than every 120 days from the date of setup, and the completion report must be submitted within less than 120 days of last draw for the activity.

Incorporated as modified.

- Regardless of whether owner-occupied rehabilitation is accessed through the Single Family Noncompetitive Program or through the competitive application process, a qualified appraiser must establish an after rehab value of the house, incorporating the rehab items, before the rehab starts.

For rehab under the Single Family Noncompetitive Program, the appraisal cannot be conducted until the code deficiencies have been identified and the scope of work has been prepared.

In keeping with the FHA standard of 120 days for which an appraisal is valid, the activity pre-approval process must be completed (allow 30 days after submittal of documentation for the HOME Program to approve the activity) and the Set-up Report ([Exhibit 3-L, Chapter 3, HOME Grant Administration Manual](#)) must be submitted within 120 days of the date of the appraisal. If more than 120 days passes before this process is complete, a new appraisal must be obtained.

Once the activity is pre-approved and set-up, construction must be started and completed within 180 days. In addition, draw requests must be submitted no less than every 120 days of set-up until the activity Completion Report ([Exhibit 3-L](#)) is submitted. The completion report must be submitted within less than 120 days of last draw for the activity.

POINT OF CLARIFICATION: For homeowner (owner-occupied) rehabilitation activities, the only eligible property type is an owner-occupied single-family unit. Properties that also consist of one, two, or three rental units are not eligible for HOME assistance under the Single Family Noncompetitive Program.

❖ **Comments:** A comment was received that properties that also consist of one, two, or three rental units should be eligible for HOME assistance under the Single Family Noncompetitive Program.

▶ **MDOC Response:** Because of the additional complexity involved with rehabilitating single-family units comprised of an owner-occupied unit along with one to four rental units, funding for this type of project needs to be accessed through the competitive application process

Incorporated as Written.

PROPOSAL: HOME funds should be utilized as **gap financing**. When designing their rehabilitation programs, Grantees should consider performing an analysis of an Applicant's income, assets, and liabilities, similar to the analysis performed for potential homebuyers, as part of the screening process. This will enable Grantees to determine if the homeowner can reasonably contribute any funds to the proposed rehabilitation.

Discussion: In some instances, a low interest loan may be affordable or more appropriate. In the case of an owner-occupant with sufficient income to repay a loan on a monthly basis, the Grantee could structure the HOME assistance to be used in combination with other financing, which would require to Grantee to develop relationships with lenders in the community. For example, the Grantee and a private lender could jointly loan the funds needed for rehabilitation. This arrangement, referred to as a participation loan, results in one loan from the lender and one from the Grantee, usually at a low interest rate. The size of the HOME loan is typically dependent upon the amount available for the

conventional loan from the lender partner. In another example, the Grantee could structure the HOME loan with small periodic (monthly, quarterly, etc) payments affordable to owner, along with a deferred loan for the balance of the HOME funds.

❖ **Comment:** A comment was received requesting criteria for making the determination as to a household’s repayment ability and requesting that a lender’s determination be sufficient.

▶ **MDOC Response:** Because a lender’s mission may be different from that of an entity providing rehab assistance to low-income households, the HOME Program is not comfortable with a lender making the determination about the household’s ability to repay a rehab loan. The HOME Program recommends that Grantee should examine the household’s ability to pay a portion of the rehab costs and/or repay any of the HOME funds using the criteria developed by the HOME Program for homebuyer activities (“front-end” and “back-end” ratios).

The HOME Program will add this issue to its Strategic Plan for further investigation and guidance.

Deferred, with further guidance forthcoming.

POINT OF CLARIFICATION: Homeowner rehabilitation activities are subject to the minimum period of affordability requirements listed below.

Amount of HOME Funds Provided	Minimum Affordability Period
<\$15,000	5 years
\$15,000 - \$40,000	10 years
>\$40,000	15 years

The Grantee must have a mechanism in place to recapture all or a portion of the HOME subsidy if the HOME-assisted homeowner decides to sell the house within the period of affordability. The Grantee may require full or partial repayment of the HOME subsidy from **net proceeds** when the property is resold during the affordability period. The amount subject to recapture must be limited to what is available. **Net proceeds** are defined as the sales proceeds minus superior non-HOME loan repayments and seller-paid closing cost. The exact amount to be repaid can be determined by only one of the following ways:

1. **Recapture the entire amount:** The Grantee may recapture the entire amount of the HOME investment from the homeowner. If there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, the Grantee can only recapture the amount of the net proceeds, if any, and the remaining balance is forgiven. If the homeowner does not sell and continues to occupy the home for the entire period of affordability, the loan is forgiven at the end of the period.

2. **Reduction (forgiveness) during the period of affordability:** The Grantee may decide to forgive part or all of the HOME subsidy. The decision to forgive must be a part of the overall homeowner rehabilitation program design, and not decided on a case-by-case basis. Forgiveness must be tied to the length of time the homeowner has occupied the home in relation to the period of affordability (i.e., the Grantee would forgive 50% of the subsidy amount for an owner who sold the home half-way through the period of affordability).

An Occupancy Agreement, Single Family Noncompetitive Program, must be signed by the assisted homeowner at the time HOME assistance is provided. This legally binding occupancy agreement **must be separate from** the documents that enforce the financial requirements.

Incorporated as written.

POINT OF CLARIFICATION: Unfinished new construction is not eligible for HOME assistance under the Single Family Noncompetitive Program – Homeowner Rehabilitation. Finishing a home in which construction was not completed is not considered to be “rehabilitation” by the HOME Program.

❖ **Comment:** A comment was received asking for an “across the board” definition of unfinished construction, rather than case by case decisions.

▶ **MDOC Response:** Homeowner rehab activities involving unfinished construction are not common; however, the HOME Program plans to incorporate developing an “across the board” definition into its Strategic Plan. In the meantime, the HOME Program will continue to evaluate homeowner rehab activities with unfinished construction on a case by case basis.

Incorporated, with further guidance forthcoming.

MATCH

REQUEST FOR INPUT: The HOME Program is proposing to develop a method to incentivize Applicants/Grantees to commit to and provide more than the minimum 5% in non-federal matching funds for competitive grants. Comments to the HOME from interested parties on how to most effectively provide incentives are being sought.

Discussion: HUD regulations requires the HOME Program to provide match in an amount equal to **no less than 25%** of the total HOME funds drawn for project costs (including soft costs). Match is a permanent contribution to affordable housing. Match is **not** leveraging; it is the non-federal contribution to the project. Excess match generated in a fiscal year can be carried forward (“banked”) to meet the next year’s match obligation. This excess (banked) match has allowed the Montana HOME Program to reduce the statutorily required 25% match to 5%.

However, the pool of banked match has been dwindling in recent years, in part, because many projects have only committed to and documented the minimum 5% match. If the pool of banked matching fund continues to erode, the HOME Program will be forced to increase the match requirement. The HOME Program has always encouraged Grantees to identify, document, and report all eligible matching funds, but is looking for ways to incentivize and reward Grantees for providing more match.

- ▶ **MDOC did not receive any comments on this Request for Input.** Future Applicants and Grantees should be aware that if the pool of “banked” matching fund continues to erode, the HOME Program will have no choice but to increase the match requirement in the future to beyond the 5% currently required.
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POINT OF CLARIFICATION: When proposing sweat equity and/or volunteer labor as a source of matching contributions, a sweat equity and/or volunteer labor worksheet that lists the work item(s), materials needed, who will perform the work, and the date by which the work will be completed must be submitted. The work items must be part of the scope of work for the activity.

Adopted as written.

POINT OF CLARIFICATION: When sweat equity and/or volunteer labor is used for matching contributions, the sweat equity and volunteer labor will be valued at the rate determined by HUD, currently \$10.00 per hour, unless the person providing the sweat equity or volunteer labor is licensed to perform the work he/she is contributing. If the person is licensed to perform the work, his/her contribution can be valued at the person’s normal hourly rate, which must be verified. A copy of the verification along with a copy of the person’s license or other certification must be submitted with the match documentation. Exhibit 4-Q, [Chapter 4, HOME Administration Manual](#), must be used to document volunteer labor and sweat equity. The forms should be completed periodically, but no less than monthly (shorter intervals are recommended) and submitted to the HOME program as part of the match documentation.

❖ **Comments:** Some concerns were expressed concerning this Point of Clarification:

- Unskilled labor should be valued at the Davis Bacon prevailing wage rate for an unskilled laborer
- Some professions are not licensed in Montana (e.g., carpenters) and other documentation (e.g., pay stubs, tax returns) should be considered for demonstrating professionalism

- ▶ **MDOC Response: The rate that may be used to value unskilled labor and sweat equity is determined by HUD. Currently that rate is set at \$10.00 per hour. The MDOC is not at liberty to change the rate.**

According to 24 CFR §92.220(a), Matching contributions must be made from nonfederal resources and may include the following:

24 CFR §92.220(a)(8): *The value of donated or voluntary labor or professional services (see [§92.354\(b\)](#) below) in connection with the provision of affordable housing. **A single rate established by HUD shall be applicable for determining the value of unskilled labor.** The value of skilled labor or professional services shall be determined by the rate that the individual or entity performing the labor or service normally charges. (emphasis added)*

24 CFR §92.354(b): *Volunteers. The prevailing wage provisions of paragraph (a) of this section [re: 24 CFR §92.354(a)] do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR Part 70.*

24 CFR §92.220(a)(9): *The value of sweat equity (see [§92.354\(c\)](#) below) provided to a homeownership project, under an established component of a participating jurisdiction's program, up until the time of project completion (i.e., submission of a project completion form). **Such labor shall be valued at the rate established for unskilled labor** at paragraph [\(a\)\(8\)](#) (above) of this section.*

24 CFR §92.354(c): *Sweat equity. The prevailing wage provisions of paragraph (a) of this section [re: 24 CFR §92.354(a)] do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.*

Adopted as modified.

When sweat equity and/or volunteer labor is used for matching contributions, the **sweat equity** (from assisted homeowners) **and unskilled volunteer labor will be valued at the rate determined by HUD, currently \$10.00 per hour.**

If the person providing volunteer labor is licensed/registered to perform the work or can otherwise document he/she is providing labor/services that he/she normally does as part of his/her normal profession, his/her contribution can be valued at the person's normal hourly rate, which must be verified. A copy of the verification along with a copy of the person's license, registration, or other certification, if applicable, must be submitted with the match documentation.

Exhibit 4-Q, [Chapter 4, HOME Administration Manual](#), must be used to document volunteer labor and sweat equity. The forms should be completed periodically, but no less than monthly (shorter intervals are recommended) and submitted to the HOME program as part of the match documentation.

OTHER COMMENTS RECEIVED

- ❖ Allow use of HOME Funds to develop Community Land Trusts (CLT), which would protect long-term affordability by limiting the resale price of homes so they remain affordable to income-eligible households.

- ▶ **MDOC Response:** Grantees that do homebuyer activities can accomplish results similar to that of a CLT by using the resale restriction option, rather than the recapture option, to ensure affordability. Grantees can also offer down payment and closing cost assistance through the Single Family Noncompetitive Program to assist homebuyers to purchase homes that are already part of an established CLT.

Using HOME funds in conjunction with CLTs is a complex issue that needs further investigation and research by the HOME Program and guidance from HUD. The HOME Program will build this investigation and research into its Strategic Plan. In the meantime, Grantees can use either the resale restriction option or the recapture option in conjunction with CLTs, as described above, under current HOME Program rules.

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- ❖ Use of HOME Funds for purchase and renovation of manufactured housing communities, where the residents own their homes but lease or rent the space upon which their homes rest. The homeowners would form a cooperative to purchase, own, and operate the community. The HUD activity needs to be a homeownership activity, rather than a rental activity, in order for the cooperative model to work correctly. The commenter referenced an excerpt from Notice CPD 03-05 (*Guidance on Manufactured Housing under the HOME Program*) in support of this concept.
 - ▶ **MDOC Response:** After reading and analyzing Notice CPD 03-05 as a whole, the HOME Program determined that additional guidance and clarification from HUD was warranted on a prior HOME project. The HOME Program contacted HUD-Denver and was advised that this type of activity was considered a rental activity, not a homeownership activity.