

## HOME RENTAL HOUSING PROGRAM MANUAL

The HOME Investment Partnership Program (HOME Program), created by the National Affordable Housing Act of 1990, provides funds to state and local governments to support affordable housing initiatives. The Georgia Housing and Finance Authority (GHFA) is the Participating Jurisdiction (PJ) and recipient of the State of Georgia's allocation of funds from the federal HOME Investment Partnership (HOME) program. GHFA contracts with the Georgia Department of Community Affairs (DCA) to administer the programs funded by this HOME allocation. The HUD regulations for the HOME program (24 CFR Part 92) set forth the minimum requirements that GHFA and sub-recipient must meet. These federal regulations governing the HOME program require DCA to ensure compliance with program requirements and to take appropriate action when problems arise (24 CFR 92.504(e)).

The Georgia Department of Community Affairs HOME Rental Housing Program provides funding through the HOME Program to respond to the affordable housing needs throughout the state of Georgia. These funds are used for eligible HOME activities to provide decent, safe and affordable housing for Georgia's low and moderate income families.

**Policies governing the administration of the HOME Rental Housing Loan Program are found throughout the 2013 Qualified Allocation Plan, the 2013 Application Manual, the 2013 Electronic Application, Application Instructions and other documents published by HUD and DCA.** Included in this Manual are policies relating to DCA HOME loans. In no way, however, should exclusion of a policy from this section be construed to limit its applicability to funding resources allocated under the Plan. DCA reserves the right to formulate new policies to address operational issues that may arise during the course of the funding cycle and during the underwriting of each HOME loan. In the event of a conflict between this document and the QAP, the QAP shall control.

**Applicants who will utilize DCA's HOME funds as a source in a competitive Application must obtain prior DCA consent pursuant to the pre-application process described in Section 11 of the Core.**

### **I. 2013 RESOURCES AVAILABLE**

HUD annually allocates HOME funds to state and larger local governments. The Federal Fiscal Year (FFY2013) HOME allocation is expected to be available to the State on **July 1, 2013**, following approval of the Annual Action Plan for FFY2013 Consolidated Funds (Annual Action Plan).

In the event HOME Loan funds remain unallocated after the Competitive Scoring process described in the Plan is complete, DCA reserves the right to apply the remaining HOME Loan funds to other DCA programs. Further, DCA reserves the right to adjust the amount of HOME funds allocated to the HOME Rental Housing Loan and CHDO Set-Aside.

### **II. POST AWARD DEADLINES**

**Formal Firm Commitments\*.** Formal firm commitments for equity and non-DCA debt must be submitted to DCA within 75 days of issuance of the DCA Commitment Letter.

**Construction Documents\***. Design Development Documents as fully outlined in the Architectural Submittal Instructions in the Manual must be submitted to DCA in accordance with the latter of the date noted in Exhibit C of the Preliminary Commitment, or 120 days from carryover allocation.

**Tax Credit and Home Projects/Commencement of Construction/Rehabilitation\*.**

Projects receiving HOME Loans must not begin construction prior to DCA's issuance of the environmental release nor prior to the HOME Loan closing. However, all projects receiving a HOME loan award in 2013 must have satisfied all conditions necessary to commence construction within one (1) year of the date of the initial HOME commitment. Exceptions may be granted by DCA at its sole and absolute discretion in accordance with HUD regulations, but must be requested prior to the start of construction. DCA will closely monitor construction start dates. Failure to comply with this policy may result in cancellation of the HOME Loan Commitment or other penalties.

**HOME Loan Closing\***. All projects receiving a HOME Loan award in 2013 must close their HOME Loans on or before **August 1, 2013**. Applicants unable to close within that time period may have their Commitment for HOME funds withdrawn.

### **III. GENERAL PROGRAM REQUIREMENTS**

**CHDO Set-aside.** A CHDO is a private, non-profit organization that meets a series of qualifications prescribed in the HOME regulations and by DCA. Fifteen percent (15%) of the HOME funds allocated in the 2013 competitive round will be set aside for projects owned by non-profits that have been pre-qualified by DCA as CHDOs. All of the CHDO set-aside will be met with funding under this Plan.

CHDOs funded under this Plan must act as sole or joint Owners of newly constructed or rehabilitated rental housing for occupancy by low and very low-income households as set forth in the Plan, Manual, and the HOME regulations. The CHDO must be either the sole general partner of the ownership entity or the managing general partner of the ownership entity. The CHDO must also exercise effective control of the project. In the event the CHDO is a general partner with a for-profit or non-profit general partner, the CHDO must own at least 51% of the general partnership interest. The CHDO (or a wholly owned or controlled affiliate) must receive a percentage of the Developer Fee greater than or equal to the percentage of ownership interest. All DCA communication with the ownership entity will be with the CHDO managing general partner. A copy of the general partnership/joint venture agreement indicating the CHDO's general partnership interest and its share (or the share of the wholly owned and controlled affiliate) of the Developer Fee must be included in the Application.

Organizations seeking funds under the CHDO Set aside may apply for funding to cover pre-development expenses through DCA's CHDO Pre-Development Loan program. Information on the Pre-Development Loan Program is available on DCA's website.

**HOME Loan Limits.** The maximum HOME loan amount is \$2.5 million and the minimum HOME loan amount is \$1,000,000. DCA reserves the right to increase the maximum HOME loan amount if it determines that additional HOME funds are available for distribution.

**Affordability Period.** All HOME-assisted rental housing must remain affordable pursuant to certain rent and occupancy restrictions for a requisite period of time. The affordability period will begin on the date that the project is marked as "completed" in the HUD reporting system for the HOME Program. This beginning date will occur after all federal HOME funds for the activity have been expended. The affordability period will be specified in the recorded Land Use Restriction Agreement (LURA).

The affordability period may be terminated under certain circumstances related to foreclosure or a transfer in lieu of foreclosure. However, certain protections are afforded existing tenants for a three year period. Also, in certain circumstances this affordability period may be revived. For example, in a foreclosure situation, where the owner of record prior to the foreclosure obtains an ownership interest in the project or property after the foreclosure is complete, the LURA may be revived.

The following are HUD's minimum Affordability Period:

**HOME Investment per Unit/Minimum Length of the Affordability Period**

Less than \$15,000	5 years
\$15,000 -\$40,000	10 years
More than \$40,000	15 years
New construction of <i>rental</i> housing	20 years
Refinancing of <i>rental</i> housing	15 years

DCA policies may require longer periods of affordability. For example, DCA requires the period of affordability to coincide with the length of the HOME loan. The minimum period of affordability will be determined during the HOME underwriting process.

**Underwriting Requirements and Feasibility Analysis**

DCA will carefully underwrite all loans to assess project feasibility and long term viability. Policies governing the administration of the Credits and HOME Loans are found throughout the Plan, the Manual, the Compliance Manual, and other documents published by IRS, HUD, and DCA. **Please refer to those documents, specifically the QAP, for guidance.** DCA reserves the right to formulate new policies to address operational issues that may arise during the course of the funding cycle.

**Repayment of HOME Funds** If a project that is funded with HOME funds is terminated before completion, all HOME funds must be repaid to DCA's HOME Investment Trust Fund (except for project-specific pre-development assistance to a CHDO that was terminated for reasons outside the control of the CHDO).

**General.** Applicants that will utilize DCA HOME funds as a funding source in a competitive application must obtain DCA's consent during the pre-application process. Any application that is submitted in the 2013 competitive funding round with DCA HOME funds as a funding source that did not obtain the required consent will be deemed to have failed Threshold under the project feasibility criteria.

**Time Frame.** Applications for a DCA HOME Consent must be submitted to DCA by **4:00 PM on March 15, 2013.**

**Failure to Use 2013 DCA HOME Funds.** Applications/Projects that receive consent to utilize HOME funds as a funding source are required to utilize the requested funds if the project is selected for an award of tax credits. Failure to utilize HOME funds may result in the withdrawal of the tax credit award or a finding which may impact future compliance scoring.

**HOME Consents.** Applicants that will utilize DCA HOME funds as a source in a competitive application must obtain prior DCA consent.

**Eligibility:** Except for Projects submitted by a CHDO or projects designated primarily for use by tenants with special needs, projects located in another “PJ” are not eligible for DCA HOME funds.

**Pre-Determination Consent Requirements.** Applicants will be required to submit a completed HOME Consent Request form at pre-application. A draft core application that meets DCA underwriting and policy criteria will also be required.

**Selection Criteria for Consent.** In the event DCA receives requests for HOME Consents that exceed available HOME funds, Consents shall be issued based on the following selection criteria:

1. Rural Projects
2. CHDO Projects
3. Projects that are proposed to have no debt other than DCA HOME unless the lender is willing to subordinate to the statutory period of affordability
4. Project Teams that are determined by DCA to be Qualified without Conditions
5. Successful HOME Loan or other successful HUD experience of Owner and Developer (projects Owner or Developer must have had a 20% or greater interest in GP/Developer entity)
6. Compliance History

Generally, each Applicant will receive only one HOME Consent. Applicants that appear to be requesting HOME funds for point purposes and do not show a clear need will not receive a Consent. Applications that do not fully utilize available credits in order to show a need for the HOME loan will not be considered for a Consent.

**Final Award.** DCA will issue a HOME Preliminary Commitment at the conclusion of the 2013 multifamily competitive funding round. A sample of the Commitment letter may be found on the DCA website. Loan closing will occur only when the project completes DCA underwriting and is approved by its project Loan Committee.

### **Defining HOME-assisted units**

When DCA HOME funds are an approved source of financing for a project, each low income unit in the project is considered a “HOME assisted unit” unless this requirement is waived. Based on the statutory HOME requirements, twenty percent (20%) of the total low income residential units in the project must be limited to rent and income restrictions based on 50% of AMI. The balance of low income units will be limited to rent and income restrictions based on 60% AMI, however **all** low income units will be limited

to HUD Fair Market Rents should they be less than the applicable rent based on the AMI and bedroom size.

The following is the statutory method for determining the minimum number of “HOME assisted units required:

***Total HOME investment / Total Development Cost (less Reserves held for more than 18 months) x Total # of units = Minimum # HOME assisted units (assuming the Min. number of HOME assisted units do not exceed the HOME maximum per unit subsidy based on per unit cost limits)***

#### **Requirements for Projects receiving DCA HOME funds:**

##### **All HOME assisted units:**

- are subject to all of the HOME requirements;
- must be comparable to the other units in the project (units are considered comparable if HOME-assisted units have similar amenities and a comparable number of bedrooms to those units that are not assisted);
- cannot have a cost differential greater than 15% of comparable unassisted units; and
- for properties with both HOME assisted and non- HOME assisted units, the Applicant must select to treat the HOME assisted units as “fixed” or “floating” units at the time of loan application. When HOME assisted units are “fixed”, the specific units that are HOME assisted (and, therefore, subject to HOME rent and occupancy requirements) are designated and will never change. When HOME assisted units are “floating”, the units that are designated as HOME assisted may change over time as long as the total number of HOME assisted units spread across unit sizes in the project remains constant and the HOME assisted units remain comparable to the non assisted units over the affordability period in terms of size, features and number of bedrooms. If the Applicant fails to make such an election at the time of loan application, DCA will deem that the Applicant has elected to treat the HOME assisted units as “floating”.

#### **Religious Organizations**

DCA is prohibited from providing HOME funds to any entity which is a “primarily religious organization”. DCA may provide HOME funds to a wholly secular entity to acquire housing from a primarily religious entity. In addition, a primarily religious entity may transfer title to its property to a wholly secular entity, and the secular entity may use HOME funds to rehabilitate or construct housing. The secular entity may be existing or newly established by a primarily religious entity. Housing completed and owned by the wholly secular entity must be available to all persons, regardless of religion. In particular, there must be no religious or membership criteria for tenants of the property.

The Georgia state constitution has a provision which prohibits the use of any funds from the state treasury being allocated to any religious entity. Therefore, state match funds cannot be distributed to any such project.

## Written Agreement

DCA will execute a Written Agreement with the owner or recipient of HOME funds. The Written Agreement is the legally binding document that HUD requires to include certain minimum provisions, to ensure compliance with HOME rules. Additionally, the Written Agreement will be enforced by a Land Use Restrictive Agreement (LURA).

## IV. ELIGIBLE AND PROHIBITED ACTIVITIES/COSTS

DCA has established the HOME Rental Housing Loan Program to allow owners and developers of rental property to apply for funding for the construction and/or rehabilitation of affordable rental housing projects for low income persons in the state of Georgia. HOME funds can be used only for eligible activities and costs for the purpose of providing affordable rental housing to low and very low-income persons. A project means a site or sites together with any building (including manufactured housing units) or buildings located on the site(s) under common ownership, management and financing, to be assisted with HOME funds as a single undertaking. The project includes all of the activities associated with the site and building.

### A. Eligible Activities

The following is a summary of activities which are eligible under the DCA HOME Rental Housing and DCA CHDO Loan Programs. Please note that in some instances, DCA requirements are more restrictive than HOME requirements.

**Reconstruction** - Reconstruction means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment. HOME funds may be used to build a new foundation or repair an existing foundation. (Note: Construction of housing on a vacant lot where a house was demolished or removed prior to project commitment is considered new construction.) During reconstruction, the number of rooms per unit may change, but the number of units may not.

**Conversion** - Conversion of an existing structure from another use to affordable residential housing is usually classified as rehabilitation. If conversion involves additional units beyond the walls of an existing structure, the entire project will be deemed new construction. Conversion of a structure to commercial use is prohibited.

**New Construction** – Any project that includes the addition of dwelling units outside the existing walls of a structure is considered new construction.

**Rehabilitation** – This includes the alteration, improvement or modification of an existing structure. It also includes moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction.

### B. Prohibited Activities

DCA HOME funds may not be used to fund the following activities:

**Transitional Housing** - Section 205 of the Housing and Development Act of 1992 added transitional housing as an eligible HOME activity. Transitional housing includes housing which is provided for a limited amount of time, often 12-18 months, for persons in need of appropriate supportive services. However, DCA does **not** fund transitional Housing under its HOME multifamily loan program.

**Public Housing:** The development or modernization of public housing or the provision of annual contributions for the operation of public housing is a prohibited activity.

**Mixed Use Projects:** For purposes of the HOME programs, a mixed-use project contains, in addition to at least one residential unit: a laundry, community or any commercial type facilities (e.g. stores, delicatessens, restaurants), and/or any other non-residential space (e.g. office space) which is available to the public. If laundry and/or community facilities are for use exclusively by the project tenants and their guests, then the project is not considered mixed-use. Neither a leasing office nor a maintenance area will trigger the mixed-use requirements. No HOME funds can be used to fund the commercial or non-residential portion of a mixed-use project. Therefore, if a HOME-assisted project contains such commercial or non-residential space, other sources of funding must be used to finance that space. In order to be eligible for HOME funding, a mixed-use project must meet the following conditions: residential living space in the project must constitute at least 51 percent of the total project space; and each building in the project must contain residential living space (including the building which holds any such laundry and/or community facility). HOME funds can only be used to fund the residential portion of the mixed-use project which meets the HOME rent/purchase price limits and income requirements. If the rental project will contain a model apartment that will be shown to potential renters, the model apartment will be considered a non-residential area subject to the mixed-use requirements, unless the model apartment will be rented in the event of high occupancy.

**Refinancing:** DCA HOME loans cannot be used to refinance or payoff an existing loan, except that proceeds from permanent HOME loans can be used to repay for construction, and DCA HOME predevelopment loans provided that the HOME assistance is part of the original financing package and meets all other DCA HOME loan requirements.

### **C. Eligible Costs**

**Project Related Hard Costs:** DCA HOME Rental Housing Loan funds are used to fund on-site construction hard costs. DCA defines construction hard costs as the total of the on-site site improvements, on-site unit/building construction costs, plus construction contingency, and contractor services. Contractor Services are defined as the Builder's Overhead, Builder's Profit, General Requirements, and the Payment and Performance Bonds or the cost of the letter of credit or construction loan when used in lieu of a Payment and Performance Bond.

These costs include, but are not limited to:

- Site preparation including demolition
- Site improvements, including utility connections
- Securing of buildings
- Construction materials and labor
- Improvements to permit use by handicapped persons
- Model Energy Code improvements (new construction)
- Energy-related repairs and improvements
- Accessibility improvements for disabled persons
- Abatement of lead based paint hazards and other environmental mitigation
- Repairs and/or replacement of major housing systems in danger of failure
- General property improvements which are non-luxury in nature

**On-Site Improvements:** Eligible Site improvements must be in keeping with improvements to surrounding standard projects. They include new, on-site improvements (sidewalks, 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 are also eligible.

**Additional eligible costs:** There are several other miscellaneous costs which are also allowable. These costs include:

- HOME funds can be used for projects previously assisted with HUD funds. If other HUD requirements still apply to the property, then both the existing requirements and the HOME requirements must be met. Projects receiving Section 8 Moderate Rehabilitation Program Assistance may not be good candidates for HOME funds, because HOME maximum rent levels may not be consistent with Moderate Rehabilitation rents.
- Interim construction financing is an eligible HOME cost as long as the construction financing converts to permanent DCA HOME Loan financing.

#### **D. Prohibited Costs**

DCA HOME funds cannot be used to fund the following activities:

- Refinancing;
- Soft costs related to the project's development, including but not limited to architectural, financing, reserves, and insurance (While reasonable and necessary soft costs are eligible under HOME regulations, DCA does **not** allow them as an eligible cost);
- Providing a project reserve account for replacements, unanticipated increases in operating costs or operating subsidies;

- Providing tenant-based rental assistance for the special purposes of the Section 8 Existing Housing program or for preventing displacement from projects assisted with rental rehabilitation grants under 24 CFR §511;
- Providing nonfederal matching contributions required under any other federal program;
- Carrying out activities authorized under 24 CFR §968 (Public Housing Modernization);
- Providing assistance to eligible low-income housing under 24 CFR §248 (Prepayment of Low Income Housing Mortgages);
- Providing assistance to project(s) previously assisted with HOME funds during the period of affordability established by DCA. However, additional HOME funds may be committed to a project up to one year after project completion, but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount;
- The Uniform Relocation Act and Section 104(d) (also known as the Barney Frank Amendments) apply to all HOME assisted properties. While these costs are eligible under HOME regulations, DCA does **not** allow them as an eligible cost;
- Using HOME funds to carry out housing remedies or to pay fines, penalties, or costs associated with an action in which DCA has been found by a federal, state or local court, to be in violation of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, or any other federal, state or local law promoting fair housing or prohibiting discrimination. However, HOME funds may be used in connection with a settlement that has been entered into in any case where claims of the above violations have been asserted against DCA only to carry out housing remedies with eligible activities;
- Using HOME funds in projects assisted under the pre-1992 Rental Rehabilitation;
- Program governed by 24 CFR §511; and
- Emergency shelters.

**Off-site Improvements:** Off-site infrastructure is not eligible as a HOME cost. For 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 for HOME costs since they are essential to the property.

**E. Contractor Cost Certification.** Contractors will be required to execute a Cost Certification (Contractor's Certificate of Actual Project Cost, General Contractor's Certification, and HOME Loan Contractor's Cost Certification Forms) as to the actual

costs incurred in construction of the project. A Certified Public Accountant must perform the audit and issue an opinion letter in accordance with Generally Accepted Accounting Principles and Generally Accepted Auditing Standards and execute the CPA Certification Form. The Cost Certification will include an audit opinion letter from a CPA certifying the contractor's actual costs. The DCA Cost Certification and audit opinion letter will be required prior to release of final retainage. The Certification and Audit will be reviewed by DCA staff who will determine the total actual allowable cost for construction.

If the Cost Certification and Audit of the actual construction costs find that the Contractor's actual costs are more than budgeted costs and DCA concurs with that finding, no further action is necessary. If the audit finds that the Contractor's actual allowable costs for construction are less than budgeted costs or DCA staff determines that the Contractor's actual allowable costs for construction are less than budgeted costs, HUD and DCA have determined that DCA has some flexibility in determining the appropriate corrective actions that should be taken in order to ensure that a HOME project's feasibility is maintained, but that the Contractor does not receive a windfall and that the project is not over subsidized. This flexibility includes the following actions which may be taken by DCA to meet the above referenced goals:

A. DCA has the ability under its change order process to approve legitimate cost increases to the property up to the original budgeted amount. Legitimate costs increases would include (but are not limited to):

- (i) Material upgrades;
- (ii) Amenities that provide security such as lighting, fencing, smoke detectors etc.; and
- (iii) Amenities designed to enhance the quality of life.

B. If the Difference between the budgeted costs and the actual costs are significant or extraordinary, DCA may determine that change orders cannot be utilized to correct the problem. In that event, the following actions may be taken by DCA to meet the above referenced goals:

- (i) DCA may determine that the reduction in costs will reduce the eligible basis and will decrease the amount of tax credits by an amount sufficient to ensure that sources will continue to equal uses.
- (ii) DCA may determine that the project HOME loan will be reduced by an amount sufficient to ensure that sources will continue to equal uses. (DCA HOME Loan documents will be revised to reflect DCA's ability to make this revision subsequent to closing).
- (iii) DCA may also approve an exception to its policy to only fund a portion of hard costs and fund all hard costs or a portion of the soft costs if necessary, provided that the final sources and uses remain equal.

C. The Office Manager of the Housing Finance and Development Division and the Division Director for Housing will review staff recommendations prior to release of retainage to ensure that goals of preventing Contractor windfall profits and of sources equaling uses are met. DCA shall limit the sum total of all payments from all sources to

the Contractor to the lesser of: (1) the construction contract price as adjusted for change orders or (2) the total actual allowable cost for construction as determined by DCA.

D. HUD and/or DCA shall have the right to audit the Contractor's Certificate of Actual Cost for a period of five years from project completion and require the return of an overpayment from the owner/borrower.

E. Each construction contract between the General Contractor and the Developer of a HOME project shall at a minimum contain the following:

- (i) The sum total of all payments from all sources to the contractor shall not exceed the actual allowable cost for Construction as determined by DCA;
- (ii) HUD and/or DCA shall have the right to audit the Contractor's Certificate of Actual costs for a period of five years from project completion; and
- (iii) HUD and the Georgia Department of Community Affairs shall have access to the Contractor's records for the project and for his/her cost certification for five years after project completion in order to conduct audits of project costs.

## **V. PER UNIT COST LIMITS**

All projects built or rehabilitated using HOME dollars must adhere to the Minimum/Maximum Per Unit Cost requirements. At a minimum, DCA must invest an amount equal to \$1,000 times the number of HOME assisted units in each project or \$100,000 whichever is greater. At a maximum, DCA will not fund projects with per-unit costs higher than those limits given in the State's Qualified Allocation Plan, which are determined using the limits set by HUD under Section 221(d)(3) of the National Housing Act. The project must comply with the HUD per-unit cost limits therefore a waiver cannot be obtained for the HUD per-unit limitations. In projects where all units are not HOME assisted- DCA will verify that HOME funds went only to HOME units and that the costs were appropriately allocated. For further information, please refer to HUD CPD Notice 98-2.

## **VI. PROPERTY REQUIREMENTS**

**Property Standards.** All HOME-assisted units- whether in a multifamily building, single room occupancy (SRO), or single-family or group home, must conform to HUD's minimum property standards and any local, state, or federal codes once construction is complete. If the HOME assisted units have been designated as "floating units", all units in the project, whether HOME assisted or not, must meet these requirements at project completion. Housing assisted with HOME funds must meet or exceed the minimum property standards set forth in Section 24 CFR 200.25, applicable state and local code requirements, and DCA Rehabilitation Standards. See the DCA Architectural Manual for additional information. Local rehabilitation standards may be adopted but they must meet or exceed DCA Rehabilitation Standards. Throughout the affordability period, the HOME-assisted property must continue to meet Housing Quality Standards, applicable state and local codes, DCA Rehabilitation Standards, and local rehabilitation standards (if any).

DCA is required to inspect the rental project and determine that the property standards are being met (annually for projects with more than 25 units, every two years for projects with 25 units or less.)

If the project is substantially rehabilitated (a total development cost of more than \$25,000 per unit) or is newly constructed, the units also must meet specific energy standards.

**Accessibility.** **Section 504 of the Rehabilitation Act of 1973** (29 U.S.C. §794) prohibits discrimination against any otherwise qualified handicapped individual from participation in any program or activity receiving federal financial assistance. All projects receiving HOME funds must comply with Section 504 of the Rehabilitation Act. *Accessibility requirements are more fully set forth in the DCA Accessibility Manual.*

## **VII. SITE AND NEIGHBORHOOD STANDARDS**

The site and neighborhood standards of 24 CFR 983.6(b) apply to the new construction of rental housing which will utilize HOME funds. Applicants for HOME funding of new construction projects will be required to meet DCA's site selection and approval process requirements before being approved for HOME funding. Applicants must first determine if the project is located in an area of minority concentration, a racially mixed area, or a non-minority area. An area of minority concentration is an area that has 50% or more minorities. A racially mixed area is an area that has 25% to 49% minority. A non-minority area is an area that is less than 25% minority. For purposes of making this designation, DCA will review the racial composition of the census tract in which the project is located. Applicants must complete the HOME Site and Neighborhood Standard Certification in documenting the appropriate designation for the census tract in which the proposed project will be located. DCA will verify this information upon receipt of application both by reviewing US Census data and by visiting the area of the proposed project.

### **A. Areas of Minority Concentration**

It is DCA's policy not to fund projects located in areas of minority concentration unless the applicant submits specific, detailed information that meets the requirements of the statute. Applicants proposing projects in areas of minority concentration should review these requirements very carefully. The Applicant must submit specific, convincing documentation to show that there is an overriding housing need in the area of the proposed project or that there are sufficient and comparable housing opportunities for minorities outside of the area. DCA will be closely scrutinizing any project submitted in a minority concentration to ensure that this policy is met.

In determining whether a proposed project in an area of minority concentration meets HUD's site and neighborhood standards, DCA will review the application and seek HUD's concurrence in determining whether there is an Overriding Housing Need in the area of the proposed project. "Overriding Housing Need" means the proposed housing project is intended to preserve or restore housing located in the area of minority concentration, provided that discrimination is not the reason that the housing located outside the area of minority concentration is not available, or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice. DCA will look at the following factors to determine whether an overriding housing need exists:

- Is the proposed project a part of an integral overall local strategy for the preservation or restoration of the immediate neighborhood? DCA will review

neighborhood redevelopment plans, revitalization strategies and special designations such as enterprise zones in determining whether this standard is met.

- Is the proposed project in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a “revitalizing area”)?

(Documentation and/or evidence of overall strategy and/or revitalizing area must be detailed in the documentation submitted by the Applicant in the Project Application.)

If insufficient information is submitted to establish that an Overriding Housing Need exists, DCA will review whether there is sufficient documentation that evidences that either “sufficient” or “comparable” housing opportunities exist for minority families (in the income range to be served by the proposed project) in the area outside the area of minority concentration where the proposed project is to be located. “Sufficient” means a reasonable distribution of assisted housing units each year which over a period of years gives a balance of housing choices within and outside the areas of minority concentration. “Comparable” means:

- A. same household type (elderly, family, disabled, etc.);
- B. same tenure type (owner/renter);
- C. same tenant contribution in rent; or
- D. same income group and same standard housing conditions exist in the same housing market area.

DCA will review the following factors to consider whether sufficient and comparable housing opportunities exist:

- Based on analysis and research of the information provided by the Applicant, the DCA-commissioned market study and other DCA sources of information, are there a significant number of assisted housing units available outside areas of minority concentration?
- Based on analysis and research of the information provided by the Applicant, the DCA-commissioned market study and United States census data, are there racially integrated neighborhoods in the locality of the project?
- Based on analysis and research of the information provided by the Applicant and the DCA commissioned market study, have a significant proportion of minority households been successful in finding units in non-minority areas under the Section 8 certificate and voucher programs?

### **Application Documentation for areas of Minority Concentration**

If a project is located in an area of minority concentration, the applicant must submit the following information to DCA:

1. Map of proposed project site showing location in census tract
2. Site map of proposed neighborhood

3. Census tract data of proposed neighborhood population by:
  - a. household type
  - b. tenure type
  - c. income group and housing conditions
  - d. race of residents
4. Narrative on how the percentage of minority residents is determined
5. DCA Site and Neighborhood certification form
6. Documentation that establishes overriding need standard or sufficient and comparable standard
7. Narrative on why project meets HUD standards for areas of minority concentration.

**B. Racially Mixed Area**

Applicants proposing projects in census tracts which are designated as racially mixed, must clearly document that the proposed project will not significantly increase the proportion of minority to non-minority residents.

**Application Documentation for Racially Mixed Areas**

If the project is located in a racially mixed area, the following must be submitted to DCA by the applicant for review:

1. Map of proposed project site
2. Site map of proposed neighborhood
3. Census tract of proposed neighborhood population by:
  - a. household type
  - b. tenure type
  - c. income group and housing conditions
  - d. race of residents
4. Based upon the proposed number of units, show what increase of minority residents to non-minority residents will occur.

**C. Non Minority Areas**

For projects located in non-minority areas and areas that are not racially mixed, the following must be submitted to DCA by the applicant:

1. Map of proposed project site
2. Site map of proposed neighborhood
3. Census tract or enumeration district data of proposed neighborhood population by:
  - a. household type
  - b. tenure type
  - c. income group and housing conditions
  - d. race of residents.

**D. Site Standards**

DCA will also review application documentation and perform a site visit to determine whether there are any conditions present which may be seriously detrimental to family

life. A determination will be made as to whether any of these undesirable conditions predominate the neighborhood. If DCA determines that there are undesirable conditions present, it will look to determine whether there is evidence of a concerted program to remedy these conditions. Substandard dwellings and abandoned buildings are examples of such undesirable conditions.

## **VIII. RENT AND OCCUPANCY REQUIREMENTS**

The HOME Program establishes rent and occupancy requirements for all units assisted with HOME funds. The HOME Program requires that each building in a HOME-assisted project contain housing that meets the applicable HOME rent and occupancy requirements. HOME-assisted housing must be in compliance with rent and occupancy requirements throughout the affordability period. HUD Income limits, Qualified Census Tracts and Difficult Development areas are available at <http://www.huduser.org>.

### **A. Rent Requirements**

There are two types of rents associated with the HOME Program.

Low HOME Rents - If the project consists of five (5) or more rental units, at least 20 percent of the HOME assisted units must have rents equal to or less than the rent affordable to a household at fifty percent (50%) of area median income (AMI) **or** the area Fair Market Rent (FMR), whichever is less. Additionally, the Low HOME units must be distributed comparably across unit sizes, e.g. 20% of the one bedroom, two bedroom and three bedroom units must be Low HOME units in each project.

High HOME Rents - DCA requires that the remaining HOME-assisted units have rents equal to or less than the rent affordable to a household at sixty percent (60%) of AMI **or** the area FMR, whichever is less.

**NOTE: DCA's policy is more restrictive than the statute. None of the HOME assisted (i.e. low income) units in a DCA project can have rents more than the area FMR.**

In determining the maximum rent that can be charged to a tenant for a HOME-assisted unit, the tenant-paid utility allowances must be subtracted from both low and high HOME rents.

While the actual project rents must meet these requirements, they may be less than the maximum allowable rents under the HOME program requirements. A number of reasons for this include developers choosing to lower the rents in order to receive consideration in the competitive selection process, and a market study indicating that lower rents are necessary for the project to be competitive in that apartment market area. The actual project rent limits will be written into the LURA which will be recorded at the closing of the HOME loan.

### **B. Occupancy Requirements**

The units renting for the low HOME rent (minimum of 20% of the HOME assisted units) must be rented to households earning no more than 50 percent AMI, adjusted for family

size. The remaining HOME assisted units must be rented to households earning no more than 60 percent AMI, adjusted for family size. DCA's website contains Utility Allowance Region Map Listing and Utility Allowance charts as well as the HUD Fair Market rents for the state of Georgia. Income is calculated using the Section 8 definition of income. The Plan includes Utility Allowance Instructions in Appendix I, Section 1A6.

### **C. Using the Low Income Housing Tax Credit with the HOME Program**

Many DCA projects will combine the Tax Credit program and a DCA HOME loan. As a result, if the 9% tax credit is proposed, the income targeting requirements may be more stringent.

Rental projects with five (5) or more HOME assisted rental units, must have twenty percent (20%) of the HOME assisted units occupied by very low income families and must meet one of the following rent requirements:

- 1- The rent does not exceed thirty percent (30%) of the annual income of a family whose income equals fifty percent (50%) of the median income for the area, as determined by HUD; or
- 2- The rent does not exceed thirty percent (30%) of the family's adjusted income. If the unit receives Federal or State project based rental subsidy and the low income family pays as a contribution not more than thirty percent (30%) of the family's adjusted income, then the maximum rent is the rent allowable under the Federal or State project based rental subsidy.

Accordingly, the maximum rents charged for the units occupied by tenants at 50% or less of AMI must be equal to or less than the lesser of the applicable tax credit rent based on the 50% rents from the rent chart or the area FMR. The remaining rents for the assisted units must have rents no greater than the lesser of the tax credit rents based on the 60% rents from the rent chart or the area FMR. The Tax Credit Section of the Application Manual provides more details on the Low Income Housing Tax Credit Program.

A project combining HOME and tax credits must meet the HOME rent requirements on **all** of the **HOME assisted (i.e. low income)** units.

## **IX. OWNER/DEVELOPER ELIGIBILITY REQUIREMENTS**

All owners/developers' financial capacity and experience will be evaluated during the underwriting process to determine if the owner/developer is able to carry forward the proposed project. However, there are additional requirements related to owner/developer, and in some cases contractors and subcontractors, participation in the program. These requirements are outlined below.

### **Debarment and Suspension Requirements**

HOME funds may not be provided to any individual or entity that is presently debarred, suspended, proposed for debarment, declared ineligible, subject to limited denial of participation (LDP) or voluntarily excluded from participation in the HOME program.

DCA will review all pertinent HUD and DCA debarment/suspension lists for the presence of any developer, owner, contractor, subcontractor, or other entity participating in the construction/rehabilitation of the HOME-assisted project.

The owner must obtain written certification from any contractor, subcontractor, or other entity participating in the construction/rehabilitation of the HOME assisted project verifying that the entity or individual is not presently debarred, suspended, proposed for debarment, declared ineligible, LDP'd or voluntarily excluded from participation in the HOME program. The owner must submit written certifications to DCA as new entities become involved with the project. The Owner must also monitor its employees and contractors to ensure that all HOME regulations relating to Debarment and Suspension are enforced.

## **X. LOBBYING PROHIBITIONS 24 CFR 87**

The Byrd Amendment prohibits a recipient of federal funds from using said federal funds to lobby members of Congress; and in the event that a recipient of federal funds uses other non-federal monies to lobby Congress, requires disclosure of lobbying activities. The Byrd Amendment requirements apply to Federal contracts, grants and cooperative agreements exceeding \$100,000 and Federal loans exceeding \$150,000.

Execution of the forms described below by the appropriate individual or entity, evidencing compliance with the Byrd Amendment must occur prior to loan closing, or for contractor or subcontractors selected after loan closing, before they are allowed to start work.

**Owner** - An owner who expects to receive a HOME loan in excess of \$150,000 must certify that the funds will not be used to lobby Congress. Each applicant must provide a copy of the Certification for Contracts, Loans and Cooperative Agreements and the Applicant/Recipient Disclosure/Update Report at the time of Application. In addition, if an owner uses non-federal money to lobby Congress, then the owner must also submit to DCA the Disclosure of Lobbying Activities Form which is also attached to this Manual. The borrower is responsible for ensuring compliance with the Byrd Amendment by all contractors and subcontractors.

**Contractor** - Any developers, contractors, subcontractors (including architects, engineers and other consultants which are contractors) (Contractor) who receive federal funds in excess of \$100,000 for any one HOME activity must complete and submit the Certification For Contracts, Loans and Cooperative Agreements and the Disclosure of Lobbying Activities Form if applicable. The owner will forward the signed form to DCA.

## **XI. CONFLICT OF INTEREST**

No person who is currently an employee, agent, consultant, officer, elected or appointed official of DCA (hereinafter collectively referred to as Person) may obtain a financial benefit or interest from any HOME-assisted activity; have an interest in any contract, subcontract or agreement relating to any HOME-assisted activity; or obtain any proceeds from a contract, subcontract or agreement relating to any HOME-assisted activity. This prohibition only applies to a Person who has HOME-related responsibilities, or is in a position to participate in the decision making process or has access to inside information. This prohibition remains in effect for one year after the tenure of said

Person has expired. This prohibition also applies to the Person's immediate family members and business associates.

Additionally, with the exception of on-site managers and maintenance workers that reside in a unit, owners of HOME-assisted properties, and their officers, employees, agents, or consultants, may not occupy a HOME-assisted unit.

If a potential conflict of interest exists involving any of the above-mentioned parties, the potential conflict of interest must be disclosed to DCA. DCA must obtain a waiver from HUD prior to awarding funds to the project.

During the process of requesting the waiver, DCA may require the applicant to provide information and assist in the preparation of the waiver. DCA's request to HUD for a waiver includes a description of the nature of the conflict; an assurance that all the interested parties have publicly disclosed the conflict; and an opinion from the Georgia Attorney General's office stating that any waiver of the conflict would not violate state or local law. DCA may request a waiver of a conflict of interest from the HUD Regional Office.

All applications should include a certification that no conflict of interest exists, and a section of the application allows for the identification of any potential conflicts of interest.

## **XII. COMPLIANCE AND ASSET MANAGEMENT**

DCA will monitor the property for compliance with all applicable HOME regulations prior to loan closing, during construction/rehabilitation, and throughout the period of affordability. At the pre-construction conference, the owner will receive a complete package of HOME compliance materials and information on training opportunities. At this conference, representatives from Architecture, Compliance, Asset Management and Legal will review all of the policies and procedures from the conversion through lease-up with the owners and other representatives. Prior to beginning lease up, the owners are encouraged to attend a Compliance workshop that covers lease-up regulations and compliance requirements throughout the period of affordability. Failure to comply with any of these policies and procedures will be considered non-compliance and may have an effect on the participant's ability to receive future funding from DCA.

Any owner, developer, syndicator or management company who has been in default or has been out of compliance with any DCA-administered program within the past three calendar years may be ineligible to participate in future funding rounds. Please refer to the Compliance Manual for compliance requirements including the Federal HOME Compliance requirements

## **XIII. LABOR STANDARDS**

### **A. Applicability**

If HOME funds are provided (whether for construction or non-construction expenses) to projects involving the construction of affordable housing consisting of 12 or more units, then the contract relating to the new construction or rehabilitation must comply with the following labor standards:

- Davis-Bacon Act, 40 U.S.C. 276(a)-5
- Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-332
- Copeland “Anti Kickback” Act, 40 U.S.C. 276(c) 1982.
- All applicable regulations and HUD Handbook #1344.1

Each developer/owner is required to attend a pre-construction conference. During this conference DCA’s Federal Compliance Officer will distribute applicable forms and instructions relating to labor standards and answer any questions you may have. The following general requirements are intended to be a summary only and should not replace direct conversations with DCA staff. Records should be maintained to evidence compliance with all requirements.

**Common Pitfalls to Avoid**

- ◇ Starting work prior to pre-construction conference and loan closing without written authorization from DCA.
- ◇ Failure to obtain a wage determination from DCA prior to soliciting construction bids.
- ◇ Failure to submit weekly contractor/subcontractor payrolls and Statements of Compliance to DCA.
- ◇ Failure to provide documentation that employees are receiving the compensation reflected on payrolls (i.e. employee interviews).
- ◇ Failure to pay workers for overtime.
- ◇ Submitting draw requests prior to submitting all weekly contractor/subcontractor payrolls.
- ◇ Submitting draw requests in an untimely manner.

Failure to comply with the items listed above may affect your compliance score and ability to compete in future funding rounds.

**B. General Requirements**

*Every construction and/or rehabilitation contract or subcontract must have appended to it the labor provisions contained in HUD Form 4010, obtained from DCA at the pre-construction conference. The property owner is required to ensure that all contractors and subcontractors comply with this requirement.*

The Labor Standards do not apply to individuals who are considered volunteers or to members of an income eligible family who provide “sweat equity.”

**C. Davis-Bacon Requirements**

DCA will provide the owner/developer with the local prevailing wage rate for the class of laborer/mechanic involved in the project at the pre-construction conference. Wage rate decisions are based on determinations made by the U.S. Dept. of Labor (DOL). The owner/developer is required to:

- Have a written contract with all contractors and subcontractors on the project;

- Submit to DCA a certification from the Bureau of Apprenticeship and Training for each apprentice employed on the project;
- Ensure that the applicable ratio of apprentices to journeymen is not exceeded;
- Ensure that all apprentices are paid the applicable wage rate;
- Ensure that the applicable wage rate decision, as changed or modified, is used in the contract bidding process, if any, and at the time the contract is awarded;
- Ensure that no party who is debarred/suspended or given limited denial of participation is used as a contractor or employee (see Section 1 of this Manual);
- Ensure that wage decisions and DOL posters are displayed on the project job site (poster will be distributed at the pre-construction conference);
- Owner/Developer, Contractor and an individual who will be completing required submissions must attend a pre-construction conference with DCA prior to the starting of construction, which is held subsequent to loan underwriting and thirty days prior to closing; and
- Allow DCA to monitor the construction and/or rehabilitation and conduct on-the-job interviews with workers on the job site.

#### **D. Copeland Act Requirements**

In general under the Copeland “Anti-Kickback” Act, the owner/developer must:

- Ensure that persons working on the construction and/or rehabilitation of the project are paid weekly and that only those salary deductions which are permissible are taken;
- Submit to DCA, on a weekly basis, payrolls and Statements of Compliance from contractors and subcontractors (*the forms will be distributed at the pre-construction conference and must be used to document compliance with this responsibility*);
- Retain for at least three (3) years (and sometimes longer) the documents described in the immediately preceding paragraph B;
- Check the payrolls of the contractor and subcontractors for accuracy; and
- Ensure that contractors and subcontractors retain for at least three (3) years the basic records supporting the payrolls.

#### **E. Contract Work Hours and Safety Standards Act**

The property owner/developer must ensure that laborers and mechanics that work in excess of forty (40) hours in any work week receive overtime compensation at a rate at least equal to one and one-half times the basic rate of pay for overtime hours.

#### **XIV. EQUAL EMPLOYMENT OPPORTUNITY/ FAIR HOUSING**

##### **A. Summary**

No person in the United States may, on the grounds of age, race, color, national origin, religion, sex, familial status or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part with HOME funds.

##### **B. Requirements**

HOME fund recipients must comply with any and all federal, state and local laws relating to fair housing and equal opportunity, including but not limited to those listed below.

1. **Minority Business Enterprise Executive Orders 11625, 12432, and 12138** relating to use of minority and women-owned business enterprises which provide that owners must make efforts to encourage the use of minority and women's business enterprises in connection with HOME funds by prescribing procedures acceptable to establish and oversee an outreach plan. (Please refer to the MBE/WBE Outreach Plan Guide Form attached to this Manual as B7)
2. **The Federal Fair Housing Act** (42 U.S.C. §3601 et seq. (1968)) and the **Georgia Fair Housing Act** (O.C.G.A. §8-3-200 et seq., (1992 Supp.)) requires each owner to affirmatively further fair housing. It is illegal to discriminate against any person because of race, color, religion, familial status, sex, handicap, or national origin: in the sale of rental or housing of residential lots; in advertising the sale or rental of housing or residential lots; in the financing of housing or residential lots; in the provision of real estate brokerage services; or in the appraisal of houses or residential lots. Blockbusting is also illegal. Blockbusting is the use of racial fears and prejudices to entice one racial group to flee a neighborhood when members of a disparate racial group move into the area. Normally, "blockbusting" refers to realtor exploitation of racial tensions. With respect to the development of rental housing, the rental housing must be accessible to persons with disabilities and must meet the applicable design and construction standards which are more fully covered in the Accessibility Manual.
3. **Age Discrimination Act of 1975** (42 U.S.C. §6101 et seq.) which prohibits discrimination based on age.
4. **Section 504 of the Rehabilitation Act of 1973** (29 U.S.C. §794) which prohibits discrimination against any otherwise qualified handicapped individual from participation in any program or activity receiving federal financial assistance.

5. **Americans With Disabilities Act of 1990 (ADA)** (42 U.S.C. §12101 et seq.) which prohibits discrimination in employment on the basis of disability (Title I) and prohibits discrimination on the basis of disability in state and local government services (Title II). Transitional housing must be in compliance with Title III of the ADA including but not limited to the Americans with Disabilities Act Accessibility Guidelines (ADAAG).
6. **Section 3 of the Housing and Urban Development Act of 1968** (12 U.S.C. §1701U et seq.) which provides that, to the greatest extent feasible, opportunities for training and employment arising in connection with planning and carrying out any project assisted with HOME funds be given to low-income persons residing within the program service area. In addition, to the greatest extent feasible, contracts for work (of all types) to be performed in connection with any project must be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, maintenance or repair, which are located in or owned in substantial part by persons residing in the program service area.
7. **Executive Order 11063** which requires that all action necessary and appropriate be taken to prevent discrimination based on race, color, religion (creed), sex, national origin, familial status or disability in the sale, rental, leasing or other disposition of residential property and related facilities, or in the use or occupancy thereof, where such property or facilities are owned or operated by the Federal Government, or provided with HOME funds and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by the U.S. Department of Housing and Urban Development.
8. **Title VI Civil Rights Act - 1964** (42 U.S.C. 2000d) which provides that no person in the United States may, on the basis of race, color, or national origin, be excluded from participation in, or be denied the benefit of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Housing and Urban Development.
9. **Affirmative Marketing** is required when HOME-assisted housing contains five or more units. If applicable, owners of HOME-assisted housing must adopt and conduct affirmative marketing procedures and requirements which provide information and otherwise attract eligible persons as described below. DCA will monitor and annually assess the affirmative marketing efforts conducted by owners in compliance with this requirement. Please refer to (1) the Instructions for the Affirmative Fair Housing Marketing Plan and (2) the Affirmative Marketing Plan. The initial Plan must be submitted as part of the 2013 Application. Beginning January 1, 2010, the Affirmative Fair Housing Marketing Plan must be submitted with the DCA HOME Annual Owner's Certification.

Owners must be in compliance with all of the above stated federal and state regulations. In addition, owners must comply with the DCA MBE/WBE Outreach Plan and submit

their own written MBE/WBE Outreach Plan to DCA for approval. The MBE/WBE Attachment can be used as a guide-form for the owner's submission, make appropriate adjustments as necessary. The owner is bound by all representations and certifications made in the approved plan.

The owner must also develop and submit to DCA a written affirmative marketing plan (Plan). Using the form provided, the applicant is required to document its Plan and assemble related documentation. Once the Plan has been approved by DCA, the applicant must keep the plan on the central office premises, along with a copy of the federal and state Fair Housing Act, both of which must be available for review by the general public.

The owner must develop and provide a Section 3 plan, outlining actions to attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by: 1) Awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 businesses; and 2) Offering 30 percent of new employment opportunities to Section 3 businesses. In addition, owners must adhere to the requirements set forth in the 2013 Section 3 Manual.

## **XV. ENVIRONMENTAL REQUIREMENTS**

HOME funded projects must adhere to the environmental requirements set forth in the 2013 QAP and the 2013 Environmental Manual. DCA requires that a Phase I be completed in accordance with DCA requirements and included in the Application. Additionally, in accordance with the National Environmental Protection Act (NEPA), DCA will provide public notice and review the environmental effects of proposed housing related activities to determine if it will have an adverse effect on the environment. As each project is identified, DCA will conduct project level NEPA advertisements and request release of funds from HUD. **No closings will occur prior to DCA's receipt of the HUD Authorization to Release Grant Funds.**

### **A. Additional Environmental Requirements for HOME/HUD funded Projects, including but not limited to PBRA**

All developments utilizing HOME or HUD funds are required to assess the environmental effects of that activity in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and HUD regulations at 24 CFR Part 58. DCA requires applicants to conduct various activities required for the environmental review process at HOME application, including a Phase I Environmental Assessment (EA), as outlined in the Environmental Manual.

The Applicant, as outlined in the HOME/HUD Environmental Questionnaire, must complete additional requirements for HOME/HUD funded projects at the time of Application Submission, including, but not limited to, the Eight-Step process and HUD publication procedures.

**Eight-Step Process:** Projects located within a flood hazard area or designated wetland are subject to Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands) respectively. HUD's implementing regulations at 24 CFR Part 55 -- "Floodplain Management" prescribe measures for protecting floodplains, and when amended, for

protecting wetlands. Under the provisions of these Executive Orders, HUD must avoid financial support for covered activities, unless it can demonstrate that there are no practicable alternatives outside the floodplain or wetland. Therefore, if jurisdictional wetlands will be filled or impacted and/or construction and landscaping activities will occupy or modify a floodplain/floodway, documentation that the Eight-Step process has been followed as mandated by 24 C.F.R. §55.20 for wetlands and floodplains must be provided as a part of the HOME and HUD Environmental Questionnaire. The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. As part of the 8- Step process, DCA requires the notification of the Regional Federal Emergency Management Agency (FEMA) Office. FEMA must be contacted anytime an 8-step process (site specific or area-wide) has been initiated. The steps to be followed in the decision making process are outlined in the 2013 Environmental Manual.

**HUD Environmental Clearance & Publication Requirements:** DCA, as the responsible entity (RE) referred to in 24 CFR §58.43, Environmental Review Procedures for Entities Assuming HUD Responsibilities, is responsible for undertaking environmental reviews for proposed HOME projects. In this capacity, DCA must ensure that the environmental review process is satisfied before certain HUD funds are committed to specific projects. Therefore, when initial awards of HOME funds are announced, DCA will publish notices of its intent to allocate HOME funds in local newspapers in the proposed project's areas. After comments, if any, have been received, HUD will review the comments to determine if there has being a finding. Once that process is complete and there has been no finding, DCA will seek HUD's approval of its commitment of HOME funds to the proposed project. In order to ensure that the environmental review process is not challenged, Owners and/or Developer of proposed projects must, once applications are submitted, refrain from undertaking activities that could have an adverse environmental impact prior to the receipt of an environmental clearance letter from DCA removing the stipulated conditions. Such activities include: acquiring, rehabilitating, converting, leasing, repairing, or constructing property. As a result, an Applicant can not commit or expend HUD or non-federal funds until the environmental review process has been completed. As previously stated, no firm commitments will be issued prior to DCA's receipt of HUD's Authorization to Release Grant Funds.

For Scattered Site Projects, the environmental requirements must be met for each non-contiguous parcel.

## **B. Lead Based Paint**

The HOME program prohibits the use of and requires the elimination of lead-based paint hazards in HOME-assisted housing. These lead-based paint requirements apply to all HOME-assisted properties built before 1978, with the exception of housing intended for elderly or handicapped persons (except for units in which children under 6 years of age or pregnant women are residing), and studio or efficiency apartments. These affected units are referred to as "targeted housing."

**Disclosure requirements for "targeted housing"** - To protect families from exposure to lead in paint and the contaminated dust and the soil it generates, Congress passed

the Residential Lead-Based Paint Reduction Act of 1992. This law requires the disclosure of known information on lead-based paint and lead-based paint hazards to the tenants or prospective tenants of “targeted housing” as described above. Property owners/developers must:

- Give tenants the EPA/HUD pamphlet titled “Protect Your Family From Lead in Your HOME” which is available at [www.epa.gov](http://www.epa.gov); and
- Incorporate the addendum entitled “Disclosure of Information on Lead Paint and Lead Paint Hazards” into all lease agreements.

**Lead based paint hazard control standards** - The national “Lead-Based Paint Hazard Reduction and Financing Task Force” recently provided recommendations related to the control of lead based paint and associated hazards in their report “Putting the Pieces Together: Controlling Lead Hazards in the Nation’s Housing.” The DCA requirements outlined below meet or exceed the recommendations provided by the Task Force. For further guidance on specific guidelines for controlling lead-based paint hazards refer to Title X of the Housing and Community Development Act of 1992 and the final new HUD regulation on lead-based paint hazards in federally-owned housing and housing receiving federal assistance released September 1999.

**All targeted housing must comply with the following requirements:**

- Completion of Environmental Questionnaire and Phase I Environmental Assessment:
- Consideration of reduction versus abatement - Depending on the condition of the property, the property owner/developer, in cooperation with HUD guidelines, referenced above, and DCA may elect to reduce the lead-based paint and associated hazards. Alternatively, the property owner/developer may propose abatement. All interim controls must be included in the property’s Operation and Maintenance Plan (O&M Plan) and reviewed by DCA as described in this Manual; and
- Engineer approval that all interim control and abatement work is effective and has been completed according to HUD guidelines, which approval must be obtained from an engineer who has a good understanding of lead paint abatement measures and work, based in training and experience, as confirmed by a Qualifications Statement or similar document describing education, training, and work experience, for the engineer(s) providing the approval.

PLEASE REFER TO THE DCA ENVIRONMENTAL MANUAL FOR FURTHER INFORMATION.

**For HOME-assisted housing constructed before 1978 and occupied by families with children under six years of age with Elevated Blood Levels, the following procedures, in addition to those listed above, must be followed:**

Cooperating with local public health officials investigating the child’s case by:

- Responding promptly to requests from local officials for information necessary to complete an environmental investigation;

- Providing access to the property;
- Implementing lead hazard control methods as directed by the agency;
- Obtaining a risk assessment unless the local health department has already conducted an environmental investigation and the owner/developer has already responded appropriately or the property is already covered by valid documentation of compliance by an independent certified individual;
- Controlling all LBP Hazards identified by the risk assessor within 15 days and conduct post intervention dust tests. Where there is evidence of chewing, the control action should provide permanent protection;
- Notifying affected tenants of risk assessment results and hazard control actions taken;
- Not retaliating against tenant in response to the identification of an EBL child; and
- Relocating tenants if LBP Hazards are not promptly controlled. In such cases the relocated tenants are eligible for relocation payments, and the unit may not be re-rented until the LBP Hazards have been controlled.

### **C. Flood Insurance**

Applicants should review the 2013 QAP and Environmental Manual for DCA requirements related to building on a site designated as a special flood hazard area. DCA requirements are more stringent than HOME requirements. In the event, that DCA does fund a project located in a flood zone, HOME and DCA requires flood insurance if the HOME-funded project is located in a community for which flood insurance has been made available under the provisions of the Flood Disaster Protection Act of 1973 (42 U.S.C. Section 4001, et seq.); or in a designated special flood hazard area (SFHA). At the sole discretion of DCA, properties at elevations where flooding is potentially a risk may also be required to obtain flood insurance.

Such flood insurance must be in a form of the standard National Flood Insurance Program policy or in the form of a policy which meets the guidelines published by the Federal Insurance Administration (FIA) in the Federal Register on February 17, 1978, as amended (43 F.R. 7142).

These guidelines establish the minimum amount of flood insurance required as the lower of the following:

- The full replacement cost value of the improvements secured by the mortgage; or
- The maximum amount of flood insurance available on the date the mortgage was filed.

The owner/developer is required to either provide documentation that the HOME funded project is located outside of a designated SFHA; or provide documentation before closing the HOME loan or grant that flood insurance is in place and will be maintained.

Documentation must be satisfactory to DCA and must include:

- Consultation with local planning/zoning officials to learn if flood insurance has been made available in the community through the Flood Disaster Protection Act of 1973;
- A copy of the flood insurance policy that references the property in question and meets or exceeds the minimum amount required by FIA guidelines (i) or (ii); and
- An agreement signed by the borrower that this policy will be maintained for the life of the HOME loan. This may also be expressed as a clause in or an addendum to the policy.

## **XVI. UNIFORM RELOCATION ACT**

### **Relocation/Displacement of Tenants**

The Uniform Relocation Act and Section 104(d) (also known as the Barney Frank Amendments) apply to all HOME assisted properties. DCA will not consider applications for financial assistance that propose the permanent displacement of existing resident tenants. However, there are instances where temporary relocation may be necessary and allowed by DCA provided the relocation complies with the URA. Temporary relocation may be allowed if a relocation plan and relocation budget are submitted and approved by DCA. The following Relocation Forms must be included in any submitted application: Tenant Household Data Form, Tenant General Information Notice, and the Tenant Relocation Plan and Budget. Please refer to the 2013 DCA Relocation Manual for further guidance regarding temporary relocation, formulation of tenant relocation plan. All additional HUD relocation forms can be obtained from the HUD website.

### **Notices to Sellers and Tenants under URA**

Voluntary acquisitions are subject to the requirements outlined at 49 CFR 24.101, as outlined in HUD's implementing instructions found in Chapter 5 of Handbook 1378. This is a HUD HOME requirement. In general, this guidance explains the voluntary acquisition process for a buyer that has the power of eminent domain, but does not plan to use such power, and for a buyer that does not have such power. In voluntary acquisitions subject to 49 CFR 24.101, the buyer must inform the seller in writing that:

- 1) The buyer does not have the power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement; or,
- 2) If the buyer is an agency that does have the power of eminent domain, that the agency has determined that it will not use its power of eminent domain to acquire the property if negotiations fail to result in an amicable agreement; and
- 3) Of the buyer's estimate of the fair market value of the property.

**NOTE:** Even though an appraisal is not required, most buyers will seek an appraisal to establish the fair market value estimate. In the event an appraisal is not obtained, the grantee's files must include an explanation, with reasonable evidence, of the basis for the estimate.

Whenever feasible, this information shall be provided before making the purchase offer. In those cases where there is an existing option or contract, the seller must be provided the opportunity to withdraw from the agreement after this information is provided.

### **Applicability**

This provision is applicable to all acquisitions of real property made with the intent of procuring federal financing. It is applicable to vacant land and to the acquisition of existing rehab properties. The fact that the property is not occupied is irrelevant to this requirement. The purchase price does not have to be equal to the fair market price. However, the documentation submitted must evidence that the Seller was aware of the fair market value prior to closing and voluntarily entered into the purchase and/or option agreement.

### **Timing**

The statute requires that the acquisition of the real property be voluntary and that the Seller be informed of the fair market value of the land. The fact that an applicant may have closed on property prior to submission of an Application for HOME funds does not obviate this requirement. If the Applicant acquired the property with the intent to procure financing, then this requirement must be satisfied.

- HOME applicants should provide the appropriate notice prior to the signing of the Sales Contract or Option or at the time the contract or option is executed. This evidences the fact that the Seller knew the fair market value of the property and voluntarily entered into the transaction. Refer to the DCA Sample Pre-Contract Agreement.
- If the Sales Contract or Purchase Option is pending, but the required notice has not been executed, the seller must be provided the opportunity to withdraw from the agreement when it is given the information required by the statute. A guide letter is included in the forms section for use by Applicants who did not properly notify the Seller of the fair market value of the property prior to entering into the Acquisition Agreement, but have not yet closed on the property.
- If the Applicant already has site control of the real estate prior to submitting the application, and did not intend to apply for federal financing at the time the property was acquired, an explanation of the applicant's initial purpose for purchasing the land must be submitted to DCA. The explanation must contain specific and detailed information sufficient for DCA to reasonably determine that the property was not acquired for the purpose of obtaining federal financing or funding and that the requirements of this statute are not applicable.
- If the Applicant obtained site control of the real estate with the intent of submitting the property for HOME funding, and did not properly comply with these

requirements, then the Applicant must obtain a reasonable estimate of the fair market value of the land. The Applicant must submit a written explanation and sufficient documentation to establish that the Seller knew the Fair market value of the land, voluntarily entered into the contract and that the transaction was an arms length transaction. (Examples of documentation may include, but are not limited to the initial listing of the property at the fair market price, or notarized statements from the broker involved in the transaction).

### **Examples of Reasonable Evidence of Fair Market Value**

All HOME applications must contain an estimate of the Fair market value of the real property at the time of acquisition, and an explanation from the Applicant along with reasonable evidence of how this value was obtained.

**(The following examples of evidence of fair market value are intended to give Applicants guidance, but do not limit the types of evidence that can be submitted)**

Appraisal

Letter from an Appraiser setting out fair market value (does not have to be a full appraisal)

Letter of Real Estate Broker familiar with market estimating fair market value – (recent comparable sales should be attached)

Documentation from Tax Assessors office as to value of property

**Any documentation required under this section must be submitted to DCA at the Application stage.**

## **XVII. TENANT AND PARTICIPANT PROTECTIONS**

There must be a written lease between a tenant and the owner of a HOME-assisted rental project for the unit occupied by the tenant. This lease must be for a term of at least one year, unless a shorter lease is mutually agreed to by the tenant and the owner/developer. The owner and tenant must also execute DCA's lease addendum. If any language in the owner's lease conflicts with the DCA lease addendum, the DCA lease addendum will take precedence. The lease must also provide that the owner will give at least 30 days notice to the tenant before implementing a rent increase.

The owner/developer may terminate a tenant's lease or refuse to renew a lease only for serious or repeated violation of the terms and conditions of the lease; violation of applicable federal, state or local law; or other good cause. The owner/developer must give the tenant at least 30 days advance written notice of the owner/developer intent to terminate or refusal to renew the lease and the grounds upon which this action is based.

The owner/developer must adopt written tenant selection policies and criteria that are consistent with the purpose of providing housing for very low-income and low-income families; are reasonably related to program eligibility and the tenant's ability to perform the obligations of the lease; give reasonable consideration to the housing needs of tenants that would have a preference under 24 CFR §960.211 (relating to federal selection preferences for public housing admission), which are families and tenants that are involuntary displaced, occupying substandard housing, homeless, or paying more than 50 percent of their annual income for rent; and provide for either the selection of

tenants from a bound written waiting list in the chronological order of their application, insofar as is practicable, or the prompt written notice to any rejected applicant of the grounds for any rejection.

The owner/developer cannot refuse to lease to a holder of a Section 8 rental assistance certificate or voucher, or a recipient of HOME tenant-based rental assistance, if the prospective tenant is otherwise eligible under the HOME program.

If the owner/developer is a CHDO, it must develop and follow a fair lease and grievance procedure, and a tenant participation plan for management decisions in keeping with the HOME requirements found at 24 CFR Part 92-303.

## **XXII. DCA'S CLOSING PROCESS**

**A. Issuance of Preliminary Commitment** – At award, DCA will issue a preliminary commitment letter to each successful applicant. The following are the general terms and conditions applicable to the GHFA loan which will appear as conditions of the commitment letter:

1. Borrower will execute the following "Loan Documents" at Closing, all of which must be in form and content satisfactory to GHFA:
  - (a) a Construction/Permanent Loan Agreement;
  - (b) a promissory note;
  - (c) a [first][second] priority deed to secure debt for the Land and security agreement granting GHFA a security interest in all furniture, fixtures, equipment, building materials, plans, records, reserves, and other tangible or intangible personal property used in or connected with the Project and financing statements sufficient to perfect GHFA's interests;
  - (d) a [first][second] priority assignment of leases, rents, and security deposits;
  - (e) a Land Use Restriction Agreement ("LURA"), which will contain restrictive covenants, in form and content satisfactory to GHFA in its sole discretion. The LURA will be recorded in the real estate records of the County where the Land is located and will contain use, rent, occupancy, and income restrictions (among other things) lasting for a period of years from the completion of construction and satisfaction of the other requirements under the HOME regulations;
  - (f) a Borrower's affidavit;
  - (g) a Borrower's Certificate; and
  - (h) any other agreements, instruments, certificates, or other documents necessary or desirable to document and evidence the agreement of the parties and close the loan.

2. Third parties must execute and GHFA must receive at or before Closing the following ancillary documents and agreements, all of which must be in form and content satisfactory to GHFA and properly executed:
  - (a) an intercreditor agreement or subordination agreement with each other lender (if applicable);
  - (b) a tri-party agreement with all permanent lenders other than GHFA (if applicable);
  - (c) a consent to assignment from the general contractor;
  - (d) a consent to assignment from the Project architect;
  - (e) a HOME addendum to the construction contract;
  - (f) all guaranties of the loan;
  - (g) an opinion letter of counsel for borrower; and
  - (h) any other agreements, instruments, certificates, memoranda, or other documents GHFA deems necessary or desirable to close the loan.
3. Borrower's acceptance of the Commitment constitutes Borrower's agreement to pay all fees, expenses, and charges incurred by GHFA in connection with closing and making the loan.
4. GHFA's obligation to make the construction loan is conditioned upon approval of the phase I environmental report on the Land and receipt of any updates or additional reports relating to the environmental status of the Land as GHFA may request, all of which are subject to GHFA's review and approval. The Loan Documents will include provisions relating to the environmental requirements for the Property, including warranties and representations by Borrower, Borrower's indemnification of GHFA against any liability resulting from violations of environmental laws, and GHFA's right to require additional environmental testing of the Property by an environmental engineer or consultant satisfactory to GHFA, all of which must be in form and content satisfactory to GHFA in its sole discretion.
5. At the date or dates specified in the Loan Documents, Borrower will be required to fund and subsequently maintain reserves for taxes and insurance, replacement of capital improvements, operating deficits[, excess cash flow], and such other purposes as GHFA may require and subject to such terms and conditions as GHFA may require in its sole discretion. All reserves will be held by State Home Mortgage, unless GHFA agrees otherwise.
6. Without GHFA's prior written consent, Borrower may not transfer the Land or any interest in it, may not permit any transfer of an interest in Borrower[, except limited partnership interests, may not permit the General Partner to be removed or replaced], and may not create or permit any liens, other security deeds, or other encumbrances on the Land, except those approved by GHFA; provided,

however, Borrower may grant easements for utilities serving only the Land and Project without GHFA's prior consent.

7. GHFA's obligation to make the construction loan is conditioned upon GHFA's determination that Borrower[, the General Partner], the developer(s), and the manager are all in compliance for other projects funded using HOME funds, state and federal housing tax credits administered by GHFA, or other sources of funds supplied or administered by GHFA or the Georgia Department of Community Affairs.
8. GHFA will be permitted to place a sign on the Land, indicating GHFA's participation in the financing for the Project. GHFA will also be permitted to obtain other publicity in connection with the Project through press releases and participation in events such as ground breaking and opening ceremonies. Borrower shall give GHFA sufficient advance notice of any such event and give GHFA as much reasonable assistance as possible in connection with obtaining such publicity as GHFA desires.
9. No statements, agreements, or representations by GHFA or any of its employees, agents, or contractors with respect to the same subject matter as this Commitment or about the GHFA loan shall have any force or effect, except to the extent stated and included in this Commitment, and all such prior statements, agreements, or representations are merged in this Commitment.
10. GHFA may terminate this Commitment in its sole and absolute discretion and without further notice or obligation if any of the following occurs:
  - (a) **Default.** Borrower's failure to meet, satisfy, or perform all applicable covenants and conditions contained in this Commitment on a timely basis or to GHFA's satisfaction if not cured within 15 days after written notice is given to Borrower by GHFA; or
  - (b) **Title Problem.** Borrower's failure to acquire the Land (if applicable) or any defect in or objection to Borrower's title to the Property that is non-curable or that is not cured within a reasonable time; or
  - (c) **Bankruptcy; Insolvency.** With respect to Borrower[, the General Partner,] or any guarantor, the commission of an act of bankruptcy, the making of a general assignment for the benefit of creditors, the filing by or against it of a petition in bankruptcy or for the appointment of a receiver, or the commencement of proceedings under any bankruptcy or insolvency law for relief or the composition, extension, arrangement, or adjustment of any of its obligations or the reorganization of its business, or the issuance of any warrant or attachment against any of its property or the taking of possession of or assumption of control of all or any substantial part of the property of it by any governmental agency; or
  - (d) **Violation of Law.** GHFA's determination that the Closing and funding of the construction loan would violate any applicable law, including the Act and the HOME Regulations; or

- (e) **Misrepresentation.** Any material misrepresentation or omission or inaccuracy in the application for the GHFA loan and any attachments to it or documents or information delivered in connection with it, including (but not limited to) the financial statements and projections that Borrower [or the General Partner or developer] may have submitted to GHFA; or
- (f) **Environmental Problem.** Any environmental matter relating to the Property is not satisfactory to GHFA; or
- (g) **Casualty and Condemnation.** The existing improvements (if applicable) are substantially damaged or destroyed or any part of the Land is taken by condemnation, eminent domain, or similar proceeding or if any such proceeding is pending at the time of Closing.

**NOTE:** The general conditions set forth in this Exhibit are not intended to be exhaustive or exclusive, and are subject to change, all in the absolute discretion of GHFA. The Loan Documents may contain other terms and conditions.

## **B. Underwriting Process**

DCA Office of Affordable Housing is committed to expediting the HOME underwriting process for projects that receive HOME commitments. The following is a summary of the HOME process.

Bimonthly conference calls with the owner representative and or developer representative are conducted.

Underwriting and Architectural due diligence submissions are required. The list of documents that must be updated, if necessary, or submitted is included in Exhibit C of the Preliminary Commitment as is the date by which they must be received.

### **Appraisals**

Appraisals are ordered by DCA as soon as a project receives clearance from the DCA architectural Department.

### **Pre-Closing Underwriting**

The project is assigned to a specific HOME Underwriter once the plans and specifications for a project have received clearance from DCA architectural department.

### **All Underwriting packets must conform to the following requirements:**

- All documents must be submitted in one packet. Incomplete or partial packets will be returned to the Applicant.
- A revised financial proforma must be submitted by the Applicant correctly reflecting all numbers in the final commitment letters and in the general contractor's contract approved by the architectural department.
- The pro forma should not significantly deviate from the pro forma submitted by the Applicant in the competitive round.
- HOME loans payments should conform to the requirements of the QAP

**\* All closings must occur on or before August 1, 2013 \***

### **C. Due Diligence**

Prior to closing, the DCA underwriting department, or closing attorney, will require that the Applicant produce certain due diligence items in support of its Application for funding. The following is a general list of the documents required:

1. If borrower is a partnership:
  - (a) The partnership agreement
  - (b) The certificate of partnership and any amendments
2. If the borrower is a corporation:
  - (a) The Articles of Incorporation and certificate of incorporation and any amendments
  - (b) The bylaws and any amendments
3. If the borrower is an LLC:
  - (a) The Articles of Organization and certificate of organization and any amendments
  - (b) The operating agreement and any amendments
4. If the general partner is a corporation:
  - (a) The Articles of Incorporation and certificate of incorporation and any amendments
  - (b) The bylaws and any amendments
5. If the general partner is an LLC:
  - (a) the Articles of Organization and certificate of organization and any amendments
  - (b) The operating agreement and any amendments
  - (c) The organizational documents of the manager(s), if applicable
6. The authorizing resolutions of the borrower
7. The authorizing resolutions of the general partner
8. Title insurance binder and revisions
9. All documents relating to exceptions from coverage under the title binder
10. All easements benefiting or burdening the property
11. The granting instrument(s) to the borrower for the real property
12. Pro forma title policy
13. Survey and revisions
14. The surveyor's certificate
15. Payment and performance bonds or letter of credit
16. Certificate of existence for borrower
17. Certificate of existence for general partner

18. Certificate of existence for the manager of the general partner when the general partner is an LLC and the manager is an entity
19. Confirmation of pre-closing construction conference scheduling
20. Opinion letter(s) of borrower's counsel
21. A list of the plans and drawings
22. The executed development agreement
23. The executed management agreement
24. Executed consulting agreements
25. Senior lender loan documents, if applicable
26. Junior lender loan documents, if applicable
27. Bridge lender loan documents, if applicable
28. Insurance certificates or policies of the borrower (liability only)
29. Insurance certificates or policies of the general contractor (builder's risk and liability only)