

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 2009 Qualified Allocation Plan, the 2009 Application Manual, the 2009 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. 2009 RESOURCES AVAILABLE

HUD annually allocates HOME funds to state and larger local governments. The Federal Fiscal Year (FFY 2009) HOME allocation is expected to be available to the State on July 1, 2009, following approval of the Annual Action Plan for FFY 2009 Consolidated Funds (Annual Action Plan). In the event FFY 2009 HOME funding is not made available to the State, DCA will not be obligated to provide any HOME Loans to Applicants.

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 at its sole and absolute discretion. Further, DCA reserves the right to adjust the amount of HOME funds allocated to the HOME Rental Housing Loan and CHDO Set-Aside in its sole and absolute discretion.

II. POST AWARD DEADLINES

Formal Firm Commitments*. Formal firm commitments for equity and non-DCA debt must be submitted to DCA within 90 days of issuance of the DCA Commitment Letter.

Design Development Documents*. Design Development Documents as fully outlined in the Architectural Submittal Instructions in the Manual must be submitted to DCA for review and approval by January 30, 2010, but no later than 90 days from carryover allocation.

Tax Credit and Home Projects/Commencement of Construction/Rehabilitation*. **Projects receiving HOME Loans must not begin construction prior to the HOME Loan closing. However, all projects receiving a HOME loan award in 2009 must have satisfied all conditions necessary to commence construction within one 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 2009 must close their HOME Loans within one year of the date of the initial HOME commitment. 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 2009 competitive round will be set aside for projects owned by nonprofits that have been pre-qualified by DCA as CHDOs. All of the CHDO set-aside will be met with funding under this Plan.

HOME requires that a CHDO participate in a proposed project as an Owner, Developer or Sponsor. However, DCA requires that any CHDO funded under this Plan and eligible for the CHDO set aside 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, the Manual, and the HOME regulations. 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 or by calling Tarolyn Moore at (404) 679-5271. DCA requires all projects granted CHDO status to execute a CHDO

agreement as part of the loan documents. The Agreement requires that the CHDO exercise effective control of the project. In addition, the DCA QAP requires all DCA communication with the ownership entity be with the CHDO managing partner.

Maximum HOME Loan. The maximum HOME Loan will be \$2.5 million per project if no other lender is involved or a second lender agrees to a second-lien position.

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 period of Affordability:

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.

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).

Defining HOME-assisted units

It is DCA's policy that affordable units in a project will be designated as HOME based on the actual investment in a unit or the actual investment in the project. The formula for determining the minimum number of HOME assisted units in a project that receives HOME funds is as follows:

Total HOME investment/(Total Development Cost less Reserves held of 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)

Requirements for Projects receiving DCA HOME funds:

All HOME affordable 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 commitment. 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 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 commitment, 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.

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 are not eligible as a HOME expense. 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 Principals 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 lightning, 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 Director of the Office of Affordable Housing and the Assistant Commissioner for Housing will review staff recommendations prior to release of retainage to ensure that goals of preventing Contractor windfall profits and that sources equal 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 which ever 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. Developers may apply for a waiver of the DCA per-unit cost limits, as described in the Qualified Allocation Plan. However, the project must comply with the HUD per-unit cost limits therefore a waiver can not 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 HQS, 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) which 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% or more minorities. A non-minority area is an area that has less than 25% minorities. For purposes of making this designation, DCA will review the racial make up 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 needs" 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 that an overriding housing needs exists, DCA will review whether there is sufficient documentation that evidences that either "sufficient" and "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 which gives a balance of housing choices within and outside the areas on 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, has 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 in 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, 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 50 percent 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 bedrooms, two bedrooms and three bedrooms 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 60 percent of AMI **or** the area FMR, whichever is less.

NOTE: DCA's policy is more restrictive than the statute. None of the HOME assisted units in a DCA project can have rents more than the area FMR. Many applicants assume that for their 60% rent restricted units, the rent can exceed FMR. It cannot unless the project has government project based rental assistance.

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. The Table Section of the DCA Application Manual contains Utility Allowance Instructions, 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.

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** 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. The 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.

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

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. If a potential conflict of interest exists between the above-mentioned parties, DCA may require the applicant to provide information and assist in the preparation of the waiver.

A certification is included in all applications stating that no conflict of interest exists, and a section of the application allows for the identification of any potential conflicts of interest.

XII. COMPLIANCE

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 will also be required to attend a DCA Compliance workshop that will cover 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 2005 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 Compliance Manager will distribute applicable forms and instructions relating to labor standards and answer any questions you may have. The following summary of general requirements is intended to be a summary 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 a timely 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 individual who will be completing required submissions must attend a pre-construction conference with DCA (mandatory, before you start construction) which is held after 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 2009 Application. Beginning January 1, 2009, 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.

XV. ENVIRONMENTAL REQUIREMENTS

HOME funded projects must adhere to the environmental requirements set forth in the 2009 QAP and the 2009 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 has provided public notice and reviewed the environmental effects of proposed housing related activities throughout the state and concluded that a broad range of activities will not have an adverse effect on the environment. As a result, the project level advertisements of NEPA are no longer necessary. However, as each project is identified, DCA will review it for adherence to DCA's environmental requirements and for adverse environmental effects.

A. 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 7 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; 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 seven 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.

B. Flood Insurance

Applicants should review the 2009 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 2009 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.

XVIII. UNDERWRITING REQUIREMENTS AND FEASIBILITY CRITERIA

Prior to making a firm loan commitment, DCA will carefully underwrite all loans to assess project feasibility and long term viability.

XIX. DCA Policies and Loan Terms Under the 2009 QAP

- **Annual Operating Expenses.** Annual budgeted Operating Costs, excluding reserve contributions, must be no less than three thousand six hundred dollars (\$3,600) per unit for urban projects, three thousand dollars (\$3,000) for non-MSA rural projects, and three thousand dollars (\$3,000) for projects that include USDA loans as a funding source. However, DCA reserves the right to determine the reasonableness of budgeted operating expenses for all projects.
- **Assumptions for Building Basis.** For purposes of underwriting acquisition Credits, the building basis must be limited to the lesser of the sales price or the appraised value of the building(s). However, DCA reserves the right to determine the reasonableness of building basis for all projects. Previous sales price as well as valuations may be considered.

- **Builder Cost Limitations.** Builder's overhead, general requirements and builder's profit are limited to percentages of the total construction contract (net of builder's overhead, general requirements, and builder's profit) as follows: Builder's overhead – two percent (2%); General Requirements – six percent (6%); and Builder's profit – six percent (6%). General Requirements shall not include water tap and sewer fees. These limits apply to both development costs and eligible basis.

Payment and performance bonds, letter of credit fees, and fees associated with obtaining a construction loan in lieu of a payment and performance bond or letter of credit will be listed as an additional line item cost. However, these fees are included in the limit for General Requirements (6%).

- **Construction Contingency.** The construction contingency amount must be at least 5%, but no greater than 7%, of the total construction hard costs for new construction projects. For rehabilitation projects, the construction contingency amount must be at least 7%, but no greater than 10% of the total construction hard cost. For historic rehabilitation projects, the construction contingency amount must be at least 10%, but no greater than 15% of the total construction hard cost. DCA reserves the right to adjust development budgets in this regard, for underwriting purposes, in its sole and absolute discretion.
- **Debt Coverage Ratio.** As part of its financial feasibility analysis, DCA will require that projects with tangible debt meet at a minimum a 1.15 debt coverage ratio for each year after the first year of the credit period. For purposes of determining the debt coverage ratio, deferred Developer Fee will not be considered tangible debt. Amounts set aside in a reserve funded in one year may not be withdrawn and treated as a gross receipt in a subsequent year to satisfy the debt service coverage ratio in the subsequent year. Amounts received in one year that exceed the debt service coverage target for that year will not be credited to another year. For purposes of this test, each year will stand alone. The debt coverage ratio cannot drop below 1.15 during the 15-year Compliance Period or HOME Loan term whichever is longer. DCA will review each project carefully to determine whether a project is over subsidized and to determine whether the amount of HOME funds/and or credits is the best use of DCA resources. While DCA does not have a cap on the DCR, projects that have DCRs that exceed 1.50 for rural projects or 1.40 for urban projects may be subject to additional scrutiny to ensure they are not over subsidized. DCA does recognize that rural deals will typically have higher debt coverage at the beginning of the compliance period in order to remain feasible over the fifteen years. Documentation to support these higher debt coverage ratios should be provided.

No-debt deals are allowed but will be subject to additional scrutiny from DCA. Projects submitted with no debt will not have a DCR but will be required to cash flow without having an undue profit. This will be determined by a ratio of Effective Gross Income to Total Annual Expenses (including reserve for replacement). A ratio of 1.05 shall be the minimum required to be considered feasible by DCA in Years 1-15.

- **Development Costs.** The costs included in the development budget including, but not limited to, the cost for land, on-site improvements, on-site development, construction cost, financing cost, professional fees, and mandatory reserve accounts. Development costs are limited to on-site development activities.
- **Developer Fee.** The sum of the Developer's overhead and Developer's profit. If a Consultant (as defined in the Plan) is acting in the capacity of Developer or construction manager, or providing technical assistance to the Developer or construction manager, the Consultant's Fee is also considered part of the total Developer Fee limitation. Guarantor Fees are also part of the total Developer Fee limitation.
- **Developer Fee Limitation.** This limitation applies to both development costs and eligible basis at all stages (scoring, carryover and Final Allocation). DCA restricts the maximum Developer Fee as follows:
 - For new construction projects, the Developer fee will be limited to 15% of Total Development Costs less the budgeted Developer Fee, any demolition cost and the cost of Land.
 - For acquisition/rehabilitation projects that are eligible for acquisition credits, the Developer Fee on the acquisition portion will be limited to 15% of the Existing Structures acquisition cost (including Acquisition Legal Fees). The rehabilitation portion will be limited to 15% of Total Development Costs less the budgeted Developer Fee, the cost of Land, Acquisition Legal Fees and Existing Structures.
 - For rehab projects that are not eligible for acquisition credits, the developer fee will be limited to 15% of Total Development Costs less the budgeted Developer Fee, the cost of Land, Acquisition Legal Fees and Existing Structures. However, if the Development Agreement specifically states that a portion of the developer fee is attributable to the building acquisition, then the developer fee will be limited to 15% of Total Development Costs less the budgeted Developer Fee and the cost of Land.

When an Identity of Interest exists between the Developer and the General Contractor, the maximum Developer Fee is restricted to 15% of the Total Development Cost less the cost of the Land, the budgeted Developer Fee, and the Builder Profit. If the Application budgets a Developer Fee of less than 15%, the percentage proposed will be substituted for 15% in determining the maximum Developer Fee.

The developer fee will be calculated using the allowable total development cost based on the DCA per Unit Cost Limits. The Developer Fee for Applications for Additional Credits (in the year the project is placed in service), shall be limited to the original approved Developer Fee.

Deferred Developer fee must be payable within fifteen (15) years from available cash flow. The deferred portion cannot exceed 50% of the total amount of Developer Fee at initial application.

Developments (as determined by DCA), that incorporate a high degree of sustainability components into their design, may be eligible for a 20% developer fee. Factors such as the size of the project, amount of developer fee and extent of components will be considered by DCA. Pre-approval by DCA is required.

Consultant's Fees and Guarantor Fees are considered to be part of the Developer Fee.

- **Distribution Across Unit/Bedroom Sizes.**

1. *Rent.* Projects with a multi-tiered rent structure must distribute the rents across unit sizes, unit types and buildings. These units need not be fixed, but may float in the same way high HOME rent and low HOME rent units may float within a project.

2. *Accessibility.* To the maximum extent feasible, accessible units must be distributed across unit sizes, unit types and buildings so as not to limit choice.

- **Identity of Interest between General Contractor and any Project Participants.** If there is an Identity of Interest between any Project Participant and the contractor, a third party front-end analysis of the construction costs must be submitted by the selected Applicant with their plans and specifications. Additionally, industry standards for such Owner-provided construction services shall be used to determine reasonableness for the services.
- **Identity of Interest – Project Participants.** Identity of interests between any Project Participant, other than the Syndicator and the construction and/or permanent lenders is prohibited unless the financing terms and conditions are reasonable, customary and consistent with industry standards. The determination of whether or not such terms and conditions are reasonable and customary is at DCA's sole and absolute discretion.
- **Identity of Interest – Land Purchase.** For Applications where there is an Identity of Interest between the buyer and the seller for any site within the project, an appraisal no more than 6 months old and prepared by a certified appraiser must be submitted with the Application as a basis for the determination of the appropriate sales price. The appraisal must be prepared in accordance with DCA Appraisal Guide and must provide separate valuations for the land and existing buildings. The allowable land value will be determined by DCA at its discretion.

DCA policy requires that the Applicant obtain an appraisal of the value of a property if there is an identity of interest between the buyer and the seller. DCA will carefully scrutinize the sales price of land between related parties to ensure that the value has not been inflated. While the appraisal will be an indication of fair market value, DCA

will consider tax values as well as actual sales price established as indicative of the value of a property. All property values shall associate a land value as well as a value for the improvements. The appraisal shall conform to USPAP standards.

Properties which have been in the control of the applicant or a related party for a period of three (3) years or less will generally be valued at the acquisition cost at the time the related party obtained initial site control. Properties that have been rezoned, subdivided or modified will not be deemed to be of higher value based on the actions taken by the owner/ applicant or any related party.

- **Local Government Fees.** The development budget must include all water tap, sewer tap, impact and building permit fees. These local government fees cannot be part of General Requirements.
- **Management Fee.** The operating budget should specify the management fee. A management fee is required for all projects. DCA will review carefully the terms of the management agreement if the property is self managed or if there is a related party relationship between the Owner/Developer and the Management Company. DCA reserves the right to limit or adjust management fees which appear to be excessive.
- **Operating Deficit Reserve.** All developments must budget for and fund an operating deficit reserve in an amount of no less than four times the secured monthly debt service to lenders plus no less than four months projected operating expenses. The funding of the operating deficit reserve must be completed at or before Conversion. The operating deficit reserve must be held for the Compliance Period. For underwriting purposes, DCA will generally use the higher of either four months of operating expenses plus four months of debt service, or lender/Syndicator requirements. However, DCA reserves the right to evaluate the reasonableness of the amount and may make appropriate adjustments.
- **Permanent Debt Financing.** Permanent debt financing shall have a minimum term of 10 years.
- **Preliminary Commitment Letter Interest Rates.** DCA will evaluate financial feasibility for all applications (other than those with an assumption of existing fixed rate debt) using an interest rate specified in the preliminary commitment letter. If the interest rate is based upon a spread over an index rate, both the underlying index to be used and the spread should be identified in the preliminary commitment letter. Any other fees or premiums included in the “all-in” interest rate should also be clearly disclosed. DCA will utilize the applicable rate effective as of April 1, 2009. For noncompetitive projects, the effective date of the applicable rate will be the first business day of the full month preceding the Application submission date. The applicant must include documentation of the applicable index rate with the commitment letter. In the event that DCA determines that continued volatility in the market makes the interest rate expressed in the preliminary commitment submitted at

Application Submission unreasonable, DCA may request that the proposed lender provide an updated interest rate during Application review.

- **Rehabilitation Hard Costs.** Average per unit rehabilitation hard costs must equal or exceed \$20,000 for properties 20 years old or less and the average per unit rehabilitation hard costs equal or exceed \$25,000 for properties that exceed 20 years old. The total hard cost of any rehabilitation project must not exceed 90% of the as-completed unrestricted appraised value of the property. The costs of furniture, fixtures, construction of community buildings and common area amenities are not included in these amounts.
- **Rent-Up Reserves.** A reasonable rent-up reserve (excluding marketing costs) is required for all projects based on the estimated projected lease up deficit. Absent information to the contrary, DCA will assume that three months of projected operating expenses constitutes a reasonable reserve. After lease-up, any funds remaining in this reserve will be transferred to the ODR or will be utilized to pay any deferred developer fee.
- **Replacement Reserve.** A Replacement Reserve based on a Replacement Plan, is required for all projects awarded funding under the Plan and must be included in the operating budget. Contributions must be made to the reserve account, starting at or before the conversion date of the construction loan to permanent loan and must be funded for the term of the loan in accordance with the Replacement Plan. The following minimum contributions must be used:
 1. **Rehabilitation:** \$25.00 per unit per month (\$300 per unit per year)
 2. **New Construction:** \$20.00 per unit per month (\$240 per unit per year)
 3. **Single Family Units:** \$35.00 per unit per month (\$420 per unit per year)

Replacement Reserve funds may be used only for Capital Improvements (substantial improvements to the real estate such as re-roofing, structural repairs, or major projects to replace or upgrade existing furnishings, but not including replacement of individual appliances or minor repairs) and must not be used for general maintenance expenses. Less restrictive provisions required by Lenders should be approved by DCA.

Replacement Reserves must escalate at a rate of 3% per year. If the Replacement Plan indicates that an amount greater than the minimum reserve outlined above is necessary, then this greater amount will be required and must be escalated at a rate of 3% per year. DCA will, at its discretion, adjust the Replacement Reserve to reflect reasonable and customary capital and replacement expenditures. For Rehabilitation Projects, the physical needs assessment will also be reviewed in determining whether sufficient reserves have been established.

- **Revenue, Vacancy, and Expense Trends.** Revenue should be trended at 2% per year, operating expenses at 3% and vacancy and collection loss at 7%. DCA reserves the right to adjust vacancy and collection loss based on available data.
- **Soft Cost Contingency.** “Soft cost” or “total project” contingency, over and above the allowed construction contingency, will not be permitted as a budgeted line item.
- **State Tax Credit.** DCA will not allocate state tax credits to a project that shows a price less than the reasonable fair market price for credits. Applicants that indicate intent to purchase state tax credits for themselves will be required to provide additional information as to the use of the credit and the basis for the price.
- **Tax Credit Percentages.** During the competitive round, new construction and rehab credits will use an applicable tax credit percentage of 9%; for acquisition credits, the Applicable Credit Percentage for the month of April 2009 should be utilized.

For 4% credits (tax-exempt bond financing), the Applicable Credit Percentage for the month preceding the submission of the application for tax credits should be utilized.

- **Assumptions for Land Purchase.** Once a project has been funded and the appraisal received, the cost assumed for acquisition of land and existing buildings will be limited to the lesser of the sales price or the appraised “as-is” value.
- **Contract Bidding and Bid Bonds.** Owners are not required to solicit bids for construction contracts to be financed with DCA HOME Loans, and bid bonds are not required when bids are solicited, unless otherwise required by law. However, prior to closing a HOME Loan, DCA must approve both the general contractor and the contract documents. DCA will not close a HOME loan unless the approved contract with the general contractor has been fully executed.
- **Contractor Construction Cost Certifications.** Certifications audited by an independent certified public accountant must be submitted with the request for final draw. All certifications must be prepared in accordance with DCA requirements.
- **Construction Commencement.** All HOME projects must be able to commence construction within one year of commitment.
- **Construction Contingency.** To the extent feasible, DCA funds should be allocated to cover disbursements from the construction contingency. Regardless of how the contingency is funded, DCA must approve all change orders. Any unused balance in the construction contingency at the time of Conversion must be used to reduce the principal amount of the HOME Loan or the senior lender loan as appropriate, with the monthly principal and interest payments adjusted accordingly.

- **Construction Hard Cost Financing.** HOME Loan funds can be used to finance only construction hard costs, which include site development, unit/building construction, and contractors, services which include, general requirements (inclusive of payment and performance bonds), builders overhead and builder's profit. Soft costs, acquisition costs and other project costs must be financed by other financing sources. (Not applicable to HOME CHDO Predevelopment Loans.)
- **Construction Loan Recourse.** All construction loans will be full recourse against the borrower and/or the principals of the Ownership entity until conversion. DCA may require that one or more Principals of the Owner or Developer guarantee the completion of construction and payment of the HOME Loan until conversion.
- **Conversion.** Projects receiving HOME Loans must be scheduled to convert within twenty four-months of the HOME construction loan closing. Extension of conversion deadlines must be approved by DCA. Failure to convert within 24 months will be considered when rating Owner/Developers Performance and Capacity.
- **Developer Overhead and Consultant Fees.** The amount of the Developer's overhead and Consultant's Fee (if applicable) that can be drawn before Conversion must not exceed 50% of the total Developer Fee requested. None of the Developer's profit will be disbursed until Conversion. These disbursement conditions will be reflected in the HOME Loan documents and in an agreement with any other funding source(s) that will be funding these line items.
- **Draws.** HOME Construction Loan proceeds will be disbursed on a draw basis during the construction period. The HOME loan documents will describe the policies and procedures for obtaining a draw.
- **Final Draw.** The final payment of funds (not including any retainage) for a HOME construction loan shall be made at the time of substantial completion of construction, to be evidenced by submission of all items on the DCA form "Requirements for Final Draw", including but not limited to: final payment request on the AIA draw request form, copies of all final certificates of occupancy for all buildings, final lien waivers, construction Consultants' final inspection report and approval for release of funds. Approvals will not be granted if the proposed project does not meet compliance and architectural standards.
- **Fixed or Floating Unit Designation.** 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 commitment. 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 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 commitment, it will be deemed that the Applicant has elected to treat the HOME assisted units as “floating”.

- **HOME Units.** The number of HOME Assisted Units must be specified at initial Application. HOME rules create a floor for the number of HOME assisted units in each project. This floor is based on the proportional share of total eligible costs to be paid with HOME funds.

- **Identity of Interest**
 1. Contractor- If there is an Identity of Interest between any participant in the Ownership entity and the contractor or the Developer and the contractor, a third party front-end analysis of the construction costs will be commissioned by DCA during the DCA underwriting period. Additionally, industry standards for such Owner-provided construction services shall be used to determine reasonableness for the services.

 2. Other Provider – If there is an Identity of Interest between the Owners and any other provider of service, material, or supplies, such Owner-supplied services, materials, or supplies must not exceed the amount ordinarily paid for the service, material, or supply.

- **Inspections.** All costs incurred by DCA for DCA HOME property inspections will be the responsibility of the Borrower – including, but not limited to, Inspections at Draws and Final Draw and other inspections required if a property is improperly maintained.

- **Intercreditor Agreements.** When GHFA is not the only construction lender on a project, an intercreditor agreement shall be executed with the other lenders to ensure DCA’s required involvement in all significant aspects of the administration of the construction loans.

At a minimum, the intercreditor agreement should contain at least the following essential elements:

1. A development cost budget approved by all lenders indicating the source(s) of funding for each line item;
2. A process and timetable for reviewing and approving change orders to the construction contract;
3. A process and timetable for reviewing and approving draw requests, including site inspection and documentation standards;
4. A process and timetable for amending the approved development cost budget;
5. Limitations on disbursements for Developer Fee (Owner’s profit and risk) and Consultant fees; and,

6. Other matters, such as priority of each lender's interest in the collateral for the loans.

- **Loan Documents.** Written agreements shall be entered into between GHFA and the borrower evidencing, securing, and setting forth all of the terms and conditions of the HOME Loan. The Project Owner will also be required to execute all other closing or loan documents DCA deems necessary or desirable to document the HOME Loan satisfactorily.

- **Loan Terms.** The principal amount of the HOME construction loan and HOME permanent loan for a project will be the same. No interest will be charged during the construction loan period. The interest rate on the permanent loan will be no less than 1%. However, the interest rate on loans to finance projects located in areas designated as rural pursuant to the definitions in the QAP may be less than 1% in years 8 through 15 as required to ensure project feasibility. In no case may such interest rate fall below 0.50%. In years 16 through maturity, such interest rates shall not fall below 0.25%. DCA reserves the right to adjust this rate at its sole and absolute discretion during underwriting. Construction loan terms will be based upon the projected construction and lease-up schedule, as determined from the Application and DCA's underwriting. In general, permanent HOME Loans will be fully amortizing, with a maturity and amortization periods ranging from 15 to 35 years.

- **Non-Fully Amortizing Loans.** Non-fully amortizing Balloon Loans are available for projects in Rural areas. In such cases the term will be set by DCA with monthly payment and interest payments determined by DCA's underwriting projections and a balloon payment due at maturity. In the case of non-fully amortizing HOME Loans, the outstanding interest and a portion of the principal must be paid every year.
 1. **Excess Cash Flow.** For all permanent non-fully amortizing HOME Loans, in which the monthly installments of principal and interest are not sufficient to pay the HOME Loan in full over the loan term (a "non-amortizing HOME Loan") the borrower will deposit one-half of the cash flow from the project (after payment of secured debt service) into an interest bearing reserve account. The holder of the reserve account and the terms under which it will be held must be approved by DCA in its sole discretion.

Funds held in the reserve account will be used only for principal reduction of the HOME Loan or Capital Improvements, but only if such use is approved by GHFA in advance. Funds in the reserve account (with the exception of those approved by GHFA for Capital Improvements) must remain in the reserve account until the HOME Loan is repaid.

2. **Future Market Value.** In the case of a non-fully amortizing HOME Loan, DCA will require a projection from the appraiser of the future market value of the property at the maturity of the HOME Loan. This value will be used by DCA to

determine the likelihood of retirement of the outstanding balance by refinance or resale of the property. The future market value of the property must be greater than the projected outstanding DCA HOME Loan balance at maturity in order for the HOME Loan to be considered financially feasible.

- **Operating Deficit Reserve.** All developments financed in whole or in part with HOME funds must budget for and fund an operating deficit reserve in an amount of no less than four times the secured monthly debt service to lenders plus no less than four months projected operating expenses. If a financing source or equity partner requires higher levels of funding for this account, DCA will require the higher level of contribution to the account. The funding of the operating deficit reserve must be completed at or before Conversion. If drawn upon, no further distribution to Owners will be authorized until such time as the operating deficit reserve is restored to full funding.

The operating deficit reserve must be held by DCA or the senior lender and must remain in place for the term of the HOME Loan or the Period of Affordability, whichever is longer. With the exception of instances in which Fannie Mae is the sole senior lender, if DCA is a subordinate lender, but makes a HOME Loan in an amount greater than the senior lender, DCA must hold the reserves. All withdrawals from the operating deficit reserve must be requested in writing and approved in advance by DCA. Interest earned on the operating deficit reserve account shall be added to the account as an additional contribution and will not be credited against the required monthly cash contributions.

- **Over-Income Tenant Restrictions.** When DCA HOME Loans are used, additional over-income restrictions shall apply. Upon re-certification of a previously eligible tenant, if it is determined that the tenant's income exceeds 60% of AMI, then the tenant's rent must be increased to the lesser of: 30% of the tenant's adjusted annual income, HUD's fair market rent limitations, or the maximum amount allowable by the Code, not to exceed limitations set by state or local laws (if any) or to be decreased under the established rent floor.
- **Owner-Contractor Agreements.** If the Owner is not also the general contractor, all developments financed in whole or in part with a HOME Loan for construction must use an AIA Standard Form Agreement between Owner and contractor, with Standard Form Terms and Conditions. The contract can either be stipulated sum or cost plus a fee with a maximum.
- **Partnership Agreements.** The partnership agreement and any amendments must be fully executed prior to the HOME Loan closing. The Partnership Agreement and any amendments must reflect the terms of the HOME Loan transaction on all material points. If the Owner is a limited liability company, an operating agreement in a form satisfactory to DCA must be fully executed before the HOME loan closing. After the

HOME loan closing, the partnership agreement or the operating agreement (as the case may be) may not be further amended without GHFA's prior approval.

- **Payment and Performance Bonds.** A 100% payment and performance bond will be required for all developments funded with HOME Loans. The issuer of the bonds and the terms of the bonds must be satisfactory to DCA in its sole discretion. The cost of these bonds shall be included in the six percent general requirements limit for the construction contract (see "Builder's Cost Limitations" above).

When an Identity of Interest exists and the contractor cannot obtain a payment and performance bond, a waiver of the requirement for payment and performance bonds may be granted if a letter of credit or construction loan is utilized in lieu of the payment and performance bond.

A waiver will not be considered unless:

1. The Owner agrees to provide a construction completion guaranty and payment guarantee, secured by a letter of credit from a federally-insured institution with a value of at least 50% of the total construction cost, including profit and overhead; or
 2. The Owner agrees to secure a construction loan with private financing. GHFA will disburse funds during the construction period, in an amount not to exceed \$10,000 per construction draw.
- **Refinancing.** DCA HOME loans cannot be used to refinance or payoff an existing loan. Proceeds from permanent HOME loans can be used to pay off construction, bridge and predevelopment loans provided that the HOME assistance is part of the original financing package.
 - **Repayment.** Repayment schedules will vary depending upon projected economics of the development, but are essentially determined by analyzing available cash flow of the project at Application Submission and again during HOME Underwriting. In the event, DCA determines that the project is experiencing feasibility problems related to increases in real estate taxes, increases in property insurance, increases in utility allowances or decreases in fair market rents, the repayment schedule may be modified by DCA.
 - **Replacement Reserve Withdrawals.** All withdrawals from the Replacement Reserve account must be approved by DCA in advance. The senior lender must maintain the Replacement Reserve account in an FDIC insured financial institution. Interest earned on the Replacement Reserve account shall be added to the account as an additional contribution and will not be credited against the required monthly cash contributions.
 - **Retainage.** The loan agreement between the Project Owner and GHFA will provide that GHFA may retain 10% of the amounts that it has approved for each draw request ("the retainage") until the project reaches 50% completion. Thereafter GHFA will

retain 5% of the amount that it has approved for each draw request, resulting in a total retainage of 7.5% at Substantial Completion. The construction contract must provide and the contractor must acknowledge that GHFA has the right to withhold such retainage and that the retainage will not be disbursed until full and final completion of the construction.

- **Rural Projects.** DCA recognizes that Rural projects may involve greater financial risk than non-Rural projects. While a sufficient economic base to support a proposed Rural project may exist at the time of Application, the loss of a predominant industry or employer, or other extenuating circumstances out of the control of the Applicant could result in a major economic impact on the project. To mitigate this increased financial risk, DCA will consider loan modifications during the course of the HOME Loan for projects which have suffered a demonstrated major economic impact as a result of the loss of a predominate industry or employer or other extenuating circumstances. The loan modification may be structured to allow the Owners to maintain Ownership and control of the property and to continue providing affordable housing to the extent it is needed in the community.
- **Stored Materials.** HOME funds will not be used to fund the cost of stored materials. Stored materials are considered to be materials that will not be incorporated into the construction within the subsequent thirty (30) days from the date of any draw request.
- **Subsidy Layering Review.** DCA will perform subsidy-layering analysis for HOME funded projects prior to the time of preliminary commitment for projects receiving tax credits from the state's low income housing tax credit allocation. In cases where the results of a DCA subsidy layering review indicated that there would be excess assistance, DCA will reduce the amount of the HOME loan to eliminate the excess. In addition, a subsidy layering review is also conducted during HOME loan underwriting prior to the closing of the HOME loan.
- **Subordination.** The decision whether to subordinate DCA's regulatory agreement and/or lien position to a private lender's security deed will be made only after DCA considers the individual circumstances of each HOME Loan. Factors that will be considered include, but are not limited to, the senior loan amount, DCA's HOME Loan amount, debt coverage ratio, private lender's interest rates, loan maturity, type of loan, etc. In no instance will DCA subordinate to a public entity's loan.
- **Syndicator Asset Management Fee.** Syndicator asset management fees will be paid from the "after debt service" cash flow less the cash flow payments to DCA on the HOME permanent loans.
- **Tri Party Agreements.** A Tri Party Agreement will be required for all DCA HOME Loan transactions involving another permanent lender that is not financing construction costs. The Tri Party Agreement must clearly state, at a minimum, that the permanent lender has reviewed and approved the DCA HOME Loan documents, plans and specifications, development budget, tenant lease, environmental

assessment, construction contract, title exception legal description, management agreement, partnership agreement, borrower's certificate of limited partnership, survey, appraisal, form of subordination agreement, and items necessary to satisfy the permanent commitment regarding completion of construction of the improvements of the collateral property.

- **General Contractor** – General Contractors must be approved by DCA prior to commencing work on either a tax credit or HOME funded property. Request for approval of a General Contract should include the following:
 - A resume on the General Contractor's Construction Experience that demonstrates a history of having performed work of the scope and type required for the development (number of projects, number of units, location of projects, capacity of involvement);
 - Three (3) letters of reference with contact information (name, address, email, phone and facsimile numbers);
 - Affidavit that the Contractor is not on the U.S. Department of Housing and Urban Development (HUD) list of contractors debarred or not approvable for prior noncompliance with HUD or DCA requirements;
 - A statement as to whether the General Contractor has any lawsuits pending, have ever declared bankruptcy or has any pending unresolved claims;
 - A statement as to whether the General Contractor has been bonded within the last three (3) years; If bonded, amount and by what entity.
 - The General Contractor's Schedule of Work in Progress which details current projects under construction and estimated timeline for completion;
 - General Contractor's Estimate of Construction Time for the project;
 - Evidence of the ability to obtain payment and performance bonds each in the amount of 100% of the total construction contract. If an Identity of Interest exists and the contractor cannot obtain a payment and performance bond, a waiver of the requirement for payment and performance bonds may be granted. In the form of a letter of credit in the amount of 50% of construction costs (including overhead and profit) or the owner obtains private construction financing from a financial institution in the amount of the GHFA loan.
 - A complete AIA A305 General Contractor Qualification statement;
 - A positive Dun & Bradstreet report (ordered by DCA. The contractor will be invoiced for the fee); and
 - Evidence that the General Contractor carries Comprehensive General Liability and Worker's Compensation insurance in the amounts specified in the Construction Contract or the DCA Insurance Manual, whichever is the most restrictive.
 - Requests should be submitted to DCA at least 60 days prior to the commencement of work.

XX. 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 following is a list of documents that must be submitted by the date indicated in the commitment letter and or Qualified Allocation Plan.

- Site and Neighborhood Standards
- Environmental Review
- HOME Workbook
- Noise Studies
- Site zoning
- Operating Utilities
- Public Water/Sanitary Sewer/Storm Sewer
- Site Access
- Market Study
- Relocation Plan
- Initial Pro forma (Application)
- Preliminary Financing Commitments
- Organizational Chart
- Contract Addendum
- Compliance History and Project Participant Experience
- Affirmative Marketing Plan
- Minority/Women's Business Enterprise
- Contractor's Qualification Statement on AIA Form A305
- Development site Soils Report
- Detailed project schedule of values prepared by the general contractor
- Project construction schedule prepared by the general contractor
- Site Survey signed and stamped by a surveyor licensed in Georgia

Step 2 project plans and specifications conforming to the Architectural Guide
(Application Manual)
Proposed agreement between the project owner and the project architect on AIA
Form B141
Proposed agreement between the project owner and the general contractor on AIA
Form A101
Architect statement regarding compliance with 504, ADA and Fair Housing

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

The following documents must be submitted by the Applicant to the assigned DCA HOME Underwriter within 30 days of DCA approval of required architectural documentation.

Updated Financial Pro Forma prepared by Applicant
Updated Organizational Chart showing all Ownership and Development entities
and principals
Final Commitment letters for all Equity and Debt Providers
Proposed Management Contracts
Proposed Consulting Agreements
Executed General Contractor Contract and Amendments
Executed Project Architect Agreement and Amendments
Current audited Financial Statements for Owner, Developer, and General
Contractor prepared in accordance with DCA requirements
Proposed Development Agreement
Updated Statement regarding Debarred Participants and Contractors

DCA Insurance Approval form from Asset Management
Copy of Executed Carryover allocation
Executed DCA Inspection Agreement
Resumes of all principals of Owner and Developer
CHDOs must submit an updated letter from DCA showing that the CHDO is
current

All closings must occur on or before September 1, 2010.

C. Due Diligence

Prior to closing, the DCA underwriting department 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. A list of the plans and drawings
- 21. The executed development agreement
- 22. The executed management agreement
- 23. Executed Consulting Agreements
- 24. Senior lender loan documents, if applicable
- 25. Junior lender loan documents, if applicable

26. Bridge lender loan documents, if applicable
27. Insurance certificates or policies of the borrower (liability only)
28. Insurance certificates or policies of the general contractor (builder's risk and liability only)
29. Opinion letter(s) of borrower's counsel