

**Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, and Subchapter F, Single Family Development Program**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, and Subchapter F, Single Family Development Program. The purpose of the proposed repeal is to eliminate the current rule while replacing it with a more current version of the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

**a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to how the Department will reallocate financial assistance.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand or contract the applicability of an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect the state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 19, 2026, through July 20, 2026, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Abigail Versyp at [abigail.versyp@tdhca.texas.gov](mailto:abigail.versyp@tdhca.texas.gov). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, July 20, 2026.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed action affects no other code, article, or statute.

10 TAC Chapter 23, Single Family HOME Program

Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds

Subchapter F, Single Family Development Program

**Attachment 2: Preamble, including required analysis, for proposed new 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, and Subchapter F, Single Family Development Program**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, and Subchapter F, Single Family Development Program. The purpose of the proposed rule is to make clarifying updates, to update threshold requirements for necessary cash reserves to operate HOME Program activities, and to update the requirements for the Single Family Development Program to reduce administrative burden and align with existing loan closing procedures.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset. While the requirements for cash reserves are increased, these reserves are utilized to pay costs temporarily prior to reimbursement by the Department.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to how the Department will reallocate financial assistance.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.
6. The new section will not expand or contract an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be an updated and clearer rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the proposed action and also requests information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis from any person required to comply with the rule action or any other interested person. REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 19, 2026, through July 20, 2026, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Abigail Versyp, ATTN: Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to [abigail.versyp@tdhca.texas.gov](mailto:abigail.versyp@tdhca.texas.gov). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, July 20, 2026.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new section affects no other code, article, or statute.

## **CHAPTER 23 SINGLE FAMILY HOME PROGRAM**

### **SUBCHAPTER B AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS**

#### **§23.20 Availability of Funds and Regional Allocation Formula**

Funds made available through an open Application cycle and subject to regional allocation formula shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide.

#### **§23.21 Application Forms and Materials and Deadlines**

(a) The Department will produce an Application to satisfy the Department's requirements to be qualified to administer HOME activities. The Application will be available on the Department's website.

(b) The Department must receive all Applications by the deadline specified in the NOFA.

#### **§23.22 Application Review Process**

(a) Contract award review process for open Application cycles. An Application received by the Department in response to an open Application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." Application acceptance dates may be staggered under an open Application cycle to prioritize Applications which propose to serve areas identified in Tex. Gov't Code §2306.127 as priority for certain communities. An Application with outstanding administrative deficiencies under this section, may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(b) Reservation System Participant review process. An Application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under Chapter 1, Subchapter C of this Title, as amended or superseded, concerning Previous Participation Review of Department Awards, and not denied under this section, will be drafted and processed in the order in which it was accepted to be executed and made effective.

(c) Administrative deficiency review process. The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses must be submitted electronically to the Department. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff may, in good faith, provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding

the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Executive Director or authorized designee, and Board, as applicable.

(d) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(e) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., central time, on the 14th day following the date of the deficiency notice, the application may be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the RSP Agreement or Contract start date. Applicants that have been terminated may reapply.

### **§23.23 General Threshold Criteria**

General Threshold. All Applicants and Applications to administer a HOME Program award from the Department must submit or comply with the following:

(1) An Applicant certification of compliance with state rules promulgated by the Department, and federal laws, rules and guidance governing the HOME Program as provided in the Application.

(2) A Resolution from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application specifying the NOFA under which funds are requested for Contract award Applications;

(B) Commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;

(C) Source of funds for Match obligation and Match amount to be contributed as a percentage of Direct Activity Costs, if applicable;

(D) Title of the person authorized to represent the organization and who also has signature authority to execute a Contract and grant agreement or loan documents, as applicable, unless otherwise stated; and

(E) Date that the resolution was passed by the governing body, which must be within six months preceding Application submission for Reservation System Participation Agreement Applications, and no earlier than the date of the Department's Governing Board approval of the NOFA for Contract award Applications.

(3) An Applicant must be registered in the System for Award Management (SAM) and have a current Unique Entity Identification (UEID) number.

(4) Service Area. Applicants must include the Service Area proposed for the Contract or RSP Agreement for all Activity types. Administrators must state whether the Service Area is limited to only certain cities within any county in the proposed Service Area.

(A) The Service Area for TBRA must include the entire rural or urban area of a county as identified in the Application, excluding Participating Jurisdictions. However, Service Areas must include Participating Jurisdictions as applicable if the Agreement includes access to the Persons with Disabilities set-aside; or

(B) The Service Area may be limited to the boundaries of the jurisdiction of the Applicant if the Applicant for TBRA is a unit of local government.

(5) Match. The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date of submission of the Application to determine the applicable Match for cities with a population of less than 5,000 persons. The Department shall use the population figures from the most recent Population Estimates from the U.S. Census Bureau's QuickFacts for all counties and for cities with a population that exceeds 5,000 persons. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this paragraph. Such incentives may be established as selection criteria in the NOFA.

(A) Excluding Applications under the disaster relief and persons with disabilities set-asides, Match shall be required for Homeowner Reconstruction Assistance (HRA), ~~and~~ Homebuyer Assistance with New Construction (HANC), and Single Family Development (SFD) based on the tiers described in clauses (i) and (ii) of this subparagraph:

(i) Zero percent of Direct Activity Costs, exclusive of Match, is required as Match when:

(I) the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(II) When the Service Area does not include the entire unincorporated area of a county and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(ii) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 25 percent.

(B) Applicants that charge customary fees related to the construction of single-family housing must waive all fees that otherwise apply to any HOME Activity. These fee waivers must be reported as Match, regardless of whether Match is otherwise required based on population and activity type. Applicants must submit their schedule of fees related to construction, if applicable, with their Application for a Contract or Reservation System Participation Agreement.

(6) Cash Reserve Threshold Requirements. Documentation, as described in subparagraphs (A) and (B) of this paragraph, must be submitted at the time of Application that demonstrates that the Applicant has at least ~~\$80~~\$100,000 in cash reserves if the Application includes construction Activities, and at least ~~\$30~~\$50,000 in cash reserves if the Application is for Tenant-Based Rental Assistance only. The cash reserves may be utilized to facilitate administration of the program, and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) evidence of an available line of credit or equivalent tool in an amount equal to or exceeding the requirement in this paragraph.

~~(7) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.~~

~~(8) Applications proposing development using the Community Housing Development Organization (CHDO) set-aside must submit an Application for CHDO certification. Applicants must meet the requirement for CHDO certification as defined in §13.2 of this Title (relating to the Multifamily Direct Loan Rule Definitions).~~

(8) In addition to the requirements in §1.21 (relating to Action by Department if Outstanding Balances Exist), Applicants with closed unresolved findings in accordance with 10 TAC §20.14(h) which include questioned costs in excess of \$5,000 from a monitoring that occurred within three years from the date of Application submission are ineligible until questioned costs have been repaid.

(9) Other Threshold and/or Selection criteria for this Activity may be outlined in the NOFA.

(10) An Application must be substantially complete when received by the Department. An Application will be terminated if an entire tab of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all-inclusive list of deficiencies in the Application.

#### **§23.24 Contract Benchmarks and Limitations**

(a) Contract Award Funding Limits. Limits on the total amount of a Contract award will be established in the NOFA.

(b) Contract Award Terms. Homeowner Reconstruction Assistance awards will have a Contract term of not more than 21 months, exclusive of any applicable affordability period or loan term. Single Family Development awards will have a Contract term of not more than ~~24~~36 months, exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance awards will have a Contract term of not more than 36 months.

(c) Contract Award Benchmarks. Administrators must have attained environmental clearance for the contractually required number of Households served within six months of the effective date of the Contract. Contract Administrators must submit to the Department complete Activity setup information for the Commitment of Funds of all contractually required ~~Households~~Activities in accordance with the requirements herein within ~~nine~~twelve months from the effective date of the Contract. All remaining funds will be deobligated and reallocated in accordance with Chapter 1 of this Title relating to Reallocation of Financial Assistance.

(d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation that occurs within twelve months from the effective date of a Contract does not limit an Administrator's ability to participate in an open application cycle.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.

(f) Pre-Contract Costs.

(1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

(2) A ~~Community Housing Development Organization~~ Developer may be reimbursed for Predevelopment Costs as defined in this Chapter for an Activity funded under Single Family Development.

(3) In no event will the Department reimburse expenses incurred more than six months prior to Governing Board approval of the Administrator's award.

(g) Amendments to Contract awards will be processed in accordance with Chapter 20 of this Title, relating to Single Family Programs Umbrella Rule.

### **§23.25 Reservation System Participant (RSP) Agreement**

(a) Terms of Agreement. The term of an RSP Agreement will not exceed 36 months. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this Chapter in effect as of the date of submission by the Administrator.

(b) Limits on Number of Reservations. Except for Activities submitted under the Disaster set-aside, RSP Administrators may have no more than five Reservations per county within the RSP's Service Area submitted to the Department for approval at any given time, except that Tenant-Based Rental Assistance Reservations submitted for approval under an RSP Agreement is limited to 30 at any given time.

(c) Extremely Low-Income Households. Except for Households submitted under the Disaster set-aside, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30 percent AMFI for the county in which they will reside or have an income that is lower than the statewide 30 percent income limit without adjustments to HUD limits.

(d) Match. Administrators must meet the Match requirement per Activity approved for assistance. Match may not be transferred from one Activity to another Activity.

(e) Completion of Construction. For Activities involving construction, construction must be complete within 12 months from the Commitment of Funds for the Activity, unless amended in accordance with subsection (g) of this section.

(f) Household commitment contract term. The term of a Household commitment contract may not exceed 12 months, except that the Household commitment contract term for Tenant-Based Rental Assistance may not exceed 24 months. Household commitment contracts may commence after the end date of an RSP Agreement only in cases when the Administrator has submitted a Reservation on or before the termination date of the RSP Agreement.

(g) Amendments to Household commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.

(1) The Executive Director's authorized designee may approve an amendment that extends the term of a Household commitment contract by not more than six months, except that the term of a Household commitment contract for Tenant-Based Rental Assistance may not be extended to exceed a total Household commitment contract term of 24 months.

(2) The Executive Director's authorized designee may approve one or more amendments to a Household commitment contract to:

(A) extend the Construction Completion Date by not more than six months;

(B) extend the term of rental subsidy up to a total term of 24 months;

(C) extend the draw period by not more than three months after the Construction Completion Date or termination of rental subsidy; or

(D) to increase Activity funds within the limitations set forth in this Chapter.

(3) The Executive Director may approve amendments to a Household commitment contract, except amendments to extend the contract term of a Household Commitment contract by more than 12 months.

(h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six months prior to the effective date of the RSP Agreement.

(i) Administrator must remain in good standing with the Department, the state of Texas, and HUD. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

### **§23.26 General Administrative Requirements**

Unless otherwise provided in this Chapter, the Administrator or Developer must comply with the requirements described in paragraphs (1) - (~~21~~22) of this section, for the administration and use of HOME funds:

(1) Complete training, as applicable.

(2) Provide all applicable Department Housing Contract System access request information and documentation requirements.

(3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor's Office of Texas, the Comptroller of Public Accounts, or any of their duly authorized representatives, throughout the applicable record retention period.

(4) For non-Single Family Development Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) Develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

(B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;

(C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) Ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) Ensure that building construction contractors are procured in accordance with State and Federal regulations for single family HOME Activities;

~~(F) To the extent that a set of architectural plans are generated and used by an Administrator for more than one Single Family Housing Unit, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect or licensed engineer for the reuse of the plans on that subsequent specific site, as demonstrated by a contract with the third party;~~

~~(G)~~ Ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

~~(H)~~ Ensure that any Request for Proposals or Invitation for Bid include:

(i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;

(ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;

(iii) a conflict of interest disclosure;

(iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;

(vi) must not have a term of services greater than five years; and

(vii) for competitive proposals, disclose the specific election/evaluation criteria.

~~(5)~~ ~~(F)~~ To the extent that a set of architectural plans are generated and used by an Administrator or Developer for more than one Single Family Housing Unit, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect or licensed engineer for the reuse of the plans on that subsequent specific site, as demonstrated by a contract with the third-party;

~~(56)~~ In instances where a potential prohibited conflict of interest exists, follow procedures to submit required documentation to the Department sufficient to submit an exception request to HUD for any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, a description of how the public disclosure was made, and an

attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household impacted by the conflict of interest regulations until HUD has granted an exception to the conflict of interest provisions.

(~~6~~7) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable.

(~~7~~8) Develop and comply with written Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan.

(~~8~~9) Complete Applicant intake and Applicant selection. Notify each Applicant Household in writing of either acceptance or denial of HOME assistance within 60 days following receipt of the intake application.

(~~9~~10) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350.3 (or most recent version), and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income. The Single Family HOME Program will implement the applicable requirements of the Housing Opportunity Through Modernization Act (HOTMA) not later than January 1, ~~2026~~2027.

(~~10~~11) Complete an updated income eligibility determination of a Household if the date of certification is more than six months prior to the Date of Assistance.

(~~11~~12) For single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom. The inspection must be signed and dated by the inspector and the Administrator. The photographs submitted with the initial inspection should evidence the deficiencies noted on the initial inspection and must clearly show the entire property, including other buildings located on the property.

(~~12~~13) Submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds.

(~~13~~14) Submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Activities when program documents are not executed timely, in the Department's sole and reasonable discretion.

(~~14~~15) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity or development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable.

~~(1516)~~ Submit any Program Income received by the Administrator or Developer to the Department within 14 days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Activity address and Activity number, and must be sent to the Department's accounting division.

~~(1617)~~ Submit required documentation for project completion reports no later than 60 days after the completion of the Activity, unless this term is extended through amendment.

~~(1718)~~ For Contract awards, submit certificate of Contract Completion within 14 days of the Department's request.

~~(1819)~~ Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department.

~~(1920)~~ Submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

~~(2021)~~ Provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

~~(2122)~~ If required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award. Failure to include the bonding requirement in subcontracts may result in termination of the RSP Agreement.

### **§ 23.27 Project Cost Limitations.**

(a) Direct Activity Costs for construction, exclusive of Match funds, are limited to the amounts described in this section; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of Contract execution and may not be adjusted through this process. Current limit amounts under this section will be reflected on the Department's website.

(b) Reconstruction and New Construction of site-built housing: the lesser of \$150 per square foot of conditioned space or \$175,000; or for Households of five or more Persons that require a four-bedroom unit, the lesser of \$150 per square foot of conditioned space, or \$200,000; and

(c) Direct Activity Costs for acquisition and placement of a unit of Manufactured Housing, including demolition or removal of existing housing and exclusive of Match funds, is limited to \$125,000.

(d) Direct Activity Costs for conversion of a Contract for Deed, including closing costs paid from HOME funds, is limited to \$40,000.

(e) In addition to the Direct Activity Costs allowable under subsections (b) and (c) of this section, additional funds in the amount of \$15,000 may be used to pay for each of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process or abatement of hazardous conditions on the site other than those identified during the Environmental

review process that would preclude the entire assisted property from meeting required property standards;

(2) Installation of an aerobic septic system; and

(3) Homeowner requests for accessibility features for a household member who is a person with disabilities.

(f) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Acquisition or refinance in conjunction with New Construction of site-built housing or placement of an MHU: no more than \$2,500 per housing unit;

(2) Replacement with an MHU: no more than \$10,000 per housing unit;

(3) Reconstruction or New Construction of site-built housing: \$15,000 per housing unit; and

(4) For HRA, Rreasonable and necessary third-party costs incurred in connection with required housing counseling, appraisals, title reports or insurance, tax certificates, recording fees, surveys, and first year hazard and flood insurance.

(g) Project Cost Limitations for Tenant-Based Rental Assistance Activities are limited as described in Subchapter E of this Chapter.

(h) Projects Costs must not exceed the federal subsidy limit, unless waived by HUD.

(i) Unless waived by HUD, the purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing with an as-built appraisal.

(j) Administrative Cost Limitations.

(1) Funds for administrative costs are limited to no more than five percent of the Direct Activity Costs, exclusive of Match funds, for HRA.

(2) Funds for administrative costs are limited to no more than eight percent of the Direct Activity Costs, exclusive of Match funds, for CFD and HANC.

(3) For TBRA, Administrators must select one method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. All costs must be reasonable and customary for the Administrator's Service Area. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional one percent of Direct Activity Costs if Match is provided in an amount equal to five percent or more of Direct Activity Costs:

(A) Funds for Administrative costs are limited to four percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to \$1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including ~~recertification~~ revisions, and conducting ~~Housing Quality Standards (HQS)~~ property standards inspections. All costs must be reasonable and customary for the Administrator's Service Area; or

(B) Funds for Administrative costs are limited to ten percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

### **§ 23.28 Design and Quality Requirements.**

(a) Each Single Family Housing Unit constructed with HOME funds must meet the design and quality requirements as described in paragraphs (1)- (6) of this subsection, and plans must be certified by a licensed architect or engineer:

(1) Current applicable International Residential Code, local codes, ordinances, and zoning ordinances in accordance with 24 CFR §92.251(a);

(2) Requirements in Chapters 20 and 21 of this Title;

(3) Units must include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; and Exhaust/vent fans (vented to the outside) in bathrooms; ~~Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs.~~ The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved-off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car must be present;

(4) ~~Units must contain no less than two bedrooms.~~ Each Single Family Housing Unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(5) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self-contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

~~(6) Units must be no less than 800 total net square feet for a two bedroom Single Family Housing Unit; no less than 1,000 total net square feet for a three bedroom and two bathroom Single Family Housing Unit; and no less than 1,200 total net square feet for a four bedroom and two bathroom Single Family Housing Unit.~~

~~(7)~~ An exception to paragraphs ~~(23)~~ - ~~(65)~~ may be requested by the Household and approved by the Division Director prior to submission of the Activity. A request for an exception must include the specific feature or design requirement for which the exception is requested, and must include justification for the exception.

(b) Units selected by Households assisted under the Tenant-Based Rental Assistance Program must be inspected for compliance with Housing Quality Standards, as established by HUD before occupancy and any subsequent inspection when the Commitment Assistance Date is on or before October 1, 2026. Thereafter, rental units must be inspected using the National Standards for the Physical Inspection of Real Estate, as modified for the HOME program. ~~meet the applicable federal requirements for the HOME Program as of the date of initial occupancy and any subsequent inspection.~~

### **§23.29 Resale and Recapture Provisions**

(a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).

(b) To ensure continued affordability, the Department has established the recapture provisions described in paragraphs (1) - (4) of this subsection and further defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented, leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.

(2) In the event that a federal affordability period is required and the assisted property is sold, including through a short sale, deed in lieu of foreclosure, or foreclosure, prior to the end of the affordability period, the Department will recapture the available amount of net proceeds based on the requirements of 24 CFR §92.254, and as outlined in the State's One Year Action Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income purchaser may assume the existing HOME loan and assume the recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the low-income purchaser. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

(4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.

(c) The Department has established the resale provisions described in paragraphs (1) - (7) of this subsection, only in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).

(1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.

(2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.

(3) In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified low-income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

(4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.

(5) The Household is required to sell the home at an affordable price to a reasonable range of low-income homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent AMFI and meet all program requirements.

(A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in excess of the amount required by the loan, and any documented capital improvements in excess of \$500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.

(7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.

(d) In the event the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the penalty amount for noncompliance under the conditional grant agreement may be waived, if the new Household qualifies for assistance in accordance with this subchapter. If the new Household does not qualify for assistance in accordance with this Chapter, forgiveness of installment payments will cease and repayment of scheduled payments under the loan will commence and continue until maturity or payment of a penalty amount under the conditional grant agreement may be required in accordance with the terms of the conditional grant agreement.

(e) Forgiveness of installment payments under the loan may continue until maturity or the penalty amount under conditional grant agreement may be waived by the Department if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this Chapter.

(f) Grants subject to conditional grant agreements are not subject to the entire penalty amount in the event the property is no longer the Principal Residence of any Household member.

## SUBCHAPTER F SINGLE FAMILY DEVELOPMENT PROGRAM

### §23.60 Single Family Development (SFD) General Requirements

(a) Program funds under this subchapter may be used for the Development of new single family housing for homeownership that complies with affordability requirements as defined at 24 CFR §92.254. Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in § 23.27, Project Cost Limitations.

(b) In addition to the requirements of Chapter 1, Subchapter B of this Title and Subchapter B of this Chapter, Applicants for an award of Single Family Development funds must submit a proposed development plan. The proposed development plan must be consistent with the requirements of this Chapter, all other federal and state rules, and include:

(1) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(2) a FEMA Issued Flood Map that identifies the location of the proposed site(s) evidencing that the housing unit(s) will be outside of the 100-year floodplain;

(3) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(4) evidence that the site is zoned appropriately for the proposed housing, including a map with the site and zoning notated, or a letter from the local jurisdiction stating that the site is zoned for single family residential construction;

(4~~5~~) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least 180 days from the date of application submission; ~~and~~

(5~~6~~) an "as vacant" appraisal of at least one of the proposed lots if the Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must not exceed the appraised value of the vacant lot at the time of Activity submission. The appraised value of the lot may be included in the sales price for the homebuyer transaction; ~~and~~

(7) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. A title commitment must include the complete legal description, copies of covenants, conditions and restrictions, easements, and any supplements. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(8) Identification of Lead-Based Paint (LBP) if site remediation is needed;

(9) A subdivision plat that includes each proposed site on which housing is to be developed;

(10) An Elected Officials and Neighborhood Organizations form, including evidence of request for neighborhood organizations submitted at least 14 days prior to the Application submission date;

(11) a commitment, term sheet, or letter of interest/intent for each non-TDHCA source of funds to be provided for either interim construction or permanent mortgage financing for the Development;

(12) a completed market assessment demonstrating demand;

(~~2~~13) A budget that includes the amount of Activity funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed; and

(14) required certifications as described in the Application.

(6c) The Department may prioritize Applications or otherwise incentivize Applications that:

(1) ~~partner with other lenders~~ include other lenders that commit to provide some or all of the permanent purchase money financing for the purchase of Single Family Housing Units developed with funds provided under this subchapter; or-

(2) include a self-help component as defined in the Notice of Funding Availability.

(ed) Program funds under this subchapter are only eligible to be administered by a CHDO certified as such by the Department if administered utilizing the CHDO set-aside. A separate grant for CHDO operating expenses may be awarded to CHDOs that receive a Contract award if funds are provided for this purpose in the NOFA. A CHDO may not receive more than one grant of CHDO operating funds in an amount not to exceed \$50,000 within any one year period, and may not draw more than \$25,000 in CHDO operating funds in any twelve month period from any source, including CHDO operating funds from other HOME Participating Jurisdictions.

(de) Direct Activity Costs are limited to the costs described in § 23.27, Project Cost Limitations.

(ef) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs. For self-help housing, total hard construction costs include the value of donated labor and materials calculated in accordance with Match requirements for the HOME Program, except that the source of the donated labor is not limited to parties eligible to provide Match. The developer fee will be reduced by one percent per month or partial month that the construction period exceeds the original term of the construction period financing.

(fg) General Contractor Fees are limited to 15 percent of the total hard construction costs. The General Contractor is defined as one who contracts for the construction of an entire development Activity, rather than a portion of the work. The General contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in paragraphs (1) and (2) of this subsection:

(1) Any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(2) If more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

~~(gh)~~ Construction period financing for each unit shall be structured as a zero percent interest loan with a ~~12~~24-month term. The maximum construction loan amount may not exceed the total development cost less developer fees/profit, closing costs associated with the permanent mortgage financing, and ineligible Activity costs. ~~Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.~~

(i) Prior to the expiration of the interim construction loan term, the property must be sold to a qualified homebuyer. If the housing unit is not sold to an eligible homebuyer within 12 months of the Construction Completion Date, additional funding, closings, and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

~~(hj)~~ In the instance that the total development cost equals more than 100 percent of the appraised value, the portion of the development cost that exceeds 100 percent of the appraised value ~~will~~may be granted to the ~~developer~~Developer to buy down the purchase price. Reasonable and customary seller closing costs may be ~~provided with HOME funds as a grant to the Developer~~included in the interim construction loan and deducted from the developer fee at the time of sale to a qualified homebuyer.

~~(ik)~~ Direct assistance to ~~the a qualified homebuyer~~ may be provided by the Department, and will be structured as a first and/or second lien loan(s) must comply with requirements of Chapter 20 of this title:

(1) A ~~first lien~~, fully amortizing, repayable loan with a ~~term up to 30-year~~s term may be provided by the Department and will initially be evaluated at zero percent interest. The ~~Department's~~ loan amount will not exceed the ~~total HOME~~total HOME funded portion of the development cost combined with reasonable and customary buyer's closing costs paid with HOME funds. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent, and such result may deem the applicant as overqualified for assistance.

(A) The total Mortgage Loan may include costs incurred for the total development cost and Mortgage Loan Closing Costs, exclusive of Match funds.

(B) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

~~(C) For buyers whose income is equal to or less than 50 percent AMFI, t~~The minimum required housing payment shall be no less than 15 percent of the household's gross Qualifying Income income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required housing payment shall be no less than 20 percent of the household's gross income.

(2) Down payment and closing costs assistance is limited to the lesser of down payment required by a third-party lender and reasonable and customary buyer's closing costs, or the amount required to ensure affordability of the ~~HOME~~permanent financing. Down payment and closing cost assistance may not exceed ten percent of the total development cost and shall be structured as a five-~~or ten~~-year deferred, forgivable loan with a subordinate lien, in accordance with the required federal affordability period.

(3) A first lien ~~conventional~~ mortgage not provided by the Department must meet the mortgage financing requirements outlined in Chapter 20 of this Title.

(jl) Earnest money is limited to no more than \$1,000, which may be credited to the homebuyer at closing, but may not be reimbursed as cash.

(km) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within 90 days of the end of the construction period, all additional funding, closings, and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(ln) The Division Director may approve the use of alternative floor plans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

(mo) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

### **§23.61 Single Family Development (SFD) Administrative Requirements**

~~(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment of Funds as described in paragraphs (1) – (12) of this subsection: (7) Identification of Lead-Based Paint (LBP) if site remediation is needed; (62) Project cost estimates, cConstruction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;~~

~~(9) Evidence that the housing unit will be located outside the 100-year floodplain;~~

(a) Interim Construction Loan Closing. Interim construction loan closing must occur not more than 18 months from the date of Contract execution. Prior to closing the interim construction loan, the Developer must submit:

(1) Construction contracts, and other construction documents, including verification of adequate builder's risk insurance, that are necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

~~(12) Site-specific aAppraisal, which includes post construction improvements prepared by a licensed real estate appraiser; and~~

(3) Site-specific survey that meets the requirements of Chapter 20 of this title;

(4) Verification of environmental clearance; and

~~(5) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Title cCommitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and~~

~~(1) Head of Household name and address of housing unit for which assistance is being requested;~~

~~(2) A budget that includes the amount of Activity funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of five percent of hard construction costs~~

~~for contingency items, proposed Match to be provided, evidence that Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;~~

~~(3) Verification of environmental clearance;~~

~~(4) A copy of the Household's intake application on a form prescribed by the Department;~~

~~(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;~~

~~(6) Project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;~~

~~(7) Identification of Lead-Based Paint (LBP) if site remediation is needed;~~

~~(8) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;~~

~~(9) Evidence that the housing unit will be located outside the 100-year floodplain;~~

~~(10) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;~~

~~(11) Appraisal, which includes post construction improvements; and~~

~~(12) Any other documentation necessary to evidence that the Activity meets the program requirements.~~

~~(b) Construction Loan closing. The Administrator must submit the documents described in paragraphs (1) – (2) of this subsection, with a request for the preparation of loan closing with the request for the Commitment of Funds:~~

~~(1) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and~~

~~(2) Within 90 days after the loan closing date, the Administrator must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within 90 days after the loan closing date will result in the Department withholding payment for disbursement requests.~~

~~(c) Disbursement of interim construction loan funds. The Administrator-Developer must comply with the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator-Developer compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:~~

~~(1) Within 90 days after the interim construction loan closing date, the Administrator-Developer must submit to the Department the original recorded deed of trust and transfer of lien interim construction loan~~

~~documents, if applicable.~~ Failure to submit these documents within 90 days after the loan closing date will result in the Department withholding payment for disbursement requests;:

~~(12) For construction costs, a~~ An interim construction binder advance endorsement not older than the date of the last disbursement of funds or 45 days, whichever is later; ~~For release of retainage a down date endorsement to the mortgagee policy issued to the homebuyer dated at least 40 days after the Construction Completion Date;~~

(23) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each ~~Administrator~~ Developer must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(34) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and ~~Administrator or Developer~~;

(45) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(56) Original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(67) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request ~~Administrator or Developer~~ to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to ~~Administrator or Developer~~ as may be necessary or advisable for compliance with all Program Requirements; and

~~(7) Table funding requests must be submitted to the Department with complete documentation no later than 14 days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;~~

(88) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date.;

~~(9) For final disbursement requests, submission of documentation required for Activity completion reports;~~

~~(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in~~

~~compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract, and~~

~~(11) For costs associated with insurance policies, including title policies and homeowner's insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.~~

(c) Sale to a Qualified Homebuyer. Not less than nine months prior to the expiration of the interim construction loan and no more than nine months after the Construction Completion Date, Developer must submit documentation to the Department evidencing a pending sale to a qualified homebuyer. Documentation submitted must include:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A copy of the Household's intake application on a form prescribed by the Department;

(3) Certification of the income eligibility of the Household signed by the Developer and all Household members aged 18 or over that includes the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(4) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(5) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(6) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. A title commitment must include the complete legal description, copies of covenants, conditions and restrictions, easements, and any supplements. The effective date of the title commitment must be no more than 60 days prior to the date of submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(7) A down date endorsement to the mortgagee policy issued to the homebuyer dated at least 40 days after the Construction Completion Date; and

(8) Any other documentation necessary to evidence that the Activity meets the program requirements.

(d) Table funding requests must be submitted to the Department with complete documentation no later than 28 days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing

(e) For costs associated with insurance policies, including title policies and homeowner's insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

(f) Final Activity disbursement. Within 90 days after the homebuyer loan closing date, the Developer must submit to the Department:

(1) the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within 90 days after the loan closing date will result in the Department withholding disbursement of the Developer Fee; and-

(92) For final disbursement requests, submission of documentation required for Activity completion reports.;

(10g) The final request for disbursement under the Contract must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract, in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.