Rental Housing Program Guidelines

Mobile County, Alabama

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1. Summary

The Mobile County Commission (the County) supports the construction of new affordable rental housing for low- and very-low income households with its annual funding allocation from the U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnerships Program (HOME program). The HOME program was created under Title 11 of the Cranston-Gonzalez National Affordable Housing Act of 1990 with implementing regulations at 24 CFR Part 92. The HOME Program is intended to achieve four specific goals:

- To expand the supply of decent, safe, sanitary, and affordable housing with the primary focus on housing for low, very low, and extremely low-income families.
- Expand the capacity of nonprofit and Community Housing Development Organizations (CHDO) to plan and implement strategies for developing affordable housing.
- To strengthen the ability of local governments to design and implement strategies for achieving adequate supplies of decent, affordable housing.
- To encourage public, private, and non-profit partnerships to address affordable housing needs.

The County's HOME funds will be used to provide gap financing to projects located in Mobile County and within the Mobile County Consortium jurisdiction. The County's program will target housing in eligible areas that is affordable to people who are at or below 60% of the Mobile area's median family income ("AMI"). In exchange for low-cost permanent financing, property owners will agree to rent restrictions and to rent to low-income tenants for at least 20 years for new construction projects. Projects are monitored for compliance during this 20-year affordability period. Project sponsors must coordinate funders' requirements when there are multiple funding sources.

This document sets forth the requirements for the County's awards of HOME funds for rental projects.

2. Application and Evaluation Procedure

The County will generally issue a Rental Housing RFP on an annual basis. The RFP will outline specific application deadlines, any funding focus (e.g. by project type, population served, etc.), and other special considerations applied to a given funding round. Applications for HOME Rental Housing funding can be submitted at any time throughout the program year. If submitted outside of an RFP period, the County may consider an application based on the availability of funding, or such applications will be reviewed as a part of the County's next Rental Housing RFP process.

A. Funding Availability

Upon submission of a proposal for HOME funds, County staff will conduct a review and analysis of the project and developers as presented in the proposal. Proposals will be scored based on criteria in the RFP. Regardless of strict numerical ranking, the scoring does not operate to vest in an applicant or project any right to a reservation or commitment of HOME funds. The County will, in all instances, commit HOME funds consistent with sound and reasonable judgment, prudent business practices, and the exercise of its inherent discretion.

Projects seeking County HOME funds prior to the receipt of all other funding sources, including state or federal tax credit reservations, may be provided with non-binding preliminary awards. Only projects with firm commitments for all other permanent and construction funding may receive binding commitments. Further, eligible Rental Housing projects will be provided funding awards upon Commission approval and may be contingent upon the 1) County's approval of the Mobile County Consortium Action Plan by the Mobile County Commission and HUD; 2) the County's receipt of HOME funds from HUD; 3) the applicant's award from the Alabama Housing Finance Authority (AHFA) for LIHTC, if applicable; and 4) the County's receipt of the HUD Authority to Use Grant Funds following completion of the Environmental Review process.

B. Submission of Materials

All HOME Rental Housing Program applicants will need to comply with the submission criteria set forth in the County's HOME request for proposals and submit supporting documentation and due diligence items identified in Exhibit A. The County reserves the right to require the submission of additional information as needed to complete project underwriting.

Rental Housing applicants whose projects rely on the award of LIHTC must also submit a copy of their completed AHFA application, including all attachments, prior to the formal commitment of HOME funds.

3. Project Funding Requirements

A. Eligibility Criteria

Eligible Applicants

The County will fund developers and owners of affordable rental housing, including for-profit developers, non-profit developers, and County-designated CHDOs, with County HOME Rental Housing Program funds. Public housing units supported Public Housing Capital or Operating funds authorized by the 1937 Act are not eligible for HOME, however non-public housing units owned and developed by a public housing authority are eligible. The County generally will not fund individual owners of rental property, such as private individuals owning single-family residential rental properties. Prior to committing funds, the County will review the status of any organization seeking funds from the CHDO set-aside to ensure that it meets all HOME requirements and that it has sufficient staff capacity to carry out the project.

Project Location

Projects must be located in Mobile County and within the Mobile County Consortium jurisdiction, which includes the following areas:

- City of Bayou La Batre,
- Town of Creola,

- Town of Mount Vernon,
- City of Chickasaw,
- City of Citronelle,
- City of Prichard,
- City of Saraland,
- City of Satsuma,
- City of Semmes
- All of the unincorporated area of Mobile County, Alabama.

Projects located within the City of Mobile and the Town of Dauphin Island are not eligible.

Project Types

Funds will be provided for new construction ground level or elevator type projects. While the County will entertain any proposals meeting its criteria, in practice most projects will also require other public investment to be economically feasible. This may include projects also funded with other federally regulated affordable housing programs such as LIHTC, HUD Section 811, or Choice Neighborhoods. Projects shall be located on a single site. The County will not fund SROs or projects on scattered sites. RFPs issued by the County may further specify eligible project types and occupancy criteria including, but limited to, projects specified for either elderly or non-age restricted occupancy.

Parameters of HOME Investment Funding

Applications must include an investment of $1,000 in HOME funds per HOME unit. In no case will the County investment exceed the maximum HOME investment allowed under 24 CFR 92.250.

Additionally, for projects involving both County and State HOME funds, the combined HOME funding investment shall not exceed the total maximum HOME investment allowed under 24 CFR 92.250.

Typically, the County will also establish a maximum cap on its investment in a single development. Such a limit will be based on the availability of funding and other County priorities and will be addressed in any RFP issued by the County.

B. Eligible Costs

Costs funded with the County's HOME funds must be eligible according to HOME Final Rule 24 CFR 92.206. The following additional limitations also apply:

i. HOME funds shall not be used for luxury improvements according to 24 CFR 92.205.

ii. With the exception of a rent-up reserve to cover initial operating deficits allowed under 24 CFR 92.206(d)(5), HOME funds shall not be used to capitalize reserves.

iii. Acquisition costs shall be supported by an independent appraisal of the property. Acquisition costs exceeding the appraised value of the property will be ineligible for HOME funding reimbursement.

iv. HOME funds shall not be used for non-residential accessory structures such as free-standing community/leasing buildings, garages, carports, or maintenance structures. HOME funds may be used for community space or common laundry facilities included in residential buildings.

v. With the exception of the costs of architectural, engineering, and related professional services required to prepare project plans as allowed by 24 CFR 92.206(d)(1) incurred not more than 24 months prior to the commitment of HOME funds, the County will only disburse HOME for eligible costs incurred on or after the commitment of HOME funds.

vi. HOME funds shall not be used for organizational costs such as partnership formation or syndication costs, especially those associated with Low Income Housing Tax Credits (LIHTC).

County Project Related Soft Costs

The HOME program allows the County to include, as project costs, its internal soft costs specifically attributable to a HOME project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and overseeing the award of funds to the project. Projects must provide budget allowances for “Mobile County-Lender Due Diligence & Legal Costs” in the project’s sources and uses and annual “Mobile County Compliance Monitoring Fees” in the operating budget.

The County will provide allowances/estimates to be used by applicants in any RFP issued.

Cost Reasonableness

Per the requirements of 92.250(b) and 24 CFR 2.225, all project costs must be reasonable, whether paid directly with HOME funds or not. The County will review project costs, including hard and soft costs, to evaluate their reasonableness and may, at its option, require applicants to obtain additional quotes, bids, or estimates of costs. County staff must be allowed the opportunity to conduct a cost analysis to determine costs reasonableness. Applications may be determined ineligible if access is not granted or costs are determined to be unreasonable.

Identity of Interest

Owners must disclose any identity of interest situations that may occur when contracting with related companies during either the development or ongoing operation of the project.

C. Property Standards

To meet both HOME regulations and County goals, all HOME-funded projects must meet certain physical standards intended to provide quality affordable housing that is durable and energy efficient.

i. Construction must meet all applicable local codes.

For projects obtaining permits on or after October 1, 2016, Mobile County has adopted and enforces the following codes with amendments:

- 2012 International Building Code (IBC)
- 2012 International Residential Code (IRC)

- 2012 International Mechanical Code (IMC)
- 2012 International Plumbing Code (IPC)
- 2012 International Fuel Gas Code (IFGC)
- 2012 International Existing Building Code (IEBC)
- 2011 National Electric Code (NEC - also known as NFPA 70)
- Commercial and Residential Energy Codes are the energy codes Adopted by the Alabama Energy and Residential Codes Board

Applicants and/or their architects are responsible for contacting Mobile County Public Works to obtain full details about all code requirements, including locally adopted modifications to the adopted international code standards.

ii. All HOME projects must meet applicable Section 504/UFAS requirements. New construction projects with 5 or more HOME-assisted units must provide 5% of the development's units for physically disabled occupants and another 2% of units designed to be accessible to those with visual or hearing impairments. Additionally, covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements required by the Fair Housing Act as outlined in 24 CFR 100.205.

iii. All multifamily buildings (those with five or more units) in a HOME-assisted project must be equipped with "broadband infrastructure" as such term is defined in 24 CFR 5.100. Note this does not require the project owner to provide internet service to tenants; rather it requires installing the connections that tenants may use to obtain high-speed internet service.

iv. All ground floor or elevator accessible units in multi-family structures funded with HOME funds shall be visitable and meet the following minimum Universal Design requirements:

- Have at least one no-step main floor entry with a threshold of ½ inch or less;
- All doorways on the main floor must be 32 inches wide when open at a 90-degree angle and must be equipped with lever-style handles;
- All main floor hallways must be at least 42 inches wide;
- All main floor bathrooms must include blocking for future grab bar installation which is not less than 33 inches and no more than 36 inches above the floor (this does not require grab bars actually be installed during construction, just that blocking be put in place); and
- Each unit must be provided with at least one half-bathroom on the main floor with i) a clear floor space of 30 by 48 inches centered on and contiguous to the sink that is not encroached by the swing path of the bathroom door and ii) a sink and toilet that allow for parallel or head-on approach by a person in a wheelchair.

v. All projects must have a fully-equipped laundry room if washer/dryer connections are not provided in each unit;

vi. Complex must have, or have access to, an accessible van or public transportation;

vii. Site shall be served by public sewer, public water, and public road;

viii. Site shall be in a designated Fire District or served by a Fire Department;

ix. Units must be equipped with the following appliances: Refrigerator, range/oven, dishwasher, and garbage disposal. Developers may also propose to include in-unit clothes washers and dryers, microwave/vent fan combination units, as appropriate. If the Energy Star program rates the type of appliances being installed, the developer must furnish the units with Energy Star rated appliances. Note however that not all appliances are rated by the Energy Star program.

D. HOME Unit Allocation

In general, HOME units will be "floating units" and evenly distributed among the unit types in the development. If the development's units are not comparable, "fixed units" must be designated. In the case of developments with comparable units, the County will designate units as HOME-assisted in proportion to the percentage of HOME investment in the transaction, whichever is greater. For example, if HOME represents 10% of the project's total HOME-eligible cost, at least 10% of each unit type will be HOME units.

HOME-assisted units shall be designated as either "High HOME units" or "Low HOME units." In projects with five or more HOME-assisted units, at least 20% of the HOME-units, rounded up to a whole number, must be designated as Low HOME units. Generally, the County will only designate the minimum number of Low-HOME units required unless the applicant requests that additional Low-HOME units be designated to coordinate income and rent restrictions with other project requirements.

E. Income and Rent Restrictions

To qualify as affordable housing, HOME units must be rented only to households with certain incomes at rents regulated by the program to be affordable to low income households.

Income Limits

i. At initial occupancy, all High HOME units must be occupied by tenants with household incomes at or below 60% of the Area Median Income (AMI). Following turnover, High HOME units must be leased to tenants with household incomes at or below 80% AMI; and

ii. Low HOME units must be rented exclusively to tenants with household incomes at or below 50% AMI both at initial occupancy and throughout the project's affordability period.

Rent Limits

i. High-HOME units must be rented at or below the High-HOME rent as published by HUD. In general, HUD will calculate the High-HOME rent to be the lesser of the applicable Fair Market Rent or a rent equal to 30% of 65% of the adjusted area median income, adjusted for unit size.

ii. Low-HOME units must be rented at or below the Low-HOME rent as published by HUD. In general, HUD calculates the Low-HOME rent to be the lesser of the applicable Fair Market Rent of a rent equal to 30% of 50% of the area median income, adjusted for unit size.

iii. The County must approve the development's rent schedule annually.

Adjustment for Tenant Paid Utilities

i. The High- and Low-HOME rent limits are gross rent limits. The actual rent collected from a tenant must be adjusted taking into account an allowance for tenant paid utilities.

ii. Utility allowances must be calculated using the HUD Utility Schedule Model or another project-specific methodology acceptable to HUD and the County. In no case may HOME projects utilize an area-wide utility allowance schedule developed by the local Public Housing Authority.

iii. The County must approve the development's utility allowance annually.

Income Verification

All projects shall use the HUD Part 5 definition of income for determining income eligibility. Prior to signing a lease, income must be verified for all new tenants using at least two months of source documentation in accordance with 24 CFR 92.203(a)(1)(i). When available, the County prefers the use of 3rd party verification as the primary means of documenting income.

During the period of affordability, the income of in-place tenants must be re-certified using source documentation at least every sixth year of the project's affordability period (e.g. in the sixth year, all in-place tenants must be re-certified using source documentation even if a given tenant is only in his/her second year of occupancy). In other years, owners must re-certify the income of existing tenants annually but may use one of the options in 92.203, unless the County requires that a project use one of the methods exclusively:

i. Re-verifying income annually through source documentation;

ii. Obtaining a written statement from the household regarding annual household income. However, source documentation for all existing tenants must be reviewed at least every 6th year of the affordability period; or

iii. Obtaining a written statement from the administrator of a government program under which the households receives benefits and which examines each year the annual income of the household.

Rent Adjustments

HUD provides HOME income and rent limits on an annual basis, usually in the spring. Each year, county staff will provide this information to owners following its publication by HUD. Utility allowances will also be reviewed and adjusted, as needed, annually. Owners must obtain County approval before implementing HOME unit rent increases. Owners shall also provide not less than 30 days' written notice to tenants upon receiving County approval for HOME unit rent increases.

HOME assisted units are considered to be compliant despite a temporary increase in income exceeding HOME requirements for existing tenants. However, in such cases there are detailed requirements about how to adjust the rent of such tenants and how to restore overall project compliance. These are outlined in the HOME Model Guide "Compliance in HOME Rental Projects: A Guide for Property Owners," which is available online at:

https://www.hudexchange.info/resources/documents/ComplianceinHOMERentalProjects_GuideforPropertyOwners.pdf

For projects with floating units, when an existing tenant's income increases beyond 80% AMI adjusted for household size, the tenant's gross rent will be increased to the lesser of the unassisted market rent for the unit or 30% of the tenant's adjusted household income. When the income of an existing tenant of a Low-HOME unit increases above 50% AMI but is below 80% AMI, the rent for that tenant will be increased to the High-HOME rent following the replacement of the Low-HOME unit. In both cases, the next available unit in the project should be rented, based on the project's compliance needs, as a Low- or High-HOME unit.

Notwithstanding, over-income tenants of HOME assisted units that have been allocated low-income housing tax credits must pay rent according to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

F. Environmental Review Requirements

Federally-assisted projects are subject to a variety of environmental requirements. Developers should be familiar with these requirements and are strongly encouraged to discuss any questions they have with County staff prior to entering into a purchase agreement or submitting an application.

i. All Rental Housing projects shall be implemented in accordance with environmental review regulations as defined 24 CFR Part 58.

ii. The County shall be responsible for conducting the environmental review and completing all necessary public notifications, and the request for release of funds (RROF) from HUD. The applicant is responsible for cooperating with the County in the environmental review process and providing information necessary for the County to fulfill its responsibilities under Part 58 and other applicable regulations.

iii. Submitting an application for HOME funds triggers environmental review requirements under 24 CFR 58, including the National Environmental Policy Act (NEPA). Once an application for federal funds is submitted, a development proposal is now subject to the environmental review requirements and requires an environmental clearance and issuance of a Release of Funds (ROF) by the US Department of Housing and Urban Development.

    Developers are prohibited from undertaking or committing or expending any funds to (including non-federal funds) any physical or choice-limiting actions on the site prior to an environmental clearance as required by Part 58. Physical and choice limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair or construction. This prohibition applies regardless of whether federal or non-federal funds are used, and taking a choice limiting action prior to completion of the required environmental clearance process will result in the denial of any HOME funds from the County.

iv. Rental Housing applicants whose projects rely on the award of LIHTC will also be required to comply with the applicable Alabama Housing Finance Authority's (AHFA) Environmental Policy Requirements for both Low Income Housing Tax Credits and HOME. While not required at the time of application submission, an acceptable Environmental Report (i.e., presented in the required format and meeting requisite AHFA standards) must be provided to Mobile County in advance of a funding commitment.

G. Other Federal Requirements

Nondiscrimination and Equal Opportunity

The following federal nondiscrimination and equal opportunity guidelines apply to all Rental Housing projects and affect both development and operation of assisted housing:

i. The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.;

ii. Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107;

iii. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d- 2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1

iv. The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146

v. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title

vi. Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135;

vii. Executive Order 11246, as amended by Executive Orders 11375, [[Page 41]] 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966- 1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60;

viii. Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971- 1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development).

ix. Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise). The nondiscrimination provisions of Section 282 of the National Affordable Housing Act of 1982.

x. The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting owners (or their agents) from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.

xi. The requirements of 24 CFR 92.359 and 24 CFR Part 5, Subpart L which implement provisions of the Violence Against Women Act (VAWA), as amended, which provides various protections to applicants and tenants who are victims of domestic violence, dating violence, sexual assault, and stalking. Notwithstanding the title of the statute, VAWA's requirements and tenant protections apply regardless of any individual's sex, gender identity, or sexual orientation.

Uniform Relocation Act (URA)

All Rental Housing projects fall under requirements of the URA. Any project resulting in permanent relocation/displacement of households will not be funded by the County. Applicants must further document that any purchase of property meets the requirements of URA, including provision of notices to the seller identifying the transaction as a voluntary sale not under the threat of eminent domain. To ensure compliance with URA, applicants should consult the County to understand the requirements of URA and reference the URA forms included in the RFP prior to submitting an application involving an occupied property.

Davis Bacon

Davis Bacon federal prevailing wage requirements shall apply to all Rental Housing projects with 12 or more units assisted with HOME funds.

Minority Business Enterprise and Women Business Enterprise (MBE/WBE) Plan

Developers must maintain a MBE/WBE plan that demonstrates marketing and solicitation of MBE/WBE businesses and contractors for the construction of the project.

Section 3

Developers must maintain a Section 3 plan that demonstrates a marketing plan to include Section 3 contractors in the construction of the project.

Excluded Parties

The County will not fund projects owned, developed, or otherwise sponsored by any individual, corporation, or other entity that is suspended, debarred, or otherwise precluded from receiving federal awards. Nor may the owner contract with any other entity (including but not limited to builders/general contractors, property management companies, or other members of the development team) that are suspended, debarred, or otherwise so precluded. Similarly, the general contractor will be required to determine that subcontractors are not so precluded.

4. Ongoing Project Requirements

A. Project Completion Deadline and Period of Affordability

The period of affordability will be based on the date of project completion as defined by 24 CFR 92.2 which, among other things, requires that all construction activity be complete, all HOME funds drawn from the U.S. Treasury, and project completion information be entered into HUD's IDIS reporting system. For rental projects, project completion occurs upon completion of construction and before occupancy, and units may be marked vacant in IDIS until complete beneficiary data is received. Project completion must occur within 4 years of the date of commitment of funds to the project. If the Owner fails to meet this 4-year deadline, it must repay to the County any HOME funds disbursed for the project. In accordance with the minimum requirements of 24 CFR 92.252(e), new construction rental project funded with HOME shall maintain HOME affordability requirements for a period of **20 years** after project completion.

B. Initial Occupancy Deadlines:

In accordance with 24 CFR 92.252, HOME-funded rental projects must comply with the following deadlines and requirements as evidenced by occupancy by tenants with a written lease that complies with the requirements of 24 CFR 92.253:

i. Within six (6) months from the date of project completion, if a rental unit remains unoccupied, the Owner will provide to the County information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible.

ii. Within 18 months from the date of project completion, if efforts to market the units are unsuccessful and units remain unoccupied by an eligible tenant, the County will require repayment of all HOME funds invested in each vacant unit. A unit that has not served a low- or very low- income household has not met the purposes of the HOME program. Therefore, the costs associated with the unit are ineligible.

C. Marketing and Leasing Materials:

The owner/developer must establish a written tenant selection plan consistent with the requirements of 24 CFR 92.253(d). Among other requirements, the tenant selection plan must, insofar as is practical, provide for the selection of tenants from a project's waiting list in chronological order of their applications and provide written notification to any rejected applicant of the reason for their rejection.

All HOME funded projects with five (5) or more HOME-assisted units must establish an affirmative marketing plan detailing marketing procedures to attract eligible occupants without regard to race, color, national origin, sex, religion, familial status, disability, or sexual orientation. Affirmative marketing plans shall include all required aspects as stated in 24 CFR 92.351(a)(2). The County will accept affirmative marketing plans using the most recent version of form HUD-935.2A or in another format as may be specified by the County from time to time. HUD-935.2A is available online at the following link:

http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.pdf

Leases between the tenant and owner shall be for one year, unless by mutual agreement between the tenant and the owner. Owners are required to provide 30 days' written notice prior to terminating or refusing to renew the lease. Owners are prohibited from including unfair provisions in HOME project leases. In accordance with the provisions of 24 CFR 92.253, the following terms are prohibited from HOME project leases:

i. Agreement to be sued
ii. Treatment of personal property
iii. Excusing owner from responsibility
iv. Waiver of notice
v. Waiver of legal proceedings
vi. Waiver of a jury trial
vii. Waiver of right to appeal court decision
viii. Tenant chargeable with cost of legal actions regardless of outcome
ix. Mandatory supportive services

The County may require owners to use a HOME Lease Addendum, as may be updated from time to time.

D. Prohibition on Certain Fees to Tenants

Pursuant to 24 CFR 92.214, HOME program participants may not charge fees to program beneficiaries to cover administrative costs related to the cost of administering the HOME program. Specifically, rental project owners may not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Owners may charge fees for the following:

i. Reasonable application fees to prospective tenants;
ii. Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and
iii. Fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged only for services provided.

The County will review and approve fee schedules annually to ensure that any fees charged in addition to rent are permissible under the applicable HOME requirements and whether proposed fees are reasonable and customary based on market comparisons.

E. Reporting and Recordkeeping

To allow effective oversight of funded projects and document compliance with applicable HOME requirements, all projects must submit periodic reports to the County. While this section outlines standard reporting requirements, the County reserves the right to require additional reporting or to alter the reporting format or frequency based on future changes to HOME requirements or County policy. Additionally, the County reserves the right to require additional or more frequent reporting for projects with compliance deficiencies.

i. Owners are required to report quarterly during the development phase and lease-up phase. Quarterly reports will be due on the 15th of the month following the end of the prior quarter (e.g. by April 15th reports on the first quarter are due);

- During the construction phase, owners must provide quarterly reports detailing construction progress and barriers to progress, copies of invoices being paid, and evidence of appropriate lien waivers.

- During the initial phase of lease-up, owners are required to provide quarterly reports detailing number of additional leases, total project leases, marketing activity, and monthly income and expenses. Once the owner has leased 90% of project units, leasing and marketing reporting will be required annually.

ii. Annual Reports shall be required for all HOME projects and shall be completed in accordance with the forms for the Rental Property Owner's Annual Report Narrative and Rental Property Owner's Financial Report and all related documents. Annual reporting requirements will, at a minimum, consist of the following information:

- Owner;
- Project name;
- Rent Roll indicating occupancy, tenant income, rents, and utility allowances for all Low- and High-HOME units;
- Outstanding loans on the property;
- Development yearly financial performance including:
  - Operating surplus or deficit;
  - Vacancy rate;
  - Rent collection rate; and

- Tenant turnover;

- Copy of the Lease Agreement; and
- Capital expenditures (previous year and any planned for next 3-5 years).

iii. The County may require more frequent reporting due to findings identified during annual monitoring, or findings identified during quarterly reports submitted during the development and lease up phases.

iv. All HOME projects shall be required to submit an annual audit prepared by an independent Certified Public Account.

v. Owners and developers shall allow the County, HUD, HUD's Office of Inspector General, State of Alabama, the Comptroller General of the United States (aka the GAO), and all other pertinent Federal or State agencies or their designated representative the right to inspect records and property.

vi. Owners must annually submit any updates to their Tenant Selection Policy and affirmative marketing plan and must maintain records of annual efforts to affirmatively further fair housing in accordance with 24 CFR 92.351. Updates must clearly detail all changes.

vii. The County will periodically require owners to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by the County. Initially, the County expects that capital needs assessments would be required every five (5) years following project completion. Such capital needs assessments shall be used for the purposes of determining the adequacy of the Replacement Reserve, taking into account its existing balance, planned deposits, and anticipated future capital replacement costs for the Project.

If the capital needs assessment indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the Affordability Period, the owner must, at the County's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding. If an additional deposit is required by the County, the owner (or the Guarantors) must replenish the Replacement Reserve Account within six months.

F. Conflict of Interest

To comply with HOME requirements and to maintain a high standard of accountability to the public, conflicts of interest and perceived conflicts of interest must be avoided.

i. Owners shall maintain compliance with all HUD conflict of interest provisions as stated in 24 CFR 92.356(f).

Owners with employees, family members, consultants, or agents that are otherwise eligible to occupy HOME funded-units must receive waiver/approval from County staff before entering into a lease with HOME eligible employees. 92.356(f) provisions apply to all HOME projects.

While conflict of interest provisions do not prohibit developers of housing from utilizing identity-of-interest providers, any identity-of-interest relationship must be disclosed in advance and approved by the County.

5. Structure of Transaction

A. Loan Types and Terms

The County will provide HOME funds in the form of a loan to the entity that owns the property. No grants will be awarded, and funding commitments are not transferable without prior written County approval.

The County's HOME Loan is intended as permanent financing. Proceeds of the HOME loan may be released during construction subject to the requirements below or may be disbursed as a permanent loan only upon achievement of Stabilized Occupancy.

In all cases, the HOME loan will:

i. Have a minimum term of 20 years following project completion;
ii. Be repayable in full upon sale, refinancing, or transfer of the property or upon maturity; and
iii. Secured with a promissory note, mortgage, and appropriate UCC liens. Mortgages will be recorded with the Mobile Country Recorder of Deeds and generally may be subordinate only to an approved amortizing first mortgage and to any loan provided by AHFA, if applicable.
iv. If disbursed during construction, upon disbursement, the loan shall be secured by an irrevocable Letter of Credit in an amount equal to the full loan amount, from a reputable banking institution acceptable to the County. The Letter of Credit will be in force from the first draw-down of County HOME funds and will be released by at the achievement of Stabilized Occupancy, receipt of an acceptable cost certification, and clearance of any monitoring findings related to the County's review of records related to initial project development and lease-up.

Typically, the County will offer one of two potential repayment structures:

i. Most loans will carry a 0% interest rate and require repayment over a 20-year term; or
ii. At the County's option, and based on its underwriting evaluation, the loan may be structured as a cash-flow contingent loan with payments limited to 50% of cash flow remaining after all County approved operating costs and deposits to reserves.

B. Guarantees

Unless otherwise determined by the County, not including investor/syndicator partners or members of the ownership entity, all underlying individuals, corporate entities, partnerships, or limited liability companies with an interest in the project's ownership entity or receiving any portion of the developer fee will be required to provide the following guarantees:

i. Completion Guarantee including provisions guaranteeing construction completion of the project.

ii. Repayment Guarantee including provisions guaranteeing environmental compliance and compliance with HUD HOME guidelines.
iii. Replacement Reserve Guarantee to ensure annual deposits to a Replacement Reserve for the project in an amount consistent with the loan documents and/or covenant running with the land.

Guarantees shall be joint and several and must remain in effect throughout the affordability period.

C. Property Covenants and Restrictions

Each HOME-funded project property must maintain Covenants and Restrictions enforcing HOME and County guidelines. The Covenants and Restrictions will be separately recorded and will remain in place for the Affordability Period even if the HOME loan is pre-paid. The following guidelines must be enforced through Covenants and Restrictions:

i. Owner will be owner in fee simple of the property unless the County agrees to a 99-year ground lease structure;

ii. Property is not subject to additional liens or encumbrances that the County has not agreed to;

iii. Other than a Low Income Housing Tax Credit land use restriction, the HOME Covenants and Restrictions must be recorded senior to <u>all</u> liens and encumbrances associated with the project financing, including any loans senior to the County's HOME loan, and structured to survive any foreclosure by a senior lien;

iv. The County must approve any transfer of the property. Such approval will be in the County's sole discretion;

v. Provisions to enforce ongoing requirements for project compliance through the HOME Affordability period, including:

- The length of the period of affordability;
- Income and rent restrictions on HOME-assisted units;
- Property standards to be enforced;
- Marketing and leasing requirements; and
- Recordkeeping and reporting requirements.

D. HOME Agreement

In addition to any financing documents, owners of HOME-financed projects must sign a HOME agreement with the County. The HOME agreement will identify requirements for compliance with the HOME regulations and the County's Rental Housing Program requirements and will remain in effect in the event of any prepayment of the HOME loan.

6. Underwriting & Subsidy Layering Reviews

A. Project Underwriting

All HOME project applications must include a third-party market study. Unless otherwise approved by the County, market studies shall be prepared by providers who are members of the National Council of Housing Market Analysts (NCHMA) using the model content standards promulgated by NCHMA. Owner's may generally submit the market study used in conjunction with the Owner's LIHTC application, if applicable. Market studies must be less than 1 year old. The County reserves the right to require an updated market study prior to the commitment of HOME funds. Proposed rent levels must be supported by the applicant's market study and within HOME regulatory limits.

All HOME applications must include financial statements from all underlying owners and guarantors. Owners must have a net worth equal to 10% of the total development cost with net liquid assets equal to 3% of the total development cost.

i. Vacancy factor of at least 7% for family developments and at least 5% for elderly developments.

ii. County staff will use a maximum 2% inflation factor for all sources of income.

iii. As part of any RFP, the County will specific minimum per-unit per-year operating cost underwriting standards. Additionally, all operating expenses will be underwritten with an annual inflation factor of at least 3%.

iv. All HOME projects must maintain a total project Debt Coverage Ratio (DCR) of 1.20 through the affordability period. Properties with a DCR that exceeds 1.20 may have rent increases reduced or denied.

v. Proposals must include justification of operating costs that includes a comparison to similar projects in the local market. Whenever possible, comparable properties should be operated by the proposed management company.

vi. A capitalized operating reserve equal to at least six months of operating expenses, reserve deposits, and debt service must be established at the initial closing of the project. This reserve must be in addition to any dedicated "deficit reserve" that may be established to account for predicted deficits with the project's 20-year cash flow projection. HOME funds cannot be used to establish this reserve.

vii. At a minimum, projects must make replacement reserve deposits of $300 per unit per month for family projects and $250 per unit per month for elderly projects and. Replacement Reserve must be funded and maintained for the full affordability period and reflected in the operating expenses for the full 20-year projection of expenses. Reserve deposits will be inflated at 3% annually.

viii. For equity pricing that is above AHFA's projections, if applicable, applicants must submit documentation indicating that a syndicator or investor has reviewed the proposal and indicated preliminary pricing along with their interest in the project.

ix. Applicant must provide the amounts and terms for the construction financing, permanent financing, and, if applicable, owner equity information.

B. Proforma Requirements

Applicants are required to provide the proforma to the County in the form of an unlocked Microsoft Excel file. The County will generally allow submission of the project proforma in the applicant's standard format provided it explicitly shows:

i. An itemized breakdown of units by bedroom size, square footage, income restriction, and both gross and net rent levels (i.e. net rents are those actually charged after adjusting rents for tenant paid utilities);

ii. Operating cost assumptions should be itemized and show costs on both a total development and per unit basis. The County prefers the format provided by AHFA in its application package;

iii. The hard costs of any stand-alone accessory buildings (including leasing offices, community buildings, laundry facilities, free-standing garages or carports, or maintenance buildings), off-site infrastructure costs, and organizational costs such as partnership or syndication expenses associated with establishing the ownership entity and/or equity investment terms should be specifically itemized in the Development Sources and Uses so that the County can complete preliminary HOME cost allocation calculations. Further, for projects using LIHTCs, the Development Sources and Uses should clearly show which costs are included in basis, whether the project qualifies for a 30% basis boost;

iv. For projects using LIHTCs, net tax credit equity projections should be supported by calculations clearly showing anticipated pricing; and

v. The 20-year operating projection should clearly show inflation assumptions for all revenues and expenses, including increases in replacement reserve funding.

vi. Costs and fees to be paid to the County as permitted by the HOME program. The HOME program allows the County to include, as project costs, its internal soft costs specifically attributable to the project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and monitoring award of funds to a project. The County will notify Owners of the amounts to include in their Development Sources and Uses for "Mobile County-Lender Due Diligence & Legal Costs" and annual "Mobile County Compliance Monitoring Fees."

C. Cost Limitations

All project costs must be reasonable and customary. The County reserves the right to review any line-item cost to ensure that total project costs are not excessive. Additionally, HOME projects will be subject to the following specific cost limitations:

i. The maximum allowable developer fee is 15% total development costs (less the developer fee itself).

ii. Maximum allowed builder General Requirements, Overhead, and Profit are 6%/2%/6%.

iii. Architectural and engineering fees may not exceed 7% of total project hard costs.

iv. Acquisition costs are limited to fair market value as determined by a third-party appraisal.

D. Other Public Funding Sources

Owners must disclose all other public sources of or applications for funding with initial HOME Rental Housing application to the County at the time of application and upon receiving any additional commitments of public source funding. The County will conduct a subsidy layering review as part of the underwriting process for any project that includes other public subsidies. Using its underwriting criteria, the County will assess the project and may require changes to the transaction to ensure that cash flows to the owner/developer are not excessive. Changes may include a reduction in HOME funds awarded, reductions in the rents being charged to tenants, requirements that excess cash is deposited to an operating reserve, or increases in annual payments on the HOME loan.

The County will consider adjusting its underwriting in consultation with other public funders including AHFA, if applicable to the project. The County retains, at its sole discretion, the power to decide whether to accept alternative standards.

7. Construction Process

A. County Construction Inspections

Whether or not HOME funds are being sought in association with any particular draw, the County must be provided with copies of all contractor invoices and provided reasonable notice of monthly draw inspections during the construction period. County staff will participate in all draw reviews and conduct inspections to ensure that the project is progressing and that work completed is consistent with all applicable HOME requirements.

B. Davis Bacon

When Davis Bacon applies to a project, the County must be provided with compliance documentation throughout the construction period even though HOME will be provided as a permanent loan following the completion of construction. Prior to commencing construction, the County must approve current wage determinations applicable to the project. The contractor will be required to provide weekly payroll forms to the County and allow access to the site and workers for the purpose of completing worker interviews.

The County will accept Form WH-47 or acceptable internal forms from the contractor. Form WH-347 and instructions for completing it may be accessed at http://www.dol.gov/whd/forms/wh347instr.htm.

C. Drawing County HOME Funds

The County's HOME Loan may be structured as a construction to permanent loan or a permanent loan only. When used as construction financing, the County loan shall be secured by an irrevocable Letter of Credit in an amount equal to the full loan amount, from a reputable banking institution acceptable to the County. The Letter of Credit will be in force from the first draw-down of County HOME funds and will be released following:

i. Construction completion and satisfactory inspection by the County;

ii. Achievement of Stabilized Occupancy which shall be defined to include:

   - Lease-up of all HOME-designated units, submission of tenant data necessary to complete the Project in HUD's IDIS system, and the County's approval of income determinations for HOME-assisted tenants;
   - Physical occupancy of no less than 93% of all units;
   - 3 consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 93%; and
   - 3 consecutive months of sustained operating performance at or above a debt coverage ratio of 1.20 (inclusive of all required debt payments and calculated as if any amortizing County HOME loan payment was payable on a monthly basis).

iii. Review and acceptance of appropriate source documentation by the County, including but not limited to submission of a cost certification prepared by an independent Certified Public Accountant following completion of construction and payment of all development costs;

iv. A determination by the County that all HOME requirements pertaining to the initial development of the Project have been met, including but not limited to monitoring of Davis Bacon compliance.

D. Project Closeout

Owners are required to submit demographic data at lease up for all HOME funded units. Data shall include elderly status, race, gender, female head of household, number of household members, and percent of area median income. Owners must be aware that the affordability period does not begin for HOME-funded units until all project costs are processed, all demographic data is verified by County staff, and the project is entered as completed in the HUD Integrated Disbursement and Information System (IDIS).

The County requires a copy of the final project sources and uses statement and submission of the project cost certification prepared by an independent Certified Public Accountant following completion of construction and payment of all development costs.

8. Long Term Monitoring

Following project closeout, the County will monitor the project for ongoing compliance with HOME requirements, including but not limited to income and rent restrictions, property standards, tenant protections, and marketing and fair housing requirements. In addition to requiring periodic reporting as outlined in Section 4.E. above, the County will conduct on-site monitoring visits. The purpose of those visits will include reviews of project records and inspection of the premises including common areas and residential units. In most cases, such reviews will take place annually based on existing HOME requirements at 24 CFR 92.504(d)(1). However, the County reserves the right to conduct site visits more or less frequently based on changes to HOME regulations and County policy or based on evidence of compliance deficiencies in a prior monitoring visit.

Exhibit A: Full Application Requirements and Due Diligence Exhibits

INSTRUCTIONS: To apply for funding, applicants must submit all materials required by the County's HOME request for proposals along with all bolded due diligence items from the list below. Applicants will need to submit all items, including non-bolded items, prior to receiving a formal commitment of funds from the County and should submit all items that are available with their initial application.

The County reserves the right to require additional due diligence items as needed to evaluate the project, document compliance with HOME and other applicable federal regulations. Additionally, following a commitment of HOME funds, additional items will be required in order to close on the County's HOME loan.

APPLICATION

- ☐ **Complete Response to Request for Proposals including all required certifications and attachments**
- ☐ **Executive Summary containing a brief synopsis of the proposed development and number of units, location, project costs and the proposed financing. The Summary should also have a brief description of the proposed complex (frontal elevation and floor plan only—detailed drawings are not required with RFP), proposed site plan, security arrangements, amenities and accessibility/adaptability provisions;**
- ☐ **Itemized summary of "self-score" under Draft Alabama Qualified Allocation Plan**
- ☐ AHFA Rental Housing Programs Application and all exhibits submitted to AHFA (for any development seeking LIHTC or other funding from the AFHA), if applicable.

DEVELOPER CAPACITY & FISCAL SOUNDNESS

- ☐ **Developer statement of qualifications that identifies**
  - **Recently completed comparable projects completed within the last five (5) years**
  - **All projects underway and/or pending**
  - **Staff assigned to this project and their roles and experience**

- **Disclosure of any identify of interest**

☐ **Individual resumes, copies of appropriate licenses and/or professional certifications of assigned developer staff**

☐ **Information on qualifications of property management agent, if applicable**

☐ **Current financial statements for developer and any guarantors (not less than 90 days old)**

☐ **Most recent corporate audit or reviewed financial statements**

☐ **Most recent tax returns for developer (990s for nonprofit developers)**

☐ **Certified copies of all organizational documents of all entities in the project, including articles of incorporation, operating agreement, partnership agreement, as applicable**

☐ **Authority to Release Confidential Information, which is included in the Application Cover Sheet certification. Will allow County to:**
- **Contact Banking references**
- **Obtain developer's corporate credit report (e.g. Dun & Bradstreet) or personal credit report (e.g. sole proprietors, S-corps, etc.)**

☐ **Completed Application for CHDO Certification (available from County upon request) along with required documentation (as applicable)**

☐ **Development team**
- **List of third-party development team members**
- **Corporation profiles and/or individual resumes, copies of appropriate licenses and/or professional certifications for development team members**

SITE AND PRODUCT

☐ **Evidence of site control (e.g. option, etc.)**

☐ **Uniform Relocation Act documentation**
- **URA Notice to Seller of Voluntary Sale**
- **Seller certification regarding vacancy (as applicable)**
- **Rent Roll and evidence of General Information Notices to existing tenants (occupied properties only)**

☐ Preliminary Title insurance commitment

☐ Documentation of existing property value (e.g. tax assessment, appraisal, etc.)

☐ **Phase I Environmental Site Assessment. The Phase I must be completed in compliance with the American Society for Testing and Materials (ASTM) standard E-1527-13, including Appendices X4 and X5. The Phase I provider should acknowledge in its "statement of purpose" that one use of the report will be to determine compliance with HUD's environmental review requirements at 24 CFR Part 58. (Additional time may be granted for submission of report prepared by third parties if requested in writing at time of application submission.** *Note: Applicants whose project rely on the award of LIHTC will also be required to comply with the applicable Alabama Housing Finance Authority's (AHFA) Environmental Policy Requirements for both Low Income Housing Tax Credits and HOME. While not required at the time of application submission, an acceptable Environmental*

Report (i.e., presented in the required format and meeting requisite AHFA standards) must be provided to Mobile County in advance of a funding commitment.

- ☐ Site specific environmental record and (as applicable) estimate of remediation costs
    - o Radon and mold testing (as applicable)
    - o LBP risk assessment (as applicable)
- ☐ **Documentation of utility availability and connection costs**
    - o **Water/sewer, electric, gas**
- ☐ Plans and specifications, including site plan and elevation drawings
- ☐ **Zoning/site plan and building/code review approvals**
- ☐ **Flood Hazard Determination Form (FEMA Form 086-0-32) from a nationally recognized flood data service or from a licensed surveyor that no portion of the property is located within the 100-year flood plain. The proposed development cannot be located in the designated floodplain.**
- ☐ Utility allowance calculations

MARKET DATA

- ☐ **Market study**
- ☐ Additional Evidence of demand—applications/waiting lists from similar projects, voucher/rental assistance pipelines, or Continuum of Care data for homeless/special needs projects, etc.

UNDERWRITING/FINANCIAL PROJECTIONS

- ☐ **Proforma showing rent and operating cost projections, all project costs, construction period sources/uses, and 20 year operating/cash flow projections**
- ☐ **Commitments for other financing, both permanent and construction loan sources**
- ☐ Documentation of construction costs (e.g. estimate by qualified individual, bids, contract documents)
- ☐ Estimates/documentation of professional services and soft costs (e.g. architectural fees, construction period taxes/insurance, marketing expenses, realtor listing agreement, etc.)

MARKETING AND LEASING

- ☐ Marketing plan outlining
    - o Tenant selection criteria and waiting list procedures
    - o Description of primary market and outreach strategies, including affirmative marketing plan using HUD form HUD-935.2A as applicable
    - o Availability of tenants services and appropriate referral plan
- ☐ Waiting list(s) of interested tenants—compare demographics to underwriting assumptions about household incomes, ability to pay projected rent, etc. (if available)