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# ***Third Amended and Restated Homebuyer Assistance Program Guidelines***

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## **INTRODUCTION**

The purpose of these guidelines is to outline the basic requirements, policies and procedures for the City of Houston Housing and Community Development Department Homebuyer Assistance Program (HAP) when reviewing client homebuyer files for approvals funded through the U.S. Department of Housing and Urban Development (HUD) HOME Investment Partnership (HOME) Program, Community Development Block Grant (CDBG) and the City of Houston Tax Increment Reinvestment Zone (TIRZ) and any other available funding source.

## **BACKGROUND**

The City of Houston (City) Housing and Community Development Department (HCDD) Homebuyer Assistance Program (HAP) was designed to expand the supply of decent, safe, sanitary, and affordable housing and to increase homeownership opportunities for low and moderate income residents, within the incorporated areas of the City.

The U.S. Department of Housing and Urban Development (HUD) Home Investment Partnerships (HOME) Program authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (HOME statute), as amended is the largest Federal block grant to State and local governments designed exclusively to create affordable housing.

The Community Development Block Grant (CDBG) Program enacted through the Housing and Community Development Act of 1974 is one of HUD's longest continuously run programs used to benefit low-to-very low income residents.

Tax Increment Reinvestment Zones (TIRZs) are special zones created by City Council to attract new investment to an area. TIRZs help finance the cost of redevelopment and encourage development in an area that would otherwise not attract sufficient market development in a timely manner. The HAP may use TIRZ tax revenue dollars specifically set-aside for affordable housing activities as well as any other funds that may become available to further promote affordable housing to increase homeownership opportunities within the City of Houston.

These guidelines are not meant to be a substitute for Federal regulations nor is it exhaustive regarding all considerations affecting the sources or usage of funds. The HAP is governed by applicable Federal, State and local laws, statutes, regulations, codes and ordinances.

The information contained in these amended and restated guidelines are based on current available guidance from HUD which is subject to change.

***Future amendments, modifications and/or corrections will only require written approval from the HCDD Director or his/her designee, provided such amendment(s), modifications and/or corrections, are required to ensure compliance with applicable Federal, State or Local regulations or law and/or to improve the HAP.***

## SECTION I: DEFINITION OF TERMS

1. **Affidavit** shall mean a written statement or statements of facts voluntarily made by an applicant under oath and under penalty of perjury administered by a person authorized to do so by law.
2. **Affordability Period** shall mean, as prescribed in the HOME Final Rule, the period of time the homebuyer is required to own and occupy the property as his/her primary residence which is tied to the amount of assistance provided. All HAP funding options utilize the same Affordability Period guidelines.
3. **Affordable Housing** shall mean housing for people at or below eighty percent (80%) of the AMI as determined by HUD for either the HOME and/or CDBG programs or, at or below one hundred and ten percent (110%) of AMI for TIRZ funded projects for which the occupant(s) is/are paying no more than thirty three (33%) percent of his or her Annual Income for gross housing costs, including utilities.
4. **Annual Income** shall mean the anticipated gross amount of income from all sources for all adult family members during the coming 12 month period in accordance with 24 CFR Part 5, Section 8 definition of annual (gross) income.
5. **Applicant** shall mean the person/household who has submitted an application for HAP assistance and whose annual gross household income does not exceed HAP established income limits. Once approved, the applicant will be referred to as a Borrower/Co-Borrower.
6. **Area Median Income (AMI)** shall mean the income limits published annually by HUD for the City, including areas serviced by the City that are subject to pay City property taxes.
7. **Assets** shall mean cash or a non-cash item that can be readily converted to cash.
8. **Affordable Lending Partner (ALP)** shall mean a financial institution, licensed by the State of Texas to provide mortgage loans, who meets all requirements to participate as an approved HAP lender as defined by the HAP Procedures Manual.
9. **Back-end Ratio** shall mean a standard that measures a combination of an Applicant's regular reoccurring monthly expenses which includes their mortgage payment (PITI) and all monthly debts (i.e. credit cards, school loans, car payment, alimony, child support, etc.) based on a percentage of their gross monthly household income.
10. **Borrower(s)** shall mean the person that (i) has applied, met specific requirements, received a monetary loan from a lender; (ii) is legally responsible for repayment of the loan and (iii) is subject to any penalties for not repaying the loan back based on the terms as described in the loan agreement, promissory note and/or deed of trust.
11. **Co-Borrower** shall mean another individual who is jointly responsible for the loan and is listed on the title/deed to the property.

12. **Community Development Block Grant (CDBG)** shall mean the U.S. Department of Housing and Urban Development program created under the Housing and Community Development Act of 1974 as amended.
13. **City** shall mean the City of Houston.
14. **City Council** shall mean the duly elected members of the City of Houston City Council.
15. **Commitment** shall mean the setting aside or earmarking of funds that will be used in the future for the purchase of a specific dwelling unit. It is a pre-obligation; it is not legally binding and shall be valid for a specific time period. Projects for acquisition of standard housing where HOME will be provided to a purchaser, the title transfer must take place within six months of the agreement date.
16. **Conflict of Interest** shall mean a situation, whether real or apparent, that undermines the impartiality and/or integrity of (i) any person who is an employee, agent, consultant, officer, elected official or appointed official of the City or (ii) any individual or organization receiving or administering federal funds on behalf of the City who (a) exercises or has exercised any function or responsibility with respect to activities provided by the HAP, (b) is in a position to participate in the decision making process, or (c) gains inside information with regard to such activities. Such person or organization is therefore prohibited from obtaining a financial interest or benefit or having an interest in any contract, subcontract, or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter pursuant to the Final HOME Program Rule, found at 24 CFR§92.356 and/or the Community Development Block Grant (CDBG) Program Regulations found at 24 CFR§570.611. Additionally, City employees will be subject to comply with the City's Standards of Conduct for all Employees found at Subsection 14-183 and Standards of Conduct for City Officials found at Subsection 18-3.
17. **Counseling Agency** shall mean either a public or private nonprofit organization (i) established as a HUD-approved provider of homebuyer education courses for at least one year in the geographical area in which it provides services, (ii) are knowledgeable concerning the local housing market and (iii) have met the regulations found at 24 CFR Part 214 to obtain HUD approval.
18. **Deferred Payment Loan (DPL)** shall mean a loan whose principal and/or interest payments are postponed for a specific period of time provided the Borrower meets the terms and conditions of such loan.
19. **Director** shall mean the HCDD Director or designee appointed by the Director to perform specified duties in his/her absence.
20. **Disabled Family** shall mean (i) a family (as described herein) whose head, co-head, spouse, or sole member is a person with disabilities as defined by §12012 of the Americans with Disabilities Act and the Texas Property Code §301.003(6); (ii) two or more persons within the household with disabilities or (iii) one or more persons within the household with disabilities with one or more live-in aides.

21. **Displaced Family** shall mean a family in which each member or the sole member is a person displaced by a governmental action, or whose dwelling has been extensively damaged or destroyed as a result of a declared disaster or otherwise formally recognized disaster as defined by federal disaster relief laws.
22. **Elderly Family** shall mean a family (i) whose head, co-head, spouse, or sole member is at least 62 years of age; (ii) two or more persons living together, each of whom are at least 62; or (iii) one or more persons, who are at least 62, living together with one or more live-in aides.
23. **Equity** shall mean the current market value of a home as determined by an official appraisal minus the outstanding mortgage or other debt owed on the property.
24. **Existing Property** shall mean a property that is one hundred (100%) percent complete at the time of appraisal, (Ready for Occupancy).
25. **First Time Homebuyer** shall mean an individual who has had no ownership in a principal residence during the three (3) year period ending on the date of purchase of the property. This includes:
  - a. A spouse if either meets the above test they are considered a first-time homebuyers,
  - b. A single parent who has only owned with a former spouse while married,
  - c. An individual who is a displaced homemaker and has only owned with a spouse,
  - d. An individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations, and or
  - e. An individual who has only owned a property that was not in compliance with state, local or model building codes and which cannot be brought into compliance for less than the cost of constructing a new permanent structure.
26. **Family** shall mean either a single person or a group of persons and includes a household with or without children. Note that a child who is temporarily away from home due to placement in foster care will not be considered a member of the family.
27. **First lien holder** shall mean the Borrower(s) or institution holding a mortgage on a specific property that is used to back such mortgage and being a position to be paid before any other debt holders that have any other mortgages on such specific property.
28. **Foreclosed** shall mean the process by which the holder of a mortgage seizes the property of a Borrower(s) who has not made interest and/or principal payments on time as stipulated in the mortgage contract in accordance with state and local law.
29. **Front-end Ratio** shall mean a standard that measures an Applicant(s) monthly mortgage expense which includes principal, interest, taxes, homeowner(s) insurance and mortgage insurance, also known as PITI, divided by Applicant(s) gross monthly income, as defined in the HAP Procedures Manual.
30. **GIMS Map** shall mean the Geographic Information & Management System mapping service provided by the City's Department of Public Works & Engineering.

31. **HAP Guidelines** shall mean the administrative guidelines embodied in this document, as amended from time to time.
32. **HAP Procedures Manual** shall mean a written manual that includes aspects of program management outlined in this document and other guidance useful for the day-to-day operation of the program for both HCDD staff and ALPs.
33. **HAP Loan Closing Documents** shall mean the Second Lien Deed of Trust, Loan Note, Terms and Conditions, Homebuyers' Acknowledgement and Affidavit of Borrower(s), with a Statement of Total Family Income, in forms approved by the City Attorney and HUD.
34. **HOME Investment Partnerships Program (HOME)** shall mean the program authorized under Title II of the Cranston-Gonzales National Affordable Housing Act, designed to increase the number of families served with decent, safe, sanitary, and affordable housing and expand the long-term supply of affordable housing. Program regulations are at 24 CFR Part 92.
35. **Homebuyer Assistance Program (HAP)** shall mean HCDD's down payment and closing cost assistance program.
36. **Household Size** shall mean the total number of persons who will reside with the applicant(s).
37. **Household Income** shall mean the anticipated gross amount of income from all sources for all adult family members during the coming 12 month period in accordance with 24 CFR Part 5 definition of annual (gross) income.
38. **Housing and Community Development Department (HCDD)** shall mean the City Department designated by the Mayor of the City of Houston that administers the City's Federal formula and or entitlement grants, and tax increment reinvestment zones affordable housing set-aside funds.
39. **HUD-1** shall mean the form used by the settlement agent (AKA the closing agent) to itemize all charges imposed upon a borrower and seller for a real estate transaction. It gives each party a complete list of their incoming and outgoing funds.
40. **Individual Taxpayer Identification Number (ITIN)** shall mean a tax processing number issued by the Internal Revenue Service. IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain a Social Security Number (SSN) from the Social Security Administration (SSA).
41. **Integrated Disbursement and Information System (IDIS)** shall mean the nationwide database system that allows grantees (City) to request grant funding from HUD and report on what is accomplished with the funds. HUD also uses IDIS collected information to report to Congress and to monitor HCDD.
42. **International Residential Code (IRC)** shall mean the comprehensive stand-alone residential code that creates minimum regulations for one-and-two family dwellings. It brings together all building, plumbing, mechanical, fuel gas, energy and electrical provisions for one-and-two family residences.

43. **Lead Based Paint** shall mean paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.
44. **Lead-Hazard Visual Assessment** shall mean an assessment of all painted surfaces in order to identify deteriorated paint, paint stabilization of each deteriorated paint surface and clearance examination in accordance with§35.1330(a) and (b) before occupancy of a vacant dwelling unit or where a unit is occupied, immediately after receipt of Federal assistance for properties built before 1978.
45. **Lead Hazard Warning Disclosure** shall mean the pamphlet that provides lead hazard information to a Homebuyer purchasing a property built prior to 1978.
46. **Lead Hazard Acknowledgement Form** shall mean the affidavit signed by an eligible homebuyer which acknowledges receipt of the lead hazard warning disclosure.
47. **Liquid Assets** shall mean an asset that can be converted into cash in a short time, with little or no loss in value. Liquid assets include items such as (1) cash; (2) demand deposits; (3) time and savings deposits; and (4) investments (i.e. most stocks, money market instruments and government bonds not eligible for tax deferral).
48. **Loan** shall mean an arrangement in which a HAP approved lender gives money to a borrower, and the borrower agrees to return the property or repay the money at some future point(s) in time.
49. **Loan Closing** shall mean the date on which all applicable loan documents are executed.
50. **Low Income** shall mean a person/household whose annual income does not exceed eighty (80%) percent of the area median income adjusted for family size, as published by the U.S. Department of Housing and Urban Development for the City of Houston.
51. **Maximum Subsidy Limits** shall mean the total amount of direct cash assistance or purchase price discount being provided to a buyer specifically to create housing affordability.
52. **Moderate Income (MI)** shall mean a person/household whose annual income is between eighty (80%) percent and one hundred and ten (110%) percent AMI adjusted for family size, as published the City of Houston.
53. **Net Proceeds** shall mean sales price minus loan repayment and closing costs.
54. **New Construction** shall mean site preparation for, and construction of an entirely newly constructed single-family dwelling unit, that has not been occupied, where the seller is typically the builder.
55. **Notice to Seller** shall mean the Uniform Relocation Act notification provided to the seller regarding their rights as described in compliance with federal regulations.
56. **Ownership Interest** shall mean any of the following interests in residential property: fee simple interest; joint tenancy; tenancy in common; interest of a tenant-shareholder in a cooperative; life estate; interest held in trust for the Applicant that would constitute a present ownership interest if held by the Applicant.

57. **Part 5 Annual Income** shall mean the Section 8 definition of annual income found at 24 CFR Part 5.609 and related program guidance.
58. **PITI** shall mean the acronym for principal, interest, taxes, homeowner's insurance and mortgage insurance
59. **Principal Residence** shall mean any eligible HAP assisted (1) single-family residence; (2) condominium; or (3) townhouse and related structures, located within the incorporated areas of the City owned by the Borrower(s). For purpose of the HAP, the Borrower(s) must occupy the dwelling for the entire Affordability Period. Rented structures or land, vacation homes, cooperatives (such as timeshares), recreational vehicles, campers, or similar vehicles do not qualify.
60. **Program Administrator** shall mean the HCDD HAP Section.
61. **Property Condition** shall mean the condition of the exterior and interior areas, as determined by an inspection conducted by the City or its agent prior to acquisition, in order to verify that the property is safe, decent, habitable and in compliance with the applicable local building codes and applicable federal requirements. Property Condition shall be determined before funds are invested in the property or after closing if rehabilitation/repair assistance is provided using federal, state or local funds.
62. **Property Value** shall mean the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Property/market value must be identified through an official appraisal.
63. **Proposed Construction** shall mean properties approved for mortgage insurance prior to the beginning of construction, defined as the first placement of concrete or other permanent materials. And where the Direct Endorsement Underwriter Statement of Appraised Value or Early Start letter has been issued by the Direct Endorsement Underwriter for the property prior to the first placement of concrete or other permanent materials.
64. **Purchase Price** shall mean the cost of acquiring a residence, excluding usual and reasonable settlement or finance costs, and the value of services performed by mortgagor in completing the acquisition.
65. **Recapture** shall mean the mechanism to recapture all or a portion of the assistance provided to the homebuyer, if the housing does not continue to be the principal residence of the family for the duration of the affordability period.
66. **Release of Lien** shall mean the document(s) the City shall prepare and issue, or cause to be prepared or issued, releasing the City's second lien on each assisted property upon Homebuyer's compliance with the Affordability Period and all other program requirements.
67. **Review Committee** shall mean a committee designated by the Director to receive and review all HAP loan and grant requests.

68. **Residential Mortgage Loan Originator (RMLO)**, shall mean any state licensed individual who takes a mortgage loan application, or offers and/or negotiates the terms of a residential mortgage loan, as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).
69. **Second Lien Deed of Trust** shall mean the document which creates and evidences a lien that is placed against the property until the Affordability Period is matured or satisfied by the terms of the Loan Note.
70. **Service Area** shall mean the incorporated areas of the City of Houston including areas annexed and/or serviced by the City which are subject to pay City property taxes.
71. **Single Family Housing** shall mean a one to four family dwelling unit.
72. **Statement of Terms and Conditions for Homebuyer Assistance Program Deferred Payment Loan (Home Statement)** shall mean the document executed by HCDD and the Homebuyer(s) or between the Homebuyer(s) and any sub-recipient or developer funded by the City that sets out the principal terms and conditions relevant to the funds provided.
73. **Subsidy Layering** shall mean the underwriting analysis conducted prior to committing funds to a homebuyer to calculate the minimal amount of funds necessary to provide quality affordable housing.
74. **Tax Increment Reinvestment Zone (TIRZ)** shall mean the one third (1/3) affordable housing tax revenue set-aside generated by a special zones created by City Council.
75. **Temporarily Absent Family Member** shall mean a child who is temporarily separated from such household due to placement in foster care will not be considered a member of such family.
76. **Under Construction** shall mean those properties in which the first placement of concrete or other permanent materials has begun, but construction is not yet 100% complete.
77. **Unfair Lending Practices** shall mean abusive practices or unscrupulous actions carried out by a lender to entice, induce and/or assist a borrower in taking a mortgage that carries high fees, a high interest rate, strips the Borrower of equity, or places the Borrower in a lower credit rated loan to the benefit of the lender.
78. **Uniform Physical Condition Standards (UPCS)** shall mean the HUD inspection protocol (24 CFR 5.703) to establish minimum property condition standards for rehabilitation and homebuyer housing.
79. **United States Department of Housing and Urban Development (HUD)** shall mean the U.S. Department of Housing and Urban Development.
80. **Very Low Income** shall mean a person/household whose annual income does not exceed fifty (50%) percent of the area median income adjusted for family size, as published by the U.S. Department of Housing and Urban Development for the City of Houston.
81. **Zero-Income Statement** shall mean a notarized affidavit whereby adult household members declare under oath and subject to perjury that he/she has zero income.

*Disclaimer*

*The recommendations and interpretations offered in these Guidelines are meant to supplement, not replace, the formal regulations and policies of the Home Investment Partnerships Program or the Community Development Block Grant Entitlement Program. In areas of doubt, readers are advised to consult the applicable Code of Federal Regulations.*

## **SECTION II: BASIC ELIGIBILITY REQUIREMENTS**

To be considered for assistance by the HAP potential applicants must first meet the following basic eligibility criteria:

### **A. Residency/Citizenship Requirements**

The HAP does not make financial assistance available to applicants who do not have eligible status with respect to citizenship or noncitizen immigration status. Persons receiving HAP assistance must agree to occupy the newly acquired property as his/her principal residence for the duration of the affordability period.

For more details staff is directed to Title IV, Section 400 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 that deals with “Restricting Welfare and Public Benefits for Aliens”. Section 401 states “an alien who is not a qualified alien (as defined in Section 431) is not eligible for any Federal public benefit”. Section 431 defines a qualified alien as:

(a) IN GENERAL- Except as otherwise provided, the terms used in these guidelines shall have the same meaning as those terms in section 101(a) of the Immigration and Nationality Act.

(b) QUALIFIED ALIEN- For purposes of these guidelines, the term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is--

- (1) An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,
- (2) An alien who is granted asylum under section 208 of such Act,
- (3) A refugee who is admitted to the United States under section 207 of such Act,
- (4) An alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year,
- (5) An alien whose deportation is being withheld under section 243(h) of such Act, or
- (6) An alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980.

## **B. Income Eligibility**

A household may be eligible to receive assistance (i.e. HOME, CDBG, TIRZ), through the HAP, when all adult persons who will reside in the assisted unit who are eighteen (18) years of age or older provides sufficient source documentation that allows the HAP to determine total household income.

To receive assistance when using HOME and or CDBG funds, the total household income from all sources (including income from a non-purchasing spouse) cannot exceed eighty (80%) percent of the Area Median Income (AMI), adjusted for household size, as determined annually by HUD.

To determine whether a household is income eligible, the HAP staff will determine the households' annual gross income using the annual income as defined in 24 CFR§5.609. The HAP staff will verify household income using the source documentation (such as wage statements, interest statements, and unemployment compensation statements) provided. The HAP is not required to re-examine the household's income at the time the HOME assistance is provided, unless more than six months has elapsed since the HAP determined that the household qualified as income eligible in accordance with 24 CFR §92.203(d)(2). The HAP reserves its right to re-examine an applicant's household income at any time prior to commitment of any funds, to ensure continued compliance with established income limits.

To receive assistance when using TIRZ funds, the 80% AMI threshold limit may not apply to applicants receiving assistance exclusively from a non-federal source such as TIRZ funds or through a federal source that specifically allows household income to exceed the 80% AMI threshold. A household may be eligible to receive TIRZ assistance through the HAP, when all adult persons who will be residing in the assisted unit who are eighteen (18) years of age or older provides sufficient source documentation supporting their income. The total household income from all sources (including income from a non-purchasing spouse) cannot exceed one hundred ten (110%) percent of the Area Median Income (AMI), adjusted for household size, as determined by the HAP. When combining TIRZ funds with HOME and or CDBG funds, the total household income cannot exceed 80% of AMI.

At least annually, the HCDD Director or his/her authorized designee, will review the TIRZ maximum AMI threshold limit and may, from time to time, adjust the maximum AMI threshold. Adjustments to the TIRZ AMI threshold limit must be authorized in writing, signed and dated by the HCDD Director or his/her authorized designee and published in the HAP Procedures Manual.

***Throughout these guidelines the term "Annual Income" is used to refer to annual (gross) income calculated using the Section 8 Part 5 (24 CFR §5.609) definition. All sources of income for all adult household members MUST be calculated and included in the determination of income, unless the source of income meets the criteria to be excluded. The HAP staff will refer to the Technical Guide for Determining Income and Allowances for the HOME program when uncertainties arise when calculating annual (gross) income. The HAP CDBG assistance meets the low-and-moderate-income housing National Objective at 24 CFR 570.208.***

### **C. First-Time Homebuyer Requirement**

HAP assistance is limited to eligible families who meet the HUD/FHA definition of First-Time Homebuyer as described in the definition section of this document.

### **D. Housing Counseling**

All applicants applying to the HAP are required to attend and complete housing counseling provided by a HUD-approved Housing Counseling Agency. Housing counseling must be completed prior to closing. Upon the successful completion of the counseling, the counseling agency shall provide the applicant with a Certificate of Completion and a detailed household monthly budget. It is the responsibility of the applicant to provide a copy of the household's monthly budget to the HAP and or his/her selected ALP upon request. The HAP and or selected ALP will maintain copies of the valid Certificate of Completion and Household Monthly Budget in the applicants' file together with all other required documents for HAP review and final approval.

In situations where applicants demonstrate certain risk factors for ongoing financial sustainability after achieving homeownership, applicants may be referred to post-purchase counseling. These risk factors will be defined in the HAP Procedures Manual.

***The HAP may pay the cost for housing counseling; however applicants may also be required to pay the cost for housing counseling under certain circumstances. The determining factors will be published in the HAP Procedures Manual. All homeowners referred to post-purchase counseling shall bear the cost for post-purchase counseling. Housing counseling requirements are subject to change based on future HUD requirements.***

### **E. Debts in Good Standing**

The ALP is responsible for determining and assessing applicant's risk when reviewing the ALP's maximum debt to income ratio, maximum total obligations, and the applicant's credit history and credit report or loan terms. However, under these guidelines, the HAP requires that the borrower, co-borrower, and or non-purchasing spouse cannot be delinquent on "**any type**" of following items:

- Student loan(s)
- Federal Income taxes, as well as State and local taxing authorities
- Utility payments applicable to current or former addresses regardless of continental location
- City services i.e. Houston Public Library, City Emergency Medical Services bills, etc.

### **F. Conflict of Interest**

The conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, State recipient, or subrecipient receiving HAP assistance. HCDD employees in decision-making positions who exercise or have exercised any functions or responsibilities with respect to the HAP activities or who are in a position to gain inside information, may not obtain a financial interest or benefit from a HAP-assisted activity, or have an interest in any contract, subcontract or agreement with respect

thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

City employees applying for HAP assistance must complete a *Conflict of Interest and Employee Affidavit*. Status as a City employee will not adversely impact an application for participation in the HAP; however, the employee must meet all HAP requirements.

Assistance with federal funds may limit participation by HCDD/HAP employees in decision-making positions or their immediate relatives, unless a waiver has been granted by HUD, pursuant to 24 CFR§92.356 and 24 CFR§570.611. Additionally, City employees are subject to comply with the City of Houston Standards of Conduct for all Employees (Subsection 14-183) and Standards of Conduct for City Officials (Subsection 18-3). Assistance with local funds may be awarded based on available and adequate source documentation to demonstrate compliance with local ordinances and requirements.

### **SECTION III: UNDERWRITING AND SUBSIDY LAYERING**

HOME requires underwriting of *all* HOME (rental and homebuyer) projects, whether or not assisted by other governmental assistance. The underwriting requirement have been put in place to assure that federal resources are neither duplicated nor wasted when applied to affordable housing and to assure long-term financial sustainability of households receiving assistance. The HAP underwriting and/or subsidy layering must demonstrate that the City is not investing any more funds, alone or in combination with other funds, than are necessary to provide quality, affordable, and financially viable housing for at least the duration of the affordability period. Reasonable and customary cost will be analyzed to assure compliance with CDBG regulations.

The HAP will maintain in its written procedures, consistent processes for evaluating the long-term financial sustainability of transactions assisted with HOME funds. These procedures will include at a minimum:

#### **A. Maximum Subsidy Limits**

To ensure that only the minimum amount of HOME subsidy is applied in any given transaction, HCDD will limit the HAP assistance to a maximum subsidy amount a family is eligible to receive. The subsidy amount will be calculated for each homebuyer according to formulas contained in the HAP Procedures Manual that consider at a minimum the front-end ratios of applicant and all sources of funds in the transaction. To ensure that public funds benefit the most number of eligible households HCDD will establish a maximum allowable subsidy amount through a gap analysis that considers the area median income as published by HUD, current prices of entry level homes, current prevailing interest rates, other lending costs including tax rates, homeowner insurance and mortgage insurance. The maximum subsidy amount will be revised at least annually or at the discretion of the Director when market volatility renders current maximum subsidy amounts inaccurate. The maximum subsidy amount will include all subsidy funds, whether provided by the HAP or a third party. Closing cost assistance will be limited to a maximum amount of assistance also published and revised annually by the HCDD.

The HAP reserves the right to adjust the amount of HAP assistance up to and including the day a transaction is scheduled to close to comply with the Maximum Subsidy Limits.

### **B. Ratio Requirements**

To ensure the long-term financial sustainability, the HAP will include in the HAP Procedures Manual maximum front-end and maximum back end ratios and the process for their calculation. These ratios will be reviewed and updated at least annually and published by HCDD.

### **C. First Mortgage Terms**

In order to ensure that homebuyers receiving HAP assistance are not subject to predatory or unfair lending practices, the HAP Procedures Manual shall have a written policy, reviewed and updated at least annually that describes the eligible types of first mortgage financing that can be combined with HAP assistance and the maximum allowable closing costs able to be charged to a program participant. At a minimum, this shall include maximum allowable interest rate, loan-to-value ratio, and types of allowable mortgages.

### **D. Maximum Closing Costs**

To ensure that participants in the HAP program are not victims of predatory lending, or that HAP closing cost assistance is not used to the sole benefit of ALPs, and that client and ALPs have a clear expectation of the amount of assistance, a maximum closing cost limit shall be published annually in the HAP Procedures Manual.

### **E. Liquid Asset Limit**

To ensure that public funds are not being used to replace a buyer's liquid assets in a transaction, HAP participants will be limited to a maximum liquid asset amount after the closing on a HAP assisted unit. This limit will be assessed annually and published in the HAP Procedures Manual. For the purpose of this rule, liquid assets will mean all cash, cash equivalents, stocks, bonds, money market instruments or any other non-retirement investments or assets that are not tax-deferred. Waivers may be granted to this requirement in situations where the applicant is (1) near retirement (2) retired (3) permanently disabled or other unusual circumstances where an applicant's ability to work is severely diminished and the applicant is solely dependent on liquid assets to pay for basic living expenses. Waiver authorizations must be provided in writing, citing the justification for the waiver signed and dated by the Director or his/her authorized designee, and maintained in the client file. Waiver requirements will be assessed annually and published in the HAP Procedures Manual.

## **SECTION IV: ELIGIBLE PROPERTIES STANDARDS**

### **A. Eligible Property Types**

Eligible property types include any property that will serve as the purchaser's principal residence, including a single-family property (1 unit), condominium unit/townhouse, cooperative unit or manufactured home on a permanent foundation.

## **B. Maximum Purchase Price**

The maximum purchase price of homebuyer/homeowner-occupied property as required by the HOME program may not exceed ninety five (95) percent of the median purchase price for that type of single-family housing for the area, as published annually by HUD. The maximum purchase price (determined by HUD) for an existing and newly constructed housing shall apply to all HAP funding sources. However, where market volatility renders the maximum purchase price inaccurate, the Director may only adjust the CDBG and or TIRZ maximum purchase price. The maximum purchase price will be provided annually.

## **C. Minimum HOME Investment**

The minimum amount of HOME funds the HAP shall provide to any potential homebuyer shall be no less than One Thousand Dollars (\$1,000.00). This minimum amount shall also apply to all HAP funding sources.

## **D. Property Location**

All properties must be located within the incorporated areas of the City or be serviced by the City and subject to pay City property taxes. In the case of local funds, other geographic restrictions may apply, which will be published as part of the HAP Procedures Manual.

## **E. Minimum Property Standards**

The housing acquired through the HAP regardless of the funding source, must meet the City's written property standards included in the HAP Procedures Manual. The units must be free from defects posing a danger to the health or safety of the occupants before transfer of ownership. Properties receiving federal assistance must also meet any other applicable federal property standards and or program requirements.

## **F. Inspection for Compliance**

HCDD requires inspection of all units receiving assistance. Prior to closing, a qualified City inspector or agent working on behalf of the City will inspect the property to determine that the property meets the applicable federal, state and or local minimum property standards.

## **G. Lead-Based Paint**

All pre-1978 built properties acquired through the HAP must meet all applicable federal standards for lead-based paint as outlined in the HCDD Minimum Housing Rehabilitation, Reconstruction/New Construction Standards.

## **H. Environmental Review for Federal Funds**

A HUD Environmental Review must be performed on the property prior to commitment of federal funds by HCDD (24 CFR Parts 50, 58, 92, 570, 574, 578, 576, and 970).

24 CFR §58.35(b)(5) defines homebuyer assistance activities as "categorical exclusions not subject to § 58.5" using the following wording:

*"Activities to assist home buyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy-*

*downs, and similar activities that result in the transfer of title.”*

Properties receiving local funds i.e. TIRZ exclusively are not subject to comply with the HUD Environmental Review.

### **I. Potential Flood Zone**

A Notice to Prospective Buyers of Properties located in a Potential Flood Zone must be provided to anyone interested in using HUD assistance, subsidy or insurance to buy a Newly Constructed property, located in a previously designated 100 Year Flood Zone.

The HAP **MUST** collect supporting documentation from time of acquisition to title transfer regarding all improvements made to each property previously designated in the 100-year floodplain is no longer in the 100-year floodplain before closing.

### **J. Relocation Obligations**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR part 24 states a “displaced person” must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person, is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas. The URA applies to federally assisted homebuyer programs including HOME and CDBG. Under the federal regulation, the Seller(s) must not displace tenants of the property being purchased. HCDD will only assist properties that are owner-occupied or vacant. If a home is tenant-occupied, the tenant and HAP applicant must be the same person.

## **SECTION V: HAP LOAN TERMS OF ASSISTANCE**

### **A. Principal Residence Requirement**

The property must be occupied as the principal residence by the homebuyer throughout the Affordability Period commencing on the date the project completion information has been entered into the Integrated Disbursement And Information System (IDIS) established by HUD or the date of closing for non-HOME funded projects, subject to the exceptions provided by the Recapture Requirements described further in this document. A Second Lien Deed of Trust will be obtained to secure the Homebuyer's compliance with the Affordability period and all other HAP requirements as determined by the Director on behalf of the City. Under the Affordability period compliance requirements, there is no change allowed in use and/or occupancy and the Homebuyer must comply with all HAP requirements. Should a change in ownership (including foreclosure) occur during the Affordability period, the loan will be subject to HCDD established Recapture Requirements.

If the homebuyer occupies the property as his/her principal residence for the entire Affordability period, no recapture restrictions will apply. However, if the property is sold or rented, the City must attempt to recapture the entire amount of HOME-funded assistance as indicated under the

Recapture Requirements. The City’s recapture amount is limited to the net proceeds available from the sale.

**B. Recapture Requirements**

The homebuyer must occupy the property as his/her principal residence throughout the term of the Affordability Period. If the applicant occupies the property as his/her principal residence for the entire Affordability Period, no recapture restrictions will apply. If the property is sold, rented or lost during the Affordability Period (including foreclosure), the City will attempt to recapture the Entire Direct HOME Investment Partnerships Program Subsidy, provided to the homebuyer before the homebuyer receives a return.

The City’s recapture amount is limited to the net proceeds or profits available from the sale of the property. In some cases, such as declining housing markets, the net proceeds or profits available at the time of sale may be insufficient to recapture the Entire Direct HOME Subsidy provided to the homebuyer. Because the HOME Final Rule at 24 CFR§ 92.254(ii)(3), limits recapture to *available* net proceeds, the City can only recapture what is available from net proceeds or profits. Hence, the City will limit the recapture to the net proceeds available from the voluntary/involuntary sale up to the full amount of the HAP loan. However, if the City is not able to recapture the Entire Direct HOME Subsidy amount, the property will not qualify for another HOME subsidy for ten (10) years after the City completes its attempt to recapture the entire HOME subsidy. If the homeowner vacates the property, converts it into a rental property, or in the case of other forms of default during the Affordability Period, the City shall pursue all available remedies to the City under the HAP Promissory note, Deed of Trust or other HAP loan documents including repayment of the HAP loan. During the continuance of any such default, the HAP loan shall bear interest at a default rate of six percent (6%) per annum.

**C. Minimum Affordability Periods**

The affordability period is based on the total amount of assistance provided by the HAP. Recipients are required to meet the applicable minimum “Affordability Period”. The HOME affordability period shall commence on the date the project completion information has been entered into the Integrated Disbursement And Information System (IDIS) established by HUD and is given an IDIS status code of complete (HCDD will strive to enter IDIS completion data within thirty (30) days of closing), or on the date of the Note, if the Deferred Payment Zero Interest Loan is not subsidized with HOME funds. Table 1 illustrates the minimum applicable HOME Affordability Periods based on the amount of HOME assistance:

Table 1 HOME Affordability Periods\*

| <b>Homebuyer Assistance</b> | <b>Affordability Period (Years)</b> |
|-----------------------------|-------------------------------------|
| Under \$15,000              | Five (5)                            |
| \$15,000 to \$40,000        | Ten (10)                            |
| Over \$40,000               | Fifteen (15)                        |

**\*Note: Non-HOME Affordability Periods are subject to change at the discretion of the Director.**

The HAP reserves its rights to require an Affordability Period for CDBG or any other local funds i.e. TIRZ. The HCDD Director or his/her authorized designee may impose an Affordability Period for CDBG or any other local funds that may be (1) greater than (2) equal to or (3) less than those required by the HOME program and shall be published annually in the HAP Procedures Manual.

#### **D. HAP Loan Terms of Assistance**

The terms of assistance are a deferred zero-interest payment forgivable loan imposed on the property that provides that the property be occupied for a period called an “Affordability Period” by that homebuyer as his/her principal residence. The affordability period is based on the funding source and amount of funds a homebuyer receives. All HAP recipients, regardless of the funding source, will be required to comply with the Affordability Period.

#### **E. Borrowers Cash Investment Requirement**

The borrower will be required to provide a minimum cash investment into the transaction from his/her own resources into the home purchase transaction. The minimum amount of investment will be defined in the HAP Procedures manual. The cost of the appraisal, credit report, inspection, earnest money and/or cash brought to closing satisfies this requirement. The homebuyer must also have cash reserves at the time the application is approved and shall remain in reserves for verification prior to closing and funding the transaction. The amount of cash reserves will be defined in the HAP Policies and Procedures Manual.

#### **F. Eligible Uses of HAP Funds**

HOME, CDBG, TIRZ and any other local funding made available to the HAP shall be used to assist income eligible homebuyers acquire either an existing or a newly constructed housing unit. HOME assistance may be used to pay the minimal amount required for (1) downpayment (2) reasonable closing costs and (3) reduce the principal amount of the first mortgage. CDBG assistance may only be used to pay (1) up to fifty (50%) percent of the required downpayment (2) pay reasonable closing costs and (3) to reasonably reduce the principal amount of the first mortgage. TIRZ assistance may be used for (1) downpayment (2) reasonable closing costs and (3) reduce the principal amount of the first mortgage.

#### **G. Ineligible Uses of HAP Funds**

HAP assistance **may not** be used to (1) pay any portion of a real estate agents fee (2) pay delinquent taxes (3) pay fees or charges on properties that are the result of the seller.

#### **H. Lien Subordination**

HCDD shall maintain a written policy in the HAP Procedures Manual for the subordination of HAP liens and eligible lien types that can be placed on homes receiving HAP assistance.

## **SECTION VI: CLIENT PROCESSING AND CLOSING INSTURCTIONS**

#### **A. HAP Procedures Manual**

HCDD shall maintain a written HAP Procedures Manual. The purpose of this document is to provide policies and procedures for the day-to-day operation of the HAP program, and contain

forms, documents and information about program guidelines that may require periodic updating. The manual will be updated annually and provided to ALP's and other HAP partners in January of each year. Updates will occur only once a year, except for immediate changes required by HUD to meet basic compliance requirements for the program.

**B. Affordable Lending Partners**

HCDD shall maintain in the HAP Procedures Manual eligibility guidelines for participating Affordable Lending Partners.

**C. Homebuyer Assistance Program Closing Procedures**

HCDD shall maintain a written policy for client processing and closing procedures in the HAP Procedures Manual. This process shall be updated annually to reflect programmatic changes.

**D. Quality Control**

Quality control (QC) is an essential component toward ensuring compliance. The HAP Administrative Supervisor or his/her designee is the designated responsible party for performing the final "QC" review on all HAP applicant files. The Administrative Supervisor or his/her designee is required to verify the accuracy and correctness of the documents prior to submitting the documents for management's signature.