

CITY OF HOUSTON
HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT

**THE FIRST AMENDED AND RESTATED
ADMINISTRATIVE GUIDELINES
FOR
THE HOMEBUYER ASSISTANCE PROGRAM**

The City of Houston (City) Housing and Community Development Department (HCDD) has designed the Homebuyer Assistance Program (HAP) to provide financial assistance to low-to-moderate income homebuyers in the incorporated area of the City. HCDD staff and/or future sub-recipients will administer HAP according to the procedures and guidelines set forth in this document. The primary goal of HAP is to increase homeownership opportunities for low-to-moderate income persons while meeting national goals and objectives as set under the federal grant programs.

Funding for HAP will be available through the HOME Investment Partnership (HOME) Program, the Community Development Block Grant (CDBG) Program, the American Dream Down Payment Initiative (ADDI), Tax Increment Reinvestment Zone (TIRZ) and any other funds that become available.

HAP will provide:

- Direct financial assistance to offset portions of the down payment, closing costs, pre-pays and principal required for home purchase;
- Identification of prospective program participants;
- Development and monitoring of "case management plans" to overcome individual barriers; and
- Access to mortgage resources

Clients will be referred to HCDD for the HAP through the following entities and methods:

- Participating lenders.
- Participating realtors.
- Participating HUD approved housing counseling agencies.
- HCDD printed and published marketing materials.
- Homebuyer introduction meetings held in the community to promote homeownership.

DEFINITION OF TERMS

ADDI shall mean American Dream Down-payment Initiative Act that authorizes up to \$200 million annually for fiscal years 2004-2007. ADDI will be administered as part of HOME.

ALP shall mean Affordable Lending Partner that has acknowledged to participate in HAP.

Affordability Period shall mean the period of time during which the Homebuyer is required to live in and maintain the property purchased as his or her primary residence. In no event will the amount of HOME funds invested in a single property exceed the threshold amount which would trigger a HUD-mandated Affordability Period in excess of 5 years. The Affordability Period shall commence on the date of closing.

Applicant shall mean the person/household requesting assistance through HAP.

CDBG refers to the Community Development Block Grant funds received from the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974, as amended.

CFR shall mean Code of Federal Regulations.

CHDO shall mean Community and Housing Development Organizations.

City shall mean the City of Houston.

Deferred Payment Loan (DPL) means a second lien, interest free loan provided through the City to a Homebuyer to provide a subsidy for the Homebuyer's purchase of a home, issued in an amount not to exceed \$19,500. The DPL may not include more than \$14,500 of federal HOME Program funds. The Deferred Payment Loan will be evidenced by a Loan Note and secured by a Second Lien Deed of Trust.

Director shall mean the Director of HCDD or an individual designated by the Director to perform duties specified in the HAP Guidelines.

First lien holder shall mean the Affordable Lending Partner or the City of Houston.

HAP shall refer to the Homebuyer Assistance Program.

HAP Guidelines shall mean the administrative guidelines embodied in this document, as amended from time to time.

HAP Loan Closing Documents shall include Second Lien Deed of Trust, Loan Note, Conditions of HOME Program Assistance, Homebuyers' Acknowledgement and Affidavit of Borrower(s), with a Statement of Total Family Income attached, in forms that have been approved by the City Attorney and HUD. The Title Company shall have the Second Lien Deed of Trust recorded in the Real Property Records of the appropriate county. There shall be no exceptions to this requirement.

HCDD shall mean Housing and Community Development Department of the City of Houston.

HOME shall mean Title II of the Cranston-Gonzales National Affordable Housing Act, entitled the HOME Investment Partnerships Act, and all regulations promulgated by HUD pursuant thereto, including but not limited to the regulations set forth at 24 CFR Part 92.

Homebuyer shall mean a prospective applicant whose annual gross household income does not exceed eighty (80) percent of the median for the City of Houston pursuant to guidelines established by HUD.

HUD shall mean the United States Department of Housing and Urban Development.

Household Income shall mean the annual gross household income anticipated to be received during the coming 12-month period for all adults who will reside in the household. The annual gross income shall be determined under the “Part 5” definition. (Appendix I)

Household Size shall mean all persons who will be residing with the applicant(s).

IDIS shall mean Integrated Disbursement and Information System

Lead-Hazard Visual Assessment shall mean a screening required for all properties built before 1978.

Lead Hazard Warning Disclosure shall mean a Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards given to a Homebuyer for a property built during 1978 or after.

Loan Closing shall mean the date on which all applicable loan documents are executed.

Low-to-Moderate Income shall mean a person/household whose annual income does not exceed eighty (80%) percent of the median income established by HUD for the City of Houston.

Minimum Property Rehabilitation Standards shall mean the document that sets forth the minimum condition the property must meet if federal assistance is to be provided. These conditions are based on the locally adopted property standards (as adopted by the City). Once deficiencies to this standard are identified, corrections shall be completed (before or after closing, as applicable) in full compliance with the City’s adopted property minimum rehabilitation standards, as amended from time to time.

Participating HUD Approved Housing Counseling Agencies shall mean housing counseling agencies that are approved by HUD to perform housing counseling activities.

Participating Realtors shall mean realtors that have acknowledged participating in HAP.

Program Administrator shall mean the City of Houston Housing and Community Development Department (HCDD)’s HAP Section staff and/or future sub-recipients responsible for

administering the Homebuyer Assistance Program.

Property Condition shall mean that the City conduct its own inspection of the property prior to acquisition to verify that the property is in compliance with the Property Standards before federal funds are invested in the property, or after closing if rehabilitation/repair assistance will also be provided from federal funds.

Recapture shall mean the proceeds from the repayment of the second mortgage by the original Homebuyer based on failure to reside in and use the property as principal residence during the Affordability Period or failure to meet other requirements of the Deferred Payment Loan or the HAP.

Release of Liens shall mean the document(s) which 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 completion of the Affordability Period and compliance with all other requirements of the Deferred Payment Loan and the HAP.

Review Committee shall mean a committee designated by HCDD Director to receive and review all loan and grant requests.

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. This lien is in second position to the ALP's first lien placed against the property. This loan does not require repayment unless the Affordability Period is not satisfied or upon the breach of any other conditions contained in the executed Terms and Conditions of HOME Program Assistance or other contractual documents.

Service Area shall mean a property located within the incorporated areas of the City of Houston.

Single Family Housing shall mean housing with one to four family units.

Terms and Conditions of HOME Program Assistance shall mean the document executed by HCDD and the homeowner(s) or between the Homebuyer and any sub-recipient or CHDO funded by the City which sets out the principal terms and conditions applicable to any HOME funding being provided.

Use of Property as Principal Residence shall mean that the Homebuyer must occupy the purchased property as the principal residence of the Homebuyer for the full designated Affordability Period.

TIRZ shall mean Tax Increment Reinvestment Zone Funds.

SECTION I - Homebuyer Requirements

A homebuyer will be eligible for HAP if the applicant/household is a homebuyer who will occupy the property as his/her principal residence during the affordability period. The homebuyer must be low-to-moderate income, defined for purposes of this program as having a gross annual income that does not exceed 80% of the City median income adjusted for family size, demonstrate the ability to obtain a mortgage loan and sustain ownership over the period of affordability.

The level of assistance provided to each homebuyer may not exceed \$19,500.00. (Federal HOME assistance may not exceed \$14,500.00). Applicant(s) combined annual household income must be *at* or *below* the amounts listed in the Household Income Limits to qualify for HAP funds. Below are a listing of the Houston area median income percentages and the level of assistance HAP will provide.

<u>Area Median Income Percentage (%)</u>	<u>Level of Assistance</u>	<u>Affordability Period</u>
50% or below*	\$14,500.00	5 years
51% to 65%	\$14,500.00	5 years
66% to 80%	\$10,000.00	5 years

* Homebuyers at 50% of the area median income or below may be eligible for an additional amount of \$5,000 of other funds (excluding HOME funds) when available.

Similar to any normal mortgage loan, Homebuyers must meet the credit and underwriting criteria established by the participating ALP providing the loan. Based on guidelines, Homebuyers must also meet the HCDD’s requirements to qualify under this program.

A. Income Determination

Income for all persons over eighteen years of age living in the property must be included in determining income for program eligibility. Income from a non-purchasing spouse must be included in Family Income calculations. **Total Family Income used for program eligibility may be different from that used by the ALP.** The City has adopted the Section 8 program definition for annual (gross) income (23 CFR Part 5). The Part 5 definition of annual income is the gross amount of income of all household members anticipated to be received during the coming 12-month period.

Required Documentation

HCDD will review and certify the family income information according to HUD approved procedures and guidelines for determining annual income (Exhibit A).

Each ALP will submit the following documents for all household members over the age of 18 years old when applicable:

- Income Worksheet signed by all household members.
- A written Verification of Employment (VOE) or three (3) calendar months of paycheck stubs

dated within ninety (90) days of file submission.

- All award letters, income verification forms and/or third party verification forms to verify other sources of income such as child support, social security, social security supplemental income (SSI), pensions, annuities, etc.
- The last three (3) years complete income tax returns including all schedules, W-2's or 1099's.
- Provide birth certificates or legal documentation of adoption or guardianship for all household members seventeen (17) years of age and under that are not listed on the tax returns.
- Three (3) calendar months of bank statements dated within ninety (90) days of file submission.
- If applicable, additional documents/statements from the applicant(s) related to marital status, i.e., divorce decree, legal separation documents, and/or death certificate.
- All household members Texas Driver's License(s), Social Security Card(s), and/or Permanent Resident Alien Card(s).
- Verification of Deposits (VOD) bank statements and/or cashier's checks to verify that the borrower has at least \$1000 in reserves. The borrower cannot have more than \$50,000 in liquid assets (excluding retirement accounts).

Income Calculations that may require explanation and review:

- The City and/or ALPs will review income from overtime, bonuses, seasonal work, etc., over a minimum period of three (3) years and complete an "income average". The amount obtained by income averaging will be added to the applicant's projected gross annual income. See also Section II A of Appendix I.
- Provide proof of varying compensation, such as tips or gratuities, along with year-to-date information or average income.

**ALP's are encouraged to use the HUD online income calculator to determine family income. The HUD online calculator may be found at the following web address:
<https://webapps1.hud.gov/hfc/calculator/>*

B. Completion of Homebuyer Education

Homebuyer must complete at least eight (8) hours of homebuyer education from any Participating HUD Approved Housing Counseling Agency or HAP staff. It is the responsibility of the homebuyer to pay all costs incurred with signing up for a homebuyer education course.

The Participating HUD Approved Housing Counseling Agency or HAP staff will prepare a Counseling Certificate and present it to the Homebuyer(s) after the course completed.

Required Documentation:

The Homebuyer must submit to ALP a copy of the Counseling Certificate to be included in the loan

file.

C. ALP Loan Approval

Downpayment, maximum debt to income ratio, maximum totals obligations, credit history and credit report or loan terms (Except for Lead-Base Paint See Section II E.) are the responsibility of the ALP to assess risk; however, no member of the family unit can be delinquent on a student loan or a student loan repayment plan. Also, the applicant(s) cannot be late or delinquent on any utility payments applicable to the current or former address(es). **Please be advised that the back ratio for all ALP loans cannot exceed 50% and PITI must be included in the total monthly payment.**

Required Documentation:

Approval letter from ALP showing interest rate and loan amount. Rate must be locked at the time of submission to HCDD. Also, an executed 1003 Loan application, 1008/MCAW Underwriting Summary and tri-merged credit report must be submitted.

SECTION II - Property Eligibility Criteria

Any property, existing or newly constructed, which will become the applicant's principal residence, may be eligible for HAP funds. Properties assisted with funds must be free from any defects that pose a danger to the health or safety of occupants before transfer of ownership.

A. Type of Property

Property approved for funding includes new and existing structures:

- Single-family property (detached and attached 1-4 units)
- Condominium unit/Townhouse
- Modular home/Manufactured home
- Cooperative unit

Required Documentation:

One complete copy of the property appraisal showing the type of unit is required.

B. Sales Price Limitations

The sales price for the property cannot exceed \$135,000.

Required Documentation:

The sales price must be supported by an executed earnest money contract or contract for sale not to exceed \$135,000.

C. Property Location

Property must be located within the incorporated area of the City of Houston.

Required Documentation:

Tax Certificate obtained from Title Company by the ALP with the Tax I.D. Number. Also, the executed Lender Affidavit- Property Location Certificate. Property location will be verified with the appropriate appraisal district. In addition, a copy of the Flood Insurance Determination Form must be submitted.

D. Property Condition

If the property to be acquired is an **existing** property, it must be certified as decent, safe and sanitary by a clear HCDD Minimum Property Rehabilitation Standards Inspection Report pursuant to local minimum property standards and building codes adopted by the City. If the property to be acquired is a newly constructed unit, it must be in full compliance with the City's new construction codes and if applicable any state requirements for new construction, including documentation that the structure complies with energy efficiency requirements as contained in Chapter 11 of the state's International Residential Code (IRC).

Required Documentation:

The property must be appraised in order to establish that the property is decent, safe and sanitary. A full copy of the Appraisal listing the condition of the property as "Average" or above must be submitted to HCDD. Also, HCDD encourages the potential homebuyer(s) to have an inspection performed on the property to be acquired. If an inspection is performed, the ALP may submit a clear inspection report with the file if available. Prior to the commitment of any funds, HCDD Inspection Services Section will conduct an independent inspection on the property.

E. Lead-Base Paint Risk Assessment

Any property built before 1978 will have Lead-Based Risk Assessment prior to approval of HAP financial assistance. The methods contained in the Texas Environmental Lead Reduction Rules, Section 295.272 Standards For Conducting Lead Based- Paint Activities will be acceptable. All properties built in 1978 or later will have Lead-Hazard Disclosure attached to the file.

Required Documentation:

If the property was built before 1978, the property must be certified as free of lead hazards. The Houston Department of Health and Human Services will perform an independent Lead-Based Risk Assessment on the property once the file is submitted by the ALP.

If the property was built during 1978 or after, a "**Lead Hazard Disclosure**" will be delivered to HCDD with the applicant's signature and date.

F. Environmental Review for Federal Funds

A HUD Environmental Review must be performed on the property prior to federal funds being committed by HAP (24 CFR Parts 50, 58, 574, 582, 583, and 970). No commitment or

disbursement of funds will occur prior to completion of the review. 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 homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.”

When a homebuyer meets this definition, the City’s responsibilities as the Responsible Entity (RE) are described on p. 13 of CPD-01-11:

“These activities are treated like exempt activities. The RE is not required to undertake NEPA level review or document that the activities comply with other Federal laws and authorities found at §58.5. Additionally, no public notices are published, and a Request for Release of Funds and Certification is not submitted to HUD (or the state in the case of state recipients). The RE must document its determination that the activity is a categorical exclusion not subject to §58.5 authorities, and place the document into the Environmental Review Record.”

There is one condition under which homebuyer assistance alone might be considered subject to § 58.5 and one condition that might require NEPA environmental assessment under § 58.36 or categorical exclusion under 24 CFR 58.35(a).

1. If the commitment is made to a homebuyer subsequent to initiation of the construction of the house.
2. If the downpayment assistance financing is committed, reserved or otherwise directed to a specific developer or project prior to initiation of construction, whether by application of the developer (or intent to apply) or declaration of the city to set-aside funds for particular projects. In such cases, the presumption has to be that the buyer assistance is integral to the overall financing of the project.

In these cases, the City cannot proceed with commitment and the developer cannot proceed with construction until the City determines whether the project qualifies under § 58.35(a), 58.34(a)(12), or 58.36 and completes the appropriate review. All stop-work provisions should apply until the appropriate review can be completed.

Under these circumstances in single family situations of less than 5 units, a homebuyer project may be categorically excluded but subject to § 58.5. The project may be converted to exempt, if no conditions apply, as outlined in Section IV.D of CPD Notice 01-11 (see pp. 15 -16). However, a HOME project is subject to both NEPA and § 58.5 and requires an environmental assessment under § 58.36 if the following conditions apply:

- The project is 5 or more units of new construction, or a multifamily rehabilitation project that fails to satisfy the conditions of categorical exclusions under 24 CFR 58.35(a)(3)(ii) or a single family (1-4 units) rehabilitation project that fails to satisfy the conditions of 24 CFR 58.35(a)(3)(i) (i.e., the project will be considered as needing an Environmental Assessment when the project will result in the production of 5 or more units, involves a change in land use, or will increase the footprint of the building in a floodplain or wetland); and
- The request for homebuyer assistance precedes construction and is determined to be integral to the project financing assembled by the developer for 5 or more units.

All of these responsibilities will remain with the City as the Responsible Entity, even if the City should later delegate other program administrative responsibilities to a subrecipient.

Required Documentation:

Homebuyers may be approved for downpayment assistance only to purchase existing homes or homes already under construction at time of application for assistance. The ALP and homebuyer must complete the “Affidavit of Eligible Borrower” to certify that the unit was under construction when the homebuyers signed the contract for sale. “The Terms and Conditions of HOME Program Assistance” and “Affidavit of Eligible Borrower” must be placed in the file as part of the determination that the downpayment assistance complies with 24 CFR 58.35(b)(5). For all existing dwelling units and dwelling units under construction a complete Compliance Documentation Checklist 24 CFR 58.6 is required.

G. Environmental Review for Non Federal Funds

Homebuyer assistance for the construction of homes not yet under construction may be considered for non-Federal assistance if and when funds are available.

Required Documentation:

Requests for assistance to individual homebuyers purchasing a home not yet under construction will complete a non-federal fund application.

H. Historical Review

A historical review must be performed on all new construction properties and existing properties that will require rehabilitation prior to receiving federal funds.

Required Documentation

As a part of the department's Environmental Review process all new construction projects will undergo the Section 106-historical review. If a potential homeowner is requesting downpayment for an existing home that will require rehabilitation, that home must undergo the Section 106 review. If the homeowner is requesting downpayment for an existing home that does not include rehabilitation, the 106 review is not required. However, the existing property must be in compliance with the law and authorities specified in 24 CFR 58.6.

I. Use of Property as a Principal Residence:

The property must be occupied as the principal residence by the homebuyer throughout the affordability period commencing on the date that all required completion data is in IDIS.

Required Documentation:

Three original typed **Terms and Conditions of HOME Program Assistance** must be submitted and signed by the borrower with the file

J. Relocation Obligations:

The Uniform Relocation Act (URA) applies to federally assisted homebuyer programs. Under the HOME Program guidelines, the Seller (s) must not displace tenants of the property being purchased. If Seller currently occupies the property, the Seller will waive rights to relocation benefits.

Required Documentation:

The Seller will submit a signed "Affidavit of Selling Parties" and "Notice to Seller" to the Lender that attests to the fact that the property is not currently leased, unless to the buyer in the transaction.

Section III – Participating Partners

The participating agencies that participate in the HAP programs will follow and comply with all HCDD established eligibility procedures.

A. Affordable Lending Partners:

The participating institution of the ALP in processing mortgages for HCDD applicants will follow the HCDD established eligibility procedures. All programs available to the ALP including conventional, portfolio, FHA, VA or other types are allowable. The homebuyer(s) are encouraged to contact their ALP of choice and make an application for "pre-approval" to purchase a home. Upon approval, or during the process, they will contact a Participating Realtor to identify properties. Each ALP will submit (courier-return receipt required or regular mail) to HCDD a complete package of required program documents on each applicant requesting HAP funds. The file must be submitted in a folder with all pages secured to the folder. HCDD will verify all the information contained on each applicant in order to qualify the household for financial assistance.

B. Participating HUD Approved Homebuyer Counseling Agencies or HAP Staff

HCDD will refer all applicants to a comprehensive counseling program. Counseling programs will encourage individuals to participate in homeownership and provide a method to track the achievement of the homeownership goal.

Section IV - Loan Financing and Closing Requirements

The property must be occupied as the principal residence by the homebuyer throughout the affordability period commencing on the date of closing. All required completion data will be entered into IDIS within three (3) business days of the date of closing. A Second Lien Deed of Trust will be obtained to secure Homebuyer's compliance with the Affordability Period and all other requirements of the HAP. Homebuyer will also execute the Loan Note.

The documents will require an Affordability Period. Payments on the loan are to be "deemed paid" on a pro-rata basis throughout the term of the Affordability Period provided that there is no change in use and/or occupancy and Homebuyer complies with all requirements of the HAP. Should a change in ownerships (including foreclosure) or occupancy occur during the affordability period, any balance would immediately become due and payable to the City.

If the homebuyer occupies the property as the principal residence for the Affordability Period, no recapture restrictions will apply. However, if the property is sold or the homebuyer vacates during the affordability period, the City must recapture the prorated amount from the Net Sales Proceeds, which shall be the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

A. Program Loan

The terms for assistance require 0% interest, deferred payment loan. There are four (4) key requirements to this "Soft Second" loan:

- The loan is not assumable.
- Owner financing is not acceptable under this program.
- No cash out home equity loan.
- Subordination will be for rate and term only.

Required Documentation:

HCDD will prepare required documentation in order to satisfy the HAP requirements.

B. Lender Mortgage Interest Rate

ALPs will price the program at an interest rate that will yield 101.00 with no more than .25 variance. The 101.00 yield is on a Fannie Mae Conventional product fixed rate with a 45/60 day lock. No discount points may be paid and neither temporary nor permanent interest rate buy-downs may be paid by the borrower. Please refer to ALP Acknowledgement executed by your company.

Required Documentation:

Loan Approval Letter with appropriate signature(s).

C. Closing Cost

- Closing cost will be limited to actual cost.
- ALP fees defined as any fees received by the ALP not paid to a third party are limited to \$650.
- In addition to the ALP fees described, the ALP may charge no more than one percent (1%) origination fee or \$500 whichever is greater.
- Participating Realtor fees are not eligible closing costs.
- Mortgage wholesale or broker transaction fees paid by the applicant are limited to \$650.

Required Documentation:

Certificate of Lender Approval is required. HCDD staff will review the HUD I Settlement Statement to ensure compliance

D. Borrowers Cash Investment Requirement

The borrower must invest at least \$500 into the transaction plus have at least \$1,000, but not more than \$50,000, in reserves (excluding retirement accounts). The cost of the appraisal, credit report, inspection, earnest money and/or cash brought to closing qualifies under this requirement.

Required Documentation:

HCDD staff will review the HUD I Settlement Statement to ensure compliance. HCDD will review Verification of Deposits (VOD), bank statements and/or cashier's checks to verify that the borrower has at least \$1000 in reserves.

E. Lien Subordination

The only liens to be placed on the property purchased through HAP will be the ALP's First Lien Deed of Trust and the City's Second Lien Deed of Trust. There will be no third lien recorded related to the purchase of property without prior written approval of the HCDD Director. Violations can result in ALP debarment from participation in HAP.

Required Documentation:

Executed HCDD Form 106 "Lien Subordination Agreement."

F. Homebuyer Assistance Program Closing Procedures

Once HCDD has received a **complete** file, an evaluation of the information will be performed in order to determine the prospective homebuyer's eligibility for HAP funds and the amount of financial assistance required to facilitate the purchase of the housing unit.

If the file is not complete or the prospective homebuyer does not qualify for financial assistance, the entire file will be returned to the ALP with a letter of explanation. The ALP will be given an opportunity to provide additional pertinent information and then re-submit the file. The review

process will be the same for the re-submitted file.

When a applicant is certified as eligible for the HAP program and the amount of financial assistance has been determined, then HCDD will utilize the step-by-step closing procedure as follows:

1. ALP will be notified via fax of approval or deficiencies within fifteen (15) business days of HCDD receipt of a complete application. HAP Supervisor/Manager will sign the faxed Transmittal Form.
2. HCDD Inspection Services Section will perform an inspection(s) on the property within fifteen (15) business days of HCDD receipt of a complete application.
3. If the file has been approved, HCDD will fax a copy of the client approval letter to the ALP and title company. HCDD will request the preliminary HUD I, first page of First Lien Deed of Trust and Schedule A & B of the title commitment from the ALP. HCDD will review the HUD I to determine if charges are eligible pursuant to HAP guidelines. HCDD will notify the ALP of the outcome of the review.
4. During the HUD I review process; HCDD will prepare the Second Lien Deed of Trust, Loan Note, and Closing Instructions
5. Once the HUD I has been accepted, HCDD will contact the appropriate title company to pick up a check and all prepared and executed documents.
6. After closing, the title company will submit to HCDD the original recorded and executed Second Lien Deed of Trust, Loan Note, HUD I Settlement Statement and a copy of the ALPs recorded First Loan Note and Deed of Trust.

It should be noted that the HUD I, first page of First Lien Deed of Trust and Schedule A & B of Title Commitment must be received at HCDD by 10:00 a.m. if the file is scheduled to close the next business day. No exceptions will be made.

These Guidelines incorporate the following documents which will be utilized to administer the HAP and which are attached hereto as **Appendix I**:

- a. Instructions for Executing the Terms and Conditions of HOME Program Assistance
- b. Terms and Conditions of HOME Program Assistance
- c. Loan Note (Deferred Payment)
- d. Second Lien Deed of Trust

EXHIBIT A

**PROCEDURES AND GUIDELINES FOR DETERMINING ANNUAL INCOME
HOMEBUYER ASSISTANCE PROGRAM**

Overview

City of Houston (City) Housing and Community Development Department (HCDD) staff administering the Homebuyer Assistance Program and/or sub-recipients administering a homebuyer program using federal housing funds from the City must adhere to the procedures and guidelines set forth in this document.

HCDD staff and/or sub-recipients responsible for determining and verifying the annual income of applicants seeking assistance must use methods prescribed in this document.

City must approve all forms, worksheets and applications used by sub-recipients to gather income information from applicants. Applications must include program information and requirements.

Pursuant to 24 CFR 92.203 (b), the City has adopted the Section 8 Program definition for annual (gross) income (24 CFR Part 5).

SECTION I - Definition of annual income

The Part 5 definition of annual income is the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period.

A. Whose income to count

Under the Part 5 definition of annual income, count income from all adult household members. Certain groups of people require special consideration when calculating a household's annual income:

B. Minors

Earned income of minors (age 17 and under) is not counted when calculating a household's Part 5 annual income.

Unearned income attributable to a minor, however, is counted in a household's Part 5 annual income. Examples of unearned income attributable to a minor include:

- child support,
- TANF payments, and
- other benefits paid on behalf of a minor.

C. Live-in aides

If a household includes a paid live-in aide, the income of the live-in aide is not counted, regardless of the source of the income (whether the aide is paid by the family or by a social service program).

Except under unusual circumstances, a related person cannot be considered a live-in aide.

D. Temporarily absent family members

The full annual gross income of temporarily absent family members is counted in the Part 5 definition of annual income - regardless of the amount the absent member contributes to the household.

For example, a construction worker employed at a temporary job on the other side of the state earns \$600 per week. He keeps \$200 per week for expenses and sends \$400 per week home to his family. The entire amount (\$600 per week) is counted in the family's income.

E. Permanently absent family members

If a family member is permanently absent from the household (such as a spouse who is in a nursing home), the head of household has the choice of either:

- counting that person as a member of the household (and including income attributable to that person as household income), or
- specifying that the person is no longer a member of the household.

F. Adult students living away from home

- If an adult student living away from home is counted as a member of a household (student is claimed as a dependant on the parent's tax return) when determining the household size, the first \$480 of the student's income must be counted in the family's income.

Note, however, that the \$480 limit does not apply to a student who is the head of household or a spouse (not claimed as a dependant on parent's tax return). When this is the case, the student's full income must be counted.

- If a student is applying for homebuyer assistance and the student is claimed as a dependant on his/her parent's tax return the income of the parent must be included when calculating income eligibility.
- If the student is not claimed on his/her parent's tax return the parent's income is not included.
- If a parent or other adult will be cosigning the first mortgage loan or be a co-borrower, but does not/will not reside in the property their income is not included in determining income eligibility.

SECTION II - Types of Income to Count

A list of the Part 5 income inclusions and exclusions as published at 24 CFR 5.609 is attached.

A. Irregular Employment Income

Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include seasonal income, sporadic work and self-employment income. Some examples of approaches to more complex situations are provided below:

- **Seasonal Work.** Clyde Kunkel is a roofer. He works from April through September. He does not work in rain or windstorms. His employer is able to provide information showing the total number of regular and overtime hours Clyde worked during the past three years. To calculate Clyde's anticipated income, use the average number of regular hours over the past three years times his current regular pay rate, and the average overtime hours times his current overtime rate.
- **Sporadic work.** Justine Cowan is not always well enough to work full-time. When she is well, she works as a typist with a temporary agency. Last year was a good year and she worked a total of nearly six months. This year, however, she has more medical problems and does not know when or how much she will be able to work. Because she is not working at the time of her certification of income, it will be best to exclude her employment income and certify income when she resumes work.
- **Self-employment income.** Mary James sells beauty products door-to-door on consignment. She makes most of her money in the months prior to Christmas but has some income throughout the year. She has no formal records of her income other than a copy of the IRS Form 1040 she files each year. With no other information available, use the income reflected on Mary's copy of her form 1040 as her annual income.

SECTION III - Procedure for the Treatment of Assets

A. What to Include

In general terms, an asset is a cash or no cash item that can be converted to cash. Note that when assets are included in the calculation of Part 5 annual income, it is the income earned from the asset - not the value of the asset - that is counted.

Assets Inclusions and Exclusions

A list of the Part 5 asset inclusions and exclusions as published at 24 CFR 5.609 is attached as Exhibit B.

B. Computing the Value of Assets

Assets have both a market value and a cash value. Under the rules of Part 5, only the cash value (rather than the market value) of an item is counted as an asset. The market value of an asset is simply its dollar value on the open market.

For example, the market value of a share of stock is the price quoted on the stock exchange on a particular day. A property's market value is the amount it would sell for on the open market. This may be determined by comparing the property with similar, recently sold properties.

An asset's cash value, however is the market value less reasonable expenses required to convert the asset to cash, including:

- Penalties or fees for converting financial holdings, such as penalties charged for premature withdrawal of a certificate of deposit, the transaction fee for converting mutual funds to cash or broker fees for converting stocks to cash; and/or
- Costs for selling real property, such as settlement costs, real estate transaction fees, payment of mortgages/liens against the property and any legal fees associated with the sale of real property.

NOTE: If an asset is owned by more than one person, the asset must be prorated according to the applicant's percentage of ownership. If no percentage is specified or provided by state or local law, the asset must be prorated evenly among all owners. If an asset is not effectively owned by an individual, it should not be counted as an asset in Part 5 annual income.

C. Determining Asset Income

In general, the Part 5 definition of income counts the actual income generated by the asset, such as the interest on a savings or checking account, for the purpose of determining "annual income."

This income is counted even if the household elects not to receive it. For example, though an applicant may elect to reinvest the interest or dividends from an asset, the interest or dividends are still counted as income.

As with other forms of income, the income from assets that is included when determining Part 5 annual income is the income that is anticipated to be received from the asset during the coming 12 months.

Several methods may be used to approximate the income from the asset. For example, to obtain the anticipated interest on a savings account, the current account balance can be multiplied by the current interest rate applicable to the account. Alternatively, if the value of the account is not anticipated to change in the near future and the interest rate has been stable, a copy of the IRS 1099 form showing past interest earned can be used. Checking account balances (as well as savings account balances) are considered an asset. This rule is not intended to count monthly income as an asset, but rather, is recognition that some households keep assets in their checking accounts.

To avoid counting monthly income as an asset, use the average monthly balance over a six-month period as the cash value of the checking account.

For most assets, calculating cash value and the income from the assets is straightforward. However, special rules have been established to address the following two circumstances:

- situations in which the assets produce little or no income, and
- assets that are disposed of for less than fair market value.

D. Determining Asset Income- Assets with Little or no Income

The Part 5 regulations assume that a household with assets has an increased payment ability, even if the assets do not currently produce income. For example, a household may own land that is not rented or otherwise currently used to produce income.

Rather than require the household to dispose of the property, the Part 5 rule requires that an "imputed" income be calculated based on a Passbook Rate applied to the cash value of all assets. (The Passbook Rate is established periodically by HUD.)

This rule only applies if the total cash value of all assets is more than \$5,000.
The City will provide the current Passbook Rate as obtained from the HUD Field Office.

Examples

1. The Cayhill family has \$6,000 (average balance over six months) in a non interest-bearing checking account. Include in the annual income an amount based on the current Passbook Rate. The calculation would be: $\$6,000 \times .02 = \120 .
2. The Shaw family has \$3,000 (average balance over six months) in a non interest-bearing checking account and \$5,500 in an interest-bearing savings account. The family reports \$150 interest on the savings account (this must be verified). Count the greater of the actual income from assets or the imputed income based on the Passbook Rate, as shown below:
Imputed income ($\$8,500 \times .02$) = \$170; Actual income = \$150; Included in "annual income" = \$170
3. The Smiths have \$600 (average balance over six months) in a non interest-bearing checking account. No income from assets would be counted because the family has no actual income from assets and the total amount of all assets is less than \$5,000.

E. Assets Sold Below Fair Market Value

Applicants who dispose of assets for less than fair market value have, in essence, voluntarily reduced their ability to afford housing.

1. The Part 5 rules therefore require that any asset disposed of for less than fair market value during the two years preceding the income determination be counted as if the household still owned the asset.
 - Fair market value is the value of an asset on the open market in an "arm's length transaction."
2. Each applicant must certify whether an asset has been disposed of for less than fair market value during the two years preceding the income determination.
 - Assets disposed of for less than fair market value as a result of foreclosure or bankruptcy are not included in this calculation.

- In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be less than fair market value if the applicant receives (or received) important consideration not measurable in dollar terms.
3. The amount to be included as an asset for purposes of calculating Part 5 annual income is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset.

Examples

1. Mr. Jones cashed in stock to give a granddaughter funds for college in August 1997. The stock had a market value of \$4,500 and a broker fee of \$500 was charged for the transaction.

Market value	\$4,500
Less broker's fee	<u>500</u>
Cash value to be considered	\$4,000

The \$4,000 in assets would be counted for any income determination conducted until August 1999 (looking forward two years from the time of disposition).

If Mr. Jones has no other assets, no income from assets would be included in annual income because the cash value of the asset is less than \$5,000. If other assets brought the total assets to more than \$5,000, however, an imputed income calculation would be required.

2. Mrs. Dutch "sold" a piece of property to a family member for \$30,000 on July 1, 1997. The home was valued at \$75,000 and had no loans against it.

Market value	\$75,000
Less settlement costs	3,000
Less sales price	<u>30,000</u>
Cash value to be considered	\$42,000

The \$42,000 would be counted as an asset for any income determination conducted until July 1, 1999. This amount would be combined with the cash value of other assets (if any), and an imputed income calculation would be required.

SECTION IV - Income calculator

HCDD staff and/or sub-recipients and CHDOs must use the HUD online income calculator as a tool to properly determine the annual income of HOME program beneficiaries. Participating lenders are also strongly encouraged to use the HUD online income calculator.

The HUD online calculator may be found at the following web address:

<http://www.hud.gov/offices/cpd/affordablehousing/training/calculator/calculator.cfm>

There are two versions of the Income and Allowances Calculator -- the step-by-step method and the short form. In the step-by-step method, one or two questions per screen are presented, accompanied by descriptive text. The short form method uses a spreadsheet style input for the more experienced user.

Documentation required

HCDD staff and/or subrecipients and CHDOs must verify annual income by requiring applicants to submit applicable documents including, but not limited to:

- Income Worksheet – Summary of Household Income Data
- Signed federal tax returns and W-2 Forms for last three (3) years and all schedules (used for resource documentation – not to be used in calculating Part 5 definition of annual income)
- Verification of employment (VOE)
- The last three (3) months of bank statements
- The last three (3) months of pay stubs (in lieu of pay stubs, VOE is sufficient)
- Form 1010
- Interest statements
- Unemployment compensation statements
- SSI and social security letters
- Pension benefits letters/statement
- Child support documentation
- Documentation of any other income or assets are from sources not included above.

Source documentation is good for six months only. HCDD staff and/or sub-recipients and CHDOs must obtain third party verifications of applicant employment, income, etc. A HOME Program Eligibility Release Form and all applicable verification forms must be obtained in order to verify annual income. If other verification forms are used, the City must approve these forms. If lenders are used to collect documentation, the City will inform participating lenders in writing of all the information that must be obtained.

HCDD staff, participating lenders and/or sub-recipients and CHDOs are responsible for directly verifying information with homebuyers.

City Review

If a sub-recipient or a CHDO administers the program, the City will review files to verify that income determination methods meet all program requirements before any federal housing dollars are committed. Income determination methodology and documentation must be reviewed and approved by the City before the sub-recipient or CHDO may commit funds to an applicant. This table presents the Part 5 income *inclusions* as stated in the Code of Federal Regulations.

General Category	Statement from 24 CFR 5.609 paragraph (b) (April 1, 1998)
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness cannot be used as deductions in

	determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment (except as provided in number 14 of Income Exclusions).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in number 3 of Income Exclusions).
6. Welfare Assistance	Welfare Assistance. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of: · the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus · the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph is the amount resulting from one application of the percentage.
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special day and allowances of a member of the Armed Forces (except as provided in number 7 of Income Exclusions).

This table presents the Part 5 income *exclusions* as stated in the Code of Federal Regulations.

General Category	Statement from 24 CFR 5.609 paragraph (c) (April 1, 1998)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).

3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in number 5 of Income Inclusions).
4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in Aides	Income of a live-in aide (as defined in 24 CFR5.403).
6. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.
7. "Hostile Fire" Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
8. Self-Sufficiency Program Income	<p>a) Amounts received under training programs funded by HUD.</p> <p>b) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).</p> <p>c) Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and that are made solely to allow participation in a specific program.</p> <p>d) Amounts received under a resident service stipend (as defined in 24 CFR 5.609(c)(8)(iv)).</p> <p>e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment-training program.</p>
9. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
10. Reparation Payments	Reparation payments paid by a foreign government pursuant to claims under the laws of that government by persons who were persecuted during the Nazi era.
11. Income from Full-time Students	Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse).
12. Adoption Assistance Payments	Adoption assistance payments in excess of \$480 per adopted child.
13. Family Support Act Income	For public housing only, the earnings and benefits to any family member resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the 1937 Act (43 U.S.C. 1437t), or any comparable federal, state or local law during the exclusion period.
14. Social Security & SSI Income	Deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17. Other Federal Exclusions	<p>Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions of 24 CFR 5.609(c) apply, including:</p> <ul style="list-style-type: none"> • The value of the allotment made under the Food Stamp Act of 1977; • Payments received under the Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program,

	<p>youthful offender incarceration alternatives, senior companions);</p> <ul style="list-style-type: none"> • Payments received under the Alaskan Native Claims Settlement Act; • Payments from the disposal of funds of the Grand River Band of Ottawa Indians; • Payments from certain submarginal U.S. land held in trust for certain Indian tribes; • Payments, rebates or credits received under Federal Low-Income Home Energy Assistance Programs (includes any winter differentials given to the elderly); • Payments received under the Main Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 9z Stat. 1785); • The first \$2,000 of per capita shares received from judgements awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian tribe; • Amounts of scholarships funded under Title IV of the Higher Education act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs, or veterans benefits; • Payments received under Title V of the Older Americans Act (Green Thumb, Senior Aides, Older American Community Service Employment Program); • Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.); • Earned income tax credit; • The value of any child care provided or reimbursed under the Child Care and Development Block Grant Act of 1990; and • Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, State job training programs and career intern programs).
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