

MILWAUKEE COUNTY HOME PROGRAM  
AGREEMENT FOR HOME ASSISTED HOUSING

**Attachment 1: 24 CFR 92.252 Qualification as Affordable Housing and Income Targeting: Rental Housing**

- (a) Rent limitation. A rental housing project (including the non-owner-occupied units in housing purchased with HOME funds in accordance with 24 CFR 92.252) qualifies as affordable housing under this part only if the project:
- (1) Bears rents not greater than the lesser of
    - (i) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111 of this title, less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant; or
    - (ii) A rent that does not exceed 30 percent of the adjusted income of a family whose gross income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit, except that HUD may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit and adjusted income assumptions to be used in calculating the maximum rent allowed under this paragraph (a)(1)(ii);
  - (2) Has, in the case of projects with five or more rental units, or in the case of an owner of multiple one or two unit projects with a total of five or more rental units, not less than 20 percent of the rental units
    - (i) Occupied by very low-income families who pay as a contribution toward rent (excluding any federal or state rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by HUD. To obtain the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction multiplies the annual adjusted income of the tenant family by 30 percent and divides by 12 and, if applicable, subtracts a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant; or
    - (ii) Occupied by very low-income families and bearing rents not greater than 30 percent of the gross income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit assumptions to be used in calculating the maximum rent allowed under paragraph (a)(2)(ii) of this section;
  - (3) Is occupied only by households that qualify as low-income families;
  - (4) Is not refused for leasing to a holder of a certificate of family participation under 34 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher

Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable HOME tenant-based assistance document; and

- (5) Will remain affordable, pursuant to deed restrictions, covenants running with the land, or other mechanisms approved by HUD that will ensure that the property will remain affordable without regard to the term of any mortgage or the transfer of ownership, for not less than the appropriate period, beginning after project completion, as specified in the following table, without regard to the term of the mortgage or to transfer of ownership, except that, upon foreclosure by a lender or other transfer in lieu of foreclosure, the affordability period shall be terminated if the foreclosure or other transfer recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid the termination of low-income affordability. However, the affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property, the affordability period shall be revived according to its original terms. In addition, when HOME funds are used in connection with multifamily housing in which acquisition, new construction, or rehabilitation is financed with a mortgage insured by HUD under chapter II of this title, the minimum period of affordability is the term of the HUD-insured mortgage.

| Activity  | Minimum period of affordability in years |
|---|--|
| Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under \$15,000 | 5  |
| \$15,000 to \$40,000  | 10                                       |
| Over \$40,000   | 15                                       |
| New construction or acquisition of newly constructed housing                                    | 20                                       |

- (b) Rent schedule and utility allowances. The participating jurisdiction must review and approve rents proposed by the owner for units with "flat rents", i.e., units subject to the maximum rent limitations in paragraph (a)(1)(i), (a)(1)(ii), or (a)(2)(ii) of this section, and, if applicable, must review and approve, for all units subject to the maximum rent limitation paragraph (a) of this section, the monthly allowances, proposed by the owner, for utilities and services to be paid by the tenant. The owner must reexamine the income of each tenant household living in low-income units at least annually. The maximum monthly rent must be recalculated by the owner and reviewed and approved by the participating jurisdiction annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for lower income units is subject to the provisions of outstanding leases, in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.
- (c) Increases in tenant income. Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraph (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made

available under this part for units that have been allocated at low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986 (26 U.S.C. 42).

- (d) Adjustment of qualifying rent. HUD may adjust the qualifying rent established for a project under paragraph (a)(1) of this section, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly. Adjustments in fair market rents and in median income over time should help maintain the financial viability of a project within the qualifying rent standard in paragraph (a)(1) of this section.
- (e) Manufactured housing. Purchase and/or rehabilitation of a manufactured housing unit qualifies as affordable housing only if, at the time of project completion, the unit --
  - (1) Is situated on a permanent foundation;
  - (2) Is connected to permanent utility hook-ups;
  - (3) Is located on land that is held in a fee-simple title, land-trust, or long-term ground lease with a term at least equal to that of the appropriate affordability period;
  - (4) Meets the construction standards established under 24 CFR 3280;
  - (5) Meets all requirements of 24 CFR 92.251..

(Approved by the Office of Management and Budget under OMB control number 2501-0013)