

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 16.5(1)“r” and 17A.3(1)“b,” the Iowa Finance Authority hereby adopts Chapter 39, “HOME Partnership Program,” Iowa Administrative Code.

The purpose of this amendment is to implement Iowa Code sections 16.5(1)“f” and 16.5(1)“m” and the Cranston-Gonzalez National Affordable Housing Act of 1990 by establishing rules for the continued administration of the HOME Partnership Program under the Authority’s administration.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers at 265—Chapter 18.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that the effect of the new rules is to transfer the existing HOME Partnership Program from the Iowa Department of Economic Development to the Iowa Finance Authority with no substantive changes to the program.

The Authority finds that adoption of these rules confers a benefit on the public in that these rules permit the uninterrupted operation of an important housing program and facilitate a smooth transition of the HOME Partnership Program from the Iowa Department of Economic Development to the Iowa Finance Authority. The Authority finds that these rules should be implemented as soon as feasible in order to facilitate the administration of grants under the program and to avoid unnecessary expense and delays. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these rules is waived.

These rules are also published herein under Notice of Intended Action as **ARC 8964B** to allow for public comment.

The Authority adopted these rules on July 7, 2010.

These rules became effective on July 8, 2010.

These rules are intended to implement Iowa Code sections 16.5(1)“f” and 16.5(1)“m” and the Cranston-Gonzalez National Affordable Housing Act of 1990.

The following amendment is adopted.

Adopt the following new 265—Chapter 39:

CHAPTER 39
HOME PARTNERSHIP PROGRAM

265—39.1(16) Purpose. The primary purpose of the HOME partnership program is to expand or retain the supply of decent and affordable housing for low- and moderate-income Iowans.

265—39.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

“*Activity*” means one or more specific housing activities, projects or programs assisted through the HOME partnership program.

“*Administrative plan*” means a document that a HOME recipient establishes that describes the operation of a funded activity in compliance with all state and federal requirements.

“*CHDO*” means a community housing development organization, which is a nonprofit organization registered with the Iowa secretary of state and certified as such by IDED or IFA, pursuant to 24 CFR 92.2 (April 1, 1997).

“*Consolidated plan*” means the state’s housing and community development planning document and the annual action plan update approved by HUD.

“*Development subsidies*” means financial assistance provided to developers of newly constructed, single-family housing to address the added costs of constructing housing. In such cases, the total cost of development is likely to exceed the sales price or the appraised fair market value of the housing. Additional costs might include labor, materials and equipment; professional design and construction oversight costs; and required third-party energy efficiency verification and certification costs.

“Displaced homemaker” means an individual who (1) is an adult; (2) has not worked full-time/full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and (3) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

“First-time home buyer” means an individual or an individual and the individual’s spouse who have not owned a home during the three-year period before the purchase of a home with HOME assistance, except that an individual who is a displaced homemaker or single parent may not be excluded from consideration as a first-time home buyer on the basis that the individual, while a homemaker, owned a home with the individual’s spouse or resided in a home owned by a spouse; and an individual may not be excluded from consideration on the basis that the individual owns or owned, as a principal residence during the three-year period before purchase of a home with HOME assistance, a dwelling unit whose structure is (1) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations or (2) not in compliance with state, local or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

“Gut rehabilitation” means an activity or project that involves the total removal and replacement of all interior (nonstructural) systems, equipment, components or features of a multifamily structure, whereby the existing structure will be reduced down to the basic structure or exterior building shell (e.g., the foundation system; exterior walls; roofs; and interior structural components such as columns, beams, floors and structural bearing walls). “Gut rehabilitation” may also include structural or nonstructural modifications to the exterior of the structure.

“HOME” means the HOME Investment Partnership Program, authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990.

“HUD” means the U.S. Department of Housing and Urban Development.

“IDED” means the Iowa department of economic development.

“IFA” means the Iowa finance authority.

“Iowa green communities criteria” means a set of rating factors, some optional and some mandatory, prepared by IDED and intended to promote public health, energy efficiency, water conservation, operational savings and sustainable building practices.

“Lead hazard reduction or abatement carrying costs” means the additional costs incurred by lead professionals to ensure that target housing is lead-safe at the completion of rehabilitation. “Lead hazard reduction or abatement carrying costs” includes, but is not limited to, required notifications and reports, lead hazard or abatement evaluations, revisions to project specifications to achieve lead safety, lead hazard reduction or abatement oversight, and clearance testing and final assessment.

“LIHTC” means low-income housing tax credits and federal tax incentives created through the Tax Reform Act of 1986 and allocated through IFA for affordable rental housing development.

“Local financial support” means financial investment by the recipient through the use of the recipient’s own discretionary funds that are a permanent financial contribution or commitment applied to and related to the objectives of the housing activity or project assisted through the HOME partnership program and that are used during the same time frame as the requested housing activity or project.

“Local support” means involvement, endorsement and investment by citizens, organizations and the governing body of the local government in which the housing project is located that promote the objectives of the housing activity or projects assisted through the HOME partnership program.

“Net proceeds” means the amount determined by calculating the difference between the resale price and the amount of the outstanding principal loan balance owed plus any seller’s reasonable and customary closing costs associated with the resale.

“New construction rental units” means the on-site construction or erection of a building, or buildings, for the purpose of providing rental housing units. New construction rental units include conventional, on-site, stick-built construction and on-site erection or fabrication of manufactured housing units or components of units. New construction rental units also include the addition of any rental units outside the existing walls (the building envelope) of an existing building, or buildings, that are part of a rental rehabilitation, renovation or conversion project.

“Program income” means funds generated by a recipient or subrecipient from the use of HOME funds.

“Reasonable and customary closing costs” means:

1. Seller’s reasonable and customary closing costs incurred include, but are not limited to: abstract updating, title search fees, deed preparation fees, bringing current the seller’s county taxes, and real estate commission fees. Ineligible costs include, but are not limited to: lender discount points, allowances, inspection fees, and buyer closing costs.

2. Buyer’s reasonable and customary closing costs incurred include, but are not limited to: lender origination fees, credit report fees, fees for the title evidence or title opinion, fees for recording and filing of legal documents, attorneys’ fees, appraisal fees, and required inspection fees. Ineligible costs under this definition include, but are not limited to: prepayment of taxes, prepayment of insurance, and lender discount points.

“Recaptured funds” means HOME funds which are recouped by the recipient when the housing unit assisted by the HOME partnership program home ownership funds does not continue to be the principal residence of the assisted home buyer for the full affordability period required by federal statute.

“Recipient” means the entity under contract with IFA to receive housing funds and undertake the funded housing activity.

“Repayment” means HOME funds which the recipient must repay to IFA because the funds were invested in a project or activity that is terminated before completion or were invested in a project or activity which failed to comply with federal requirements.

“Single-family unit” means one dwelling unit designated or constructed to serve only one household or family as the primary residence. Single-family units include a detached single unit, condominium unit, cooperative unit, or combined manufactured housing unit and lot.

“Single parent” means an individual who (1) is unmarried or is legally separated from a spouse and (2) is pregnant or has one or more minor children for whom the individual has custody or joint custody.

“Technical services” means all services that are necessary to carry out individual, scattered site activities including but not limited to: (1) conducting initial inspections, (2) work write-up or project specification development, (3) cost estimate preparation, (4) construction supervision associated with activities that do not require an architect or engineer, (5) lead hazard reduction or lead abatement need determination and oversight, (6) lead hazard reduction or abatement carrying costs, (7) temporary relocation coordination, (8) financing costs such as security agreement preparation and recording or filing fees, (9) processing of individual applications for assistance, (10) income eligibility determination and verification, (11) value determination (new construction) or after rehabilitation value determination (existing structures), and (12) project-specific environmental clearance processes.

“Technical services provision” means the cost to provide other individual housing project-related services such as: (1) financing costs (security agreement preparation, recording and filing fees), (2) processing individual applications for assistance, (3) income eligibility determination and verification, (4) after rehabilitation value determination, and (5) project-specific environmental clearance.

265—39.3(16) Eligible applicants. Reserved.

265—39.4(16) Eligible activities and forms of assistance.

39.4(1) Eligible activities include transitional housing, tenant-based rental assistance, rental housing rehabilitation (including conversion and preservation), rental housing new construction, home ownership assistance (including development subsidies), owner-occupied housing rehabilitation, and other housing-related activities as may be deemed appropriate by IFA. Assisted housing may be single-family housing or multifamily housing and may be designed for occupancy by homeowners or tenants.

a. Assisted units shall be affordable.

(1) For rental activities, all assisted units shall rent at the lesser of the area fair market rents or a rent that does not exceed 30 percent of 65 percent of the area median family income and, for projects with five or more units, 20 percent of the assisted units shall rent at the lesser of the fair market rent or a

rent that does not exceed 30 percent of 50 percent of the area median family income. Assisted units shall remain affordable for a specified period: 20 years for newly constructed units; 15 years for rehabilitated units receiving over \$40,000 per unit in assistance; 10 years for rehabilitated units receiving \$15,000 to \$40,000 per unit in assistance; and 5 years for projects receiving less than \$15,000 per unit.

(2) For tenant-based rental assistance, gross rents shall not exceed the jurisdiction's applicable rent standard and shall be reasonable, based on rents charged for comparable, unassisted rental units.

(3) For home ownership assistance, the initial purchase price for newly constructed units or the after rehabilitation value for rehabilitated units shall not exceed 95 percent of the median purchase price as established by HUD mortgage limits for the same type of single-family housing in the area. Assisted units shall remain affordable through recapture or resale provisions for a specified period: 5 years for projects receiving less than \$15,000 in assistance per unit; 10 years for projects receiving \$15,000 to \$40,000 in assistance per unit; and 15 years for projects receiving over \$40,000 in assistance per unit.

(4) For owner-occupied housing rehabilitation, the after rehabilitation value of the rehabilitated unit shall not exceed 95 percent of the median purchase price as established by HUD mortgage limits for the same type of single-family housing in the area.

b. Assisted households shall meet income limits established by federal program requirements.

(1) For rental activities, all assisted units shall be rented to households with incomes at or below 80 percent of the area's median family income; at initial occupancy, 90 percent of the units shall be rented to households with incomes at or below 60 percent of the area's median family income and, for projects with five or more units, 20 percent of the units shall be rented initially to households with incomes at or below 50 percent of the area's median family income.

(2) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.

(3) For home ownership assistance and owner-occupied rehabilitation, only households with incomes at or below 80 percent of the area median family income shall be assisted.

c. Property standards. All newly constructed housing (single-family and multifamily housing) shall be constructed in accordance with any locally adopted and enforced building codes, standards and ordinances. In the absence of locally adopted and enforced building codes, the requirements of the state building code shall apply.

(1) All rental housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted and enforced building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the state building code shall apply.

(2) All single-family housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the most current version of Iowa's Minimum Housing Rehabilitation Standards shall apply (all communities with populations of 15,000 or less).

d. Iowa green communities criteria. All newly constructed housing (single-family and multifamily housing) and all multifamily rental activities involving gut rehabilitation shall meet the mandatory requirements of the Iowa green communities criteria. All other multifamily rental activities involving rehabilitation (that is, not gut rehabilitation) shall meet the applicable mandatory requirements of the Iowa green communities criteria regarding rehabilitation.

39.4(2) Eligible forms of IFA assistance to its recipients include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans or other forms of assistance as may be approved by IFA.

39.4(3) For all single-family housing projects or activities assisting homeowners or home buyers, the only form of HOME funds assistance to the end beneficiary is a forgivable loan.

265—39.5(16) Application procedure. Reserved.

265—39.6(16) Minimum requirements. A recipient shall meet the following threshold criteria:

39.6(1) Any housing activity must be consistent with the purpose and eligibility requirements and the consolidated plan.

39.6(2) The recipient shall have the capacity to administer the proposed activity. Documentation of the ability of the recipient to provide technical services and of the availability of certified lead professionals and contractors either trained in safe work practices or certified as abatement contractors may also be required as applicable to the housing activity.

39.6(3) and **39.6(4)** Reserved.

39.6(5) After all other financial resources have been identified and secured for the proposed activity, a need for the HOME funds must exist.

39.6(6) The recipient must certify that the recipient will comply with all applicable state and federal laws and regulations.

39.6(7) If the recipient's project is located in a locally designated participating jurisdiction (PJ), the recipient must show evidence of a financial commitment from the local PJ at least equal to 25 percent of the total HOME funds requested. Sources of a local PJ financial commitment could include one or more of the following: HOME, CDBG, TIF, tax abatement, or general funds. This requirement is waived for awards made during federal HOME program year 2010 (October 1, 2009 – September 30, 2010).

39.6(8) Home ownership assistance activity must indicate that recipients will require the beneficiaries of their home ownership assistance activity to use a principal mortgage loan product that meets the following criteria:

a. With the exception of Habitat for Humanity principal mortgage loan products, the principal mortgage loan must be the only repayable loan in all individual home ownership assistance projects.

b. The HOME assistance may be recorded in junior position to the principal mortgage loan, but must be recorded in senior position to any and all other funding in all home ownership assistance projects. Recipients must maintain their assistance security agreements in the above-stated recording position throughout the applicable period of affordability and will not be allowed to subordinate the required recording position to any other forms of assistance, such as home equity loans.

c. Any mortgage lending entity's principal mortgage loan products may be used provided they meet all of the following minimum requirements:

(1) Loan interest rates may be no higher than four percentage points above the federal prime interest rate at the time of loan closing;

(2) Loan terms will include an 80 percent or higher loan-to-value ratio;

(3) No less than a 15-year, fully amortized, fixed-rate mortgage may be used; and

(4) No adjustable rate mortgages or balloon payment types of mortgages will be allowed.

d. Recipients are encouraged but not required to have the beneficiaries of their home ownership assistance activity utilize a principal mortgage loan product offered by one of the following: Iowa Finance Authority; USDA-Rural Development; Federal Home Loan Bank; HUD (including FHA and VA); Habitat for Humanity; Fannie Mae; or Freddie Mac.

39.6(9) Home ownership assistance activity shall be for first-time home buyers only, and the assisted unit must remain as the assisted home buyer's principal residence throughout the required period of affordability.

265—39.7(16) Application review criteria. Reserved.

265—39.8(16) Allocation of funds.

39.8(1) IFA may retain a portion of the amount up to 10 percent of the state's annual HOME allocation from HUD for administrative costs associated with program implementation and operation.

39.8(2) Not less than 15 percent of the state's annual HOME allocation shall be reserved for eligible housing activities developed, sponsored or owned by CHDOs.

39.8(3) IFA reserves the right to set aside a portion of the state's annual HOME allocation for rental housing activities jointly funded with HOME and low-income housing tax credits.

39.8(4) Reserved.

39.8(5) IFA reserves the right to limit the amount of funds that shall be awarded for any single activity type.

39.8(6) Awards shall be limited to no more than \$500,000 for all single-family activities assisting homeowners or home buyers. Awards shall be limited to no more than \$900,000 for all multifamily rental activities.

39.8(7) Single-family per unit subsidies.

a. The maximum per unit subsidy for all single-family activities involving rehabilitation is \$37,500. The \$37,500 per unit limit includes all applicable costs including, but not limited to, the hard costs of rehabilitation or the acquisition subsidy or both; home ownership assistance activities; technical services costs, including lead hazard reduction carrying costs; lead hazard reduction costs; and temporary relocation. All rehabilitation hard costs funded with HOME funds are limited to \$24,999. All applicable technical services costs, including any lead hazard reduction carrying costs, are limited to \$4,500 per unit.

b. Assistance for single-family activities providing acquisition assistance for newly constructed housing (mortgage buy-down, downpayment or closing costs assistance or both, or combinations thereof) is limited to \$35,000 per unit, inclusive of all costs, including technical services costs.

c. Assistance for single-family activities providing development subsidies for newly constructed housing is limited to \$20,000 per unit. Development subsidies may be provided in addition to acquisition assistance activities.

39.8(8) Multifamily per unit subsidies. The maximum per unit HOME funds subsidy for all multifamily activities is \$60,000 per unit including both newly constructed units and the rehabilitation of existing multifamily units, including conversion activities. The \$60,000 per unit multifamily limit includes all applicable costs including, but not limited to, hard costs of construction or rehabilitation; architectural design or technical services costs; lead hazard reduction or abatement costs; lead hazard reduction or abatement carrying costs; and temporary relocation.

39.8(9) Recipients shall identify general administrative costs in the HOME funds application. IFA reserves the right to negotiate the amount of funds provided for general administration, but in no case shall the amount for general administration exceed 10 percent of a total HOME funds award. Only local government and nonprofit recipients are eligible for general administrative funds.

39.8(10) IFA reserves the right to negotiate the amount and terms of a HOME funds award.

39.8(11) IFA reserves the right to make award decisions such that the state maintains the required level of local match to HOME funds.

265—39.9(16) Administration of awards. Applicants selected to receive HOME funds awards shall be notified by letter from the IDED director or IFA executive director.

39.9(1) *Preaudit survey.* A preaudit survey may be required for all for-profit and nonprofit direct recipients for assistance that exceeds \$150,000.

39.9(2) *Contract.* A contract shall be executed between the recipient and IFA. These rules, the approved application, the Iowa Housing Fund Management Guide and all applicable federal and state laws and regulations shall be part of the contract.

a. The recipient shall execute and return the contract to IFA within 45 days of transmittal of the final contract from IFA. Failure to do so may be cause for IFA to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Contracts may be conditioned upon the timely completion of these requirements.

c. Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. Release of funds shall be conditioned upon IFA's receipt of an administrative plan for the funded activity.

e. Release of funds shall be conditioned upon IFA's receipt and approval of documentation of environmental clearance.

39.9(3) Local administrative and technical services contracts.

a. Recipients awarded funds for general administration that employ the services of a third-party administrator to perform all or part of the general administrative functions for the recipient shall enter into a contractual agreement for the general administrative functions to be performed.

b. Recipients awarded funds for activities requiring technical services (e.g., inspections, work write-ups, cost estimates, construction supervision, lead hazard reduction need determination and oversight, lead hazard reduction carrying costs, and temporary relocation coordination) that employ a third-party entity to perform all or part of the technical services shall enter into a contractual agreement for the technical services to be performed.

c. Recipients that employ a third party to perform all or part of the general administration for the recipient and that also employ a third party to perform all or part of the technical services for the recipient shall conduct separate procurement transactions and shall enter into separate contractual agreements for each: one contract for general administration and one contract for technical services. Separate contracts are required even if both functions are performed by the same third-party entity.

39.9(4) Requests for funds. Recipients shall submit requests for funds in the manner and on forms prescribed by IFA. Individual requests for funds shall be made in whole dollar amounts equal to or greater than \$500 per request, except for the final draw of funds.

39.9(5) Record keeping and retention.

a. HOME-funded projects. For HOME-funded projects, 24 CFR 92.508 provides the record retention requirements. All records pertaining to each fiscal year of HOME funds must be retained for the most recent five-year period, except as provided in the following:

(1) For rental housing projects, records may be retained for five years after the project completion date, except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period, until five years after the affordability period terminates;

(2) For home ownership housing projects, records may be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the affordability period terminates;

(3) For tenant-based rental assistance projects, records must be retained for five years after the period of rental assistance terminates;

(4) Written agreements must be retained for five years after the agreement terminates;

(5) For records covering displacements and acquisitions, see 24 CFR 92.508;

(6) For records relating to litigation, see 24 CFR 92.508.

b. Representatives of IFA, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a HOME funds award.

39.9(6) Performance reports and reviews. Recipients shall submit performance reports to IFA in the manner and on forms prescribed by IFA. Reports shall assess the use of funds and progress of activities. IFA may perform reviews or field inspections necessary to ensure recipient performance.

39.9(7) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alterations of the funded activities affecting the scope, location, objectives or scale of the approved activity. Amendments shall be requested in writing by the CEO of the recipient and are not considered valid until approved in writing by IFA following the procedure specified in the contract between the recipient and IFA.

39.9(8) Contract closeout. Upon the contract expiration date or work completion date, as applicable, IFA shall initiate closeout procedures. Recipients shall comply with applicable audit requirements described in the HOME funds application and Iowa Housing Fund and Management Guide.

39.9(9) Compliance with federal, state and local laws and regulations. Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable federal, state and local regulations.

39.9(10) Remedies for noncompliance. At any time, IFA may, for cause, find that a recipient is not in compliance with the requirements of this program. At IFA's discretion, remedies for noncompliance

may include penalties up to and including the return of program funds to IFA. Reasons for a finding of noncompliance include the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activities in a timely manner.

39.9(11) *Appeals process for findings of noncompliance.* Appeals will be entertained in instances where it is alleged that IFA staff participated in a decision which was unreasonable, arbitrary, or capricious or otherwise beyond the authority delegated to IFA. Appeals should be addressed to the director of the affordable rental production division. Appeals shall be in writing and submitted to IFA within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. IFA's executive director will make the final decision on all appeals.

These rules are intended to implement Iowa Code sections 16.5(1) "f" and 16.5(1) "m" and the Cranston-Gonzalez National Affordable Housing Act of 1990.

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