DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 92

[Docket No. FR–3962–F–02]

RIN 2501–AC06

Office of the Secretary; HOME Investment Partnerships Program: Final Rule

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations to implement the HOME Investment Partnerships Program (the HOME program). The HOME program provides grants to States, units of general local government, consortia, and insular areas to implement local housing strategies designed to increase homeownership and affordable housing opportunities for low- and very low-income Americans.

EFFECTIVE DATE: October 16, 1996.

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SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The HOME Investment Partnerships Act (the HOME Act) (Title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625), and created the HOME Investment Partnerships Program that provides funds to expand the supply of affordable housing for very low-income and low-income persons. Interim regulations for the HOME Investment Partnerships Program were first published on December 16, 1991 (56 FR 65313) and are codified at 24 CFR part 92.

The original statute has been amended three times since enactment. The Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) included a substantial number of amendments to the HOME Program. These amendments were implemented in rules published on December 22, 1992 (57 FR 60960), June 23, 1993 (58 FR 34130), and April 19, 1994 (59 FR 18626). The HUD Demonstration Act (Pub. L. 103–120, approved October 27, 1993) provided additional authorization for HOME Program technical assistance. The Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 103–233, approved April 11, 1994) included an additional number of amendments to the HOME Program. These amendments were implemented in a rule published on August 26, 1994 (59 FR 44258).

A proposed rule (60 FR 36012) to modify the HOME allocation formula and an interim rule (60 FR 36020) with clarifying changes to the HOME regulation and a request for additional comments before the issuance of a final rule were published on July 12, 1995. The proposed rule was issued as an interim rule on January 23, 1996 (61 FR 1824). Finally, on March 6, 1996 (61 FR 9036), an interim rule making a number of streamlining amendments to the HOME regulation was published.

The preamble to the July 12, 1995 interim rule solicited comments on various specific policy issues, as well as on any other aspect of the HOME regulation, in anticipation of preparing a final rule. This rule addresses the comments that were received, and makes the interim HOME regulation a final rule.

II. Summary of Comments and Responses

Subpart A—General

The Department is appreciative of all the public comment on both the proposed and interim rules published on July 12, 1995. Thirty seven (37) comments were received on the interim rule and twenty-one (21) comments were received on the proposed rule from State and local participating jurisdictions, nonprofit developers, public interest groups and community and nonprofit associations. This rule also furthers goals of reinventing government by incorporating public input in rulemaking and clarifying statutory language. The Department has reviewed every section of the program rules and believes that the rule has been substantially reinvented to be clearer and more user friendly.

The Department in a succession of program rules has attempted to make the program rules more simple, and easier to understand and administer in adherence with the principles of reinventing government. The program experience of State and local participating jurisdictions has informed and shaped the program rules in many areas such as the recapture/resale provisions for new homebuyers, the nature and timing of match, the targeting and operation of tenant-based rental assistance.

Fifteen comments were received on general policy. Twelve commenters supported the changes in the seventh interim rule and the growing flexibility and simplification of the HOME program. They were pleased with the open dialogue enjoyed with HUD staff in working out the technical details, as well as with the opportunity to comment on the entire body of regulations. One commenter found HOME to be flexible, responsive to local needs, and fostering true public/private/community collaboration. Another stated that HOME is now the single most important and used low-income housing program. However, this commenter was also concerned that HOME funds were being substituted for State and local funds and requested that the HOME rule specifically prohibit this.

Three commenters felt that HOME was in need of major significant improvement, although they acknowledged that most of the needed changes were statutory. One commenter stated that the abundant and burdensome requirements do not provide an avenue for creative solutions to affordable housing. Another commenter was increasingly concerned that the original notion of a ''housing block grant'' with significant flexibility to support locally designed initiatives is being lost. Furthermore, the commenter noted that existing HOME restrictions are not compatible with those under the Low Income Housing Tax Credit or the Section 8 Certificate and Voucher programs.

Among the statutory requirements identified as particularly burdensome by commenters were local match, income targeting, rent limitations, per unit subsidy limitations, the period of affordability, and wage rates. Requested statutory changes were: flexible treatment of over-income tenants; allowing for on-site monitoring every two years; excluding land acquisition and homeownership from Davis-Bacon requirements; restoring the funding threshold, removal of the per-unit subsidy limit; and conforming HOME to the Low Income Housing Tax Credit program.

Requirements such as HOME rents, tiered income targeting, and match are statutory provisions which are not subject to regulatory revision. To the extent the Department has regulatory flexibility in the areas of monitoring and sources of local match, it has exercised that flexibility in this rule. For the convenience of the reader, the preamble does distinguish which provisions are

statutory and not subject to regulatory revision. In providing more local flexibility, the Department has created options which permit participating jurisdictions to make choices in how to define income, to expand eligible sources of match, to efficiently monitor rental housing, and to prepare written agreements which reflect the appropriate requirements.

Additional requirements which commenters identified as burdensome, but which are actually regulatory, include: site and neighborhood standards, the capping of low-income at the national income ceiling and the use of HOME for project-based assistance.

These issues will be discussed section by section in the balance of the preamble.

Section 92.2 Definitions

Commitment

Three comments were received on this definition. Two commenters found the language under § 92.2(i)(C) to be confusing. This section refers to the requirement for a legally binding agreement between the PJ and the project owner. The commenters noted that in a typical acquisition project, the PJ will enter into a contract with the purchaser who in turn will enter into a contract for sale with the owner. The purchaser (who is the recipient of HOME funds) will acquire title, rather than transfer title. The commenters recommended that new language be added to define ''project owner'' as an entity that will receive HOME assistance and will be the owner of the project not later than the completion of the project.

Another commenter suggested that when land is being acquired for a HOME project that the expected start of construction should be extended from 12 to 24 months from the date of commitment.

The Department agrees with the clarification on project owner and has made the change in the definition. The Department believes that 12 months from the time of project commitment to construction start is a reasonable period of time and declines to make that change.

Community Housing Development Organization (CHDO)

Eleven comments were received on the definition of a CHDO. Two commenters urged that the definition of a CHDO remain the same. Concern was expressed that tampering with the CHDO definition could be harmful to the development of local affordable housing delivery systems.

Eight commenters found that the current definition is restrictive, targets a very narrow band of specific non-profit organizations, and often disqualifies accomplished and committed community organizations. Two commenters felt there needed to be additional avenues for groups just forming to access capacity building funds.

Four commenters requested that the requirements concerning CHDO governing board membership be changed to include all legitimate non-profit housing providers. One commenter stated that the CHDO set-aside should be a non-profit set-aside (statutory). State and local governments, through their consolidated plans, should be able to determine the appropriate CHDO organizational structure.

One commenter urged that CHDO qualifications be consistent with requirements for non-profit participation in other federal housing programs and the Low Income Housing Tax Credit program. Another commenter found that the current regulations concerning demonstrated capacity need to be more specific, and should include such elements as a long term organizational plan and regulatory experience and knowledge. A third commenter requested that the requirement that CHDOs have a formal process for low-income beneficiaries to advise the CHDO, be made as flexible as possible. Under no circumstances should CHDOs be required to amend their bylaws if they can demonstrate a satisfactory community consultation process.

One commenter found that the current CHDO model is purely urban and negatively impacts on rural areas whose non-profits are relatively young, primarily experienced in poverty programs and unfamiliar with labor standards, Section 3, Section 504 and rehabilitation/acquisition requirements. The same commenter urged that CHDOs be allowed to undertake all eligible HOME activities, instead of those where the CHDO acts in the riskier owner, developer or sponsor role.

The Department declines to make any changes in the community housing development organization (CHDO) definition. The Department believes that there was specific statutory intent to create an entitlement for community-based nonprofit organizations who would own, sponsor or develop HOME-assisted housing. While partnerships with State and local government are critical to the development of affordable housing, these organizations are viewed as private, independent organizations separate and apart from State or local governments.

One of the major objectives of the Department's technical assistance program is to increase the number of capable, successful CHDOs able and willing to use the CHDO set-aside, required by the statute.

Homeownership

Two comments were received. Both commenters supported allowing a PJ to classify limited equity cooperatives and/or mutual housing as either homeownership or rental housing based on State law. This would ensure consistent treatment throughout a State's affordable housing programs. It was suggested that the regulations define both terms. It was recommended that the HOPE 2 definition of ''mutual housing'' be used.

The Department has, in fact, been granting waivers in deferring to a participating jurisdiction's determination under State and local law as to whether a unit was rental or homeownership. It is clarifying this procedure in the final rule but is not defining the terms in deference to State and local law.

Housing

The Department has expanded this definition to include all forms of housing which are eligible for assistance under the HOME program. The Department has also clarified that certain types of facilities do not qualify as housing under the HOME program. Such facilities are generally classified as ''public facilities'' and may be funded under the Community Development Block Grant program.

Program Income

The Department has added a definition of program income to clarify what is included and considered as program income. The Department did this in response to many inquiries on the use and retention of program income from participating jurisdictions.

Project

Thirteen comments were received. Commenters were unanimous in urging HUD to eliminate the ''4 block rule'' for defining a single project. Commenters stated that this requirement generates substantial, unnecessary paperwork and results in the arbitrary division of projects into four block segments. Commenters were unanimous in urging HUD to allow local flexibility in defining ''project''. One commenter felt the HUD Field Office should have this authority. All other commenters felt that the local participant jurisdictions should have this authority.

Five commenters noted that scattered site housing projects which are part of neighborhood revitalization strategies are discouraged by the current requirement. Two commenters could see no compelling reason for the ''4 block rule''.

Four commenters pointed out that the ''4 block rule'' is particularly inappropriate for rural areas which often do not have distinct neighborhoods, and are not divided into city blocks. One commenter noted that block size varies, and suggested that a ½-mile radius be used instead.

One commenter raised concerns about how any change in the definition would affect Davis-Bacon applicability.

The Department is amending the definition of project by deleting the four block area provision. The Department recognizes the negative effect on scattered site projects, subdivisions and the inappropriateness of the standard in rural areas. However, the concept of a project as a site or sites together with any building or buildings located on the site(s) under common ownership, management and financing and assisted with HOME funds as a single undertaking under this part remains. To the extent twelve or more units are HOME-assisted and are constructed under one construction contract, Davis-Bacon provisions would apply, regardless of whether the contract covers units that comprise one or more projects. However, on larger projects that formerly comprised separate projects, Davis-Bacon applicability could now be affected by the prohibition in § 92.354 on arranging multiple construction contracts *within a single project* for the purpose of avoiding the wage provisions.

Reconstruction

One comment was received. The commenter expressed concern that ''rehabilitation'' and ''reconstruction'' are held to different standards. It was recommended that the term ''reconstruction'' only apply to those cases where a very small percentage of the existing structure is maintained.

The definition of reconstruction continues to read that it is considered rehabilitation for purposes of this part.

Single Room Occupancy (SRO) Housing

Four comments were received. All commenters strongly supported the July 12, 1995 regulation clarifying that, for acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required within the units. One commenter stated that it would like this flexibility to extend to new construction and reconstruction projects as well.

One commenter urged that the HOME's SRO definition continue to conform to the definition for other federal programs so the programs can work together.

The HOME definition for SRO is adopted from a FHA multifamily insurance program and it is more permissive in its occupancy standard. The Department declines to eliminate the requirement to have either food preparation or sanitary facilities when buildings are newly constructed or converted from non-residential space. By creating new housing with some or all of the basic amenities, it is hoped that the units will be more marketable and livable in the future.

Subpart B—Allocation Formula

Section 92.50 Formula Allocation

On July 12, 1995, the Department published a proposed rule to make a change in the operation of the HOME formula. It was proposed that Section 92.50(d)(3) would be revised to maximize the number of units of general local government which receive an initial allocation of HOME funds.

Formerly, units of general local government, after an initial distribution of funds available for allocation, were eliminated at $250,000 and below. They were eliminated from the pool of eligible jurisdictions and their allocations were redistributed among other units of general local government. This redistribution technique continued until 95% of the funds had been distributed among units of general local government that received $500,000 or more. The new method would drop only one jurisdiction on each recalculation, and redistribute funds to all others, thus assuring that the maximum number of units of general local government receive an allocation.

The Department received 12 comments on this section of the proposed rule.

On the formula redistribution technique to maximize the number of participating jurisdictions, eight commenters favored the change while two did not. One of the two commenters felt that additional performance criteria should be added to the formula calculations rewarding good performance.

Another commenter suggested that the Department establish a participation threshold of $500,000/$750,000 regardless of the annual appropriation. PJs who previously qualified under a lower threshold would be grandfathered (statutory change). The same commenter recommended that allocations for newly formed or expanded consortia come from the State set-aside rather than from the PJ set-aside (statutory change).

The Department has adopted the proposed formula change and republished the rule on January 23, 1996 for effect in order to use the methodology for FY 1996 allocations. The two other suggested changes have not been made because they would require statutory changes.

Subpart E—Program Requirements

Section 92.201 Distribution of Assistance

Two comments were received. Both commenters expressed concern that State participating jurisdictions can allocate funds to participating jurisdictions which receive their own direct funding allocation. This diverts HOME funds from smaller rural communities which are in great need of these funds. The commenters urged that the regulations be revised to prohibit this practice.

The State's ability to distribute HOME funds to projects anywhere within the State is a statutory provision.

Section 92.202 Site and Neighborhood Standards

Ten comments were received. The commenters were unanimous in recommending that site and neighborhood standards not apply to HOME new construction projects. Commenters felt that these standards inhibit investment in minority areas, discourage revitalization of the most needy areas and keep participating jurisdictions from assisting minority families who wish to move into racially mixed areas. Commenters considered the imposition of federal standards to be contrary to the basic notion of local control and discretion inherent in the HOME program.

Five commenters stated that compliance with State and local standards should be sufficient. Therefore, Federal site and neighborhood requirements should be entirely eliminated. One commenter noted that the Federal standards often conflict with Court ordered housing plans.

Five commenters recommended that participating jurisdictions be permitted to address the issues of concentration and impact as part of their consolidated plans. This would allow for public input and the adoption of standards which are appropriate for local needs.

The Department is limiting the application of site and neighborhood standards to newly constructed rental

projects and excluding new construction homeowner projects. The Department believes that the creation of new homeowner opportunities is important to all neighborhoods.

Section 92.203 Income Determinations

Five comments were received. Four commenters requested that participating jurisdictions have the option to define income in the same manner as the CDBG program. Current HOME requirements are unduly strict and labor intensive. Under CDBG, jurisdictions may select one of three criteria; (a) Section 8; (b) census long form; (c) IRS adjusted gross income. Since CDBG and HOME are often combined in the same project, allowing the same income definition to be used facilitates program administration.

One commenter recommended retaining the Section 8 definition for income as a more accurate reflection of a person's income.

Commenters also urged flexibility in obtaining income verification. One commenter recommended that participating jurisdictions be permitted to either directly obtain verification or accept the verification from another program with income requirements that are at least as strict. One commenter urged that occupants of HOME assisted units who do not receive Section 8 should simply be allowed to report income based on a pay stub or tax return. Two commenters requested that HOME participating jurisdictions be allowed to use the same ''presumed income eligibility'' approach for special needs populations that the CDBG program uses.

Special needs populations may only be presumed income eligible in the CDBG Program for limited clientele, at least 51 percent of whom are low or moderate income persons. For housing, income eligibility must be established.

One commenter requested that the Section 8 income qualification process not be used in determining eligibility for homeownership assistance. Section 8 criteria are designed for rental assistance and can penalize a person who has saved for a downpayment or home maintenance.

One commenter requested that HUD eliminate the requirement that caps the 80% of median income level in high cost communities at the national median. This penalizes such communities.

The Department has adopted the three options to define income currently permitted in the CDBG Program. For rental projects, the HOME statute requires that income be verified initially and during the period of affordability. However, the Department has also provided three ways to determine tenant eligibility before a tenant receives the benefit of HOME assistance. The options create greater flexibility in initial and subsequent income determinations for tenants occupying HOME-assisted rental units.

In regard to the request to remove income limit caps in high cost areas, the Department recently reevaluated its policy of capping Low-Income limits at the national median family income (currently $41,600 for a family of four) in areas with unusually high income. It determined that it continues to make good policy sense to have an income limit cap in this era of increasingly scarce Federal housing assistance resources, and that it has legislative authority to set a cap. HUD also has determined, however, that the logic of the income limits calculation system suggested that higher income limits should be permitted for high-income areas with unusually high housing-cost-to-income relationships. On May 2, 1996, HUD Notice 96–01 increased the Low-Income limits for 8 metropolitan and 12 nonmetropolitan areas based on this determination.

Section 92.205 Eligible Activities: General

Fifteen comments were received concerning eligible activities.

Refinancing of Multifamily Properties

Thirteen comments concerned the refinancing of multifamily properties. One commenter opposed using HOME funds for refinancing multifamily properties because it does not generally result in a net increase in affordable housing.

Twelve commenters supported using HOME funds for refinancing multifamily properties. Refinancing was seen as an important tool in preserving affordable housing. Refinancing was also viewed as an effective way to leverage private funds. One commenter noted that in a soft market, refinancing is often the most cost effective way to increase the number of affordable units. Several commenters stated that refinancing ensures that existing affordable units are retained at a level of affordability and maintenance which would justify the HOME investment. Another commenter stated that it is often necessary to include the refinancing of debt in a rehabilitation financing package in order to attract conventional lenders. One commenter found that in rural areas where HOME rents are low, the refinancing of existing debt is needed to ensure project feasibility.

Despite strong support for allowing multifamily refinancing, most commenters felt refinancing should only be permitted under certain circumstances. HUD was urged to move cautiously after further consultation with HOME participating jurisdictions and organizations. However, one commenter stated that HUD should allow participating jurisdictions to structure their own refinancing provisions subject to local HUD office approval (similar to resale/recapture provisions).

One commenter would limit refinancing to properties where ownership has recently been, or is being transferred to a public entity, a non-profit or resident owners. Another commenter would limit refinancing to projects owned by non-profits where refinancing would result in lowered rents and where code violations exist. Another commenter would limit refinancing to use in conjunction with receivership, provided continued affordability and stability of units is maintained. Another commenter would limit refinancing to buildings where either increased affordable units or reduced rents could be demonstrated. Another commenter would limit refinancing to debt incurred to improve property within the last twelve months, provided the debt service would be reduced and rents would be lowered. Another commenter would require that at least 49 percent of the units must be HOME-assisted and the affordability period be 20 years regardless of the amount of HOME assistance.

The Department recognizes the necessity of refinancing for some multifamily projects but is also aware that the use of HOME funds for this purpose reduces the amount of funds available for the development of additional affordable units. In developing guidance in the final rule at § 92.206(b)(2), the Department felt refinancing should be permissible under certain circumstances according to guidelines developed by the participating jurisdiction as part of its consolidated plan. At minimum, the guidelines would require refinancing be done in connection with rehabilitation, reduce overall project costs when HOME funds are lent and subject multifamily rental projects be to a longer affordability period of at least 15 years. A participating jurisdiction would also identify whether refinancing would be permitted city wide or limited to a particular area such as a neighborhood identified in neighborhood revitalization strategy, an Empowerment Zone or Enterprise community. HOME funds cannot be

used to refinance a multifamily loan made with Federal funds or which is Federally insured.

Other Activities

One commenter recommended that housing counseling be an eligible activity for households which are considering applying for HOME assistance, or households which have applied and been rejected. Currently, housing counseling is only eligible as a project soft cost for owners or tenants of funded projects.

Participating jurisdictions may also use their administrative funds to cover the cost of homebuyer counseling programs.

One commenter recommended that HOME be allowed to fund exterior painting, landscaping and clean-up in neighborhood revitalization areas, along with the development of affordable housing to further neighborhood stability.

While the Department is providing additional flexibility with regard to housing standards, it is not permitting its use for emergency repair or neighborhood cleanup programs with HOME funds unless all assisted units are brought up to an established standard (see § 92.251). The HOME Program was created to be a housing production program and has successfully assisted 184,000 units of standard housing.

Forms of Assistance

Ten comments were received. Eight comments concerned loan guarantees.

Loan Guarantees

Commenters were unanimous in supporting the July 12, 1995 regulatory change establishing the eligibility of loan guarantees. Commenters considered loan guarantees to be an excellent way to leverage the use of private funds and welcomed this flexibility.

However, most commenters felt that the loan guarantee requirements needed further revisions. One commenter requested that the regulations clarify that loan guarantees must be used to expand the availability of private financing or obtain more favorable terms. This same commenter found the 20% cap on the guarantee fund to be too rigid and recommended an increase to 50%, with the provision for additional waivers. Another commenter felt investor interest may be reduced by the requirement that all guaranteed loans must meet HOME requirements. The commenter suggested a less restrictive standard for projects which have no direct HOME subsidy, such as the project having at least 20% of the units affordable as long as the HOME funds guarantee the loan (statutory change).

One commenter made numerous suggestions for revising the way a loan guarantee pool should be structured. The commenter was concerned that current language appears to require participating jurisdictions to underwrite and manage subrecipient loans, and urged that participating jurisdictions be given the authority to delegate this to the subrecipient. This commenter also noted that most loan pools are established by dollar amount, and not by the number of estimated loans. The commenter recommended that participating jurisdictions be given both options. The commenter was concerned with the prohibition on increasing the number of loans, and the fact that the current requirements result in guaranteeing initial loans at 100%. Recommendations include allowing the draw down of funds when there is a clear binding commitment in place with the lender; allowing non-eligible HOME loans to be included in the loan pool, provided the loan guarantee is limited to HOME eligible loans; allowing HOME funds to subsidize interest on the loan pool; clarifying that repayment of non-HOME funds are not subject to HOME eligibility restrictions; and providing for Secretarial approval of other loan guarantee models which meet the basic purpose of the regulations.

The Department is open to additional suggestions concerning the way to structure loan guarantees as was indicated in the preamble to July 12, 1995 rule. A participating jurisdiction may carry out a loan guarantee program through a subrecipient, with the duties and responsibilities detailed in a written agreement. However, the participating jurisdiction is ultimately responsible for the administration of all of its HOME funds. HOME funds may be drawn down for a loan guarantee at the point in time when HOME funds are invested in a project. While this may lead to 100 percent guarantee of earlier loans in order to establish a minimum balance in the guarantee fund, that will quickly diminish as successive loans are guaranteed. The Department in creating a ''project'' concept of a certain number of loans to be guaranteed did so in order to trigger the reporting of the units being assisted at the end of the project, regardless of whether all the projected loans were made. HOME funds can also be used to write down the interest rate of private loans in order to make the loan more affordable for new homebuyers or project owners. In the July 12, 1995 rule, the Department at § 92.205(b)(2) made it clear that while loans funds guaranteed with HOME funds are subject to all HOME requirements, funds which are used to repay the guaranteed loans are not.

Other

One commenter requested that ''compensating balances'' be specifically allowed. Another commenter recommended that HOME provide bridge financing for tax credit projects, and for a long-term loan guarantee program like Section 108 (statutory change).

The Department believes that the loan guarantee concept is a more efficient way to leverage private funds than the compensating balance approach. In a new section at § 92.206(g), the Department has clarified that HOME funds may be used for construction or bridge financing. The Department does not currently have statutory authority to create a Section 108 type program for HOME but has suggested such an approach in its current legislative package.

One commenter recommended that the regulations clarify the eligibility of equity investments which are part of the financial work-out of an existing low-income housing project.

Under existing rules, a participating jurisdiction may provide funds in the form of an equity investment. This means that the participating jurisdiction becomes part owner of the housing. The eligible cost would be acquisition.

Termination Before Completion

Current regulations require the repayment of all funds expended on a project which does not go forward. One commenter proposed that participating jurisdictions be allowed to forgive such repayment where there are impediments to project development which are reasonably beyond the control of the owner. This approach is consistent with policy which forgives CHDO project-specific loans. There are instances where neither the owner nor the PJ can recover these funds. Participating jurisdictions should not be required to assume financial liability for such situations.

The Department declines to change its policy with regard to reimbursement of funds when a project does not proceed, but will examine the facts relating to specific instances as they occur. The statute provides separate loan authority to cover CHDO predevelopment costs, which are not eligible for other HOME projects and may be forgiven if the project does not go forward.

Manufactured Housing

Five comments were received on the requirement that HOME-assisted manufactured housing for rent or homeownership be situated on permanent foundations.

One commenter suggested that State laws governing the taxation of manufactured housing as real property should be the standard for determining whether a unit is considered HOME-eligible.

Four commenters recommended that the permanent foundation requirement be eliminated. All of these commenters cited the significant additional cost (estimated at about $7,500 by some commenters) as an obstacle to providing affordable housing in rural areas and as the primary reason for elimination. Three of the commenters questioned HUD's assumption that permanent foundations make manufactured housing units safer. One of the commenters pointed out that not all areas of the country experience the type of weather patterns that might justify the expense of installing manufactured housing units on permanent foundations.

One commenter urged the Department to maintain its current requirements with respect to manufactured housing. The commenter cited safety and the need to develop a stock of permanently situated, standard manufactured housing in rural areas as the justification for this position.

The Department has removed references to manufactured housing in §§ 92.252 and 92.254. The Department has included under eligible activities, a new section at § 92.205(a)(5) on manufactured housing in which it has eliminated the requirement for a permanent foundation in deference to local and State standards for this type of unit.

Section 92.206 Eligible Project Costs

Three comments were received. Two commenters recommended that the rule be revised to permit initial operating reserves for new construction and all rehabilitation projects, not just substantial rehabilitation projects.

The Department has made this change as well as clarifying that reserves for initial operating expenses (which include scheduled payments to project replacement reserves) permitted for the first 18 months of a project may remain with the project after that period at the discretion of the participating jurisdiction.

Another commenter suggested that all pre-environmental clearance activity costs be reimbursable activity delivery costs.

The Department agrees that participating jurisdictions may incur costs which may be reimbursed with HOME funds, provided all HOME requirements have been met, including the environmental review requirements of Part 58. Under certain circumstances, costs may be incurred prior to the award of a fiscal year HOME allocation and charged to the HOME allocation after its award. This is discussed under the new § 92.212. However, costs for activities covered by Part 58 can not be reimbursed if the NEPA requirements are not met prior to incurring these costs. The costs of preparing environmental reviews and clearances may be charged to either administrative costs or project costs. This is clarified under § 92.207(g).

Section 92.207 Eligible Administration and Planning Costs

Four comments were received. Two commenters said that the 10 percent administrative fee is insufficient and should be increased (statutory). They also recommended that participating jurisdictions be permitted to charge application and monitoring fees of developers of HOME-assisted projects. One commenter recommended that the Department return to its original regulatory language of permitting 10 percent of the HOME allocation to be spent on administration. They objected to the cost allocation methods suggested at § 92.207(a)(1).

Participating jurisdictions are permitted to charge nominal application fees to discourage frivolous applications. The HOME Program, however, provides a 10 percent administrative fee for ongoing administration of the program. The cost allocation methods detailed at § 92.207(a)(1) are simply an amplification of the procedures required by OMB Circular A–87 revised and OASC–10, Cost Principles and Procedures for Establishing Cost Allocation Plans.

The Department has also clarified that meeting the requirements under Subpart H, *Other Federal Requirements*, is an eligible administrative cost.

The third commenter recommended that the Section 8 Housing Quality Standards inspection for a unit receiving tenant-based rental assistance be an eligible related soft cost chargeable to a TBRA project.

The Department declines to make this change since it views the operation of a tenant-based rental assistance program as an administrative cost under the 10 percent administrative cost cap.

Assisted Units in Multi-unit Projects

The Department in a new paragraph at § 92.205(d) expressly permits HOME funds to assist less than all units in a project and addresses prorating costs in projects with less than 100 percent HOME-assisted units. The regulation permits cost allocation when the units are not comparable in size, features or amenities. Guidance on attribution of eligible costs to the HOME program is detailed in CPD Notice–94–12, *Allocating costs and identifying HOME-assisted units in multifamily projects.*

Section 92.208 Eligible CHDO Operating Expense and Capacity Building Costs

One commenter recommended that the 5 percent CHDO operating expenses be deducted from the CHDO set-aside.

The statute provides that both the 10 percent administrative amount and the 5 percent CHDO operating fund be deducted from the participating jurisdiction's total allocation. A participating jurisdiction has discretion about whether to use either or both allowable percentages.

Section 92.211 Tenant-based Rental Assistance

Six comments were received. All six commenters endorsed the interim rule change which permitted HOME tenant-based rental assistance to be targeted to special needs populations. One commenter asked whether special needs populations would be defined for this purpose, suggesting that complete local flexibility be permitted within the confines of existing civil rights and fair housing law.

The Department declines to define special needs populations and defers to the priorities which participating jurisdictions establish in their consolidated plan under 24 CFR 91.

§§ 92.209, 210 and 211 on tenant-based rental assistance and security deposits have all been consolidated in § 92.209. This section contains clarification of required income eligibility determinations and annual property inspections.

Section 92.212 Pre-award Costs

The Department added a new section covering pre-award costs and the requirements which must be met.

Section 92.214 Prohibited Activities

Six comments were received on this section of the rule. Five of the commenters recommended that the Department permit the funding of both operating reserves and reserves for replacement. To the extent the Department permits initial operating

reserves for the first eighteen months of a project, these funds can remain in the project at the discretion of the participating jurisdiction. Two of the five commenters suggested that the Department also permit operating subsidies.

As discussed earlier under § 92.206, Eligible project costs, the Department agrees that during the initial rentup of a project both operating reserves and reserves for replacement required for the first 18 months of a project may be funded and retained by the project at the discretion of the participating jurisdiction.

With the program emphasis on production, the Department declines to fund operating subsidies.

Two commenters also requested that participating jurisdictions be permitted to add additional HOME funds to projects during the period of affordability, to handle unanticipated costs particularly during a twenty year affordability period.

While the Department declines to make this a general policy, it would be willing to examine cases where it might be appropriate to permit additional funding.

Income Targeting

Section 92.216 Income Targeting: Tenant-based Rental Assistance and Rental Units

Four comments were received on the overall targeting requirement for project and rental assistance under the HOME Program. Two of the commenters suggested that the targeting requirements be changed to parallel the requirements for the low-income housing tax credit i.e. that 20 percent of the units be reserved for households at 50 percent of median income or that 40 percent of the units be reserved for households at 60 percent of median income (statutory).

One commenter suggested that the complex rent structure be eliminated while retaining a single targeting requirement that all assistance should benefit tenant households below 80 percent of median income (statutory).

Another commenter objected to the requirement that family income and family size and composition be reexamined at least annually (statutory).

Since all the changes require statutory amendments, the Department did not adopt any of these changes. See § 92.203(a)(1) for options in determining tenant eligibility in HOME-assisted rental housing.

Matching Contribution Requirement

The Department received comments from seventeen parties regarding match. Four of these commenters recommended that the HOME match requirements be eliminated (statutory). Two commenters suggested that the match concept be replaced by a leverage requirement (statutory). One of these commenters suggested a 50% to 75% non-Federal leverage requirement.

Numerous other commenters made specific suggestions for changing the current match requirements.

Sections 92.218–92.222, covering the match contribution requirements, have been revised to make the sections clearer, to reflect policy determinations gained through program operation and to expand the sources of match in response to public comment.

Section 92.218 Amount of Matching Contribution

One commenter stated that the requirement that match liability and contributions be calculated on a fiscal year basis is cumbersome. The commenter suggested that, in light of the consolidated plan and the adoption of single program years that may not coincide with the Federal fiscal year, participating jurisdictions be permitted to count match on a program year basis.

While the Department is sympathetic to the comment, the statute refers to funds expended ''during the fiscal year''.

Another commenter suggested that match liability be incurred at the time of project completion, rather than as a PJ expends HOME funds. This, the commenter asserted, would simplify tracking and monitoring match.

The statute specifies that match liability is incurred as HOME funds are expended.

Section 92.219 Recognition of Matching Contribution

Three commenters suggested that all State affordable housing resources be counted as match. Instead of tracking contributions to specific, eligible housing projects, States should be permitted to certify that they are committing resources to decent, safe and affordable housing for low-income persons. These three commenters and an additional commenter contended that other affordable housing (not assisted with HOME funds) should not be required to meet the criteria set out in the rule to qualify as match. One of the three commenters stated that State participating jurisdictions should not be required to have written agreements with the owners of other affordable housing counted as match to ensure that the projects meet the criteria to qualify as affordable housing.

The statute requires other affordable housing counted as match to meet the qualifications of Section 215 of the statute. For projects containing both HOME-assisted and affordable housing units, there appeared to be confusion that contributions to affordable housing units could only be counted if at least 50% of the units were HOME assisted. The Department wants to clarify that contributions to affordable housing that meet the requirements in § 92.219(b) should be recognized whether there are no, some or a majority of HOME-assisted units in the project. The Department also wishes to stress that contributions are counted only after a written agreement is executed.

Two commenters asked the Department to clarify that housing that is ''substantially equivalent'' to HOME-assisted housing may be counted as match.

There is currently no such requirement in the HOME program. This was proposed statutory language that was never passed.

Section 92.220 Form of Matching Contribution

Thirteen commenters requested that the Department expand the definition of match so that additional types of contributions would be deemed eligible.

Five commenters suggested that sweat equity be counted as an eligible match. One of these commenters suggested that this provision be extended only to organized mutual self-help groups that can document shared labor requirements.

The Department recognizes the value of a sweat equity contribution by homeowners as a source of match and has changed the rule accordingly.

Five commenters suggested that owner equity in homeownership or rental projects be counted as an eligible match. One of these commenters suggested that this provision be extended only in cases where the equity is a ''permanent contribution'' to the affordable housing.

By definition owner equity is not a permanent contribution to affordable housing because owners realize their equity upon sale of the unit or project. However, under cash contributions made from nonfederal sources, § 92.220(a)(1)(i), the Department has clarified that cash contributions made to a nonprofit organization for use in a HOME project may be counted as match.

Six commenters suggested that the value of social services provided to the residents of HOME-assisted and HOME-eligible housing be counted as matching contributions. Several of the

commenters pointed out that significant State and local resources are expended for this purpose. One of the commenters suggested that the value of all non-Federal services provided to the residents of HOME-assisted or other affordable housing (i.e., whether the services are housing-based or provided to the general community) be permitted to be counted as match.

The Department has changed the rule to recognize as match the direct costs related to supportive services necessary to facilitate independent living or required as part of self-sufficiency programs provided to residents of HOME-assisted units during the period of affordability. In addition, the Department has recognized the value of homebuyer counseling services provided to families who acquire properties with HOME funds.

Two commenters requested that the rule be changed to count 100% of the value of tax-exempt bond financing for affordable housing, rather than the 25% per loan for single-family projects and 50% for multifamily projects currently permitted (statutory).

Two commenters suggested that the rule be changed to permit donated professional services to be valued at their market value, rather than the labor rate established annually for the program.

The rule has been changed to value skilled labor at the rate which is normally charged while unskilled labor will be valued at a rate set by the Secretary. The rate is currently $10 per hour.

One commenter suggested that in-kind administrative services provided to State HOME programs by small local governments be counted as an eligible match contribution.

Match credit derived from administrative expenses is not recognized statutorily as a source of match.

Four commenters stated that funds lent to affordable housing projects (HOME and non-HOME) that are repaid to the original source, rather than the local HOME account, should be counted as match.

This is currently permitted. However, the value of the match is the present value of the yield foregone on a below-market interest rate loan, not the full face value.

Five commenters wrote in support of the two changes made in the July 12, 1995 rule to count fees and charges waived by nongovernmental entities as match and to permit match requirements for forgiven CHDO redevelopment loans to be waived.

Section 92.221 Match Credit

Two commenters asserted that the requirement that match be credited in the year that it is made may cause compliance problems (i.e., inadequate match contributions in a given year) when a PJ relies upon multi-year match contributions such as property tax forgiveness.

This may be true if there is a long delay in dedicating the match contribution. However, the current rule permits the present value of the tax-exemption over the period of forgiveness to be credited immediately, not year-by-year.

One commenter recommended that States be permitted to accept resources from local participating jurisdictions to use for State match contributions.

Although not explicitly stated in the regulation, for a HOME-assisted project a State may count resources provided by a locality as match as described in § 92.221(c).

Section 92.222 Match Reduction

One commenter urged the Department to reduce the match requirement for CHDO activities.

There is no statutory authority to permit this.

Another commenter contended that match reductions granted to States for disasters and distress result in inequities that complicate the administration of the program. Specifically, this commenter stated that, when States can offer HOME funds without match requirements to jurisdictions within urban counties or consortia and the consortia or urban county itself must provide full match, the local PJ is put at a disadvantage in using its HOME funds.

Match reduction based on disaster designation would be the same for both a State and a local jurisdiction, because a State match reduction applies only to funds the State uses in a disaster area. While the Department recognizes the different match liability between State and local HOME funds created by distress designations, it is clear that there is not sufficient HOME funds from either source to address the affordable housing needs and that HOME funds should not go unused in any community.

Subpart F—Project Requirements

Section 92.250 Maximum Per-Unit Subsidy Amount

Two comments on the maximum per-unit subsidy limits were received. One commenter proposed that Congress eliminate the statutory provision requiring HUD to establish per-unit subsidy limits. This commenter contended that local governments are in the best position to establish limits based on knowledge of local construction costs and housing conditions.

Section 212(e) of NAHA was specific that the Secretary shall establish limits on the amount of HOME funds which can be invested on a per unit basis, therefore, it would require a statutory change. The Department has also added a new paragraph to highlight the requirement for and use of locally-developed subsidy layering guidelines when HOME funds are combined with other governmental assistance.

Another commenter suggested that the Department reconsider its decision to define group housing as being one unit to permit more HOME funds to be expended on such units.

This is not a regulatory definition. See CPD Notice 94–01, *Using HOME Funds for Single Room Occupancy and Group Housing,* which provides great flexibility to participating jurisdictions in how they characterize SROs and group homes.

Section 92.251 Property Standards

Thirteen parties commented on the property standards applicable to properties assisted with HOME program funds. Nearly all the commenters recommended some form of change to the existing requirement that all HOME-assisted properties meet the Section 8 Housing Quality Standards (HQS).

Eleven commenters recommended that the Department, under some circumstances, permit HOME to be used for emergency repairs in which a unit will not be brought up to HQS. Five of the commenters suggested that the Department establish a maximum per unit dollar limit for emergency repairs where a unit would not be required to meet HQS or some other housing code. Another commenter suggested that the Department limit the percentage of each HOME allocation that could be used for such repairs.

Two commenters, who supported emergency repairs, recommended that the Department maintain HQS as the standard for all other HOME assisted units.

Three commenters suggested that the Department permit home repair, weatherization or handicapped accessibility that will not bring a unit up to code. Another commenter, who favored elimination of the HQS requirement, felt that, at a minimum, single family housing should be exempted from the requirement.

Four commenters recommended that the Department require units to meet

locally-established housing codes. Two other commenters suggested that State participating jurisdictions that adopt national model codes be permitted to use those as the HOME property standard.

One commenter suggested that the Department replace the HQS requirement with the FHA Minimum Property Standards, to prevent duplicative inspections where HOME and FHA insurance are being combined.

Two commenters recommended that the Department continue to require substantially rehabilitated units to meet the cost-effective energy conservation standards. Another commenter requested that the Department make these standards optional.

One commenter recommended that the Department continue to apply the Council of American Building Official's Model Energy Code to HOME-funded new construction (statutory).

Two commenters requested that the HQS requirement be eliminated for manufactured housing units.

Many of these comments with regard to the use of HOME funds have been addressed in the preamble under eligible activities and project costs. With regard to the property standard that a HOME-assisted project must meet, the Department has revised the rule to permit newly constructed or rehabilitated housing to meet local codes, rehabilitation standards, ordinances, and zoning ordinances. In the absence of local code for new construction or rehabilitation, housing must meet one of the model codes cited in this section. All other HOME units including those occupied by tenants receiving HOME tenant-based rental assistance, must meet Section 8 Housing Quality Standards (HQS). During the affordability period, rental units must continue to meet the standard which was initially used when the unit was assisted. The cost effective energy conservation and effectiveness standards have been deleted as a requirement because they were deleted from 24 CFR Part 39 although participating jurisdictions are encouraged to use them as guidelines in the rehabilitation of HOME-assisted housing. New guidelines will be issued shortly.

Section 92.252 Qualification as Affordable Housing: Rental Housing

Nineteen parties provided comments on the HOME provisions for the qualification of affordable rental housing. Most of the commenters recommended changes to simplify the rental requirements or to conform the HOME requirements with those of the Low-Income Housing Tax Credit (LIHTC).

The Department has revised this whole section to make the rental requirements easier to understand and clarified the procedures with regard to initial and subsequent tenant eligibility determinations.

With the statutorily required two tier income targeting and annual income recertification requirements, the HOME statute differs from the LIHTC requirements. The rule spells out the options by which tenant income can be reviewed during the affordability period and offers a degree of flexibility for single-family rental properties. One option permits a tenant to submit a written statement of income, which may be actual income or income ranges which delineate when a tenant is below 50 percent or above 80 percent of median income. The tenant submits this statement as well as a certification to its completeness and accuracy. For multifamily projects with longer periods of affordability, tenant income must be examined periodically using source documents indicating annual income.

Two commenters recommended that the Department eliminate the 20-year period of affordability for rental new construction and base affordability periods on the amount of HOME funds invested regardless of activity. One of these commenters felt that all HOME requirements should be eliminated once the HOME funds have been repaid (statutory). The other commenter suggested that the Department establish a de minimis threshold of $2,500. Units receiving less than this amount in HOME funds would have no HOME requirements.

The Department is retaining the longer affordability period for new construction rental projects because of the substantial investment of HOME funds in these projects. The other recommendations can not be implemented because they are statutory.

One commenter felt that the affordability periods established in the HOME rule were too short and did not accurately reflect the statutory provision that HOME-assisted properties remain affordable for their useful life. Another commenter suggested that participating jurisdictions be given the authority to waive affordability periods for rental projects in those instances where a tenant wishes to purchase the assisted unit. This commenter also felt that rental units in HOME-assisted homeownership projects should not be subject to the rental requirements.

The Department has made provision for the purchase of a rental unit by an existing tenant as a way to encourage homeownership. That provision is included at § 92.255, which describes the affordability requirements depending upon whether additional HOME funds are invested to assist the existing tenant to become a homebuyer. In response to the last comment, the Department has reconsidered the automatic application of rental requirements to rental units in HOME-assisted homeownership projects. The new requirements are discussed in § 92.254(a)(ii)(5).

One commenter recommended that the separate program-wide and project-specific income targeting requirements be eliminated and replaced with a more flexible system. Specifically, the commenter suggested that all HOME rental units be initially occupied by families with incomes below 60% of area median income and carry rents not to exceed 30% of the income of a family at 80% of area median income (statutory).

Ten commenters approved of the July 12, 1995 regulatory change with respect to rent levels when HOME is combined with State or Federal project-based assistance. Four commenters believed that the Department should extend this provision to HOME-assisted units occupied by families receiving tenant-based assistance. One commenter felt that the provision should be extended to include local project-based assistance.

On the change in the threshold for the 20 percent very-low income occupancy requirement from a project with three units to a project with five units, the Department received fourteen comments. Twelve of those comments were supportive of the change citing an easing of administrative requirements for small rental properties. Three commenters, national public interest groups, opposed the change as a diminishment of the potential number of units occupied by very-low tenants.

The Department because of language in Section 215(a)(1)(B) of the statute can not provide similar treatment for local project-based rental assistance as it did for Federal or State rental assistance.

Section 92.253 Tenant and Participant Protections

Two parties commented on the HOME tenant and participant protections. One commenter recommended that the Department delete these provisions and permit participating jurisdictions to develop their own standards (statutory). Another commenter specifically objected to the requirement that tenants be given 30 days notice before tenancy can be terminated for cause. (statutory). The commenter states that the HOME requirements are inconsistent with other

HUD program requirements, which differentiate between ''good cause'' and ''material noncompliance.'' The effect of this provision, the commenter claims, is that owners must wait 30 days to begin eviction proceedings for a tenant that has failed to pay rent or has committed a violent crime on the premises. The commenter recommends eliminating the notice requirement.

Because of the statutory nature of these items, the Department has not accepted these recommendations.

Section 92.254 Qualification as Affordable Housing: Homeownership

Seventeen parties commented on the provisions that set out the qualifying criteria for affordable homeownership units. Three commenters objected to the requirement that the purchase-price or after-rehabilitation value of assisted homeownership units not exceed 95% of the median purchase price for the area. One commenter pointed out that this requirement makes it difficult to assist low-income elderly persons who are ''house-rich.'' Another expressed the belief that this provision limited homebuyer assistance programs to areas of low-income concentration (statutory).

In response to these comments but recognizing the need to carry out statutory intent, the Department is offering a participating jurisdiction the option of determining 95 percent of the median area purchase price locally and putting that information into its consolidated plan for approval by the Department. Alternatively, a participating jurisdiction can continue to use and may obtain the Single Family Mortgage Limits for Section 203(b) from the single housing family division in the field office. The information will no longer be distributed nationally by the Office of Affordable Housing Programs, CPD Headquarters.

Four other commenters did not object to the limitation on purchase price, but recommended elimination of the limit on the appraised value of a unit at the time of acquisition. Two commenters contended that the purchase price limitation alone was sufficient to limit the use of HOME funds to suitable, modest housing. One commenter noted that the appraised value limitation has a negative impact on the use of newly constructed units, which typically have higher appraised value, in the HOME Program. Another commenter recommended that the Department permit participating jurisdictions to use alternate method to appraisals to determine after-rehabilitation value of properties.

Whether using the Section 203(b) or locally derived 95 percent of median purchase price limits, a participating jurisdictions will be responsible for setting the limits, determining the property value of units which are acquired and rehabilitated, and demonstrating that HOME funds are used in keeping with statutory intent, that of subsidizing the purchase of modest housing. The requirement for an appraisal has been eliminated, however, PJs must have a reasonable method to determine property value.

Twelve commenters expressed their approval of the changes made to the homebuyer assistance recapture provisions in the July 12, 1995 interim rule. This rule provided participating jurisdictions additional flexibility in establishing recapture rules. The commenters felt that these changes would make the HOME Program easier to use in a variety of housing markets.

Two commenters objected to the provision that applies the resale restrictions to homebuyer units for which no direct subsidy was provided to the homebuyer so that no HOME funds will be subject to recapture. One State commented that it uses its HOME funds to revitalize distressed areas by rehabilitating housing and selling it at market price. Because the area is distressed, demand is low, and the housing is available at affordable prices without the need for homebuyer assistance. Most of the homebuyers are low-income. The State urged that homebuyers who are buying housing rehabilitated or constructed with HOME funds in distressed neighborhoods not be burdened with deed restrictions which make the property even less desirable.

The final rule contains a new provision under which resale deed or other restrictions are not required to be imposed. The provision permits the participating jurisdiction to do a market analysis which supports a presumption that the housing meets the resale requirements, i. e., the housing will be available to a subsequent low-income purchaser who will use the property as its principal residence and will be sold at a price which is affordable to a reasonable range of low-income homebuyers and affords the homeowner a fair return on investment. The market analysis must include an evaluation of the location and characteristics of the housing and residents in the neighborhood in relation to housing and incomes in the housing market area. If a participating jurisdiction in preparing a neighborhood revitalization strategy or an Empowerment Zone or Enterprise Community application has developed this type of market data, those submissions may serve as the required analysis under this section.

One commenter asked that the Department clarify that the net proceeds of a homebuyer unit resale include the original homebuyer's investment in capital improvements.

The net proceeds, the sales price minus loan repayment other than HOME funds and closing costs, does not include capital improvements, except to the extent that these improvements would be reflected in the sales price. However, capital improvements are included in the calculation of the homebuyer's investment in the property and considered in determining the amount of HOME funds to be recaptured.

The Department has added a new section on *Special considerations for single family properties with more than one unit.* This section clarifies the application of rental requirements when HOME funds are used to assist both the homeowners unit and one or more rental units. If HOME funds are used to assist only the rental units in such a property then the requirements of § 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of § 92.254.

Section 92.255 Mixed-income Projects

One commenter contended that, in projects with units that are not HOME-assisted, incomes should be collected only for residents of units that are HOME-assisted.

This section is retitled and the requirements previously in this section have been incorporated into the match section at § 92.219(a). In response to the commenter, income information is not required to be collected for tenants occupying units that are not HOME-assisted unless the units are HOME eligible and an investment in these units is being counted as a match contribution.

Section 92.256 Mixed-use Projects

One commenter suggested that the Department eliminate the requirement that mixed use projects be at least 51% residential in order for contributions to the nonresidential portion to count as match (statutory).

This section is being eliminated and the statutory requirement on match is being consolidated into the rule at § 92.219(a)(4).

Section 92.258 Limitation on the Use of HOME Funds With FHA Mortgage Insurance

Six commenters recommended elimination of the provision extending

the HOME period of affordability to match the term of the mortgage when HOME and FHA mortgage insurance are combined. Commenters noted that this placed a significant burden on owners receiving a small amount of HOME funds, especially homebuyers receiving downpayment assistance. Others characterized the requirement as unfairly penalizing projects that receive FHA mortgage insurance. An additional commenter suggested that the requirement apply only to projects receiving more than $15,000 in HOME funds.

One commenter supported the requirement and recommended that it be left intact.

The Department agrees with the majority of commenters and has eliminated this provision.

Subpart G—Community Housing Development Organizations

Thirteen comments were received relating to the CHDO set-aside, operating expenses, and redevelopment costs.

Section 92.300 Set-aside for Community Housing Development Organizations

One commenter felt that the rule as it now stands is excellent but the unwillingness of certain participating jurisdictions to delegate authority to CHDOs is a significant issue. This view was echoed by a second commenter who criticized participating jurisdictions for their unwillingness to provide CHDO operating funds. This commenter recommends that the final rule elaborate on the extent to which CHDOs may retain funds repaid from set-aside projects and, by so doing, distinguish between these repayments and program income which must be returned to the PJ. The commenter also objects to participating jurisdictions requiring that local match provided to CHDO projects be returned to the local or State trust fund account upon repayment instead of being retained by the CHDO. In the commenter's view, this policy seriously undermines the ability of any CHDO to obtain local match.

The Department is revising this section to permit participating jurisdictions to allow CHDOs, who are assisting homebuyers in connection with the development of homebuyer housing under § 92.254, to retain the return of the investment of HOME funds (i.e. interest on HOME loans, the proceeds from permanent financing) for use for HOME-eligible *or other affordable housing activities.* However, any recapture of HOME funds not meeting the affordability requirements is required to be used for HOME activities in accordance with the requirements of Part 92.

In the opinion of three commenters, owner-occupied housing rehabilitation should be included among eligible CHDO set-aside projects while a fourth supports allowing downpayment assistance to be included as well. One of these commenters goes further in recommending that any HOME-eligible activity undertaken by a CHDO, including tenant-based assistance, be considered as a set-aside project. This view was also expressed by three other commenters. Yet another commenter proposed that a carry-over credit be instituted for funding provided in excess of the minimum 15 percent set-aside in any year (statutory).

The statutory provisions established the CHDO set-aside exclusively for community-based nonprofits who would own, sponsor or develop affordable housing. It is in keeping with this special intent, that the Department declines to include other eligible activities for use of set-aside funds. The Department has also determined that the statute is clear that a minimum of 15 percent of each year's HOME allocation should be reserved and used by CHDOs.

One commenter requested that the language in § 92.300(a) relating to CHDO ownership of projects in partnership with other persons or entities should be changed to make clear that separate *nonprofit* subsidiaries as well as wholly owned for-profit subsidiaries can be a managing general partner. According to the commenter, it is common, particularly when using Low-Income Housing Tax Credits, for CHDOs to establish a separate, nonprofit subsidiary to be the managing general partner.

The Department has made that clarification.

One commenter strongly expressed their opposition to Federally mandated set-asides in general and the 15 percent CHDO set-aside in particular believing that the Federal government should not dictate which housing providers receive States fund. According to the commenter, States face the distressing prospect of losing scarce housing funds to reallocation because they have few qualified nonprofits and even fewer qualified CHDOs. This commenter recommends that, at a minimum, the set-aside should be transformed into a general nonprofit set-aside, using a reasonable definition such as that utilized under the Low-Income Housing Tax Credit (statutory).

Another commenter objected to the CHDO set-aside, stating that it often must award funds to nonprofit groups that are less qualified than for-profit developers in order to meet this requirement. The commenter recommends that all references to CHDOs be deleted from the law and that the CHDO set-aside be transformed into a general non-profit set-aside (statutory).

With respect to CHDO operating expenses, one commenter believes that the requirement limiting availability to CHDOs expected to receive set-aside funds within 24 months should be eliminated. Instead, the agreement between the PJ and the CHDO should specify the expectations of the parties. In addition, the commenter feels that if the operating support is being used to strengthen a CHDO's asset or property management capacity, then the agreement should also set benchmarks for these efforts. Finally, the commenter suggests that language in the regulations describing eligible uses for operating support be changed to make clear that such support is not limited to the costs directly associated with the development of specific projects.

Another commenter recommended that the provision of operating funds to CHDOs be made mandatory since participating jurisdictions seem unwilling to provide this support (statutory). The Department believes that CHDO operating funds are the means to permit CHDOs to successfully use HOME funds for projects in which they are owners, sponsors or developers. These operating funds may be used for general administrative and operating expenses as well as for project costs, but they are being provided in connection with the anticipated use of HOME funds, just as they are provided to participating jurisdictions for the production of HOME-assisted affordable housing. The Department has clarified at § 92.300(f) that the limitation on the amount of HOME funding received by a CHDO in any fiscal year does not include administrative funds provided under § 92.207 when a CHDO is acting in a subrecipient or contractor capacity.

Section 92.301 Project-specific Assistance to Community Housing Development Organizations

One commenter recommends that the authority to use HOME as redevelopment funds that would not need to be repaid if the project did not go forward be extended to non-CHDO owners and developers (statutory).

Subpart H—Other Federal Requirements

Section 92.350 Equal Opportunity and Fair Housing

Four comments were received on this section. Two commenters objected to the imposition of the Section 3 rule, which they contend goes substantially beyond local capacity to administer employment and training programs. They indicate that the rule requirements go far beyond the statutory requirement of employing local residents to the ''greatest extent feasible''. They also contend that the Davis Bacon requirements impede Section 3 objectives in that small, local contractors do not have the administrative expertise to maintain compliance and reporting records.

One commenter suggested that local minority and women's owned business programs should be given credit for meeting Section 3 requirements. Another commenter complained that it is burdensome to apply Section 3 requirements to a whole project when Federal funds often represent a small portion of the financing.

The Section 3 requirements were subject to separate rulemaking and comment and the Department has not altered the requirements in this section.

One commenter suggested that affirmative marketing compliance monitoring should be done at the same time that HOME projects are monitored for rents, tenant incomes, and Housing Quality Standards.

The Department believes examination of affirmative marketing records during on-site inspections and reviews of rents is a good suggestion, however, no change has been made to the regulation.

Section 92.352 Environmental Review

Seven comments were received. Two commenters requested that participating jurisdictions be authorized to use substantially equivalent State or local environmental law and review procedures in place of NEPA (statutory). Four commenters requested that States be authorized to assume responsibility for the release of funds based on environmental reviews and certifications completed by State recipients and State CHDOs. The current procedure requiring States to request funds release from HUD delays projects.

Four commenters requested that 1–4 unit projects and all owner-occupied homeownership projects be exempt from environmental review (statutory). Two commenters requested that historic preservation reviews be waived for emergency repairs. Two commenters requested that one environmental review and funds release process be allowed for projects receiving both HOME and CDBG funds.

One commenter found current requirements unduly restrictive concerning options. The commenter noted that the Department allows options to be undertaken prior to environmental review, when a full refund of the option fee is provided if the project does not go forward. However, the commenter noted that such a scenario is unlikely in real estate transactions. The commenter urged that options be treated as other initial feasibility actions, in that options allow the developer to secure the right, but not the obligation to purchase a site. The commenter also requested that options purchased with non-federal funds be permitted prior to environmental review, even if HOME funds will be subsequently used.

Environmental review requirements are subject to separate rulemaking under 24 CFR 58. Part 58 currently authorizes States to exercise HUD's responsibilities with respect to approval of a State recipient's environmental certification and RROF. However, when a State elects to directly undertake the HOME program, HUD provides the second level of review. Therefore, States must submit their certification and RROF to HUD. Part 58 has been revised to allow purchase options prior to the completion of an environmental review, if the option agreement is subject to a determination by the recipient of the desirability of the property following the environmental review and the option cost reflects a nominal portion of the purchase price. Participating jurisdictions may currently conduct a single environmental review and submit a single RROF for projects funded with both CDBG and HOME, provided the separate funding sources are identified.

Section 92.353 Displacement, Relocation and Acquisition

Four comments were received on this section. Two commenters recommend altering the Uniform Relocation Act requirements for tenants displaced by HOME or CDBG-financed activity. They view benefits for a five year period as overly generous and suggest that the benefits be for two years and be paid once at the capitalized value of the benefits.

The calculation of benefits is based on explicit statutory language. Persons whose displacement is subject to the Uniform Relocation Act (URA) are entitled to an amount that is 42 times the difference between their rent at the unit from which they are displaced and the comparable unit they are offered (or 42 times the difference between 30% of household income and the rent at the comparable unit, if that results in a larger payment). For low and moderate income persons whose displacement is subject to section 104(d) of the Housing and Community Development Act of 1974, the payment is calculated to assure that their post-relocation shelter costs do not exceed 30% of income for five years. Since these benefit levels are set by statute, the Department has no authority to change them.

Two commenters strongly recommended that the URA requirements be simplified for homeownership situations. Current rules require that the participating jurisdiction notify the sellers of the property that the property is not being acquired under eminent domain and that they are not eligible for relocation benefits. Additionally, if the unit being offered for sale is occupied by a tenant, relocation benefits would be triggered. It was recommended that homebuyer programs be exempt from relocation requirements when the participating jurisdiction has no role in determining which house is selected by the buyer when it is offered for sale on the open market.

When HOME funds are used for homeownership programs, the property purchased is a Federally-assisted acquisition. Thus, it is subject to the provisions of the URA, and sellers and displaced tenants must be accorded certain rights and benefits. Although the selling homeowner is not entitled to relocation benefits, it is necessary to inform the seller that the purchaser does not have the power of eminent domain and of the estimate of fair market value. These actions are necessary to meet the URA requirements of section 301 (2) and (3). If there are tenants in the home, they are entitled to the standard URA benefits. Since these are statutory requirements, the Department cannot change or waive them.

Section 92.354 Labor

Nine comments were received on this section of the rule. Four commenters suggested eliminating the Davis-Bacon requirements for the HOME Program, and if not eliminated completely, at least conforming the requirements to CDBG in that land acquisition with HOME would not trigger Davis Bacon requirements. It was also suggested that some substantial dollar amount trigger Davis-Bacon (statutory).

Two commenters suggested that Davis Bacon requirements not be applied to homeownership projects when the units are sold to individual homebuyers.

Two commenters complained about the substantial administrative burden of the requirements and how that discourages small, local contractors from participating in contradiction to the Section 3 goals and requirements.

Davis-Bacon requirements apply to twelve or more HOME-assisted units under one construction contract, whether rental or homeowner. Small, local contractors can work on single family units or small rental projects while gaining experience before taking on a larger project with Davis Bacon requirements.

Section 92.356 Conflict of Interest

The third change in the July 12, 1995 proposed rule, the application of conflict of interest rules to developers, whether for profit or nonprofit, of projects receiving HOME funds elicited sixteen comments. Eleven commenters endorsed the application of the requirements either totally or with qualifications relating to occupancy of resident managers or income-qualified CHDO board members. Five commenters opposed the application of the requirements as too burdensome and intrusive on the participating jurisdiction's administration of the program.

The Department believes that the positive comments outweigh the negative ones and has adopted the conflict of interest provisions for developers, both profit and nonprofit, that receive HOME funds. The determination of a conflict is made at the State or local level and does not involve the Department, unlike the procedure when the conflict involves an official or an employee of the participating jurisdictions, its State recipients or subrecipients.

Subpart K—Program Administration

Section 92.502 C/MIS: Disbursement of HOME Funds

Five parties commented on C/MI and disbursement-related issues. All of the commenters suggested ways in which they believed the Department could simplify or streamline the current system. Three commenters recommended that the Department eliminate or relax the requirement that HOME funds drawn from the Treasury account be expended for eligible costs within 15 days (statutory). One of the commenters suggested extending the period to 30 days. Two commenters recommended that participating jurisdictions be allowed to draw lump sums for projects and place the funds in escrow accounts (statutory).

Three commenters requested that participating jurisdictions be permitted to draw down lump sums of HOME funds for long-term relocation expenses. One commenter stated that long-term relocation obligations prevented it from sending in project completion forms. Both commenters believed that the five-year deadline for the expenditure of funds would elapse before participating jurisdictions had completed monthly payments for relocation.

Existing policies should be adequate to permit required payments of relocation benefits without delaying project completion. Although relocation benefits to displaced tenants may be calculated to assist them with their shelter costs for as long as 5 years, the Department does not require that monthly payments be made for such a period. Although a single lump sum payment of benefits is prohibited by statute (except where down payment assistance is involved), the Department allows great latitude to displacing agencies in setting up the payout of the assistance. For example, quarterly or semi-annual payments could be made for a period deemed reasonable by the participating jurisdiction, at the end of which the balance could be paid to the displaced person.

One commenter noted that the Department needs to reduce the complexity of drawing down funds and decrease the time that it takes project set-up forms faxed to HUD to be entered into the system. The commenter suggested that the Department adopt the Payment Management System used by the Department of Health and Human Services.

Two commenters stated that the reports generated by the C/MIS should be useful and user friendly. One commenter suggested that the C/MIS operating hours being changed to accommodate participating jurisdictions in western time zones.

One commenter suggested that CHDOs be permitted to set up their own accounts in the C/MIS.

The same commenter suggested that subrecipients be permitted to have their own U.S. Treasury accounts and draw HOME funds directly from the Treasury.

Two commenters suggested that the new Integrated Data and Information System (IDIS) being developed by the Department for HOME and other programs allow participating jurisdictions to set up HOME funds for broad activities (e.g., rehabilitation) rather than on a project-by-project basis. One of these commenters recommended that information on families receiving HOME tenant-based rental assistance (i.e., social security number, tenant contribution, amount of subsidy) be included as part of a project completion report rather than at set-up.

There currently is no project completion form required for TBRA. The new Integrated Data and Information system (IDIS) will continue to collect data on a project basis. Only participating jurisdictions and state recipients are permitted to have HOME funds deposited directly into their own bank accounts (statutory).

Three commenters requested that participating jurisdictions be permitted to accumulate significant amounts of program income in their local HOME accounts before being required to expend the funds. Currently, participating jurisdictions are required to disburse program income on hand before drawing any additional funds from the U.S. Treasury. The commenters contend that this results in administrative burden, particularly when only small amounts of program income are on hand.

This is an OMB and Treasury Department requirement for all Federal programs under part 85, not a HOME regulatory requirement. Our current (nonregulatory) guidance to participating jurisdictions is that they may undertake a periodic accounting of program income whenever their financial reports are normally available and spend those funds before drawing additional Federal funds.

One commenter objected to the requirement at § 92.502(g) that requires States to designate the local PJ as a State recipient and suballocate its HOME funds when a State and local PJ undertake a jointly funded project.

This requirement has been dropped and State and local participating jurisdictions can each set up a project for its share of the funds and report on the proportionate number of units.

Another commenter expressed concern about jointly funded projects undertaken by CHDOs. The commenter believes that the State funds suballocated to a local participating jurisdiction is credited to that jurisdiction, rather than the State.

This is not the case. The State funds retain their identity, so all expenditures and production information related to the State's share of the project are included in the State's report.

Section 92.503 Program Income, Repayments, and Recaptured Funds

In response to many public comments and numerous requests for clarification, the Department has created a new section describing program income, repayments and funds that are recaptured. In prior rules, program

income has often been described as a return on the investment of HOME funds. This section hopefully will provide adequate guidance to participating jurisdiction on these issues.

Section 92.504 PJ Responsibilities; Written Agreements; Monitoring

The Department has substantially revised this section to be more specific about the contents of the written agreement between the participating jurisdiction and the entity receiving the HOME funds. The revisions were done in response to many comments requesting clarification about the contents of the agreement.

Six comments were received regarding the HOME monitoring requirements at § 92.504(e). All of the commenters felt that the current requirements were too burdensome and should be changed.

Two commenters suggested that the HOME monitoring requirements be changed to conform with the LIHTC monitoring requirements, which they felt offered more flexibility in determining the number of tenant files reviewed and the frequency of on-site visits. One commenter suggested that less information should be required from tenants whose rents are close to market rents than from those who receive a significant subsidy. The commenter suggests a single pay stub as proof of low-income status.

Two commenters felt that participating jurisdictions should be permitted to develop their own monitoring plans to assure project compliance with HOME requirements. One of these commenters suggested that these plans could be subject to HUD approval.

Another commenter suggested that HUD, in place of the current monitoring provisions, require participating jurisdictions to develop monitoring plans that include an initial on-site inspection, biannual on-site financial and management reviews and remote monitoring of tenant files and financial statements in alternate years. One commenter recommended that HOME rental projects be monitored every two years rather than annually, regardless of the size of the project.

The Department has provided options with regard to determining tenant income during the period of affordability which are discussed under the preamble comments at § 92.203.

With regard to monitoring requirements, the Department has created additional flexibility in the schedule for on-site inspections of smaller projects as permitted by the statute.

One commenter stated that the Department should eliminate the requirement that, when a PJ applies a longer period of affordability period to a project than is required by HUD, monitoring of the project continue for the extended affordability period.

There is no such requirement.

One commenter suggested that, when a project is found to be out of compliance with HOME requirements and the participating jurisdiction is unable to obtain timely repayment from the owner, the Department reduce the participating jurisdictions future grants rather than require repayment to the HOME account.

The Department declines to make this change because it reduces funds available to provide affordable housing but will review cases as necessary to determine appropriate action.

Section 92.506 Audits

One commenter wrote in support of the Office of Management and Budget's efforts to increase the threshold for audits from $25,000 to $300,000.

A bill has been proposed to make this change but has not been enacted.

Section 92.508 Recordkeeping

The Department has revised this section to ensure consistency with the requirements of Part 92. In addition, the period for record retention has been extended to five years in keeping with the Part 91 Consolidated Plan requirement. In response to comments, the Department has clarified the record retention period for various types of records. The Department has clarified that certain records do not have to be retained for the full period of affordability for rental projects.

Section 92.552 Notice and Opportunity for Hearing; Sanctions

The Department recently published a proposed regulation at 61 FR 18026 (April 23, 1996) setting forth hearing procedures for formal hearings according to the Administrative Procedures Act (5 U.S.C. 551 et seq.). The Department intends to adopt these hearing procedures for the HOME program. Conforming changes to the HOME regulations will be made when the final rule for Part 26 is published.

Conforming Changes to Part 91

The Department has made conforming changes to 24 CFR part 91, the Consolidated Plan. If a participating jurisdiction chooses to refinance existing debt in connection with the rehabilitation of multifamily properties, it would be required to develop guidelines which would describe under what conditions it would permit the use of HOME funds for refinancing. The guidelines would be made part of the participating jurisdiction's consolidated plan and be subject to public review and comment.

Extension of Interim Rule

Section 92.5 of the interim rule was added to implement a Department-wide policy for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. This section also provides that the expiration period may be extended by notice published in the Federal Register, and the Department is hereby providing notice that the interim rule remains in effect without interruption until the effective date of this final rule.

III. Findings and Certifications

Paperwork Reduction Act. The information collection requirements for the HOME Investment Partnerships Program have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0191. This final rule does not contain additional mandatory information collection requirements, but does contain additional voluntary information collection requirements in §§ 92.206 and 92.254. When received, the OMB approval number for these information collection requirements will be published in a separate notice in the Federal Register. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act. Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, local and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30

p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Planning and Review. This rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Federalism Impact. The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that this rule does not have federalism implications concerning the division of local, State, and federal responsibilities. While the HOME Program interim rule was determined to be a rule with federalism implications and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this final rule only makes limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family. The General Counsel, as the designated official under Executive Order 12606, *The Family,* has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under this rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. This rule would not, however, affect the institution of the family, which is requisite to coverage by the Order.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends parts 91 and 92 of title 24 of the Code of Federal Regulations as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. Section 91.220 is amended by adding a new paragraph (g)(2)(iii), to read as follows:

§ 91.220 Action plan.

* * * * *

(g) * * *

(2) * * *

(iii) If the participating jurisdiction intends to use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds, it must state its refinancing guidelines required under 24 CFR 92.206(b). The guidelines shall describe the conditions under which the participating jurisdictions will refinance existing debt. At minimum, the guidelines must:

(A) Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.

(B) Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long term needs of the project can be met; and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated.

(C) State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both.

(D) Specify the required period of affordability, whether it is the minimum 15 years or longer.

(E) Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR 91.215(e)(2) or a Federally designated Empowerment Zone or Enterprise Community.

(F) State that HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.

3. Section 91.320 is amended by adding a new paragraph (g)(2)(iii), to read as follows:

§ 91.320 Action plan.

* * * * *

(g) * * *

(2) * * *

(iii) If the State intends to use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds, it must state its refinancing guidelines required under 24 CFR 92.206(b). The guidelines shall describe the conditions under which the State will refinance existing debt. At minimum, the guidelines must:

(A) Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.

(B) Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long term needs of the project can be met; and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated.

(C) State whether the new investment is being made to maintain current affordable units, create additional affordable units or both.

(D) Specify the required period of affordability, whether it is the minimum 15 years or longer.

(E) Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR § 91.215(e)(2) or a Federally designated Empowerment Zone or Enterprise Community.

(F) State HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.

4. Part 92 is revised to read as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

Subpart A—General

Sec.

92.1 Overview.
92.2 Definitions.
92.4 Waivers and suspension of requirements for disaster areas.

Subpart B—Allocation Formula

92.50 Formula allocation.

Insular Areas Program

92.60 Allocation amounts for insular areas.
92.61 Program description.
92.62 Review of program description and certifications.
92.63 Amendments to program description.
92.64 Applicability of requirements to insular areas.
92.65 Funding sanctions.
92.66 Reallocation.

Subpart C—Consortia; Designation and Revocation of Designation as a Participating Jurisdiction

92.100 [Reserved]
92.101 Consortia.
92.102 Participation threshold amount.
92.103 Notification of intent to participate.
92.104 Submission of a consolidated plan.
92.105 Designation as a participating jurisdiction.
92.106 Continuous designation as a participating jurisdiction.
92.107 Revocation of designation as a participating jurisdiction.

Subpart D—Submission Requirements

92.150 Submission requirements.

Subpart E—Program Requirements

92.200 Private-public partnership.
92.201 Distribution of assistance.
92.202 Site and neighborhood standards.
92.203 Income determinations.
92.204 Applicability of requirements to entities that receive a reallocation of HOME funds, other than participating jurisdictions.

Eligible and Prohibited Activities

92.205 Eligible activities: General.
92.206 Eligible project costs.
92.207 Eligible administrative and planning costs.
92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs.
92.209 Tenant-based rental assistance: Eligible costs and requirements.
92.212 Pre-award costs.
92.213 [Reserved]
92.214 Prohibited activities.
92.215 Limitation on jurisdictions under court order.

Income Targeting

92.216 Income targeting: Tenant-based rental assistance and rental units.
92.217 Income targeting: Homeownership.

Matching Contribution Requirement

92.218 Amount of matching contribution.
92.219 Recognition of matching contribution.
92.220 Form of matching contribution.
92.221 Match credit.
92.222 Reduction of matching contribution requirement.

Subpart F—Project Requirements

92.250 Maximum per-unit subsidy amount and subsidy layering.
92.251 Property standards.
92.252 Qualification as affordable housing: Rental housing.
92.253 Tenant and participant protections.
92.254 Qualification as affordable housing: Homeownership.
92.255 Converting rental units to homeownership units for existing tenants.
92.256 [Reserved].
92.257 Religious organizations.
92.258 Elder cottage housing opportunity (ECHO) units.

Subpart G—Community Housing Development Organizations

92.300 Set-aside for community housing development organizations (CHDOs).
92.301 Project-specific assistance to community housing development organizations.
92.302 Housing education and organizational support.
92.303 Tenant participation plan.

Subpart H—Other Federal Requirements

92.350 Other Federal requirements.
92.351 Affirmative marketing; minority outreach program.
92.352 Environmental review.
92.353 Displacement, relocation, and acquisition.
92.354 Labor.
92.355 Lead-based paint.
92.356 Conflict of interest.
92.357 Executive Order 12372.

Subpart I—Technical Assistance

92.400 Coordinated Federal support for housing strategies.

Subpart J—Reallocations

92.450 General.
92.451 Reallocation of HOME funds from a jurisdiction that is not designated a participating jurisdiction or has its designation revoked.
92.452 Reallocation of community housing development organization set-aside.
92.453 Criteria for competitive reallocations.
92.454 Reallocations by formula.

Subpart K—Program Administration

92.500 The HOME Investment Trust Fund.
92.501 HOME Investment Partnership Agreement.
92.502 Program disbursement and information system.
92.503 Program income, repayments, and recaptured funds.
92.504 Participating jurisdiction responsibilities; written agreements; on-site inspections.
92.505 Applicability of uniform administrative requirements.
92.506 Audit.
92.507 Closeout.
92.508 Recordkeeping.
92.509 Performance reports.

Subpart L—Performance Reviews and Sanctions

92.550 Performance reviews.
92.551 Corrective and remedial actions.
92.552 Notice and opportunity for hearing; sanctions.

Authority: 42 U.S.C. 3535(d) and 12701–12839.

Subpart A—General

§ 92.1 Overview.

This part implements the HOME Investment Partnerships Act (the HOME Investment Partnerships Program). In general, under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income families. Generally, HOME funds must be matched by nonfederal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions may provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

§ 92.2 Definitions.

The terms ''*1937 Act*'', ''*ALJ*'', ''*Fair Housing Act*'', ''*HUD*'', ''*Indian Housing Authority (IHA)*'', ''*Public Housing Agency (PHA)*'', and ''*Secretary*'' are defined in 24 CFR 5.100.

Act means the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*

Adjusted income. See § 92.203.

Annual income. See § 92.203.

Certification shall have the meaning provided in section 104(21) of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12704.

Commitment means:

(1) The participating jurisdiction has executed a legally binding agreement with a State recipient, a subrecipient or a contractor to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance; or has executed a written agreement reserving a specific amount of funds to a community housing development organization; or has met the requirements to commit to a specific local project, as defined in paragraph (2), of this definition.

(2) Commit to a specific local project means:

(i) If the project consists of rehabilitation or new construction (with

or without acquisition) the participating jurisdiction (or State recipient or subrecipient) and project owner have executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project under which construction can reasonably be expected to start within twelve months of the agreement date. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project set-up date.

(ii)(A) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is acquiring the property with HOME funds, the participating jurisdiction (or State recipient or subrecipient) and the property owner have executed a legally binding contract for sale of an identifiable property and the property title will be transferred to the participating jurisdiction (or State recipient or subrecipient) within six months of the date of the contract.

(B) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is providing HOME funds to a family to acquire single family housing for homeownership or to a purchaser to acquire rental housing, the participating jurisdiction (or State recipient or subrecipient) and the family or purchaser have executed a written agreement under which HOME assistance will be provided for the purchase of the single family housing or rental housing and the property title will be transferred to the family or purchaser within six months of the agreement date.

(iii) If the project consists of tenant-based rental assistance, the participating jurisdiction (or State recipient, or subrecipient) has entered into a rental assistance contract with the owner or the tenant in accordance with the provisions of § 92.209.

Community housing development organization means a private nonprofit organization that:

(1) Is organized under State or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:

(i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.

(ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members; and

(iii) The community housing development organization must be free to contract for goods and services from vendors of its own choosing;

(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c) (3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)–1);

(5) Does not include a public body (including the participating jurisdiction). An organization that is State or locally chartered may qualify as a community housing development organization; however, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of the participating jurisdiction or State recipient. Board members appointed by the State or local government may not appoint the remaining two-thirds of the board members;

(6) Has standards of financial accountability that conform to 24 CFR 84.21, ''Standards for Financial Management Systems;''

(7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(8) Maintains accountability to low-income community residents by:

(i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, ''community'' may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and

(ii) Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

(9) Has a demonstrated capacity for carrying out activities assisted with HOME funds. An organization may satisfy this requirement by hiring experienced key staff members who have successfully completed similar projects, or a consultant with the same type of experience and a plan to train appropriate key staff members of the organization; and

(10) Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

Family has the same meaning given that term in 24 CFR 5.403.

HOME funds means funds made available under this part through allocations and reallocations, plus program income.

Homeownership means ownership in fee simple title or a 99 year leasehold interest in a one- to four-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD. The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest. For purposes of the insular areas, homeownership includes leases of 40 years or more. The participating jurisdiction must determine whether or not ownership or membership in a cooperative or mutual housing project constitutes homeownership under State law.

Household means one or more persons occupying a housing unit.

Housing includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters

for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities and student dormitories.

Insular areas means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

Jurisdiction means a State or unit of general local government.

Low-income families means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Metropolitan city has the meaning given the term in 24 CFR 570.3.

Neighborhood means a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

Participating jurisdiction means a jurisdiction (as defined in this section) that has been so designated by HUD in accordance with § 92.105.

Person with disabilities means a household composed of one or more persons, at least one of whom is an adult, who has a disability.

(1) A person is considered to have a disability if the person has a physical, mental, or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated. Notwithstanding the preceding provisions of this definition, the term ''person with disabilities'' includes two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted with HOME funds, with the deceased member of the household at the time of his or her death.

Program income means gross income received by the participating jurisdiction, State recipient, or a subrecipient directly generated from the use of HOME funds or matching contributions. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used. Program income includes, but is not limited to, the following:

(1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;

(2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income;

(3) Payments of principal and interest on loans made using HOME funds or matching contributions;

(4) Proceeds from the sale of loans made with HOME funds or matching contributions;

(5) Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions;

(6) Interest earned on program income pending its disposition; and

(7) Any other interest or return on the investment permitted under § 92.205(b) of HOME funds or matching contributions.

Project means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking under this part. The project includes all the activities associated with the site and building. For tenant-based rental assistance, project means assistance to one or more families.

Project completion means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under § 92.251); the final drawdown has been disbursed for the project; and the project completion information has been entered in the disbursement and information system established by HUD. For tenant-based rental assistance, project completion means the final drawdown has been disbursed for the project.

Reconstruction means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is rehabilitation for purposes of this part.

Single room occupancy (SRO) housing means housing (consisting of single room dwelling units) that is the primary residence of its occupant or occupants. The unit must contain either food preparation or sanitary facilities (and may contain both) if the project consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this part.

State recipient. See § 92.201(b)(2).

Subrecipient means a public agency or nonprofit organization selected by the participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME program. A public

agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subrecipient. The participating jurisdiction's selection of a subrecipient is not subject to the procurement procedures and requirements.

Tenant-based rental assistance is a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance under this part also includes security deposits for rental of dwelling units.

Transitional housing means housing that:

(1) Is designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and

(2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the participating jurisdiction or project owner before occupancy.

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; a consortium of such political subdivisions recognized by HUD in accordance with § 92.101; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part. When a county is an urban county, the urban county is the unit of general local government for purposes of the HOME Investment Partnerships Program.

Urban county has the meaning given the term in 24 CFR 570.3.

Very low-income families means low-income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments 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 findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

§ 92.4 Waivers and suspension of requirements for disaster areas.

HUD's authority for waiver of regulations and for the suspension of requirements to address damage in a Presidentially declared disaster area is described in 24 CFR 5.110 and in section 290 of the Act, respectively.

Subpart B—Allocation Formula

§ 92.50 Formula allocation.

(a) *Jurisdictions eligible for a formula allocation.* HUD will provide allocations of funds in amounts determined by the formula described in this section to units of general local governments that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved under § 92.101; and States.

(b) *Amounts available for allocation; State and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving amounts for Indian tribes, insular areas, housing education and organizational support, other support for State and local housing strategies, and other purposes authorized by Congress, in accordance with the Act and appropriations.

(c) *Formula factors.* The formula for determining allocations uses the following factors. The first and sixth factors are weighted 0.1; the other four factors are weighted 0.2.

(1) Vacancy-adjusted rental units where the household head is at or below the poverty level. These rental units are multiplied by the ratio of the national rental vacancy rate over a jurisdiction's rental vacancy rate.

(2) Occupied rental units with at least one of four problems (overcrowding, incomplete kitchen facilities, incomplete plumbing, or high rent costs). *Overcrowding* is a condition that exists if there is more than one person per room occupying the unit. *Incomplete kitchen facilities* means the unit lacks a sink with running water, a range, or a refrigerator. *Incomplete plumbing* means the unit lacks hot and cold piped water, a flush toilet, or a bathtub or shower inside the unit for the exclusive use of the occupants of the unit. *High rent costs* occur when more than 30 percent of household income is used for rent.

(3) Rental units built before 1950 occupied by poor families.

(4) Rental units described in paragraph (c)(2) of this section multiplied by the ratio of the cost of producing housing for a jurisdiction divided by the national cost.

(5) Number of families at or below the poverty level.

(6) Population of a jurisdiction multiplied by a net per capita income (pci). To compute net pci for a jurisdiction or for the nation, the pci of a three person family at the poverty threshold is subtracted from the pci of the jurisdiction or of the nation. The index is constructed by dividing the national net pci by the net pci of a jurisdiction.

(d) *Calculating formula allocations for units of general local government.* (1) Initial allocation amounts for units of general local government described in paragraph (a)(1) of this section are determined by multiplying the sum of the shares of the six factors in paragraph (c) of this section by 60 percent of the amount available under paragraph (b) of this section for formula allocation. The shares are the ratio of the weighted factor for each jurisdiction over the corresponding factor for the total for all of these units of general local government.

(2) If any of the initial amounts for such units of general local government in Puerto Rico exceeds twice the national average, on a per rental unit basis, that amount is capped at twice the national average.

(3) To determine the maximum number of units of general local government that receive a formula allocation, only one jurisdiction (the unit of general local government with the smallest allocation of HOME funds) is dropped from the pool of eligible jurisdictions on each successive recalculation. Then the amount of funds available for units of general local government is redistributed to all others. This recalculation/redistribution continues until all remaining units of general local government receive an allocation of $500,000 or more. Only units of general local government which receive an allocation of $500,000 or more under the formula will be awarded an allocation. In fiscal years in which Congress appropriates less than $1.5 billion of HOME funds, $335,000 is substituted for $500,000.

(4) The allocation amounts determined under paragraph (d)(3) of this section are reduced by any amounts that are necessary to provide increased allocations to States that have no unit of general local government receiving a formula allocation (see paragraph (e)(4) of this section). These reductions are made on a prorata basis, except that no unit of general local government allocation is reduced below $500,000 (or $335,000 in fiscal years in which Congress appropriates less than $1.5 billion of HOME funds).

(e) *Calculating formula allocations for States.* (1) Forty percent of the funds available for allocation under paragraph (b) of this section are allocated to States. The allocation amounts for States are calculated by determining initial amounts for each State, based on the

sum of the shares of the six factors. For 20 percent of the funds to be allocated to States, the shares are the ratio of the weighted factor for the entire State over the corresponding factor for the total for all States. For 80 percent of the funds to be allocated to States, the shares are the ratio of the weighted factor for all units of general local government within the State that do not receive a formula allocation over the corresponding factor for the total for all States.

(2) If the initial amounts for Puerto Rico (based on either or both the 80 percent of funds or 20 percent of funds calculation) exceed twice the national average, on a per rental unit basis, each amount that exceeds the national average is capped at twice the national average, and the resultant funds are reallocated to other States on a prorata basis.

(3) If the initial amounts when combined for any State are less than the $3,000,000, the allocation to that State is increased to the $3,000,000 and all other State allocations are reduced by an equal amount on a prorata basis, except that no State allocation is reduced below $3,000,000.

(4) The allocation amount for each State that has no unit of general local government within the State receiving an allocation under paragraph (d) of this section is increased by $500,000. Funds for this increase are derived from the funds available for units of general local government, in accordance with paragraph (d)(4) of this section.

Insular Areas Program

§ 92.60 Allocation amounts for insular areas.

(a) *Initial allocation amount for each insular area.* The initial allocation amount for each insular area is determined based upon the insular area's population and occupied rental units compared to all insular areas.

(b) *Threshold requirements.* The HUD Field Office shall review each insular area's progress on outstanding allocations made under this section, based on the insular area's performance report, the timeliness of close-outs, and compliance with fund management requirements and regulations, taking into consideration the size of the allocation and the degree and complexity of the program. If HUD determines from this review that the insular area does not have the capacity to administer effectively a new allocation, or a portion of a new allocation, in addition to allocations currently under administration, HUD may reduce the insular area's initial allocation amount.

(c) *Previous audit findings and outstanding monetary obligations.* HUD shall not make an allocation to an insular area that has either an outstanding audit finding for any HUD program, or an outstanding monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been established. This restriction does not apply if the HUD Field Office finds that the insular area has made a good faith effort to clear the audit and, when there is an outstanding monetary obligation to HUD, the insular area has made a satisfactory arrangement for repayment of the funds due HUD and payments are current.

(d) *Increases to the initial allocation amount.* If funds reserved for the insular areas are available because HUD has decreased the amount for one or more insular areas in accordance with paragraphs (b) or (c) of this section, or for any other reason, HUD may increase the allocation amount for one or more of the remaining insular areas based upon the insular area's performance in committing HOME funds within the 24 month deadline, producing housing units described in its program description, and meeting HOME program requirements. Funds that become available but which are not used to increase the allocation amount for one or more of the remaining insular areas will be reallocated in accordance with § 92.66.

(e) *Notice of allocation amounts.* HUD will notify each insular area, in writing, as to the amount of its HOME allocation.

§ 92.61 Program description.

(a) *Submission requirement.* Not later than 90 days after HUD notifies the insular area of the amount of its allocation, the insular area must submit a program description and certifications to HUD.

(b) *Content of program description.* The program description must contain the following:

(1) An executed Standard Form 424;

(2) The estimated use of HOME funds and a description of projects and eligible activities, including number of units to be assisted, estimated costs, and tenure type (rental or owner occupied) and, for tenant assistance, number of households to be assisted;

(3) A timetable for the implementation of the projects or eligible activities;

(4) If the insular area intends to use HOME funds for homebuyers, the guidelines for resale or recapture as required in § 92.254(a)(5);

(5) If the insular area intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in § 92.209;

(6) If an insular area intends to use other forms of investment not described in § 92.205(b), a description of the other forms of investment;

(7) A statement of the policy and procedures to be followed by the insular area to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under § 92.351;

(8) If the insular intends to use HOME funds for refinancing along with rehabilitation, the insular area's guidelines described in § 92.206(b).

(c) *Certifications.* The following certifications must accompany the program description:

(1) A certification that, before committing funds to a project, the insular area will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other governmental assistance than is necessary to provide affordable housing;

(2) If the insular area intends to provide tenant-based rental assistance, the certification required by § 92.209;

(3) A certification that the submission of the program description is authorized under applicable law and the insular area possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

(4) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of § 92.353;

(5) A certification that the insular area will use HOME funds in compliance with all requirements of this part;

(6) The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F; and

(7) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by 24 CFR part 87.

§ 92.62 Review of program description and certifications.

(a) *Review of program description.* The responsible HUD Field Office will review an insular area's program description and will approve the description unless the insular area has failed to submit information sufficient to allow HUD to make the necessary determinations required for § 92.61

(b)(4), (b)(6), and (b)(7), or the guidelines under (b)(8) are not satisfactory to HUD, if applicable; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs. If the insular area has not submitted information on § 92.61 (b)(4), (b)(6), and (b)(7), or the guidelines under (b)(8) are not satisfactory to HUD, if applicable; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory program description.

(b) *Review period*. Within thirty days of receipt of the program description, the HUD Field Office will notify the insular area if determinations cannot be made under § 92.61 (b)(4), (b)(6), (b)(7), or (b)(8) with the supporting information submitted, or if the proposed projects or activities are beyond currently demonstrated capability. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information or to revise the proposed projects or activities in its program description.

(c) *HOME Investment Partnership Agreement.* After HUD Field Office approval under this section, a HOME funds allocation is made by HUD execution of the agreement, subject to execution by the insular area. The funds are obligated on the date HUD notifies the insular area of HUD's execution of the agreement.

§ 92.63 Amendments to program description.

An insular area must submit to HUD for approval any substantial change in its HUD-approved program description that it makes and must document any other changes in its file. A substantial change involves a change in the guidelines for resale or recapture (§ 92.61(b)(4)), other forms of investment (§ 92.61(b)(6)), minority and women business outreach program (§ 92.61(b)(7)) or refinancing (§ 92.61(b)(8)); or a change in the tenure type of the project or activities; or a funding increase to a project or activity of $100,000 or 50% (whichever is greater). The HUD Field Office will notify the insular area if its program description, as amended, does not permit determinations to be made under § 92.61 (b)(4), (b)(6), (b)(7), or (b)(8), or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to revise the proposed projects or activities in its program description.

§ 92.64 Applicability of requirements to insular areas.

(a) Insular areas are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following:

(1) Subpart E (Program Requirements): Administrative costs, as described in § 92.207, are eligible costs for insular areas in an amount not to exceed 15 percent of the HOME funds provided to the insular area. The matching contribution requirements in this part do not apply.

(2) Subpart K (Program Administration):

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury for each insular area and the HOME funds must be used for approved activities. A local account must be established for program income. Each insular area may use either a separate local HOME account or a subsidiary account within its general fund (or other appropriate fund) as the local HOME account. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which HUD notifies the insular area of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds that are not expended within five years after the last day of the month in which HUD notifies the insular area of HUD's execution of the HOME Investment Partnership Agreement; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Program disbursement and information system) applies, except that references to the HOME Investment Trust Fund mean HOME account. In addition, § 92.502(c) does not apply, and instead compliance with Treasury Circular No. 1075 (31 CFR part 205) and 24 CFR 85.21 is required.

(iii) Section 92.503 (Program income, repayments, and recaptured funds) applies, except that the funds may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; on-site inspections) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required for the fiscal year allocation only after completion of the approved projects funded by the allocation.

(6) Subpart L (Performance Reviews and Sanctions): Section 92.552 does not apply. Instead, § 92.65 applies.

(b) The requirements of subpart H (Other Federal Requirements) of this part apply as follows: § 92.357 Executive Order 12372 applies as written, and the requirements of the remaining sections which apply to participating jurisdictions are applicable to the insular areas.

(c) Subpart B (Allocation Formula), subpart C (Consortia; Designation and Revocation as a Participating Jurisdiction), subpart D (Submission Requirements), and subpart G (Community Housing Development Organizations) of this part do not apply.

(d) Subpart A (General) applies, except that for the definitions of ''*commitment*'', ''*program income*'', and ''*subrecipient*'', ''participating jurisdiction'' means ''insular area.''

§ 92.65 Funding sanctions.

Following notice and opportunity for informal consultation, HUD may withhold, reduce or terminate the assistance where any corrective or remedial actions taken under § 92.551 fail to remedy an insular area's performance deficiencies, and the deficiencies are sufficiently substantial, in the judgment of HUD, to warrant sanctions.

§ 92.66 Reallocation.

Any HOME funds which are reduced or recaptured from an insular area's allocation and which are not used to increase the allocation amount for one or more of the remaining insular areas as provided in § 92.60 of this part, will be reallocated by HUD to the States in

accordance with the requirements in subpart J for reallocating funds initially allocated to a State.

Subpart C—Consortia; Designation and Revocation of Designation as a Participating Jurisdiction

§ 92.100 [Reserved]

§ 92.101 Consortia.

(a) A consortium of geographically contiguous units of general local government is a unit of general local government for purposes of this part if the requirements of this section are met.

(1) One or more members of a proposed consortium or an existing consortium whose consortium qualification terminates at the end of the fiscal year, must provide written notification by March 1 to the HUD Field Office of its intent to participate as a consortium in the HOME Program for the following fiscal year. Provided that subsequent deadlines could be met, the Field Office may accept notification at a later date.

(2) The proposed consortium must provide, at such time and in a manner and form prescribed by HUD, the qualification documents, which will include submission of:

(i) A written certification by the State that the consortium will direct its activities to alleviation of housing problems within the State; and

(ii) Documentation which demonstrates that the consortium has executed one legally binding cooperation agreement among its members authorizing one member unit of general local government to act in a representative capacity for all member units of general local government for the purposes of this part and providing that the representative member assumes overall responsibility for ensuring that the consortium's HOME Program is carried out in compliance with the requirements of this part.

(3) Before the end of the fiscal year in which the notice of intent and documentation are submitted, HUD must determine that the consortium has sufficient authority and administrative capability to carry out the purposes of this part on behalf of its member jurisdictions. HUD will endeavor to make its determination as quickly as practicable after receiving the consortium's documentation in order to provide the consortium an opportunity to correct its submission, if necessary. If the submission is deficient, HUD will work with the consortium to resolve the issue, but will not delay the formula allocations.

(b) A metropolitan city or an urban county may be a member of a consortium. A unit of general local government that is included in an urban county may be part of a consortium, only if the urban county joins the consortium. The included local government cannot join the consortium except through participation in the urban county.

(c) A non-urban county may be a member of a consortium. However, the county cannot on its own include the whole county in the consortium. A unit of local government located within the non-urban county that wishes to participate as a member of the consortium must sign the HOME consortium agreement.

(d) If the representative unit of general local government distributes HOME funds to member units of general local government, the representative unit is responsible for applying to the member units of general local government the same requirements as are applicable to subrecipients.

(e) The consortium's qualification as a unit of general local government continues for a period of three successive Federal fiscal years, or until HUD revokes its designation as a participating jurisdiction, or until an urban county member fails to requalify under the CDBG program as an urban county for a fiscal year included in the consortium's qualification period, or the consortium fails to receive a HOME allocation for the first Federal fiscal year of the consortium's qualification period and does not request to be considered to receive a HOME allocation in each of the subsequent two years. However, if a member urban county's three year CDBG qualification cycle is not the same as the consortium, the consortium may elect a shorter qualification period than three years to synchronize with the urban county's qualification period. During the period of qualification, additional units of general local government may join the consortium, but no included unit of general local government may withdraw from the consortium. See 24 CFR part 91, subpart E, for consolidated plan requirements for consortia, including the requirement that all members of the consortia must be on the same program year.

§ 92.102 Participation threshold amount.

(a) To be eligible to become a participating jurisdiction, a unit of general local government must have a formula allocation under § 92.50 that is equal to or greater than $750,000; or

(b) If a unit of general local government's formula allocation is less than $750,000, HUD must find:

(1) The unit of general local government has a local PHA and has demonstrated a capacity to carry out the provisions of this part, as evidenced by satisfactory performance under one or more HUD-administered programs that provide assistance for activities comparable to the eligible activities under this part; and

(2) The State has authorized HUD to transfer to the unit of general local government a portion of the State's allocation or the State, the unit of general local government, or both, has made available its own resources such that the sum of the amounts transferred or made available are equal to or greater than the difference between the unit of general local government's formula allocation and $750,000.

(c) In fiscal years in which Congress appropriates less than $1.5 billion for this part, $500,000 is substituted for $750,000 each time it appears in this section.

§ 92.103 Notification of intent to participate.

(a) Not later than 30 days after receiving notice of its formula allocation amount, a jurisdiction must notify HUD in writing of its intention to become a participating jurisdiction.

(b) A unit of general local government that has a formula allocation of less than $750,000, or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part, must submit, with its notice, one or more of the following, as appropriate, as evidence that it has met the threshold allocation requirements in § 92.102(b):

(1) Authorization from the State to transfer a portion of its allocation to the unit of general local government;

(2) A letter from the governor or designee indicating that the required funds have been approved and budgeted for the unit of general local government;

(3) A letter from the chief executive officer of the unit of general local government indicating that the required funds have been approved and budgeted.

§ 92.104 Submission of a consolidated plan.

A jurisdiction that has not submitted a consolidated plan to HUD must submit to HUD, not later than 90 days after providing notification under § 92.103, a consolidated plan in accordance with 24 CFR part 91.

§ 92.105 Designation as a participating jurisdiction.

When a jurisdiction has complied with the requirements of §§ 92.102 through 92.104 and HUD has approved the jurisdiction's consolidated plan in accordance with 24 CFR part 91, HUD

will designate the jurisdiction as a participating jurisdiction.

§ 92.106 Continuous designation as a participating jurisdiction.

Once a State or unit of general local government is designated a participating jurisdiction, it remains a participating jurisdiction for subsequent fiscal years and the requirements of §§ 92.102 through 92.105 do not apply, unless HUD revokes the designation in accordance with § 92.107.

§ 92.107 Revocation of designation as a participating jurisdiction.

HUD may revoke a jurisdiction's designation as a participating jurisdiction if:

(a) HUD finds, after reasonable notice and opportunity for hearing as provided in § 92.552(b) that the jurisdiction is unwilling or unable to carry out the provisions of this part, including failure to meet matching contribution requirements; or

(b) The jurisdiction's formula allocation falls below $750,000 (or below $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part) for three consecutive years, below $625,000 (or below $410,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part) for two consecutive years, or the jurisdiction does not receive a formula allocation in any one year.

(c) When HUD revokes a participating jurisdiction's designation as a participating jurisdiction, HUD will reallocate any remaining funds in the jurisdiction's HOME Investment Trust Fund established under § 92.500 in accordance with § 92.451.

Subpart D—Submission Requirements

§ 92.150 Submission requirements.

In order to receive its HOME allocation, a participating jurisdiction must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, the process of developing the consolidated plan, including citizen participation, the submission date, HUD approval, and amendments.

Subpart E—Program Requirements

§ 92.200 Private-public partnership.

Each participating jurisdiction must make all reasonable efforts to maximize participation by the private sector in accordance with section 221 of the Act.

§ 92.201 Distribution of assistance.

(a) *Local.* (1) Each local participating jurisdiction must, insofar as is feasible, distribute HOME funds geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in its approved consolidated plan.

(2) The participating jurisdiction may only invest its HOME funds in eligible projects within its boundaries, or in joint projects within the boundaries of contiguous local jurisdictions which serve residents from both jurisdictions.

(b) *State.* (1) Each State participating jurisdiction is responsible for distributing HOME funds throughout the State according to the State's assessment of the geographical distribution of the housing needs within the State, as identified in the State's approved consolidated plan. The State must distribute HOME funds to rural areas in amounts that take into account the non-metropolitan share of the State's total population and objective measures of rural housing need, such as poverty and substandard housing, as set forth in the State's approved consolidated plan. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need.

(2) A State may carry out its own HOME program without active participation of units of general local government or may distribute HOME funds to units of general local government to carry out HOME programs in which both the State and all or some of the units of general local government perform specified program functions. A unit of general local government designated by a State to receive HOME funds from a State is a State recipient.

(3) (i) A State that uses State recipients to perform program functions shall ensure that the State recipients use HOME funds in accordance with the requirements of this part and other applicable laws. The State may require the State recipient to comply with requirements established by the State or may permit the State recipient to establish its own requirements to comply with this part.

(ii) The State shall conduct such reviews and audit of its State recipients as may be necessary or appropriate to determine whether the State recipient has committed and expended the HOME funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching contribution requirements.

(4) A State and local participating jurisdiction may jointly fund a project within the boundaries of the local participating jurisdiction. The State may provide the HOME funds to the project or it may provide the HOME funds to the local participating jurisdiction to fund the project.

(5) A State may fund projects on Indian reservations located within the State provided that the State includes Indian reservations in its consolidated plan.

§ 92.202 Site and neighborhood standards.

(a) *General.* A participating jurisdiction must administer its HOME program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d–4), the Fair Housing Act (42 U.S.C. 3601 *et seq.*, E.O. 11063 (3 CFR, 1959–1963 Comp., p. 652), and HUD regulations issued pursuant thereto; and promotes greater choice of housing opportunities.

(b) *New rental housing.* In carrying out these requirements with respect to new construction of rental housing, a participating jurisdiction must follow 24 CFR 893.6(b).

§ 92.203 Income determinations.

(a) The HOME program has income targeting requirements for the HOME program and for HOME projects. Therefore, the participating jurisdiction must determine each family is income eligible by determining the family's annual income.

(1) For families who are tenants in HOME-assisted housing and not receiving HOME tenant-based rental assistance, the participating jurisdiction must determine annual income by one of the following methods:

(i) Examine the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(ii) Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

(iii) Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income;

or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

(2) For all other families, the participating jurisdiction must determine annual income by examining the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(b) When determining whether a family is income eligible, the participating jurisdiction must use one of the following three definitions of ''annual income'':

(1) ''Annual income'' as defined under the Section 8 Housing Assistance Payments programs in 24 CFR part 813 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets); or

(2) Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(i) Wages, salaries, tips, commissions, etc.;

(ii) Self-employment income from owned non-farm business, including proprietorships and partnerships;

(iii) Farm self-employment income;

(iv) Interest, dividends, net rental income, or income from estates or trusts;

(v) Social Security or railroad retirement;

(vi) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(vii) Retirement, survivor, or disability pensions; and

(viii) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(3) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

(c) When determining the adjusted income of a family, the participating jurisdiction must use the definition of ''adjusted income'' for the Section 8 Housing Assistance Payments programs in 24 CFR part 813, except that the participating jurisdiction may use any of the three definitions of ''annual income'' permitted in paragraph (a) of this section. The HOME rents for very low-income families are based on adjusted income. See § 92.252. In addition, the participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family.

(d) (1) The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income shall include income from all family members. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

(2) The participating jurisdiction is not required to re-examine the family's income at the time the HOME assistance is provided, unless more than six months has elapsed since the participating jurisdiction determined that the family qualified as income eligible.

§ 92.204 Applicability of requirements to entities that receive a reallocation of HOME funds, other than participating jurisdictions.

(a) Jurisdictions other than participating jurisdictions and community housing development organizations receiving competitive reallocations from HUD are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following:

(1) Subpart E (Program Requirements): the matching contribution requirements in § 92.218 through § 92.221 do not apply.

(2) Subpart K (Program Administration):

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury and the HOME funds must be used for approved activities. A local account must be established for program income. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds that are not expended within five years after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Program disbursement and information system) applies, except that references to the HOME Investment Trust Fund mean HOME account and the reference to 24 CFR part 58 does not apply. In addition, § 92.502(c) does not apply, and instead, compliance with Treasury Circular No. 1075 (31 CFR part 205) and 24 CFR 85.21 is required.

(iii) Section 92.503 (Program income, repayments, and recaptured funds) applies, except that program income may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; on-site inspections) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

(b) The requirements in subpart H (Other Federal Requirements) of this part apply as written, except that jurisdictions and community housing development organizations receiving reallocations from HUD must comply with affirmative marketing requirements, labor requirements, and lead-based paint requirements, applicable to participating jurisdictions.

(c) Subpart B (Allocation Formula), subpart C (Consortia; Designation and Revocation of Designation as a Participating Jurisdiction), and subpart G (Community Housing Development Organizations) of this part do not apply.

(d) Subpart A (General) applies, except that for the definitions of *commitment*, *program income*, and *subrecipient*, ''participating jurisdiction'' means jurisdiction or community housing development organization receiving the competitive reallocation.

Eligible and Prohibited Activities

§ 92.205 Eligible activities: general.

(a) *Eligible activities.* (1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other

expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing. The specific eligible costs for these activities are set forth in §§ 92.206 through 92.209.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing.

(3) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding one or more units beyond the existing walls, in which case, the project is new construction for purposes of this part.

(4) *Manufactured housing.* HOME funds may be used to purchase and/or rehabilitate a manufactured housing unit, or purchase the land upon which a manufactured housing unit is located. Except for existing, owner-occupied manufactured housing that is rehabilitated with HOME funds, the manufactured housing unit must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

(b) *Forms of assistance.* (1) A participating jurisdiction may invest HOME funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

(2) A participating jurisdiction may invest HOME funds to guarantee loans made by lenders and, if required, the participating jurisdiction may establish a loan guarantee account with HOME funds. The HOME funds may be used to guarantee the timely payment of principal and interest or payment of the outstanding principal and interest upon foreclosure of the loan. The amount of the loan guarantee account must be based on a reasonable estimate of the default rate on the guaranteed loans, but under no circumstances may the amount on deposit exceed 20 percent of the total outstanding principal amount guaranteed; except that the account may include a reasonable minimum balance. While loan funds guaranteed with HOME funds are subject to all HOME requirements, funds which are used to repay the guaranteed loans are not.

(c) *Minimum amount of assistance.* The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is $1,000 times the number of HOME-assisted units in the project.

(d) *Multi-unit projects.* HOME funds may be used to assist one or more housing units in a multi-unit project. Only the actual HOME eligible development costs (i.e. costs eligible under § 92.206(a), (b) or (c) of the assisted units may be charged to the HOME program. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation. If the assisted and non-assisted units are comparable in terms of size, features and number of bedrooms, the actual cost of the HOME-assisted units can be determined by pro-rating the total HOME eligible development costs of the project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME-assisted units in the project.

(e) *Terminated projects.* A HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and any HOME funds invested in the project must be repaid to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b) (except for project-specific assistance to community housing development organizations as provided in § 92.301(a)(3) and § 92.301(b)(3)).

§ 92.206 Eligible project costs.

HOME funds may be used to pay the following eligible costs:

(a) *Development hard costs.* The actual cost of constructing or rehabilitating housing. These costs include the following:

(1) For new construction, costs to meet the applicable new construction standards of the participating jurisdiction and the Model Energy Code referred to in § 92.251;

(2) For rehabilitation, costs:

(i) To meet the property standards in § 92.251;

(ii) To make essential improvements, including energy-related repairs or improvements, improvements necessary to permit use by persons with disabilities, and the abatement of lead-based paint hazards, as required by § 92.355, and to repair or replace major housing systems in danger of failure; and

(3) For both new construction and rehabilitation, costs:

(i) To demolish existing structures;

(ii) To make utility connections including off-site connections from the property line to the adjacent street; and

(iii) To make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.

(4) For both new construction and rehabilitation of multifamily rental housing, costs to construct or rehabilitate laundry and community facilities which are located within the same building as the housing and which are for the use of the project residents and their guests.

(b) *Refinancing costs.* The cost to refinance existing debt secured by housing that is being rehabilitated with HOME funds:

(1) For single-family (1- to 4-family) owner-occupied housing when loaning HOME funds to rehabilitate the housing, if the refinancing is necessary to reduce the overall housing costs to the borrower and make the housing more affordable.

(2) For multifamily projects, when loaning HOME funds to rehabilitate the units if refinancing is necessary to permit or continue affordability under § 92.252. The participating jurisdiction must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. Regardless of the amount of HOME funds invested, the minimum affordability period shall be 15 years. The guidelines shall describe the conditions under which the participating jurisdictions will refinance existing debt. At minimum, the guidelines must:

(i) Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing;

(ii) Require a review of management practices to demonstrate that disinvestment in the property has not occurred, that the long term needs of the project can be met and that the

feasibility of serving the targeted population over an extended affordability period can be demonstrated;

(iii) State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both;

(iv) Specify the required period of affordability, whether it is the minimum 15 years or longer;

(v) Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR 91.215(e)(2) or a Federally designated Empowerment Zone or Enterprise Community; and

(vi) State that HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.

(c) *Acquisition costs.* Costs of acquiring improved or unimproved real property, including acquisition by homebuyers.

(d) *Related soft costs.* Other reasonable and necessary costs incurred by the owner or participating jurisdiction and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:

(1) Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups.

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees.

(3) Costs of a project audit that the participating jurisdiction may require with respect to the development of the project.

(4) Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by § 92.351.

(5) For new construction or rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay project operating expenses, scheduled payments to a replacement reserve, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended after the period of project rent-up may be retained for project reserves if permitted by the participating jurisdiction.

(6) Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers, e.g., housing counseling, may be charged to project costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project. For multi-unit projects, such costs must be allocated among HOME-assisted units in a reasonable manner and documented.

(7) For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.

(8) Costs of environmental review and release of funds in accordance with 24 CFR Part 58 which are directly related to the project.

(e) *Community housing development organization costs.* Eligible costs of project-specific assistance are set forth in § 92.301.

(f) *Relocation costs.* The cost of relocation payments and other relocation assistance to persons displaced by the project are eligible costs.

(1) Relocation payments include replacement housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in the temporary relocation of persons.

(2) Other relocation assistance means staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.

(g) *Costs relating to payment of loans.* If the HOME funds are not used to directly pay a cost specified in this section, but are used to pay off a construction loan, bridge financing loan, or guaranteed loan, the payment of principal and interest for such loan is an eligible cost only if:

(1) The loan was used for eligible costs specified in this section, and

(2) The HOME assistance is part of the original financing for the project and the project meets the requirements of this part.

§ 92.207 Eligible administrative and planning costs.

A participating jurisdiction may expend, for payment of reasonable administrative and planning costs of the HOME program, an amount of HOME funds that is not more than ten percent of the fiscal year HOME basic formula allocation plus any funds received in accordance with § 92.102(b) to meet or exceed participation threshold requirements that fiscal year. A State that transfers any HOME funds in accordance with § 92.102(b) must exclude these funds in calculating the amount it may expend for administrative and planning costs. A participating jurisdiction may also use up to ten percent of the program income deposited in its local HOME account during the program year, for administrative and planning costs. Reasonable administrative and planning costs include:

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the participating jurisdiction's staff. In charging costs to this category the participating jurisdiction may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The participating jurisdiction may use only one of these methods. Program administration includes the following types of assignments:

(i) Developing systems and schedules for ensuring compliance with program requirements;

(ii) Developing interagency agreements and agreements with entities receiving HOME funds;

(iii) Monitoring HOME-assisted housing for progress and compliance with program requirements;

(iv) Developing agreements and monitoring housing not assisted with HOME funds that the participating jurisdiction designates as a matching contribution in accordance with § 92.219(b) for compliance with applicable program requirements;

(v) Preparing reports and other documents related to the program for submission to HUD;

(vi) Coordinating the resolution of audit and monitoring findings;

(vii) Evaluating program results against stated objectives; and

(viii) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraphs (a)(1)(i) through (vii) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services;

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space; and

(5) Costs of administering tenant-based rental assistance programs.

(b) *Staff and overhead.* Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, and other services related to assisting potential owners, tenants, and homebuyers (e.g., housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 92.206 (d)(6) and (f)(2), at the discretion of the participating jurisdiction.

(c) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HOME funds.

(d) *Fair housing.* Activities to affirmatively further fair housing in accordance with the participating jurisdiction's certification under 24 CFR part 91.

(e) *Indirect Costs.* Indirect costs may be charged to the HOME program under a cost allocation plan prepared in accordance with OMB Circulars A–87 or A–122 as applicable.

(f) *Preparation of the consolidated plan.* Preparation of the consolidated plan required under 24 CFR part 91. Preparation includes the costs of public hearings, consultations, and publication.

(g) *Other Federal requirements.* Costs of complying with the Federal requirements in subpart H of this part. Project-specific environmental review costs may be charged as administrative costs or as project costs in accordance with § 92.206(d)(8), at the discretion of the participating jurisdiction.

§ 92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs.

(a) Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). These funds may not be used to pay operating expenses incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials and supplies. The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.300 (e) and (f).

(b) HOME funds may be used for capacity building costs under § 92.300(b).

§ 92.209 Tenant-based rental assistance: Eligible costs and requirements.

(a) *Eligible costs.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family pursuant to this section. Administration of tenant-based rental assistance is eligible only under general management oversight and coordination at § 92.207(a).

(b) *General requirement.* A participating jurisdiction may use HOME funds for tenant-based rental assistance only if the participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with 24 CFR 91.225(d)(1), 91.325(d)(1), or 91.425(a)(2)(i), and specifies local market conditions that lead to the choice of this option.

(c) *Tenant selection.* The participating jurisdiction must select families in accordance with written tenant selection policies and criteria that are consistent with the following:

(1) *Low-income families.* Tenant-based rental assistance may only be provided to very low- and low-income families. The participating jurisdiction must determine that the family is very low- or low-income before the assistance is provided. During the period of assistance, the participating jurisdiction must annually determine that the family continues to be low-income.

(2) *Federal preferences.* At least 50 percent of the families assisted must qualify, or would qualify in the near future without tenant-based rental assistance, for one of the three Federal preferences under section 6(c)(4)(A) of the 1937 Act. These are families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families); families that are paying more than 50 percent of their annual income for rent; or families that are involuntarily displaced. [For FY 1995 only, a Federal preference is also given to families that include one or more adult members who are employed. For FY 1996 only, the Federal preferences do not apply.]

(3) *Preferences for Individuals with Special Needs.* (i) The participating jurisdiction may establish a preference for individuals with special needs. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of non-mandatory services that may be most appropriate for persons with a special need or a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with special needs or disabilities who can benefit from such services.

(ii) The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

(iii) Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a). For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance.

(iv) To the extent that a participating jurisdiction is operating a tenant-based rental assistance program targeted exclusively to individuals with special needs or disabilities or to a specific category of individuals with special

needs or disabilities, at least 50% of the individuals must qualify or would qualify in the near future for one of the three Federal preferences as described in paragraph (c)(2) of this section.

(4) *Existing tenants in the HOME-assisted projects.* A participating jurisdiction may select low-income families currently residing in housing units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program without requiring that the family meet the requirements of paragraph (c)(2) of this section. Families so selected may use the tenant-based assistance in the rehabilitated or acquired housing unit or in other qualified housing.

(d) *Portability of assistance.* A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.

(e) *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a participating jurisdiction and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a participating jurisdiction and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

(f) *Rent reasonableness.* The participating jurisdiction must disapprove a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

(g) *Tenant protections.* The lease must comply with the requirements in § 92.253 (a) and (b).

(h) *Maximum subsidy.* (1) The amount of the monthly assistance that a participating jurisdiction may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the participating jurisdiction and 30 percent of the family's monthly adjusted income.

(2) The participating jurisdiction must establish a minimum tenant contribution to rent.

(3) The participating jurisdiction's rent standard for a unit size must be based on:

(i) Local market conditions; or

(ii) For each unit size, may not be less than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the participating jurisdiction adopts its rent standard amount). (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under 24 CFR 882.106(a)(3) for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.) A participating jurisdiction may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

(i) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the requirements set forth in 24 CFR 982.401. The participating jurisdiction must inspect the housing initially and re-inspect it annually.

(j) *Security deposits.* (1) A participating jurisdiction may use HOME funds provided for tenant-based rental assistance to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units whether or not the participating jurisdiction provides any other tenant-based rental assistance under this section.

(2) The relevant State or local definition of ''security deposit'' in the jurisdiction where the unit is located is applicable for the purposes of this part, except that the amount of HOME funds that may be provided for a security deposit may not exceed the equivalent of two month's rent for the unit.

(3) Only the prospective tenant may apply for HOME security deposit assistance, although the participating jurisdiction may pay the funds directly to the tenant or to the landlord.

(4) HOME funds for security deposits may be provided as a grant or as a loan. If they are provided as a loan, the loan repayments are program income to be used in accordance with § 92.503.

(5) Paragraphs (b), (c), (d), (f), (g), and (i) of this section are applicable to HOME security deposit assistance.

(k) *Program operation.* A tenant-based rental assistance program must be operated consistent with the requirements of this section. The participating jurisdiction may operate the program itself, or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family. In either case, the participating jurisdiction (or entity operating the program) must approve the lease.

(l) *Use of Section 8 assistance.* In any case where assistance under section 8 of the 1937 Act becomes available to a participating jurisdiction, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

§ 92.212 Pre-award costs.

(a) *General.* Before the effective date of the HOME Investment Partnership Agreement, the participating jurisdiction may incur costs which may be charged to the HOME allocation after the award of the HOME allocation, provided the costs are in compliance with the requirements of this part (including environmental review requirements) and with the statutory and regulatory requirements in effect at the time the costs are charged to the HOME allocation.

(b) *Administrative and planning costs.* Eligible administrative and planning costs may be incurred as of the beginning of the participating jurisdiction's consolidated program year (see 24 CFR 91.10) or the date the consolidated plan describing the HOME allocation to which the costs will be charged is received by HUD, whichever is later.

(c) *Project costs.* Eligible project costs may be incurred during the current program year in an amount not to exceed 25% of the current HOME allocation amount, to be charged to the following year's HOME allocation. Before incurring the pre-award costs, the participating jurisdiction must comply with its citizen participation plan requirements addressing 24 CFR 91.105(b)(2), (4), (5) and (g) (local governments) or 24 CFR 91.115(b)(2), (4), (5) and (f) (States). In lieu of a full action plan, the participating jurisdiction may develop a mini-action plan which describes the proposed pre-award projects and costs in accordance with 24 CFR 91.220(c) and includes, if applicable, 24 CFR 91.220(g)(2) (local governments) or 24 CFR 91.320(c) and, if applicable, 24 CFR 91.320(g)(2) (States). The mini-action plan must state that HOME funding for the project(s) is subject to the future availability of HOME funds. The subsequent action

plan (i.e., action plan for the HOME allocation to which the costs will be charged) must also include the use of HOME funds contained in the mini-action plan.

(d) *Subrecipient or State recipient costs.* The participating jurisdiction may authorize its subrecipient or State recipient to incur pre-award costs in accordance with the requirements of this section. The authorization must be in writing.

(e) *Other pre-agreement costs.* Pre-agreement costs in excess of the amount set forth in paragraph (c) of this section must be approved, in writing, by the HUD Field Office before the costs are incurred.

§ 92.213 [Reserved]

§ 92.214 Prohibited activities.

(a) HOME funds may not be used to:

(1) Provide project reserve accounts, except as provided in § 92.206(d)(5), or operating subsidies;

(2) Provide tenant-based rental assistance for the special purposes of the existing section 8 program, in accordance with section 212(d) of the Act;

(3) Provide non-federal matching contributions required under any other Federal program;

(4) Provide assistance authorized under section 9 of the 1937 Act (annual contributions for operation of public housing);

(5) Carry out activities authorized under 24 CFR part 968 (Public Housing Modernization);

(6) Provide assistance to eligible low-income housing under 24 CFR part 248 (Prepayment of Low Income Housing Mortgages);

(7) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction in the written agreement under § 92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.

(8) Pay for the acquisition of property owned by the participating jurisdiction, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project; or

(9) Pay for any cost that is not eligible under §§ 92.206 through 92.209.

(b) Participating jurisdictions may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, participating jurisdictions may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. Such fees are applicable credits under OMB Circular A–87.

§ 92.215 Limitation on jurisdictions under court order.

Limitations on the use of HOME funds in connection with litigation involving discrimination or fair housing are set forth in section 224 of the Act.

Income Targeting

§ 92.216 Income targeting: Tenant-based rental assistance and rental units.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that, with respect to tenant-based rental assistance and rental units:

(a) Not less than 90 percent of:

(1) The families receiving such rental assistance are families whose annual incomes do not exceed 60 percent of the median family income for the area, as determined and made available by HUD with adjustments for smaller and larger families (except that HUD may establish income ceilings higher or lower than 60 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 cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later; or

(2) The dwelling units assisted with such funds are occupied by families having such incomes; and

(b) The remainder of:

(1) The families receiving such rental assistance are households that qualify as low-income families (other than families described in paragraph (a)(1) of this section) at the time of occupancy or at the time funds are invested, whichever is later; or

(2) The dwelling units assisted with such funds are occupied by such households.

§ 92.217 Income targeting: Homeownership.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that with respect to homeownership assistance, 100 percent of these funds are invested in dwelling units that are occupied by households that qualify as low-income families at the time of occupancy or at the time funds are invested, whichever is later.

Matching Contribution Requirement

§ 92.218 Amount of matching contribution.

(a) *General.* Each participating jurisdiction must make contributions to housing that qualifies as affordable housing under the HOME program, throughout a fiscal year. The contributions must total not less than 25 percent of the funds drawn from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year, excluding funds drawn for purposes identified in paragraph (c) of this section.

(b) *Shortfall amount from State or local resources.* Amounts made available under § 92.102(b)(2) from the resources of a State (other than a transfer of the State's formula allocation), the local participating jurisdiction, or both, to enable the local participating jurisdiction to meet the participation threshold amount are not required to be matched and do not constitute matching contributions.

(c) *HOME funds not required to be matched.* HOME funds used for administrative and planning costs (pursuant to § 92.207); community housing development organization operating expenses (pursuant to § 92.208); capacity building (pursuant to § 92.300(b)) of community housing development organizations; and project specific assistance to community housing development organizations (pursuant to § 92.301) when the participating jurisdiction waives repayment under the provisions of § 92.301(a)(3) or § 92.301(b)(3) are not required to be matched.

(d) *Match contribution for other programs.* Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching contribution requirement for the HOME program.

§ 92.219 Recognition of matching contribution.

(a) *Match contribution to HOME-assisted housing.* A contribution is recognized as a matching contribution if it is made with respect to:

(1) A tenant who is assisted with HOME funds;

(2) A HOME-assisted unit;

(3) The portion of a project that is not HOME-assisted provided that at least 50 percent of the housing units in the project are HOME-assisted. If the match contribution to the portion of the project that is not HOME-assisted meets the affordable housing requirements of § 92.219(b)(2), the percentage

requirement for HOME-assisted units does not apply; or

(4) The commercial space in a mixed-use project in which at least 51 percent of the floor space is residential provided that at least 50 percent of the dwelling units are HOME-assisted.

(b) *Match contribution to affordable housing that is not HOME-assisted.* The following requirements apply for recognition of matching contributions made to affordable housing that is not HOME-assisted:

(1) For tenant-based rental assistance that is not HOME-assisted:

(i) The contribution must be made with respect to a tenant who is assisted with tenant-based rental assistance that meets the requirements of §§ 92.203 (Income determinations) and 92.209 (Tenant-based rental assistance, except for § 92.209(e) Term of rental assistance contract); and

(ii) The participating jurisdiction must demonstrate in writing that such assistance meets the provisions of §§ 92.203 and 92.209 (except § 92.209(e)).

(2) For affordable housing that is not HOME-assisted:

(i) The contribution must be made with respect to housing that qualifies as affordable housing under § 92.252 or § 92.254.

(ii) The participating jurisdiction or its instrumentality must execute, with the owner of the housing (or, if the participating jurisdiction is the owner, with the manager or developer), a written agreement that imposes and enumerates all of the affordability requirements from § 92.252 and § 92.253(a) and (b) (Tenant protections), or § 92.254, whichever are applicable; the property standards requirements of § 92.251; and income determinations made in accordance with § 92.203. This written agreement must be executed before any match contributions may be made.

(iii) A participating jurisdiction must establish a procedure to monitor HOME match-eligible housing to ensure continued compliance with the requirements of §§ 92.203 (Income determinations), 92.252 (Qualification as affordable housing: Rental housing), 92.253(a) and (b) (Tenant protections) and 92.254 (Qualification as affordable housing: Homeownership). No other HOME requirements apply.

(iv) The match contribution may be in any eligible form of match except those in § 92.220(a)(2) (forbearance of fees) and (4) (on-site and off-site infrastructure).

(v) Match contributions to mixed-use or mixed-income projects that contain affordable housing units will be recognized only if the contribution is made to the project's affordable housing units.

§ 92.220 Form of matching contribution.

(a) *Eligible forms.* Matching contributions must be made from nonfederal resources and may be in the form of one or more of the following:

(1) *Cash contributions from nonfederal sources.* To be recognized as a cash contribution, funds must be contributed permanently to the HOME program (or to affordable housing not assisted with HOME funds), regardless of the form of investment provided to the project. Therefore, to receive match credit for the full amount of a loan to a HOME project, all repayment, interest, or other return on investment of the contribution must be deposited in the local account of the participating jurisdiction's HOME Investment Trust Fund to be used for eligible HOME activities in accordance with the requirements of this part. A cash contribution to affordable housing that is not assisted with HOME funds must be contributed permanently to the project. Repayments of matching contributions in affordable housing projects, as defined in § 92.219(b), that are not HOME-assisted, must be made to the local account of the participating jurisdiction's HOME Investment Trust Fund to get match credit for the full loan amount.

(i) A cash contribution may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals, except as prohibited under paragraph (b)(4) of this section. A cash contribution made to a nonprofit organization for use in a HOME project may be counted as a matching contribution.

(ii) A cash contribution may be made from program income (as defined by 24 CFR § 85.25(b)) from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G) and the Housing Development Grant Program (24 CFR part 850), and from the Rental Rehabilitation Grant Program (24 CFR part 511) after all fiscal year Rental Rehabilitation grants have been closed out.

(iii) The grant equivalent of a below-market interest rate loan to the project that is not repayable to the participating jurisdiction's HOME Investment Trust Fund may be counted as a cash contribution, as follows:

(A) If the loan is made from funds borrowed by a jurisdiction or public agency or corporation the contribution is the present discounted cash value of the difference between the payments to be made on the borrowed funds and payments to be received from the loan to the project based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than funds borrowed by a jurisdiction or public agency or corporation, the contribution is the present discounted cash value of the yield foregone. In determining the yield foregone, the participating jurisdiction must use as a measure of a market rate yield one of the following, as appropriate:

(*1*) With respect to one- to four-unit housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points;

(*2*) With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points; or

(*3*) With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points.

(iv) Proceeds of bonds that are not repaid with revenue from an affordable housing project (e.g., general obligation bonds) and that are loaned to a HOME-assisted or other qualified affordable housing project constitute a cash contribution under this paragraph.

(v) A cash contribution may be counted as a matching contribution only if it is used for costs eligible under §§ 92.206 or 92.209, or for the following (which are not HOME eligible costs): the cost of removing and relocating an ECHO housing unit during the period of affordability in accordance with § 92.258(d)(3)(ii), payments to a project reserve account beyond payments permitted by § 92.206(d)(5), operating subsidies, or costs relating to the portion of a mixed-income or mixed-use HOME-assisted project not related to the affordable housing units.

(2) *Forbearance of fees.* (i) *State and local taxes, charges or fees.* The value (based on customary and reasonable means for establishing value) of State or local taxes, fees, or other charges that are normally and customarily imposed or charged by a State or local government on all transactions or projects in the conduct of its operations, which are waived, foregone, or deferred (including State low-income housing tax credits) in a manner that achieves affordability of HOME-assisted projects, may be counted as match. The amount of any real estate taxes may be based on

post-improvement property value. For taxes, fees, or charges that are forgiven for future years, the value is the present discounted cash value, based on a rate equal to the rate for the Treasury security with a maturity closest to the number of years for which the taxes, fees, or charges are waived, foregone, or deferred.

(ii) *Other charges or fees.* The value of fees or charges associated with the transfer or development of real estate that are normally and customarily imposed or charged by public or private entities, which are waived or foregone, in whole or in part, in a manner that achieves affordability of HOME-assisted projects, may be counted as match. Fees and charges under this paragraph do not include fees or charges for legal or other professional services; professional services which are donated, in whole or in part, are an eligible matching contribution in accordance with paragraph (a)(7) of this section.

(iii) Fees or charges that are associated with the HOME Program only (rather than normally and customarily imposed or charged on all transactions or projects) are not eligible forms of matching contributions.

(3) *Donated Real Property.* The value, before the HOME assistance is provided and minus any debt burden, lien, or other encumbrance, of donated land or other real property may be counted as match. The donation may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals, except as prohibited under paragraph (b)(4) of this section.

(i) Donated property not acquired with Federal resources is a contribution in the amount of 100% of the value.

(ii) Donated property acquired with Federal assistance may provide a partial contribution as follows. The property must be acquired with Federal assistance specifically for a HOME project (or for affordable housing that will be counted as match pursuant to § 92.219(b)(2)). The property must be acquired with the Federal assistance at demonstrably below the appraised value and must be acknowledged by the seller as a donation to affordable housing at the time of the acquisition with the Federal assistance. The amount of the contribution is the difference between the acquisition price and the appraised value at the time of acquisition with the Federal assistance. If the property is acquired with the Federal assistance by someone other than the HOME project (or affordable housing) owner, to continue to qualify as a contribution, the property must be given to the HOME project (or affordable housing) owner at a price that does not exceed the amount of the Federal assistance used to acquire the property.

(iii) Property must be appraised in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value must be based on the best available data properly analyzed and interpreted. The appraisal of land and structures must be performed by an independent, certified appraiser.

(4) The cost, not paid with Federal resources, of on-site and off-site infrastructure that the participating jurisdiction documents are directly required for HOME-assisted projects. The infrastructure must have been completed no earlier than 12 months before HOME funds are committed to the project.

(5) Proceeds from multifamily and single family affordable housing project bond financing validly issued by a State or local government, or an agency or instrumentality of a State or local government or a political subdivision of a State and repayable with revenues from the affordable housing project financed as follows:

(i) Fifty percent of the loan amount made from bond proceeds to a multifamily affordable housing project owner may qualify as match.

(ii) Twenty-five percent of the loan amount from bond proceeds made to a single-family affordable housing project owner may qualify as match.

(iii) Loans made from bond proceeds may not constitute more than 25 percent of a participating jurisdiction's total annual match contribution.

(6) The reasonable value of donated site-preparation and construction materials, not acquired with Federal resources. The value of site-preparation and construction materials is to be determined in accordance with the participating jurisdiction's cost estimate procedures.

(7) The reasonable rental value of the donated use of site preparation or construction equipment.

(8) The value of donated or voluntary labor or professional services (see § 92.354(b)) in connection with the provision of affordable housing. A single rate established by HUD shall be applicable for determining the value of unskilled labor. The value of skilled labor or professional services shall be determined by the rate that the individual or entity performing the labor or service normally charges.

(9) The value of sweat equity (see § 92.354(c)) provided to a homeownership project, under an established component of a participating jurisdiction's program, up until the time of project completion (i.e., submission of a project completion form). Such labor shall be valued at the rate established for unskilled labor at paragraph (a)(8) of this section.

(10) The direct cost of supportive services provided to families residing in HOME-assisted units during the period of affordability. The supportive services must be necessary to facilitate independent living or be required as part of a self-sufficiency program. Examples of supportive services include: case management, mental health services, assistance with the tasks of daily living, substance abuse treatment and counseling, day care, and job training and counseling.

(11) The direct cost of homebuyer counseling services provided to families that acquire properties with HOME funds under the provisions of § 92.254(a), including ongoing counseling services provided during the period of affordability. These services may be provided as part of a homebuyer counseling program that is not specific to the HOME Program, but only the cost of services to families that complete purchases with HOME assistance may be counted as match.

(b) *Ineligible forms.* The following are examples that do not meet the requirements of paragraph (a) of this section and do not count toward meeting a participating jurisdiction's matching contribution requirement:

(1) Contributions made with or derived from Federal resources or funds, regardless of when the Federal resources or funds were received or expended. CDBG funds (defined in 24 CFR 570.3) are Federal funds for this purpose;

(2) The interest rate subsidy attributable to the Federal tax-exemption on financing or the value attributable to Federal tax credits;

(3) Owner equity or investment in a project; and

(4) Cash or other forms of contributions from applicants for or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for, assistance for a HOME-assisted project, except as permitted under paragraph (a)(9) of this section.

§ 92.221 Match credit.

(a) *When credit is given.* Contributions are credited on a fiscal year basis at the time the contribution is made, as follows:

(1) A cash contribution is credited when the funds are expended.

(2) The grant equivalent of a below-market interest rate loan is credited at the time of the loan closing.

(3) The value of state or local taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred is credited at the time the state or local government or other public or private entity officially waives, forgoes, or defers the taxes, fees, or other charges and notifies the project owner.

(4) The value of donated land or other real property is credited at the time ownership of the property is transferred to the HOME project (or affordable housing) owner.

(5) The cost of investment in infrastructure directly required for HOME-assisted projects is credited at the time funds are expended for the infrastructure or at the time the HOME funds are committed to the project if the infrastructure was completed before the commitment of HOME funds.

(6) The value of donated material is credited as match at the time it is used for affordable housing.

(7) The value of the donate use of site preparation or construction equipment is credited as match at the time the equipment is used for affordable housing.

(8) The value of donated or voluntary labor or professional services is credited at the time the work is performed.

(9) A loan made from bond proceeds under § 92.220(a)(5) is credited at the time of the loan closing.

(10) The direct cost of social services provided to residents of HOME-assisted units is credited at the time that the social services are provided during the period of affordability.

(11) The direct cost of homebuyer counseling services provided to families that purchase HOME-assisted units is credited at the time that the homebuyer purchases the unit or for post-purchase counseling services, at the time the counseling services are provided.

(b) *Excess match.* Contributions made in a fiscal year that exceed the participating jurisdiction's match liability for the fiscal year in which they were made may be carried over and applied to future fiscal years' match liability. Loans made from bond proceeds in excess of 25 percent of a participating jurisdiction's total annual match contribution may be carried over to subsequent fiscal years as excess match, subject to the annual 25 percent limitation.

(c) Credit for match contributions shall be assigned as follows:

(1) For HOME-assisted projects involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution may decide to retain the match credit or permit the other participating jurisdiction to claim the credit.

(2) For HOME match contributions to affordable housing that is not HOME-assisted (match pursuant to § 92.219(b)) involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution receives the match credit.

(3) A State that provides non-Federal funds to a local participating jurisdiction to be used for a contribution to affordable housing, whether or not HOME-assisted, may take the match credit for itself or may permit the local participating jurisdiction to receive the match credit.

§ 92.222 Reduction of matching contribution requirement.

(a) *Reduction for fiscal distress.* HUD will determine match reductions annually.

(1) *Distress criteria for local government participating jurisdictions.* If a local government participating jurisdiction satisfies both of the distress factors in paragraphs (a)(1)(i) and (ii) of this section, it is in severe fiscal distress and its match requirement will be reduced by 100% for the period specified in paragraph (a)(3) of this section. If a local government participating jurisdiction satisfies either distress factor in paragraphs (a)(1)(i) or (ii) of this section, it is in fiscal distress and its match requirement will be reduced by 50 percent, for the period specified in paragraph (a)(4) of this section.

(i) *Poverty rate.* The average poverty rate in the participating jurisdiction was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information of the Bureau of the Census.

(ii) *Per capita income.* The average per capita income in the participating jurisdiction was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.

(2) *Distress criteria for participating jurisdictions that are States.* If a State satisfies at least 2 of the 3 distress factors in paragraphs (a)(2)(i) through (iii) of this section, it is in severe fiscal distress and its match requirement will be reduced by 100% for the period specified in paragraph (a)(3) of this section. If a State satisfies any 1 of the 3 distress factors in paragraphs (a)(2)(i) through (iii) of this section, it is in fiscal distress and its match requirement will be reduced by 50 percent, for the period specified in paragraph (a)(4) of this section.

(i) *Poverty rate.* The average poverty rate in the State was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.

(ii) *Per capita income.* The average per capita income in the State was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.

(iii) *Personal income growth.* The average personal income growth rate in the State over the most recent four quarters for which the data are available was less than 75 percent of the average national personal income growth rate during that period, as determined according to information from the Bureau of Economic Analysis.

(3) *Period of match reduction for severe fiscal distress.* A 100% match reduction is effective for the fiscal year in which the severe fiscal distress determination is made and for the following fiscal year.

(4) *Period of match reduction for fiscal distress.* A 50% match reduction is effective for the fiscal year in which the fiscal distress determination is made and for the following fiscal year, except that if a severe fiscal distress determination is published in that following fiscal year, the participating jurisdiction starts a new two-year match reduction period in accordance with the provisions of paragraph (a)(3) of this section.

(b) *Reduction of match for participating jurisdictions in disaster areas.* If a participating jurisdiction is located in an area in which a declaration of major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act is made, it may request a reduction of its matching requirement. For a local participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218 by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year. For a State participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218, by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year with respect to any HOME funds expended in an area to which the declaration of a major disaster applies.

At its discretion and upon request of the participating jurisdiction, the HUD Field Office may extend the reduction for an additional year.

Subpart F—Project Requirements

§ 92.250 Maximum per-unit subsidy amount and subsidy layering.

(a) *Maximum per-unit subsidy amount.* The amount of HOME funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established by HUD under 24 CFR 221.514(b)(1) and (c) for elevator-type projects, involving nonprofit mortgagors, insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l(d)(3)) that apply to the area in which the housing is located. These limits are available from the Multifamily Division in the HUD Field Office. If the participating jurisdiction's per-unit subsidy amount has already been increased to 210% as permitted in 24 CFR 221.514(c), upon request to the Field Office, HUD will allow the per-unit subsidy amount to be increased on a program-wide basis to an amount, up to 240% of the original per unit limits.

(b) *Subsidy layering.* Before committing funds to a project, the participating jurisdiction must evaluate the project in accordance with guidelines that it has adopted for this purpose and will not invest any more HOME funds, in combination with other governmental assistance, than is necessary to provide affordable housing.

§ 92.251 Property standards.

(a) (1) Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion, except as provided in paragraph (b) of this section. The participating jurisdiction must have written standards for rehabilitation that ensure that HOME-assisted housing is decent, safe, and sanitary. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable: one of three model codes (Uniform Building Code (ICBO), National Building Code (BOCA), Standard Building Code (SBCCI)); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926. To avoid duplicative inspections when FHA financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(2) All other HOME-assisted housing must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(3) The housing must meet the accessibility requirements in the regulations referenced in 24 CFR 5.105(a) which implement the Fair Housing Act (42 U.S.C. 3601–19) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:

(1) Before the transfer of the homeownership interest, the participating jurisdiction must:

(i) Inspect the housing for any defects that pose a danger to health; and

(ii) Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.

(2) The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer.

(3) The housing must meet the property standards in paragraph (a)(1) of this section not later than 2 years after transfer of the ownership interest.

(c) An owner of rental housing assisted with HOME funds must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(d) All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the housing quality standards in 24 CFR 982.401.

§ 92.252 Qualification as affordable housing: Rental housing.

The HOME-assisted units in a rental housing project must be occupied only by households that are eligible as low-income families and must meet the following requirements to qualify as affordable housing. The affordability requirements also apply to the HOME-assisted non-owner-occupied units in single-family housing purchased with HOME funds in accordance with § 92.254.

(a) *Rent limitation.* HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of:

(1) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or

(2) A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

(b) *Additional Rent limitations.* In rental projects with five or more HOME-assisted rental units, twenty (20) percent of the HOME-assisted units must be occupied by very low-income families and meet one of following rent requirements:

(1) The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits which include average occupancy per unit and adjusted income assumptions. However, if the rent determined under this paragraph is higher than the applicable rent under paragraph (a) of this section, then the maximum rent for units under this paragraph is that calculated under paragraph (a) of this section.

(2) The rent does not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

(c) *Initial rent schedule and utility allowances.* The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone). The participating jurisdiction must review and approve rents proposed by the owner for units subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure that the rents do not exceed

the maximum rent minus the monthly allowances for utilities and services.

(d) *Nondiscrimination against rental assistance subsidy holders.* The owner cannot refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982—Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

(e) *Periods of Affordability.* The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. 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 deed in lieu of foreclosure, 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.

Rental housing 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 or rehabilitation involving refinancing	15
New construction or acquisition of newly constructed housing	20

(f) *Subsequent rents during the affordability period.* (1) The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. HUD then provides the new maximum HOME rent limits to participating jurisdictions. Regardless of changes in fair market rents and in median income over time, the HOME rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment.

(2) The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (f)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner. Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section.

(3) Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and 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.

(g) *Adjustment of HOME rent limits for a particular project.* (1) Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of a project within the HOME rent limits in this section.

(2) HUD may adjust the HOME rent limits for a project, 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.

(h) *Tenant income.* The income of each tenant must be determined initially in accordance with § 92.203. In addition, each year during the period of affordability the project owner must re-examine each tenant's annual income in accordance with one of the options in § 92.203 selected by the participating jurisdiction. An owner of a multifamily project with an affordability period of 10 years or more who re-examines tenant's annual income through a statement and certification in accordance with § 92.203(a)(1)(ii), must examine the income of each tenant, in accordance with § 92.203(a)(1)(i), every sixth year of the affordability period. Otherwise, an owner who accepts the tenant's statement and certification in accordance with § 92.203(a)(1)(ii) is not required to examine the income of tenants in multifamily or single-family projects unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

(i) *Over-income tenants.* (1) HOME-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants 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.

(2) 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 income, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by section 42.

(j) *Fixed and floating HOME units.* In a project containing HOME-assisted and other units, the participating jurisdiction may designate fixed or floating HOME units. This designation must be made at the time of project commitment. Fixed units remain the same throughout the period of affordability. Floating units are changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

§ 92.253 Tenant and participant protections.

(a) *Lease.* The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an

agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

(d) *Tenant selection.* An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that:

(1) Are consistent with the purpose of providing housing for very low-income and low-income families;

(2) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;

(3) Give reasonable consideration to the housing needs of families that would have a Federal preference under section 6(c)(4)(A) of the 1937 Act (see § 92.209(c)(2)) ;

(4) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(5) Give prompt written notification to any rejected applicant of the grounds for any rejection.

§ 92.254 Qualification as affordable housing: homeownership.

(a) *Acquisition with or without rehabilitation.* Housing that is for acquisition by a family must meet the affordability requirements of this paragraph (a).

(1) The housing must be single-family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) .

(2) The housing must be modest housing as follows:

(i) In the case of acquisition of newly constructed housing or standard housing, the housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area, as described in paragraph (a)(2)(iii) of this section.

(ii) In the case of acquisition with rehabilitation, the housing has an estimated value after rehabilitation that does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section.

(iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single-family properties, the participating jurisdiction may use the Single Family Mortgage Limits under Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) (which may be obtained from the HUD Field Office) or it may determine 95 percent of the median area purchase price for single family housing in the jurisdiction, as follows. The participating jurisdiction must set forth the price for different types of single family housing (1- to 4-unit family residence, condominium unit, cooperative unit, combination of manufactured housing and lot or manufactured housing lot) for the jurisdiction. The 95 percent of median area purchase price must be established in accordance with a market analysis which ensured that a sufficient number of recent housing sales are included in the survey. Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a two-month reporting period; for less than 250 sales per month, at least a three-month reporting period. The data must be listed in ascending order of sales price. The address of the listed properties must include the location within the participating jurisdiction. Lot, square and subdivision data may be substituted for the street address. The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire participating jurisdiction. To determine the median, take the middle sale on the list if an odd number of sales and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by .95 to determine the 95 percent of the median area purchase price. This information must be submitted to the HUD Field Office for review.

(3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section.

(4) *Periods of affordability.* The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The per unit amount of HOME funds and the affordability period that they trigger are described more fully in paragraphs (a)(5)(i) (resale) and (ii) (recapture) of this section.

Homeownership assistance HOME amount per-unit	Minimum period of affordability in years
Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15

(5) *Resale and recapture.* To ensure affordability, the participating jurisdiction must impose either resale or recapture requirements, at its option. The participating jurisdiction must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate.

(i) *Resale.* Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only

to a buyer whose family qualifies as a low-income family and will use the property as its principal residence. The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers. The period of affordability is based on the total amount of HOME funds invested in the housing.

(A) Except as provided in paragraph (a)(5)(i)(B) of this section, deed restrictions, covenants running with the land, or other similar mechanisms must be used as the mechanism to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

(B) Certain housing may be presumed to meet the resale restrictions (i.e., the housing will be available and affordable to a reasonable range of low-income homebuyers; a low-income homebuyer will occupy the housing as the family's principal residence; and the original owner will be afforded a fair return on investment) during the period of affordability without the imposition of enforcement mechanisms by the participating jurisdiction. The presumption must be based upon a market analysis of the neighborhood in which the housing is located. The market analysis must include an evaluation of the location and characteristics of the housing and residents in the neighborhood (e.g., sale prices, age and amenities of the housing stock, incomes of residents, percentage of owner-occupants) in relation to housing and incomes in the housing market area. An analysis of the current and projected incomes of neighborhood residents for an average period of affordability for homebuyers in the neighborhood must support the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing. For example, an analysis shows that the housing is modestly priced within the housing market area and that families with incomes of 65% to 80% of area median can afford monthly payments under average FHA terms without other government assistance and housing will remain affordable at least during the next five to seven years compared to other housing in the market area; the size and amenities of the housing are modest and substantial rehabilitation will not significantly increase the market value; the neighborhood has housing that is not currently owned by the occupants, but the participating jurisdiction is encouraging homeownership in the neighborhood by providing homeownership assistance and by making improvements to the streets, sidewalks, and other public facilities and services. If a participating jurisdiction in preparing a neighborhood revitalization strategy under § 91.215(e)(2) of its consolidated plan or Empowerment Zone or Enterprise Community application under 24 CFR part 597 has incorporated the type of market data described above, that submission may serve as the required analysis under this section. If the participating jurisdiction continues to provide homeownership assistance for housing in the neighborhood, it must periodically update the market analysis to verify the original presumption of continued affordability.

(ii) *Recapture.* Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. The period of affordability is based upon the total amount of HOME funds subject to recapture described in paragraph (a)(5)(ii)(A)(*5*) of this section.

(A) The following options for recapture requirements are acceptable to HUD. The participating jurisdiction may adopt, modify or develop its own recapture requirements for HUD approval.

(*1*) *Recapture entire amount.* The participating jurisdiction may recapture the entire amount of the HOME investment from the homeowner.

(*2*) *Reduction during affordability period.* The participating jurisdiction may reduce the HOME investment amount to be recaptured on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.

(*3*) *Shared net proceeds.* If the net proceeds are not sufficient to recapture the full HOME investment (or a reduced amount as provided for in paragraph (a)(5)(ii)(A)(2) of this section) plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the participating jurisdiction may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\frac{\text{HOME investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{HOME amount to be recaptured}$$

$$\frac{\text{homeowner investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

(*4*) *Owner investment returned first.* The participating jurisdiction may permit the homebuyer to recover the homebuyer's entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HOME investment.

(*5*) *Amount subject to recapture.* The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The recaptured funds must be

used to carry out HOME-eligible activities in accordance with the requirements of this part. If the HOME assistance is only used for the development subsidy and therefore not subject to recapture, the resale option must be used.

(*6*) *Special considerations for single-family properties with more than one unit.* If the HOME funds are only used to assist a low-income homebuyer to acquire one unit in single-family housing containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit. If HOME funds are also used to assist the low-income homebuyer to acquire one or more of the rental units in the single-family housing, the affordability requirements of § 92.252 apply to assisted rental units, except that the participating jurisdiction may impose resale or recapture restrictions on all assisted units (owner-occupied and rental units) in the single family housing. If resale restrictions are used, the affordability requirements on all assisted units continue for the period of affordability. If recapture restrictions are used, the affordability requirements on the assisted rental units may be terminated, at the discretion of the participating jurisdiction, upon recapture of the HOME investment. (If HOME funds are used to assist only the rental units in such a property then the requirements of § 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of § 92.254.)

(*7*) *Lease-purchase.* HOME funds may be used to assist homebuyers through lease-purchase programs. The housing must be purchased by a homebuyer within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed and at the time the housing is transferred if more than six months have elapsed since the participating jurisdiction determined that the family was income eligible. If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in § 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.

(b) *Rehabilitation not involving acquisition.* Housing that is currently owned by a family qualifies as affordable housing only if:

(1) The estimated value of the property, after rehabilitation, does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section; and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

(c) *Ownership interest.* The ownership in the housing assisted under this section must meet the definition of ''homeownership'' in § 92.2.

(d) *New construction without acquisition.* Newly constructed housing that is built on property currently owned by a family which will occupy the housing upon completion, qualifies as affordable housing if it meets the requirements under paragraph (a) of this section.

§ 92.255 Converting rental units to homeownership units for existing tenants.

The participating jurisdiction may permit the owner of HOME-assisted rental units to convert the rental units to homeownership units by selling, donating, or otherwise conveying the units to the existing tenants to enable the tenants to become homeowners in accordance with the requirements of § 92.254. If no additional HOME funds are used to enable the tenants to become homeowners, the homeownership units are subject to a minimum period of affordability equal to the remaining affordable period if the units continued as rental units. If additional HOME funds are used to directly assist the tenants to become homeowners, the minimum period of affordability is the affordability period under § 92.254(a)(4), based on the amount of direct homeownership assistance provided.

§ 92.256 [Reserved]

§ 92.257 Religious organizations.

HOME funds may not be provided to primarily religious organizations, such as churches, for any activity including secular activities. In addition, HOME funds may not be used to rehabilitate or construct housing owned by primarily religious organizations or to assist primarily religious organizations in acquiring housing. However, HOME funds may be used by a secular entity to acquire housing from a primarily religious organization, and a primarily religious entity may transfer title to its property to a wholly secular entity and the entity may participate in the HOME program in accordance with the requirements of this part. The entity may be an existing or newly established entity, which may be an entity established by the religious organization. The completed housing project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the property.

§ 92.258 Elder cottage housing opportunity (ECHO) units.

(a) *General.* HOME funds may be used for the initial purchase and initial placement costs of elder cottage housing opportunity (ECHO) units that meet the requirements of this section, and that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings.

(b) *Eligible owners.* The owner of a HOME-assisted ECHO unit may be:

(1) The owner-occupant of the single-family host property on which the ECHO unit will be located;

(2) A participating jurisdiction; or

(3) A non-profit organization.

(c) *Eligible tenants.* During the affordability period, the tenant of a HOME-assisted ECHO unit must be an elderly or disabled family as defined in 24 CFR 5.403 and must also be a low-income family.

(d) *Applicable requirements.* The requirements of § 92.252 apply to HOME-assisted ECHO units, with the following modifications:

(1) Only one ECHO unit may be provided per host property.

(2) The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit rent, but if a rent is charged, it must meet the requirements of § 92.252.

(3) The ECHO housing must remain affordable for the period specified in § 92.252(e). If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:

(i) Rent the unit to another eligible occupant on site;

(ii) Move the ECHO unit to another site for occupancy by an eligible occupant; or

(iii) If the owner of the ECHO unit is the host property owner-occupant, the owner may repay the HOME funds in accordance with the recapture provisions imposed by the participating jurisdiction consistent with § 92.254(a)(5)(ii). The participating jurisdiction must use the recaptured HOME funds for additional HOME activities.

(4) The participating jurisdiction has the responsibility to enforce the project requirements applicable to ECHO units.

Subpart G—Community Housing Development Organizations

§ 92.300 Set-aside for community housing development organizations (CHDOs).

(a)(1) Within 24 months after HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be developed, sponsored, or owned by community housing development organizations. For a State, the HOME allocation includes funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, funds transferred from a State under § 92.102(b). The funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization. The funds must be provided to a community housing development organization or its subsidiary. If a CHDO owns the project in partnership, it or its wholly owned for-profit or non-profit subsidiary must be the managing general partner. In acting in any of the capacities specified, the community housing development organization must have effective project control. In addition, a community housing development organization, in connection with housing it develops, sponsors or owns with HOME funds provided under this section, may provide direct homeownership assistance (e.g. downpayment assistance) and not be considered a subrecipient.

(2) The participating jurisdiction determines the form of assistance, e.g., grant or loan, that the community housing development organization receives and whether any proceeds must be returned to the participating jurisdiction or may be retained by the community housing development organization. While the proceeds the participating jurisdiction permits the community housing development organization to retain are not subject to the requirements of this part, the participating jurisdiction must specify in the written agreement with the community housing development organization whether they are to be used for HOME-eligible or other housing activities to benefit low-income families. However, funds recaptured because housing no longer meets the affordability requirements under § 92.254(a)(5)(ii) are subject to the requirements of this part in accordance with § 92.503.

(b) Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved consolidated plan and to encourage such community housing development organizations to do so. If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable community housing development organizations, up to 20 percent of the minimum community housing development organization setaside of 15 percent specified in paragraph (a) of this section, above, (but not more than $150,000 during the 24 month period) may be committed to develop the capacity of community housing development organizations in the jurisdiction.

(c) Up to 10 percent of the HOME funds reserved under this section may be used for activities specified under § 92.301.

(d) HOME funds required to be reserved under this section are subject to reduction, as provided in § 92.500(d).

(e) If funds for operating expenses are provided under § 92.208 to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be developed, sponsored or owned by the community housing development organization, the participating jurisdiction must enter into a written agreement with the community housing development organization that provides that the community housing development organization is expected to receive funds under paragraph (a) of this section within 24 months of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

(f) *Limitation.* A community housing development organization may not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or $50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under § 92.208.

§ 92.301 Project-specific assistance to community housing development organizations.

(a) *Project-specific technical assistance and site control loans.* (1) *General.* Within the percentage specified in § 92.300(c), HOME funds may be used by a participating jurisdiction to provide technical assistance and site control loans to community housing development organizations in the early stages of site development for an eligible project. These loans may not exceed amounts that the participating jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (a)(2) of this section. All costs must be related to a specific eligible project or projects.

(2) *Allowable costs.* A loan may be provided to cover project costs necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, option to acquire property, site control and title clearance. General operational expenses of the community housing development organization are not allowable costs.

(3) *Repayment.* The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(b) *Project-specific seed money loans.* (1) *General.* Within the percentage specified in § 92.300(c), HOME funds may be used to provide loans to community housing development organizations to cover preconstruction project costs that the participating jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies, and legal fees.

(2) *Eligible sponsors.* A loan may be provided only to a community housing development organization that has, with respect to the project concerned, site control (evidenced by a deed, a sales contract, or an option contract to acquire the property), a preliminary financial commitment, and a capable development team.

(3) *Repayment.* The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in

part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the community housing development organization.

§ 92.302 Housing education and organizational support.

HUD is authorized to provide education and organizational support assistance, in conjunction with HOME funds made available to community housing development organizations in accordance with section 233 of the Act. HUD will publish a notice in the Federal Register announcing the availability of funding under this section, as appropriate. The notice need not include funding for each of the eligible activities, but may target funding from among the eligible activities.

§ 92.303 Tenant participation plan.

A community housing development organization that receives assistance under this part must adhere to a fair lease and grievance procedure approved by the participating jurisdiction and provide a plan for and follow a program of tenant participation in management decisions.

Subpart H—Other Federal Requirements

§ 92.350 Other Federal requirements.

(a) The Federal requirements set forth in 24 CFR 5.105(a), *Nondiscrimination and equal opportunity*, are applicable to participants in the HOME program.

(b) OMB Circulars referenced in this part may be obtained from: Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G–2200, Washington, DC 20503; telephone: (202) 395–7332.

§ 92.351 Affirmative marketing; minority outreach program.

(a) *Affirmative marketing.* (1) Each participating jurisdiction must adopt affirmative marketing procedures and requirements for rental and homebuyer projects containing 5 or more HOME-assisted housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. (The affirmative marketing procedures do not apply to families with Section 8 tenant-based rental housing assistance or families with tenant-based rental assistance provided with HOME funds.)

(2) The affirmative marketing requirements and procedures adopted must include:

(i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(ii) Requirements and practices each owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the participating jurisdiction and by owners to affirmatively market units and records to assess the results of these actions; and

(v) A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(3) A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.

(b) *Minority outreach.* A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

§ 92.352 Environmental review.

(a) *General.* The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58.

(b) *Responsibility for review.* (1) The jurisdiction (e.g., the participating jurisdiction or State recipient) or insular area must assume responsibility for environmental review, decisionmaking, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR part 58.

(2) A State participating jurisdiction must also assume responsibility for approval of requests for release of HOME funds submitted by State recipients.

(3) HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction.

§ 92.353 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the participating jurisdiction must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must

relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* (1) *General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and 49 CFR part 24. A ''displaced person'' must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(2) *Displaced Person.* (i) For purposes of paragraph (c) of this section, the term *displaced person* means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After notice by the owner to move permanently from the property, if the move occurs on or after:

(*1*) The date of the submission of an application to the participating jurisdiction or HUD, if the applicant has site control and the application is later approved; or

(*2*) The date the jurisdiction approves the applicable site, if the applicant does not have site control at the time of the application; or

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the jurisdiction or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*i*) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or

(*ii*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*i*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(*ii*) Other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a *displaced person* if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the participating jurisdiction determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.

(B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a ''displaced person'' (or for any assistance under this section) as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The jurisdiction may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(d) *Optional relocation assistance.* The participating jurisdiction may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section. The jurisdiction may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by State or local law, the jurisdiction must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Residential antidisplacement and relocation assistance plan.* The participating jurisdiction shall comply with the requirements of 24 CFR part 42, subpart B.

(f) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(g) *Appeals.* A person who disagrees with the participating jurisdiction's

determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the jurisdiction. A low-income person who is dissatisfied with the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

§ 92.354 Labor.

(a) *General.* (1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).

(2) The contract for construction must contain these wage provisions if HOME funds are used for any project costs in § 92.206, including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.

(b) *Volunteers.* The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

(c) *Sweat equity.* The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

§ 92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*) and 24 CFR part 35. The lead-based paint provisions of 24 CFR 982.401(j) also apply, irrespective of the applicable property standard under § 92.251. In a project in which not all units are assisted with HOME funds, the lead-based paint requirements apply to all units and common areas in the project. Unless otherwise provided, the participating jurisdiction is responsible for testing and abatement activities.

§ 92.356 Conflict of interest.

(a) *Applicability.* In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decisionmaking process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

(f) *Owners and Developers.* (1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an owner-occupant of single-family housing or to an employee or agent of the owner or developer of a rental housing project who occupies a HOME assisted unit as the project manager or maintenance worker.

(2) *Exceptions.* Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

§ 92.357 Executive Order 12372.

(a) *General.* Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and HUD's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

Subpart I—Technical Assistance

§ 92.400 Coordinated Federal support for housing strategies.

(a) *General.* HUD will provide assistance in accordance with Subtitle C of the Act.

(b) *Notice of funding.* HUD will publish a notice in the Federal Register announcing the availability of funding under this section as appropriate.

Subpart J—Reallocations

§ 92.450 General.

(a) This subpart J sets out the conditions under which HUD reallocates HOME funds that have been allocated, reserved, or placed in a HOME Investment Trust Fund.

(b) A jurisdiction that is not a participating jurisdiction but is meeting the requirements of §§ 92.102, 92.103, and 92.104, (participation threshold, notice of intent, and submission of consolidated plan) is treated as a participating jurisdiction for purposes of receiving a reallocation under subpart J of this part.

§ 92.451 Reallocation of HOME funds from a jurisdiction that is not designated a participating jurisdiction or has its designation revoked.

(a) *Failure to be designated a participating jurisdiction.* HUD will reallocate, under this section, any HOME funds allocated to or reserved for a jurisdiction that is not a participating jurisdiction if:

(1) HUD determines that the jurisdiction has failed to:

(i) Meet the participation threshold amount in § 92.102;

(ii) Provide notice of its intent to become a participating jurisdiction in accordance with § 92.103; or

(iii) Submit its consolidated plan, in accordance with 24 CFR part 91; or

(2) HUD after providing for amendments and resubmissions in accordance with 24 CFR part 91 disapproves the jurisdiction's consolidated plan.

(b) *Designation revoked.* HUD will reallocate, under this section, any funds remaining in a jurisdiction's HOME Investment Trust Fund after HUD has revoked the jurisdiction's designation as a participating jurisdiction under § 92.107.

(c) *Manner of reallocation.* HUD will reallocate funds that are subject to reallocation under this section in the following manner:

(1) If the funds to be reallocated under this section are from a State, HUD will:

(i) Make the funds available by competition in accordance with criteria in § 92.453 among applications submitted by units of general local government within the State and with preference being given to applications from units of general local government that are not participating jurisdictions, and

(ii) Reallocate the remainder by formula in accordance with § 92.454.

(2) If the funds to be reallocated are from a unit of general local government:

(i) Located in a State that is participating jurisdiction, HUD will reallocate the funds to that State. The State, in distributing these funds, must give preference to the provision of affordable housing within the unit of general local government; or

(ii) Located in a State that is not a participating jurisdiction, HUD will reallocate the funds by competition among units of general local government and community housing development organizations within the State, with priority going to applications for affordable housing within the unit of general local government; and reallocate the remainder by formula in accordance with § 92.454.

§ 92.452 Reallocation of community housing development organization set-aside.

HUD will reallocate, under this section, any HOME funds reduced or recaptured by HUD from a participating jurisdiction's HOME Investment Trust Fund under § 92.300(d). HUD will reallocate these funds by competition in accordance with criteria in § 92.453 to other participating jurisdictions for affordable housing developed, sponsored, or owned by community housing development organizations.

§ 92.453 Criteria for competitive reallocations.

(a) *General.* HUD will invite applications through Federal Register notice for HOME funds that become available for competitive reallocation under § 92.451 or § 92.452, or both. The notice will describe the application requirements and procedures, including the deadline for the submission of applications of at least 30 days, the total funding available for the competition and any maximum amount of individual awards. The notice will describe the selection criteria and any special factors to be evaluated in awarding points

under the selection criteria. The selection criteria are those set forth in this section and any additional requirements in §§ 92.451 and 92.452. The notice will also state whether HUD will make selections based on the application for a project or activities.

(b) *Threshold factors.* To be considered for a competitive reallocation, an application submitted by a jurisdiction must demonstrate to the satisfaction of HUD that:

(1) *Cooperative efforts.* The jurisdiction is engaged, or has made good faith efforts to engage, in cooperative efforts between the State and appropriate participating jurisdictions within the State to develop, coordinate, and implement housing strategies under the Act; and

(2) *Barrier removal.* (i) The jurisdiction is implementing, or has plans to implement, a strategy to remove or ameliorate negative effects of public policies which raise the cost of housing or constrain incentives to develop, maintain, or improve affordable housing; or demonstrate the absence of these policies.

(ii) A local jurisdiction must provide a satisfactory explanation (based on its approved consolidated plan, or based on the State's approved consolidated plan, if the jurisdiction is not required to submit a consolidated plan) of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by State and local policies, statutes, ordinances, regulations, and administrative procedures and processes. Of particular concern are policies such as tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment. The jurisdiction must also provide a satisfactory description of its strategy to remove or ameliorate negative effects, if any, of such policies.

(iii) A State must provide a satisfactory explanation of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the State are affected by State, as well as local policies, statutes, ordinances, regulations, and administrative procedures and processes. Of particular concern are policies such as tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment. A State must also provide a satisfactory description of its strategy to remove or ameliorate directly any negative effects, as well as to work with units of general local government involved to remove or ameliorate such negative effects of such policies. The strategy should propose, as appropriate, a program of State enabling reforms, direct State action as well as model codes, standards, and technical assistance for local governments.

(c) *Evaluation criteria.* Each applicant jurisdiction meeting the threshold factors in paragraph (b) of this section and each applicant that is not a jurisdiction will be evaluated and ranked in accordance with criteria contained in the notice that are consistent with the following factors and take into account selection preferences and other requirements in § 92.450 through § 92.452 that may apply, based on the source of the HOME funds being competitively reallocated.

(1) *Policies (25 Points).* The degree to which the applicant is pursuing policies that:

(i) Make existing housing more affordable;

(ii) Preserve the affordability of privately owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment;

(iii) Increase the supply of housing that is affordable to very low-income and low-income persons, particularly in areas that are accessible to expanding job opportunities; and,

(iv) Remedy the effects of discrimination and improve the housing opportunities for disadvantaged minorities.

(2) *Actions (50 points).* The applicant's actions that:

(i) Direct HOME funds to benefit very low-income families, to a greater extent than required by § 92.252(b). Extra consideration will be given for activities that expand the supply of affordable housing for very low-income families whose annual incomes do not exceed 30 percent of the median family income for the area;

(ii) Apply the tenant selection preference categories applicable under section 8 of the 1937 Act to the selection of tenants for housing assisted with HOME funds;

(iii) Provide matching resources in excess of funds required under § 92.218; and

(iv) Stimulate a high degree of investment and participation by the private sector, including nonprofit organizations.

(3) *Commitment (25 points).* The applicant's demonstrated commitment to expand the supply of affordable rental housing, including units developed by public housing agencies, as indicated by the additional number of units of affordable housing made available through new construction or rehabilitation within the previous two years, making adjustments for regional variations in construction and rehabilitation costs and giving special consideration to the number of additional units made available under this part through new construction or rehabilitation, including units developed by public housing agencies, in relation to the amounts made available under this program.

§ 92.454 Reallocations by formula.

(a) HUD will reallocate under this section:

(1) Any HOME funds remaining available for reallocation after HUD has made competitive reallocations under § 92.451 and § 92.452;

(2) Any HOME funds available for reallocation because HUD reduced or recaptured funds from participating jurisdiction under § 92.500(d) for failure to commit the funds within the time specified;

(3) Any HOME funds withdrawn by HUD from a participating jurisdiction under 24 CFR 91.520(f) for failure to submit in a timely manner a performance report required by 24 CFR 91.520 that is satisfactory to HUD; and

(4) Any HOME funds remitted to HUD under § 92.503(b) when a jurisdiction ceases to be a participating jurisdiction.

(b) Any reallocation of funds from a State must be made only among all participating States, and any reallocation of funds from units of general local government must be made only among all participating units of general local government, except those participating jurisdictions that HUD has removed from participating in reallocations under § 92.552.

(c) A local participating jurisdiction's share of a reallocation is calculated by multiplying the amount available for reallocation to units of general local government by a factor that is that ratio of the participating jurisdiction's formula allocation provided under § 92.50 to the total of the formula allocations provided for all local participating jurisdictions sharing in the reallocation. A State participating jurisdiction's share is comparably determined using the amount available for reallocation to States.

(d) HUD will make reallocations under this section quarterly, unless the amount available for such reallocation is insufficient to warrant making a reallocation. In any event, HUD will make a reallocation under this section at least once a year. The minimum amount of a reallocation is $1000.

Subpart K—Program Administration

§ 92.500 The HOME Investment Trust Fund.

(a) *General.* A HOME Investment Trust Fund consists of the accounts described in this section solely for investment in accordance with the provisions of this part. HUD will establish a HOME Investment Trust Fund United States Treasury account for each participating jurisdiction. Each participating jurisdiction may use either a separate local HOME Investment Trust Fund account or, a subsidiary account within its general fund (or other appropriate fund) as the local HOME Investment Trust Fund account.

(b) *Treasury Account.* The United States Treasury account of the HOME Investment Trust Fund includes funds allocated to the participating jurisdiction under § 92.50 (including for a local participating jurisdiction, any transfer of the State's allocation pursuant to § 92.102(b)(2)) and funds reallocated to the participating jurisdiction, either by formula or by competition, under subpart J of this part; and

(c) *Local Account.* (1) The local account of the HOME Investment Trust Fund includes deposits of HOME funds disbursed from the Treasury account; the deposit of any State funds (other than HOME funds transferred pursuant to § 92.102(b)(2)) or local funds that enable the jurisdiction to meet the participating threshold amount in § 92.102; any program income (from both the allocated funds and matching contributions in accordance with the definition of program income); and any repayments or recaptured funds as required by § 92.503.

(2) The participating jurisdiction may establish a second local account of the HOME Investment Trust Funds if:

(i) The participating jurisdiction has its own affordable housing trust fund that the participating jurisdiction will use for matching contributions to the HOME program;

(ii) The statute or local ordinance requires repayments from its own trust fund to be made to the trust fund;

(iii) The participating jurisdiction establishes a separate account within its own trust fund for repayments of the matching contributions; and

(iv) The funds in the account are used solely for investment in eligible activities within the participating jurisdiction's boundaries in accordance with the provisions of this part, except as provided under § 92.201(a)(2).

(3) The funds in the local account cannot be used for the matching contribution and do not need to be matched.

(d) *Reductions.* HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of:

(1) Any funds in the United States Treasury account that are required to be reserved (i.e., 15 percent of the funds) by a participating jurisdiction under § 92.300 that are not reserved for a community housing development organization pursuant to a written agreement within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement);

(2) Any funds in the United States Treasury account that are not committed within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement);

(3) Any funds in the United States Treasury account that are not expended within five years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement); and

(4) Any penalties assessed by HUD under § 92.552.

§ 92.501 HOME Investment Partnership Agreement.

Allocated and reallocated funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement ensures that HOME funds invested in affordable housing are repayable if the housing ceases to qualify as affordable housing before the period of affordability expires.

§ 92.502 Program disbursement and information system.

(a) *General.* The Home Investment Trust Fund account established in the United States Treasury is managed through a computerized disbursement and information system established by HUD. The system disburses HOME funds that are allocated or reallocated, and collects and reports information on the use of HOME funds in the United States Treasury account. [For purposes of reporting in the Integrated Disbursement and Information System, a HOME project is an activity.]

(b) *Project set-up.* (1) After the participating jurisdiction executes the HOME Investment Partnership Agreement, submits the applicable banking and security documents, complies with the environmental requirements under 24 CFR part 58 for release of funds and commits funds to a specific local project, the participating jurisdiction may identify (set up) specific investments in the disbursement and information system. Investments that require the set-up of projects in the system are the acquisition, new construction, or rehabilitation of housing, and the provision of tenant-based rental assistance. The participating jurisdiction is required to enter complete project set-up information at the time of project set-up.

(2) If the project set-up information is not completed within 20 days of the project set-up call, the project may be cancelled by the system. In addition, a project which has been committed in the system for 12 months without an initial disbursement of funds may be cancelled by the system.

(c) *Disbursement of HOME funds.* (1) After complete project set-up information is entered into the disbursement and information system, HOME funds for the project may be drawn down from the United States Treasury account by the participating jurisdiction by electronic funds transfer. The funds will be deposited in the local account of the HOME Investment Trust Fund of the participating jurisdiction within 48 to 72 hours of the disbursement request. Any drawdown of HOME funds from the United States Treasury account is conditioned upon the provision of satisfactory information by the participating jurisdiction about the project or tenant-based rental assistance and compliance with other procedures, as specified by HUD.

(2) HOME funds drawn from the United States Treasury account must be expended for eligible costs within 15 days. Any interest earned within the 15 day period may be retained by the participating jurisdiction as HOME funds. Any funds that are drawn down and not expended for eligible costs within 15 days of the disbursement must be returned to HUD for deposit in the participating jurisdiction's United States Treasury account of the HOME Investment Trust Fund. Interest earned after 15 days belongs to the United States and must be remitted promptly, but at least quarterly, to HUD, except that a local participating jurisdiction may retain interest amounts up to $100 per year for administrative expenses and States are subject to the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.).

(3) HOME funds in the local account of the HOME Investment Trust Fund must be disbursed before requests are made for HOME funds in the United States Treasury account.

(4) A participating jurisdiction will be paid on an advance basis provided it complies with the requirements of this part.

(d) *Project completion.*

(1) Complete project completion information must be entered into the disbursement and information system, or otherwise provided, within 120 days of the final project drawdown. If satisfactory project completion information is not provided, HUD may suspend further project set-ups or take other corrective actions.

(2) Additional HOME funds may be committed to a project up to one year after project completion, but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.

(e) *Access by other participants.* Access to the disbursement and information system by other entities participating in the HOME program (e.g., State recipients) will be governed by procedures established by HUD.

§ 92.503 Program income, repayments, and recaptured funds.

(a) *Program income.* (1) Program income must be used in accordance with the requirements of this part. Program income must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient or subrecipient to retain the program income for additional HOME projects pursuant to the written agreement required by § 92.504.

(2) If the jurisdiction is not a participating jurisdiction when the program income is received, the funds are not subject to the requirements of this part.

(3) Program income derived from consortium activities undertaken by or within a member unit of general local government which thereafter terminates its participation in the consortium continues to be program income of the consortium.

(b) *Repayments.* (1) Any HOME funds invested in housing that does not meet the affordability requirements for the period specified in § 92.252 or § 92.254, as applicable, must be repaid by the participating jurisdiction in accordance with paragraph (b)(3) of this section.

(2) Any HOME funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the participating jurisdiction in accordance with paragraph (b)(3) of this section except for repayments of project specific community housing development organization loans which are waived in accordance with §§ 92.301(a)(3) and 92.301(b)(3).

(3) If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund Treasury account, they must be repaid to the Treasury account. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund local account, they must be repaid to the local account. If the jurisdiction is not a participating jurisdiction when the repayment is made, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

(c) *Recaptures.* HOME funds recaptured in accordance with § 92.254(a)(5)(ii) must be used in accordance with the requirements of this part. Recaptured funds must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient, subrecipient, or community housing development organization to retain the recaptured funds for additional HOME projects pursuant to the written agreement required by § 92.504. If the jurisdiction is not a participating jurisdiction when the recaptured funds are received, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

(a) *Responsibilities.* The participating jurisdiction is responsible for managing the day to day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance of each contractor and subrecipient must be reviewed at least annually.

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity, the participating jurisdiction must enter into a written agreement with that entity. Before disbursing any HOME funds to any entity, a State recipient, subrecipient, or contractor which is administering all or a part of the HOME program on behalf of the participating jurisdiction, must also enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of this part.

(c) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. This section details basic requirements by role and the minimum provisions that must be included in a written agreement.

(1) *State recipient.* The provisions in the written agreement between the State and a State recipient will depend on the program functions that the State specifies the State recipient will carry out in accordance with § 92.201(b).

(i) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

(iii) *Program income.* The agreement must state if program income is to be remitted to the State or to be retained by the State recipient for additional eligible activities.

(iv) *Uniform administrative requirements.* The agreement must require the State recipient to comply with applicable uniform administrative requirements, as described in § 92.505.

(v) *Project requirement.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted.

(vi) *Other program requirements.* The agreement must require the State recipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the State recipient does not assume the State's responsibilities for release of funds under § 92.352 and the intergovernmental review process in § 92.357 does not apply to the State recipient.

(vii) *Affirmative marketing.* The agreement must specify the State recipient's affirmative marketing responsibilities in accordance with § 92.351, if the HOME funds received by the State recipient will be used for housing containing five or more assisted units.

(viii) *Requests for disbursement of funds.* The agreement must specify that the State recipient may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the State recipient requests funds from the State.

(ix) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the State in meeting its recordkeeping and reporting requirements.

(x) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of affordable housing requirements by the State or the intended beneficiaries, if the State recipient will be the owner at project completion of the affordable housing. The means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The affordability requirements in § 92.252 must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the HOME requirements. The agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the State recipient materially fails to comply with any term of the agreement. The State may permit the agreement to be terminated for convenience in accordance with 24 CFR 85.44.

(xi) If the State recipient provides funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors who are providing services to the State recipient, the State recipient must have a written agreement with such entities which meets the requirements of this section.

(xii) *Duration of the agreement.* The duration of the agreement will depend on which functions the State recipient performs (e.g., whether the State recipient or the State has responsibility for monitoring rental projects for the period of affordability) and which activities are funded under the agreement.

(2) *Subrecipient.* A subrecipient is a public agency or nonprofit selected by the participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME Program. The agreement between the participating jurisdiction and the subrecipient must include:

(i) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction effectively to monitor performance under the agreement.

(ii) *Program income.* The agreement must state if program income is to be remitted to the participating jurisdiction or to be retained by the subrecipient for additional eligible activities.

(iii) *Uniform administrative requirements.* The agreement must require the subrecipient to comply with applicable uniform administrative requirements, as described in § 92.505.

(iv) *Other program requirements.* The agreement must require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the subrecipient does not assume the participating jurisdiction's responsibilities for environmental review under § 92.352 and the intergovernmental review process in § 92.357 does not apply.

(v) *Affirmative marketing.* The agreement must specify the subrecipient's affirmative marketing responsibilities in accordance with § 92.351, if the HOME funds administered by the subrecipient will be used for housing containing five or more assisted units.

(vi) *Requests for disbursement of funds.* The agreement must specify that the subrecipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subrecipient requests funds from the participating jurisdiction.

(vii) *Reversion of assets.* The agreement must specify that upon expiration of the agreement, the subrecipient must transfer to the participating jurisdiction any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(viii) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(ix) *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the agreement. The agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the agreement. The participating jurisdiction may permit the agreement to be terminated for convenience in accordance with 24 CFR 85.44.

(x) If the subrecipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors, the subrecipient must have a written agreement which meets the requirements of this section.

(3) *For-profit or nonprofit housing owner, sponsor or developer (other than single-family owner-occupant).*

(i) *Use of the HOME funds.* The agreement between the participating jurisdiction and a for-profit or non-profit housing owner, sponsor or developer must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. If the owner or developer is undertaking rental projects, the agreement must establish the initial rents and the procedures for rent increases. If the owner or developer is undertaking homeownership projects for sale to homebuyers in accordance with § 92.254(a), the agreement must set forth the resale or recapture requirements which must be imposed on the housing.

(iii) *Project requirements.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted.

(iv) *Property standards.* The agreement must require the housing to meet the property standards in § 92.251 and the lead-based paint requirements in § 92.355 upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing in compliance with § 92.251 for the duration of the affordability period.

(v) *Affirmative marketing.* If the project contains 5 or more HOME-assisted units, the agreement must

specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.

(vi) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(vii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the participating jurisdiction or the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions or covenants running with the land. The affordability requirements in § 92.252 must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(viii) *Requests for disbursement of funds.* The agreement must specify that the developer may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(ix) *Duration of the agreement.* The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the affordability period required by the participating jurisdiction under § 92.252. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the low-income family.

(x) *Conditions for religious organizations.* Where applicable, the agreement must include the conditions prescribed in § 92.257 for the use of HOME funds by religious organizations.

(xi) *Community housing development organization provisions.* If the nonprofit owner or developer is a community housing development organization and is using set-aside funds under § 92.300, the agreement must include the appropriate provisions under §§ 92.300 and 92.301.

(4) *Contractor.* The participating jurisdiction selects a contractor through applicable procurement procedures and requirements. The contractor provides goods or services in accordance with a written agreement (the contract). For contractors who are administering all or a portion of the HOME program, the contract must include at a minimum the following provisions:

(i) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and the length of the agreement.

(ii) *Program requirements.* The agreement must provide that the contractor is subject to the requirements in Part 92 that are applicable to the participating jurisdiction, except §§ 92.505 and 92.506 do not apply, and the contractor cannot assume the participating jurisdiction responsibilities for environmental review, decisionmaking, and action under § 92.352. Where the contractor is administering only a portion of the program, the agreement must list the requirements applicable to the activities the contractor is administering.

(iii) *Duration of agreement.* The agreement must specify the duration of the contract. Generally, the duration of a contract should not exceed two years.

(5) *Homebuyer, homeowner or tenant receiving tenant-based rental or security deposit assistance.* When a participating jurisdiction provides assistance to a homebuyer, homeowner or tenant the written agreement may take many forms depending upon the nature of assistance. As appropriate, it must include as a minimum:

(i) For homebuyers, the agreement must conform to the requirements in § 92.254(a), the value of the property, principal residence, lease-purchase, if applicable, and the resale or recapture provisions. The agreement must specify the amount of HOME funds, the form of assistance, e.g., grant, amortizing loan, deferred payment loan, the use of the funds (e.g., down-payment, closing costs, rehabilitation) and the time by which the housing must be acquired.

(ii) For homeowners, the agreement must conform to the requirements in § 92.254(b) and specify the amount and form of HOME assistance, rehabilitation work to be undertaken, date for completion, and property standards to be met.

(iii) For tenants, the rental assistance contract or the security deposit contract must conform to §§ 92.209 and 92.253.

(d) *On site inspections*—(1) *HOME assisted rental housing.* During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards of § 92.251 and to verify the information submitted by the owners in accordance with the requirements of § 92.252 no less than: every three years for projects containing 1 to 4 units; every two years for projects containing 5 to 25 units; and every year for projects containing 26 or more units. Inspections must be based on a sufficient sample of units.

(2) *Tenant-based rental assistance.* The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to determine compliance with the property standards of § 92.251.

§ 92.505 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A–87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, State recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32 through 85.34, 85.36, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–122 and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are nonprofit organizations that are not governmental subrecipients: §§ 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73.

§ 92.506 Audit.

Audits of the participating jurisdiction, State recipients, and subrecipients must be conducted in accordance with 24 CFR parts 44 and 45, as applicable.

§ 92.507 Closeout.

(a) HOME funds from each individual Federal fiscal year (i.e., the allocation and any reallocated funds from the particular federal fiscal year appropriation) will be closed out when all the following criteria have been met:

(1) All funds to be closed out have been drawn down and expended for completed project costs, or funds not drawn down and expended have been deobligated by HUD;

(2) The matching requirements in § 92.218 have been met;

(3) Project Completion Reports for all projects using funds to be closed out have been submitted and project completion information has been entered into the program disbursement and information system established by HUD;

(4) The participating jurisdiction has been reviewed and audited and HUD has determined that all requirements, except for affordability, have been met

or all monitoring and audit findings have been resolved.

(i) The participating jurisdiction's most recent audit report and audit reports of state recipients, where applicable, must be received by HUD. If the audit does not cover all funds to be closed out, the closeout may proceed, provided the participating jurisdiction agrees in the Closeout Report that any costs paid with the funds that were not audited must be subject to the participating jurisdiction's next single audit and that the participating jurisdiction may be required to repay to HUD any disallowed costs based on the results of the audit.

(ii) The on-site monitoring of the participating jurisdiction by the HUD Field Office must include verification of data reflected in the Closeout Report and reconciliation of any discrepancies which may exist between program disbursement and information system data and participating jurisdiction or state recipient records.

(b) The Closeout Report contains the final data on the funds and must be signed by the participating jurisdiction and HUD. In addition, the report must contain:

(1) A provision regarding unaudited funds, required by paragraph (a)(4)(i) of this section; and

(2) A provision requiring the participating jurisdiction to continue to meet the requirements applicable to housing projects for the period of affordability specified in § 92.252 or § 92.254, to keep records demonstrating that the requirements have been met and to repay the HOME funds, as required by § 92.503, if the housing fails to remain affordable for the required period.

§ 92.508 Recordkeeping.

(a) *General.* Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of this part. At a minimum, the following records are needed:

(1) *Records concerning designation as a participating jurisdiction.*

(i) For a consortium, the consortium agreement among the participating member units of general local government as required by § 92.101.

(ii) For a unit of general local government receiving a formula allocation of less than $750,000 (or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part), records demonstrating that funds have been made available (either by the State or the unit of general local government, or both) equal to or greater than the difference between its formula allocation and $750,000 (or $500,000 in fiscal years in which Congress appropriates less than $1.5 billion) as required by § 92.102(b).

(2) *Program records.* (i) Records of the efforts to maximize participation by the private sector as required by § 92.200.

(ii) The forms of HOME assistance used in the program, including any forms of investment described in the Consolidated Plan under 24 CFR part 91 which are not identified in § 92.205(b).

(iii) The subsidy layering guidelines adopted in accordance with § 92.250 which support the participating jurisdiction's Consolidated Plan certification.

(iv) If existing debt is refinanced for multi-family rehabilitation projects, the refinancing guidelines established in accordance with § 92.206(b), described in the Consolidated Plan.

(v) If HOME funds are used for tenant-based rental assistance, records supporting the participating jurisdiction's Consolidated Plan certification in accordance with § 92.209(b), including documentation of the local market conditions that led to the choice of this option; written selection policies and criteria; supporting documentation for preferences for specific categories of individuals with disabilities; and records supporting the rent standard and minimum tenant contribution established in accordance with § 92.209(h).

(vi) If HOME funds are used for tenant-based rental assistance or rental housing, records evidencing that not less than 90 percent of the families receiving such rental assistance meet the income requirements of § 92.216.

(vii) If HOME funds are used for homeownership housing, the procedures used for establishing 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2), in the Consolidated Plan.

(viii) If HOME funds are used for acquisition of housing for homeownership, the resale or recapture guidelines established in accordance with § 92.254(a)(5), in the Consolidated Plan.

(ix) Records demonstrating compliance with the matching requirements of § 92.218 through § 92.222 including a running log and project records documenting the type and amount of match contributions by project.

(x) Records documenting compliance with the 24 month commitment deadline of § 92.500(d).

(xi) Records demonstrating compliance with the fifteen percent CHDO set-aside requirement of § 92.300(a).

(xii) Records documenting compliance with the ten percent limitation on administrative and planning costs in accordance with § 92.207.

(3) *Project records.* (i) A full description of each project assisted with HOME funds, including the location, form of HOME assistance, and the units or tenants assisted with HOME funds.

(ii) The source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20.

(iii) Records demonstrating that each rental housing or homeownership project meets the minimum per-unit subsidy amount of § 92.205(c), the maximum per-unit subsidy amount of § 92.250(a) and the subsidy layering guidelines adopted in accordance with § 92.250(b).

(iv) Records demonstrating that each project meets the property standards of § 92.251 and the lead based paint requirements of § 92.355.

(v) Records demonstrating that each family is income eligible in accordance with § 92.203.

(vi) Records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of § 92.209(c), including the tenant preference requirements, the rent reasonableness requirements of § 92.209(f), the maximum subsidy provisions of § 92.209(h), HQS inspection reports, and calculation of the HOME subsidy.

(vii) Records demonstrating that each rental housing project meets the affordability and income targeting requirements of § 92.252 for the required period. Records must be kept for each family assisted.

(viii) Records demonstrating that each multifamily rental housing project involving rehabilitation with refinancing complies with the refinancing guidelines established in accordance with § 92.206(b).

(ix) Records demonstrating that each lease for a tenant receiving tenant-based rental assistance and for an assisted rental housing unit complies with the tenant and participant protections of § 92.253. Records must be kept for each family.

(x) Records demonstrating that the purchase price or estimated value after rehabilitation for each homeownership housing project does not exceed 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2). The records must

demonstrate how the estimated value was determined.

(xi) Records demonstrating that each homeownership project meets the affordability requirements of § 92.254 for the required period.

(xii) Records demonstrating that any pre-award costs charged to the HOME allocation meet the requirements of § 92.212.

(4) *Community Housing Development Organizations (CHDOs) Records.* (i) Written agreements reserving HOME funds to CHDOs in accordance with § 92.300(a).

(ii) Records setting forth the efforts made to identify and encourage CHDOs, as required by § 92.300(b).

(iii) The name and qualifications of each CHDO and amount of HOME CHDO set-aside funds reserved and committed.

(iv) Records demonstrating that each CHDO complies with the written agreements required by § 92.504.

(v) Records concerning the use of CHDO setaside funds, including funds used to develop CHDO capacity pursuant to § 92.300(b).

(vi) Records concerning the use of funds for CHDO operating expenses and demonstrating compliance with the requirements of § 92.208, § 92.300(e) and § 92.300(f).

(vii) Records concerning the tenant participation plan required by § 92.303.

(viii) Records concerning project-specific assistance to CHDOs pursuant to § 92.301, including the impediments to repayment, if repayment is waived.

(5) *Financial records.* (i) Records identifying the source and application of funds for each fiscal year, including the formula allocation, any reallocation (identified by federal fiscal year appropriation), and any State or local funds provided under § 92.102(b).

(ii) Records concerning the HOME Investment Trust Fund Treasury account and local account required to be established and maintained by § 92.500, including deposits, disbursements, balances, supporting documentation and any other information required by the program disbursement and information system established by HUD.

(iii) Records identifying the source and application of program income, repayments and recaptured funds.

(iv) Records demonstrating adequate budget control, in accordance with 24 CFR 85.20, including evidence of periodic account reconciliations.

(6) *Program administration records.* (i) Records demonstrating compliance with the written agreements required by § 92.504.

(ii) Records demonstrating compliance with the applicable uniform administrative requirements required by § 92.505.

(iii) Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

(7) *Records concerning other Federal requirements.* (i) Equal opportunity and fair housing records.

(A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.

(B) Documentation of actions undertaken to meet the requirements of 24 CFR Part 135 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(C) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing.

(ii) Affirmative marketing and MBE/WBE records.

(A) Records demonstrating compliance with the affirmative marketing procedures and requirements of § 92.351.

(B) Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

(iii) Records demonstrating compliance with the environmental review requirements of § 92.352 and 24 CFR part 58, including flood insurance requirements.

(iv) Records demonstrating compliance with the requirements of § 92.353 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in § 92.353(c)(2)(i)(A), moving into the property on or after the date described in § 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.

(v) Records demonstrating compliance with the labor requirements of § 92.354, including contract provisions and payroll records.

(vi) Records demonstrating compliance with the lead-based paint requirements of § 92.355.

(vii) Records supporting exceptions to the conflict of interest prohibition pursuant to § 92.356.

(viii) Debarment and suspension certifications required by 24 CFR parts 24 and 91.

(ix) Records concerning intergovernmental review, as required by § 92.357.

(b) *States with State Recipients.* A State that distributes HOME funds to State recipients must require State recipients to keep the records required by paragraphs (a)(2), (a)(3), (a)(5), (a)(6) and (a)(7) of this section, and such other records as the State determines to be necessary to enable the State to carry out its responsibilities under this part. The State need not duplicate the records kept by the State recipients. The State must keep records concerning its review of State recipients required under § 92.201(b)(3).

(c) *Period of record retention.* All records pertaining to each fiscal year of HOME funds must be retained for the most recent five year period, except as provided below.

(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 homeownership 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) Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 92.353.

(6) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the

expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

(d) *Access to records.* (1) The participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the participating jurisdiction, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts.

§ 92.509 Performance reports.

(a) *Management reports.* Each participating jurisdiction must submit management reports on its HOME Investment Partnerships Program in such format and at such time as HUD may prescribe.

(b) *Annual performance report.* For annual performance report requirements, see 24 CFR part 91.

Subpart L—Performance Reviews and Sanctions

§ 92.550 Performance reviews.

(a) *General.* HUD will review the performance of each participating jurisdiction in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the participating jurisdiction's and, as appropriate, the State recipient's records and reports, findings from on-site monitoring, audit reports, and information generated from the disbursement and information system established by HUD. Where applicable, HUD may also consider relevant information pertaining to a participating jurisdiction's or State recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the participating jurisdiction or State recipient. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the participating jurisdiction.

(b) *Standards for comprehensive performance review.* A participating jurisdiction's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine:

(1) For local participating jurisdictions and State participating jurisdictions administering their own HOME programs, whether the participating jurisdiction has committed the HOME funds in the United States Treasury account as required by § 92.500 and expended the funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching requirements; or

(2) For State participating jurisdictions distributing HOME funds to State recipients, whether the State has met the matching contribution and other requirements of this part; has distributed the funds in accordance with the requirements of this part; and has made such reviews and audits of its State recipients as may be appropriate to determine whether they have satisfied the requirements of paragraph (b)(1) of this section.

§ 92.551 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 92.550 and in taking corrective and remedial actions.

(b) *Performance review.*

(1) If HUD determines preliminarily that the participating jurisdiction has not met a requirement of this part, the participating jurisdiction will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.

(2) If the participating jurisdiction fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or § 92.552.

(c) *Corrective and remedial actions.* Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the participating jurisdiction to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:

(i) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;

(iv) Reprogramming HOME funds that have not yet been expended from affected activities to other eligible activities;

(v) Reimbursing its HOME Investment Trust Fund in any amount not used in accordance with the requirements of this part;

(vi) Suspending disbursement of HOME funds for affected activities; and

(vii) Making matching contributions as draws are made from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account.

(2) HUD may also change the method of payment from an advance to reimbursement basis; and take other remedies that may be legally available.

§ 92.552 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a participating jurisdiction has failed to comply with any provision of this part and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the participating jurisdiction's HOME Investment Trust Fund by the amount of any expenditures that were not in accordance with the requirements of this part; and

(2) HUD may do one or more of the following:

(i) Prevent withdrawals from the participating jurisdiction's HOME Investment Trust Fund for activities affected by the failure to comply;

(ii) Restrict the participating jurisdiction's activities under this part to activities that conform to one or more model programs which HUD has developed in accordance with section 213 of the Act;

(iii) Remove the participating jurisdiction from participation in allocations or reallocations of funds made available under subpart B or J of this part;

(iv) Require the participating jurisdiction to make matching contributions in amounts required by § 92.218(a) as HOME funds are drawn from the participating jurisdiction's

HOME Investment Trust Fund United States Treasury Account. Provided, however, that HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the participating jurisdiction, or at HUD's option, the State recipient.

(1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent by first class mail. The notice shall specify:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this part;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Chief Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Chief Docket Clerk;

(iv) The action HUD proposes to take and that the authority for this action is § 92.552; and

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify the Chief Docket Clerk, Office of Administrative Law Judges, of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an ALJ. The case shall be referred to the ALJ at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery before the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) *Ex parte communications.* An *ex parte* communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. *Ex parte* communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an *ex parte* communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized *ex parte* communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the rationale therefor, affirming, modifying or revoking the

decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

Dated: August 28, 1996.

Henry G. Cisneros,

Secretary.

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