

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**
**24 CFR Part 92**
**[Docket No. FR-3962-F-04]**
**RIN 2501-AC06**
**HOME Investment Partnerships  
Program: Technical Amendment to  
Final Rule**
**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Technical amendment to final rule.

**SUMMARY:** This document makes a number of technical amendments to a final rule issued by the Department of Housing and Urban Development (Department) to implement the HOME Investment Partnerships Program.

**DATES:** Effective date: June 27, 1997.

Retroactive applicability: This technical amendment applies retroactively to the final rule published September 16, 1996 (61 FR 48736), that became effective on October 16, 1996.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** On September 16, 1996 (61 FR 48736), the Department published a final rule for the HOME Investment Partnerships Program (the HOME program). This document makes a number of technical amendments, described below, to the final rule.

Section 92.50(d)(1) contains an incorrect reference to paragraph (a)(1). The reference is changed to paragraph (a).

Section 92.202(b) incorrectly cites 24 CFR 893.6(b). The correct cite should be to 24 CFR 983.6(b). This section is also amended to clarify that the participating jurisdiction, not the Department, is responsible for determining and documenting that proposed sites for new construction of HOME-assisted housing meet the standards of § 983.6(b).

Section 92.203(a)(1) is amended to clarify that participating jurisdictions must make the initial determination of income eligibility for families to be assisted with HOME funds, using source documentation as described in

paragraph (a)(1)(i), and also must conduct periodic income determinations for tenants in HOME-assisted rental units during the period of affordability. Although this provision appears in § 92.252(h), *Rental Housing*, it is added to the *Income Determination* section to avoid any confusion.

The October 18, 1996 **Federal Register**, at 61 FR 54492, contains a final rule that removes 24 CFR part 813 (Definition of income, income limits, rent and reexamination of family income for the Section 8 program) and creates a new subpart F to part 5 which covers income, income limits, and related issues for public housing and Section 8 programs. The HOME final rule at §§ 92.203 (b)(1) and (c), and § 92.353(c)(2)(i)(C)(I)(ii), refers to part 813 and therefore must be amended to reference part 5 instead.

The text of § 92.203(c) is amended because the current language might lead to the assumption that only the Section 8 definition of income had to be adjusted, and not the IRS or Census definitions. The reference in this section is also amended from citing paragraph (a) of the section to citing paragraph (b).

Section 92.205(d) is amended to clarify that the eligible HOME development costs for multi-unit projects include all costs made eligible for HOME funding under § 92.206. The final rule inadvertently limited the eligible costs to those listed in paragraphs (a), (b), and (c) of § 92.206.

Section 92.206(a)(5) is amended to clarify that utility connections and site improvements are eligible project-related soft costs in connection with the acquisition of standard housing. The language in the final rule inadvertently limited the eligibility of these costs to rehabilitation and new construction of housing. However, the Department recognizes that such improvements may be necessary in instances where standard housing is being acquired with HOME funds.

Section 92.209(c)(2) contains language reflecting a provision in HUD's FY 1996 appropriations act that the Federal preferences do not apply for FY 1996. This section is amended to reflect the same provision for FY 1997 included in HUD's FY 1997 appropriations act. A reference to a special provision affecting the Federal preferences for FY 1995 is deleted because it is no longer applicable.

Section 92.209(j) is amended to clarify that the income determination and Housing Quality Standards inspection requirements apply to security deposit assistance only at the point at which the assistance is provided. It was not HUD's

intention to apply ongoing requirements to this limited form of assistance.

To implement a provision of HUD's FY 1997 appropriations act which permits the use of HOME funds for a priority purchaser under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPHA), § 92.214(a)(6) is amended.

Section 92.219(b)(1)(i) is amended to more accurately reflect the requirements of § 92.209 that apply to tenant-based rental assistance programs not funded with HOME that will be counted as match. The final rule specifically exempted these programs only from the term of rental assistance contract requirements of paragraph (e). However, paragraphs (b) (General requirement), (e) (Term of rental assistance contract), (g) (Tenant protections), (h) (Maximum subsidy), (j) (Security deposits), (k) (Program operation) and (l) (Use of Section 8 assistance) contain requirements that should apply only to HOME-assisted TBRA and not to tenant-based rental assistance funded through other sources. The provisions of paragraph (d) (Portability of assistance) are descriptive only and need not be included in the provisions applicable to non-HOME tenant-based rental assistance. The paragraphs that apply to non-HOME tenant-based rental assistance are (a) (Eligible costs), (c) (Tenant selection), (f) (Rent reasonableness), and (i) (Housing quality standards).

Section 92.219(b)(2)(iv) is amended to correct an internal inconsistency in the rule and reflect that two sources of match credit (supportive services at § 92.220(a)(10) and homebuyer counseling at 92.220(a)(11)) in addition to those presently listed are limited to HOME-assisted units.

Section 220(a)(10) is amended to add as eligible match the direct cost of supportive services provided to recipients of HOME-funded tenant-based rental assistance. The final rule established the direct cost of supportive services as a new source of match. However, the language in the rule limited eligibility to residents of HOME-assisted units. It was not the Department's intention to prohibit the value of supportive services provided to other HOME-assisted tenants, those receiving HOME tenant-based rental assistance, from being counted as match. The direct cost of supportive services provided to families residing in HOME-eligible units or receiving tenant-based rental assistance not funded with HOME is not an eligible match contribution.

Section 92.220(b)(4) is amended to eliminate an internal inconsistency in

the final rule. Section 92.220(a)(8) permits the value of donated or voluntary labor or professional services in connection with the provision of affordable housing to be counted as match. Section 92.220(b)(4) contradicts that provision by establishing as ineligible cash or other contributions from recipients of HOME contracts. It was not HUD's intention to eliminate as eligible match the value of labor or professional services provided to affordable housing at a reduced rate as a donation by an individual or entity that has a contract to provide labor or services to a HOME-assisted project. If, for example, an architect enters into a contract to provide services to a HOME-assisted project and agrees, as a donation to affordable housing, to accept a lower rate, the participating jurisdiction may count the value of the difference between architect's normal rate and the reduced rate.

As part of the recent effort to streamline regulations, 24 CFR 221.514 was deleted. To reflect this change with respect to maximum per-unit subsidy amounts for the HOME Program, the citations to various paragraphs of § 221.514 are deleted from § 92.250(a) and replaced with citations to the appropriate section of the National Housing Act.

The preamble to the final rule mischaracterized the provisions of § 92.251 (property standards). In explaining changes to this section, the preamble stated that units rehabilitated or constructed with HOME funds must meet local codes, rehabilitation standards, ordinances and zoning ordinances or, in the absence of local codes, the units must meet one of several model codes specified in the regulation. The preamble went on to state that "(A)ll other HOME units including those occupied by tenants receiving HOME tenant-based rental assistance, must meet the Section 8 Housing Quality Standards (HQS)." This language may lead to the conclusion that housing that is acquired with HOME funds must meet HQS. In fact, § 92.251(a)(2) provides that all other HOME-assisted housing (i.e., housing that is not rehabilitated or constructed with HOME funds) must meet all applicable State or local codes or, in the absence of such codes, HQS. Units occupied by recipients of HOME tenant-based rental assistance are required to meet HQS, in accordance with § 92.251(d). No changes to the text of the rule are required.

Section 92.251(a)(1) of the final rule established the Standard Building Code as one of the three model codes that may be used for HOME-assisted

rehabilitation or new construction in the absence of State or local codes. This model code, which was established by the Southern Building Code Congress International (SBCCI), was formerly known as the Southern Building Code. To avoid confusion, a parenthetical reference to the former, commonly used title of this code has been added to this paragraph.

As a point of clarification, the word "acquisition" is added as a parenthetical reference to § 92.251(a)(2) as an example of other HOME-assisted housing.

Section 92.251(a)(3) cited 24 CFR 5.105(a) as the implementing regulations for accessibility requirements under section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act. The reference has been amended to be more specific and now cites to 24 CFR part 8, which contains the implementing regulations for section 504, and to the design and construction standards of the Fair Housing Act at 24 CFR 100.205, which apply to multifamily dwellings assisted with HOME funds.

In revising § 92.251 with respect to the property standards applicable to all HOME-assisted units, the Department did not specifically address manufactured housing. In doing so, it created some confusion among participating jurisdictions and omitted language stating that all new manufactured housing (whether or not it receives HOME assistance) must meet the construction and safety standards in 24 CFR 3280. A new paragraph (a)(4) is added to explain the property standards applicable to manufactured housing. The Federal construction and safety standards preempt State and local codes or laws covering the same aspects of performance for such housing. For installation, participating jurisdictions must follow State or local codes or comply with the manufacturer's written installation instructions. Manufactured housing rehabilitated with HOME funds is subject to the requirements of paragraph (a)(1) of this section.

In § 92.252(h), the reference to § 92.203 is clarified to read more precisely § 92.203(a)(1)(i). Initial income determinations must be based upon source documents in accordance with § 92.203(a)(1)(i). The original reference included initial determinations of income eligibility based upon written statements and certifications provided by the applicant family or written statements provided by the administrators of other government programs under which the HOME applicant is assisted. These two methods may be used for verifying

income in subsequent years, consistent with the provisions in § 92.252(h).

In § 92.300(a)(1), the fourth sentence is corrected to clarify that funds can be provided not only to a community housing development organization (CHDO) or its subsidiary, but also to a partnership of which the CHDO or its subsidiary is the managing general partner.

In § 92.300(f), the paragraph heading is amended to read *Limitation on community housing development organization operating expenses*. This change is made to further clarify the content of the paragraph.

In § 92.350(a), the reference to the nondiscrimination and equal opportunity provisions in 24 CFR 5.105(a) has been changed. The correct reference is to 24 CFR part 5, subpart A and the requirements included in this subpart are listed.

Section 92.350(b), which provides for obtaining OMB circulars, is redesignated as paragraph (c) of § 92.505, which lists applicable OMB circulars.

A new § 92.350(b) is added. This paragraph applies the nondiscrimination requirements at section 282 of the Cranston Gonzalez National Affordable Housing Act (NAHA), which had been erroneously omitted from the final rule, to the HOME Program. The paragraph also implements section 213 of HUD's FY 1997 appropriations act, which permits HUD to waive the nondiscrimination requirements of the HOME statute at section 282 of NAHA in connection with the use of HOME funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

Although the Department made the Section 8 HQS provisions optional in the final rule, it intended to continue to apply the HQS lead-based paint provisions to HOME-assisted housing. To accomplish this, § 92.401(j) was cited in section 92.355. This change has led to some confusion because the HQS provisions state that they supersede 24 CFR part 35, which also applies to the HOME Program. The provisions of both part 35 and § 92.401(j) continue to apply to all HOME-assisted housing. To avoid further confusion, language has been added to § 92.355 to clarify that the HQS provisions do not supersede part 35, but constitute additional lead-based paint requirements applicable to HOME-assisted housing.

The term "elected or appointed official" is added to the conflict of interest provisions applicable to owners and developers under § 92.356(f)(1), so that the language will parallel that in paragraph (c), *Persons covered*. The

language in this paragraph is also amended to make clear that an *individual* who receives HOME funds to acquire or rehabilitate his or her principal residence is exempt from this provision. Organizations do not qualify as homebuyers or owner-occupants.

A new § 92.358 is added to implement a provision in HUD's appropriation act that imposes limitations on compensation of consultants to be paid with HOME funds. The regulatory language, similar to that established for the Community Development Block Grant (CDBG) Program, was erroneously omitted from the final rule.

In § 92.500(d), paragraphs (1), (2), and (3) are revised to remove from each the parenthetical phrase stating that HUD will notify the participating jurisdiction of its execution of the HOME Investment Partnership Agreement on the date that HUD executes the agreement. Notification of participating jurisdictions must be performed in accordance with congressional notification procedures and the date of notification is often not the same date that HUD signs the grant agreement. To avoid the confusion caused by the reference to the notification on the date that HUD executes the agreement, these parenthetical references are deleted. In addition, these paragraphs are redesignated as paragraphs (d)(1) (A), (B), and (C), to permit the addition of a new paragraph (d)(2), as discussed immediately below.

In § 92.500(d), a new paragraph (2) is added to explain the Department's practice with respect to the reduction of a participating jurisdiction's HOME Investment Partnership Account when funds are not committed or expended in accordance with the 24-month or 5-year deadlines, respectively. For a participating jurisdiction to be deemed to have met the requirement for commitment of a fiscal year's allocation by its deadline, the sum of commitments from that allocation and all subsequent allocations must be equal to or greater than the amount of the allocation being examined, and the sum of funds reserved for and/or committed to community housing development organizations from that allocation and all subsequent allocations must be equal to or greater than 15 percent of the allocation being examined. For a participating jurisdiction to be deemed to have met the requirement for the expenditure of a fiscal year's allocation by its deadline, the amount of funds expended from that allocation and all subsequent allocations must be equal to or greater than the amount of the allocation being examined.

## List of Subjects in 24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 92 is amended as follows:

## PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 continues to read as follows:

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

2. In § 92.50, paragraph (d)(1) is revised to read as follows:

### § 92.50 Formula allocation.

(d) *Calculating formula allocations for units of general local government.* (1) Initial allocation amounts for units of general local government described in paragraph (a) 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.

3. In § 92.202, paragraph (b) is revised to read as follows:

### § 92.202 Site and neighborhood standards.

(b) *New rental housing.* In carrying out the site and neighborhood requirements with respect to new construction of rental housing, a participating jurisdiction is responsible for making the determination that proposed sites for new construction meet the requirements in 24 CFR 983.6(b).

4. In § 92.203, paragraphs (a)(1) introductory text, (b)(1) and (c) are revised to read as follows:

### § 92.203 Income determinations.

(a) \* \* \*

(1) For families who are tenants in HOME-assisted housing and not receiving HOME tenant-based rental assistance, the participating jurisdiction must initially determine annual income using the method in paragraph (a)(1)(i) of this section. For subsequent income determinations during the period of

affordability, the participating jurisdiction may use any one of the following methods in accordance with § 92.252(h):

\* \* \* \* \*

(b) \* \* \*

(1) "Annual income" as defined at 24 CFR 5.609 (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

\* \* \* \* \*

(c) Although the participating jurisdiction may use any of the three definitions of "annual income" permitted in paragraph (b) of this section, to calculate adjusted income it must apply exclusions from income established at 24 CFR 5.611. The HOME rents for very low-income families established under § 92.252(b)(2) are based on adjusted income. In addition, the participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family.

\* \* \* \* \*

5. In § 92.205, paragraph (d) is amended by revising the second sentence to read as follows:

### § 92.205 Eligible activities: general.

\* \* \* \* \*

(d) *Multi-unit projects.* \* \* \* Only the actual HOME eligible development costs of the assisted units may be charged to the HOME program. \* \* \*

\* \* \* \* \*

6. Section 92.206 is amended by adding a new paragraph (a)(5) to read as follows:

### § 92.206 Eligible project costs.

\* \* \* \* \*

(a) \* \* \*

(5) Costs to make utility connections or to make improvements to the project site, in accordance with the provisions of § 92.206(a)(3) (ii) and (iii) are also eligible in connection with acquisition of standard housing.

\* \* \* \* \*

7. Section 92.209 is amended by revising paragraph (c)(2) and paragraph (j)(5) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(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. [During FY 1996 and FY 1997, the Federal preferences do not apply.]

\* \* \* \*

(j) \* \* \*

(5) Paragraphs (b), (c), (d), (f), (g), and (i) of this section are applicable to HOME security deposit assistance, except that income determinations pursuant to paragraph (c)(1) of this section and Housing Quality Standard inspections pursuant to paragraph (i) of this section are required only at the time the security deposit assistance is provided.

\* \* \* \*

8. In § 92.214, paragraph (a)(6) is revised to read as follows:

**§ 92.214 Prohibited activities.**

(a) \* \* \*

(6) Provide assistance to eligible low-income housing under 24 CFR part 248 (Prepayment of Low Income Housing Mortgages), except that assistance may be provided to priority purchasers as defined in 24 CFR 248.101;

\* \* \* \*

9. In § 92.219, paragraphs (b)(1)(i) and (b)(2)(iv) are revised to read as follows:

**§ 92.219 Recognition of matching contribution.**

\* \* \* \*

(b) \* \* \*

(1) \* \* \*

(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 paragraphs (a), (c), (f), and (i) of § 92.209 (Tenant-based rental assistance); and

\* \* \* \*

(2) \* \* \*

(iv) The match may be in any eligible form of match except those in § 92.220(a)(2) (forbearance of fees), (a)(4) (on-site and off-site infrastructure), (a)(10) (direct cost of supportive services) and (a)(11) (direct costs of homebuyer counseling services).

\* \* \* \*

10. Section 92.220 is amended by revising the first sentence in paragraph (a)(10) and by revising paragraph (b)(4) to read as follows:

**§ 92.220 Form of matching contribution.**

(a) \* \* \*

(10) The direct cost of supportive services provided to families residing in

HOME-assisted units during the period of affordability or receiving HOME tenant-based rental assistance during the term of the tenant-based rental assistance contract. \* \* \*

\* \* \* \*

(b) \* \* \*

(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. The prohibition in this paragraph (b)(4) does not apply to contractors (who do not own any HOME project) contributing professional services in accordance with paragraph (a)(8) of this section or to persons contributing sweat equity in accordance with paragraph (a)(9) of this section.

11. In § 92.250, paragraph (a) is revised to read as follows:

**§ 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 under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects 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 under section 221(d)(3)(ii) of the National Housing Act, upon request of 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.

\* \* \* \*

12. Section 92.251 is amended by revising paragraph (a) to read as follows:

**§ 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 (Southern) 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 (e.g., acquisition) 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 at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601–3619).

(4) Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing. Participating jurisdictions providing HOME assistance to install manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the participating jurisdiction must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using HOME funds must meet the requirements set out in paragraph (a)(1) of this section.

\* \* \* \*

13. Section 92.252 is amended by revising the first sentence of paragraph (h) to read as follows:

**§ 92.252 Qualification as affordable housing: Rental housing.**

\* \* \* \*

(h) *Tenant income.* The income of each tenant must be determined initially in accordance with § 92.203(a)(1)(i).

\* \* \*

\* \* \* \*

14. Section 92.300 is amended by revising the fourth sentence of

paragraph (a)(1), and the paragraph heading of paragraph (f) to read as follows:

**§ 92.300 Set-aside for community housing development organizations (CHDOs).**

(a) (1) \* \* \* The funds must be provided to a community housing development organization, its subsidiary, or a partnership of which it or its subsidiary is the managing general partner. \* \* \*

\* \* \* \* \*

(f) *Limitation on community housing development organization operating funds.* \* \* \*

15. Section 92.350 is revised to read as follows:

**§ 92.350 Other Federal requirements and nondiscrimination.**

(a) The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.

(b) The nondiscrimination requirements at section 282 of the Act are applicable. These requirements are waived in connection with the use of HOME funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

16. In § 92.353, paragraph (c)(2)(i)(C)(I)(ii) is revised to read as follows:

**§ 92.353 Displacement, relocation, and acquisition.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(C) \* \* \*

(I) \* \* \*

(ii) The total tenant payment, as determined under 24 CFR 5.613, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

\* \* \* \* \*

17. Section 92.355 is revised to read as follows:

**§ 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), except 24 CFR 982.401(j)(1)(i), 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.

18. In § 92.356, paragraph (f)(1) is revised to read as follows:

**§ 92.356 Conflict of interest.**

\* \* \* \* \*

(f) *Owners and Developers.* (1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official 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 individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

\* \* \* \* \*

19. A new § 92.358 is added to subpart H to read as follows:

**§ 92.358 Consultant activities.**

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. 104-204 (September 26, 1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

20. In § 92.500, paragraph (d) is revised to read as follows:

**§ 92.500 The HOME Investment Trust Fund.**

\* \* \* \* \*

(d)(1) *Reductions.* HUD will reduce or recapture HOME funds in the HOME

Investment Trust Fund by the amount of:

(A) 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;

(B) 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;

(C) 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; and

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

(2) For purposes of determining the amount by which the HOME Investment Trust Fund will be reduced or recaptured under paragraphs (d)(1)(A), (B) and (C) of this section, HUD will consider the sum of commitments to CHDOs, commitments, or expenditures, as applicable, from the fiscal year allocation being examined and from subsequent allocations. This sum must be equal to or greater than the amount of the fiscal year allocation being examined, or in the case of commitments to CHDOs, 15 percent of that fiscal year allocation.

21. Section 92.505 is amended by adding a new paragraph (c) to read as follows:

**§ 92.505 Applicability of uniform administrative requirements.**

\* \* \* \* \*

(c) 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.

Dated: April 23, 1997.

**Andrew Cuomo,**

*Secretary.*

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