

# **HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)**



**FY 2019-2020**

## **PROGRAM GUIDELINES AND APPLICATION**

**23 Russell Blvd., Suite 1**

**Davis, CA 95616**

**Mary Rice: (530) 757-5623**



December 19, 2018

Dear Prospective Applicant(s):

The City of Davis is requesting proposals for services and projects qualifying under the following program:

## **2019-2020 HOME INVESTMENT PARTNERSHIPS PROGRAM**

### **Background**

The City of Davis is an entitlement city in the U.S. Department of Housing and Urban Development (HUD) Home Investment Partnerships Program (HOME). Since its initial participation in HOME, over \$9.8 million has been awarded to the city. The grant funds have assisted very-low income persons/households in Davis by providing much needed affordable housing. The City Council, Social Services Commission, and staff review all requests for funding of HOME projects during the city's annual "Proposal Review" cycle.

### **Available funding**

The 2019-2020 HOME program year runs from July 1, 2019 through June 30, 2020. The City of Davis is anticipating an allocation of approximately **\$300,000** in HOME funds for the program year.

### **The Application**

The Application can be found in **Section 7**. Instructions for completing the application can be found in **Section 6**, and **Section 10**. For applicants requesting additional funding allocations for existing projects, the City limits the body of the grant proposal to four pages (excluding the performance schedule and budget). Applicants may adjust the spacing as necessary to adequately describe their project. Attachments may be included with the proposal; however, they should not be a continuation of the proposal narrative. Instead, they should be illustrative of a point made in the proposal, clearly marked as an attachment and should not be cumbersome.

For new projects, applicants are not expected to limit their application to 4 pages. Applicants should contact city staff to determine whether or not paper applications will be required, in addition to the electronic submittal.

### **Funding Limitations**

The federally-funded HOME Program limits the amount of funds that can be spent in two categories: 1) At least fifteen percent (15%) of HOME funds must be awarded to a Community Housing Development Organization (CHDO); and 2) Administration (and other related activities) cannot exceed ten percent (10%) of the total grant. The federal government also limits the activities that can receive HOME funding. Organizations with questions about the eligibility of a project are strongly encouraged to contact staff for technical assistance and guidance.

### **Evaluation Criteria**

Prior to developing your proposal, staff urges each potential applicant to carefully consider whether or not their program meets a critical need (See **Section 8**).

The evaluation criteria used by staff and commissions is included in **Section 3**. Please note the "absolute thresholds" within the evaluation criteria for the HOME program. **All proposals must benefit Davis residents and at least 90% of those beneficiaries must be low income persons/households (60% of median income.)** Projects that do not meet the funding requirements must be disqualified from HOME funding consideration. City staff will assist organizations in evaluating project eligibility and can be contacted for technical assistance at any time before the application deadline.

## **Application Process**

An "Applicant Workshop" will be held to provide an opportunity for all potential applicants to ask questions about the overall CDBG program, evaluation criteria, proposal process, etc. **It is strongly recommended that all applicants attend this workshop.** The workshop will be held:

**Tuesday, January 10, 2019**  
**10:00 a.m. – 12:00 p.m.**  
**City Hall – Community Chambers**  
**23 Russell Blvd.**  
**Davis, CA 95616**

**An electronic version of the proposal must be received by the City of Davis via-email no later than 5:00 pm on Monday, January 22, 2019.** Proposals received after this date **will not** be accepted. No exceptions will be granted, and no paper copies will be accepted, except for those applicants that have been directed to submit paper applications. Submit your application via e-mail to Mary Rice at [mrice@cityofdavis.org](mailto:mrice@cityofdavis.org)

**NOTE: All documents should be submitted in Word Format, not as a PDF.**

Final funding levels, project categories, and recipients will be determined by the City Council in **April 23, 2019**. (See **Section 2** for all pertinent dates.) Decisions by the City Council are conditional upon the successful completion by the city of the project's environmental review and final approval from HUD.

## **Letters of Support**

In December 1993, the City Council decided that "Letters of Support" would not be accepted in support of grant proposals. Applicants should address community support, the need for the project and the effectiveness of the organization in the proposal narrative. No letters should be sent with the proposal, or to individual Council members.

## **Program Guidelines**

The Program Guidelines are divided into the following sections:

- Section 1: Introduction and Fact Sheet
- Section 2: 2019-2020 Grant Program Schedule
- Section 3: Evaluation Criteria to be used by Commissioners and Staff
- Section 4: Income Guidelines
- Section 5: Insurance and Bonding Requirements
- Section 6: HOME Program Grant Application Worksheets and Instructions
- Section 7: HOME Program Grant Application Form
- Section 8: City of Davis Critical Needs
- Section 9: Program Background, Guidelines, and Regulations
- Section 10: Addendum - HOME Underwriting Requirements

If you have any questions or if city staff can be of any assistance, please feel free to contact Mary Rice at [mrice@cityofdavis.org](mailto:mrice@cityofdavis.org) or (530)757-5623. I wish you best of luck with the application process.

Sincerely,

**Lisa A. Baker**  
Senior Grants Manager

## **SECTION 1**

INTRODUCTION

FACT SHEET

## INTRODUCTION

The "Program Guidelines" packet is designed to aid your organization in applying for HOME Investment Partnerships Program (HOME) grant funds. All organizations must qualify under the HOME guidelines (services to low income persons/households.) Some organizations meeting a critical need may not qualify for HOME funding under the guidelines.

## HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME) FACT SHEET

**Summary:** The HOME Investment Partnerships Program (HOME) grants federal funds through the Department of Housing and Urban Development (HUD) to cities to implement several housing projects. The City of Davis has been granted over \$9.8 million since 1995 and has awarded grants to both nonprofit and governmental agencies.

**Who is eligible for HOME funds?** The City has many options for implementing the HOME grant program. In Davis, housing and other community development activities are primarily administered through "non-profit" community groups. At least fifteen percent (15%) of the funds must be granted to a Community Housing Development Organization (CHDO). The CHDO must demonstrate capacity for each role (Owner, Developer or Sponsor) it intends to undertake. The Federal 2013 HOME Final Rule emphasizes that the CHDO must have paid key staff members who have housing experience appropriate to the role the CHDO undertakes. Thus, a CHDO in the role of developer must demonstrate development experience and a CHDO in the role of owner/manager must demonstrate ownership and management experience. If the CHDO lacks development experience or capacity it may be certified only as an Owner/Operator. Capacity is evaluated during the certification process as well as each time the CHDO applies for funding. The capacity requirement cannot be met through the use of volunteers or staff that is donated by organization, including the parent organization, if applicable. CHDO's have specific board and by-law requirements. For more information, see HOME Final Rule section on CHDO's.

Information on the complete Federal 2013 HOME Final Rule changes can be found at:

<https://www.onecpd.info/home/home-final-rule/>

**What type of activities are HOME funded?** There are many options for spending HOME funds, including: homebuyer programs, development of rental units, tenant-based rental assistance and owner-occupied property rehabilitation.

**Who benefits from HOME Projects?** The primary beneficiaries of HOME funded projects are low income person(s) and household(s) at 60% of the median income. At least 90% of the activities of a project must serve this population. HOME grantees in Davis have reported that they also benefit from the grant funds and from some of the technical assistance they receive from city staff.

**Who decides how HOME funds are distributed?** In Davis, the Social Services Commission reviews the proposals and makes funding recommendations to the City Council. The City Council reviews the requests, reviews the commission funding recommendations, and makes the funding decisions for use of the city of Davis HOME allocation. HUD reviews the council's funding decisions and must approve the projects and funding levels made by the council. During the review process, there are multiple opportunities for public comments either in writing to the City and/or during the public comment periods at the publicly advertised open meetings of the Commission and City Council.

**How can I find out more about the HOME Program?** Contact Mary Rice, Management Analyst, at (530) 757-5623, or [mrice@cityofdavis.org](mailto:mrice@cityofdavis.org).

The complete FY 2019-2020 Request for Proposals (RFP), with application and Excel budget worksheets, can be downloaded by visiting the main city website at [www.cityofdavis.org](http://www.cityofdavis.org) and finding the CDBG HOME Request for Proposals link, under the Spotlight section on the left-hand side of the page.

## **SECTION 2**

2019 - 2020

GRANT PROGRAM

SCHEDULE

**2019-2020 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT  
PARTNERSHIPS (HOME) PROGRAM  
REQUEST FOR PROPOSALS AND AWARD SCHEDULE  
(Dates Subject to Change)**

|                          |   |
|--------------------------|---|
| November 19, 2018        | <b>Social Services Commission:</b> Recommendation of Critical Needs List  |
| <b>December 4, 2018</b>  | <b>City Council (Public Hearing):</b> Final Approval of Critical Needs List and Request for Proposals (RFP) Schedule                      |
| <b>December 19, 2018</b> | <b>RFP released</b>   |
| <b>January 10, 2019</b>  | Applicant Workshop (Applicant participation is <b>strongly encouraged</b> )   |
| <b>January 22, 2019</b>  | Proposals Due to City of Davis staff no later than <b>5:00 p.m.</b> (Postmark will <i>not</i> be accepted)                                |
| February 11, 2019        | Proposals are posted online and distributed to Commission and City Council  |
| February 26, 2019        | Staff, Commission and City Council questions/requests for information are submitted to staff  |
| February 28, 2019        | Questions are distributed to applicants   |
| March 8, 2019            | Applicant responses to questions due no later than <b>5:00 p.m.</b>   |
| March 15, 2019           | Funding recommendations sent to Social Services Commission  |
| <b>March 18, 2019</b>    | <b>Social Services Commission (Public Hearing):</b><br><br>Funding Deliberations/Recommendations and One-Year Action Plan to City Council |
| April 11, 2019           | Funding recommendations sent to City Council  |
| <b>April 23, 2019</b>    | <b>City Council (Public Hearing):</b> CDBG/HOME Funding Decisions and One-Year Action Plan  |
| May 15, 2019             | One-Year Action Plan submitted to HUD   |
| May - June 30, 2019      | HUD review and approval of One-Year Action Plan   |
| <b>July 1, 2019</b>      | <b>2019-2020 CDBG/HOME Program Year begins</b>  |

### **SECTION 3**

COPY OF EVALUATION CRITERIA

TO BE USED BY THE CITY COUNCIL,  
SOCIAL SERVICES COMMISSION AND STAFF

## 2019-2020 HOME EVALUATION CRITERIA

**ABSOLUTE THRESHOLD** (If the answer is no to any of these five criteria after staff follow up, then the proposal will **not** be recommended for HOME funding. However, city staff may be making funding recommendations about all grant requests, regardless of HOME qualification.)

|   | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| 1. Was the proposal complete?   | _____      | _____     |
| 2. Is the proposal an eligible activity according to HOME regulations? 24 CFR Parts 91 and 92   | _____      | _____     |
| 3. Does the proposal comply with the HOME requirement that 90% of residents will have incomes less than 60% of the median and remaining residents will have incomes less than 80% (for rental housing)? | _____      | _____     |
| 4. Is the organization an eligible sub-recipient/sub-grantee according to the HOME regulations?   | _____      | _____     |
| 5. Do Davis residents benefit in (at least) the same percentage of HOME contribution to the overall project?  | _____      | _____     |

### **BENEFIT**

6. How many **Davis** persons/households will benefit? (How does this compare to other proposals?)
7. What percentage of the beneficiaries are very-low, low/moderate-income **Davis** persons/households? (How does this compare to other proposals?)
8. What is the cost per beneficiary? (How does it compare to other proposals?)
9. Are the beneficiaries already served by another program/funding source?

### **NEED**

10. Is the need documented?
11. Does the proposal respond to 1-3 critical needs as identified on the Critical Needs List?
12. Does the proposal respond to one or more of the additional indicators as identified on the Critical Needs List?
13. Does the project represent an innovative approach to affordable housing?

**PROGRAM DESIGN**

- 14. Is the proposed program adequately described?
- 15. Are the services/activities/projects described in quantifiable terms?
- 16. Is the Performance Schedule consistent with the Scope of Services?

**BUDGET/FUND LEVERAGING**

- 17. Does the budget appear cost-effective and provide sufficient information?
- 18. Have funds from other sources been leveraged?
- 19. Does it appear that the program is depending upon HOME funds for continuation?
- 20. Did the organization submit the documents for the underwriting/subsidy layering review (if ` required?)

**ORGANIZATIONAL CAPACITY**

- 21. Does it appear that the organization is capable of implementing the program?
- 22. Are the organization's accounting/administrative systems adequate to meet HOME requirements?
- 23. Will the organization qualify as a Community Housing Development Organization (CHDO)?

## **SECTION 4**

### **INCOME LIMITS**

## INCOME LIMITS

These figures should be the basis of your organization's responses to questions about the benefits of your service(s) to very-low, low and low-moderate income persons/households:

**The 2018 Median Family Income Summary for Yolo County (PMSA)**

| <b>(Maximum Yearly Income)</b> |                             |                              |                                  |                                       |
|--------------------------------|-----------------------------|------------------------------|----------------------------------|---------------------------------------|
| Program<br>HOME                | 80% of Median<br>Low-Income | 60% of Median<br>"60% Limit" | 50% of Median<br>Very-Low Income | 30% of Median<br>Extremely Low-Income |
| # in Household                 |                             |                              |                                  |                                       |
| 1                              | \$46,600                    | \$34,980                     | \$29,150                         | \$17,500                              |
| 2                              | \$53,250                    | \$39,960                     | \$33,300                         | \$20,000                              |
| 3                              | \$59,900                    | \$44,940                     | \$37,450                         | \$22,500                              |
| <b>4</b>                       | <b>\$66,550</b>             | <b>\$49,920</b>              | <b>\$41,600</b>                  | <b>\$24,950</b>                       |
| 5                              | \$71,900                    | \$53,940                     | \$44,950                         | \$26,950                              |
| 6                              | \$77,200                    | \$57,960                     | \$48,300                         | \$28,950                              |
| 7                              | \$82,550                    | \$61,920                     | \$51,600                         | \$30,950                              |
| 8                              | \$87,850                    | \$65,940                     | \$54,950                         | \$32,950                              |

The **2018 Median Family Income** for Yolo County (PMSA) is **\$85,100**

These guidelines are provided by HUD for use in the CDBG/HOME programs. These limits determine income eligibility and program benefits to 30% of median yearly income, 50% of median yearly income, and 80% of median yearly income persons. These figures are based on the Primary Metropolitan Statistical Area (PMSA) median yearly income.

\*The Office of Affordable Housing Programs has advised that the 30%-of-area-median should be used as the definition of extremely low income persons/families. After consultation among all four formula programs, CPD has confirmed that ALL CPD programs included in the Consolidated Plan should be using the HOME income limits under which extremely low-income families are identified by the 30 percent income limits as opposed to the Section 8 limits which are adjusted for poverty.

The effective date of these HOME income guidelines are effective 4/2018. These guidelines may change within the first quarter of each year.

### ***References:***

For HOME, 24 CAR 92.216 establishes what is called the "60% limit." HOME income limits for the 50% and 80% levels are called Very Low- and Low-income, respectively.

## **SECTION 5**

### **INSURANCE AND BONDING REQUIREMENTS**

## INSURANCE AND BONDING REQUIREMENTS

As part of the City of Davis' self-insurance system, city sub-recipients/grantees need to comply with all insurance and bonding requirements. Prior to acceptance of the first invoice and processing of reimbursement, each sub-recipient/grantee must provide the city with copies of the following for approval:

### 1. Worker's Compensation Insurance

- Policy shall provide that no cancellation, major change or expiration shall become effective until at least **ten (10) days receipt of written notice by the city.**

### 1. General Liability and Property Damage

- For the period covered by the contract in the amount of \$1,000,000 occurrence/\$2,000,000 aggregate for bodily injury, and property damage per occurrence combined single limit coverage.
- To include (and not be limited to) protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under the contract, and use of owned and non-owned automobiles.
- To provide notice be given the city at least 30 days prior to cancellation or material change. Cancellation clause on Certificate of Insurance to read as follows: **"Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail 30 days written notice to the certificate holder named to the left."**
- Required endorsements: policy must cover personal injuries as well as bodily injuries (exclusion of contractual liability must be eliminated from the personal injury endorsement); policy must cover contractual liability by amending the definition of incidental contract to include any written contract, and the city (including its officers and employees) shall be named as additional insured.

### 1. Required Construction and Project Bonds

- To cover any officers, employees or agents of sub-recipient/grantee handling, or having access to funds, or authorization to sign or countersign checks.
- To cover full amount of CDBG/HOME award.
- Bond shall not be canceled or modified except upon **30 days written notice to the city.**

City staff will review each document and may return the certificate requiring specific changes before approval is given.

## **SECTION 6**

HOME APPLICATION WORKSHEETS

AND INSTRUCTIONS

## 2019-2020 HOME APPLICATION WORKSHEETS AND INSTRUCTIONS

The Application form is in Section 7 of these guidelines and linked in the Spotlight section on the City website located at [www.cityofdavis.org](http://www.cityofdavis.org).

**Part One:** Most are self-explanatory. When listing a contact person, please list the best contact to get information to and from the organization as quickly as possible.

**Organization Name:** Please list the name of your organization and specify if your organization operates under a DBA. \_\_\_\_\_

**Name:** Include the name of the applicant who is the point of contact for the application, as well as their title and phone number.

**Mailing address/Email Address:** Include the mailing address for your organization \_\_\_\_\_ where you want documents and correspondence related to the grant application mailed.

**Proposed Project Location:** Indicate the location where the project activities will take place.

*NOTE: if the location needs to remain confidential for the safety of program participants, please notify City staff of project location separately.*

**Part Two:** This next section is the specific request for the grant funds and eligible activity category for the project.

**Total Proposal Request:** \$ \_\_\_\_\_ **Minimum Request:** \$ \_\_\_\_\_

List the total amount of grant funds being requested for the project. In addition, list the minimum amount of funds the organization could receive for the project to be viable. \_\_\_\_\_

**Is the applicant claiming status as a Non-Profit Community Housing Development Organization (CHDO)? (Applicants will be required to provide qualifying documentation)**

\_\_\_\_ Yes      \_\_\_\_ No

**HOME Eligible Activities Category:** From the following list, please choose the “HOME Eligible Activities Category” for the proposed project and enter on Page 1 of the Application. See Section 9 - Eligible Activities for a more detailed description.

**HOME Eligible Activities Category: (List A)**

Homebuyer Program

Owner Occupied Property Rehabilitation

Rental Housing Development

Tenant-Based Rental Housing

**National Objective Compliance/Low and Mod Benefit:** Choose the "**Low Income Benefit**" description for the proposed project. Since some of the projects have more than one income level, all categories as applicable, and enter on Page 1 of the Application. See Section 9 - for a more detailed description.

**"Low Income Benefit"**

35% of Median Income

50% of Median Income

60% of Median Income

80% of Median Income

**City Council Identified Critical Needs:** Enter three Critical Needs as identified in the Critical Needs List, included in Section 8 of the packet.

**Beneficiary Information:**

- \_\_\_\_\_ Total number of beneficiaries in proposed project
- \_\_\_\_\_ Number of beneficiaries in proposed project to be served with **HOME** funds
- \_\_\_\_\_ Percentage of the **HOME** beneficiaries with very-low, low/moderate income
- \_\_\_\_\_ Cost (\$) per HOME beneficiary (HOME Request/HOME Beneficiaries)

**Part Three:** This section includes specific descriptions of the project, target groups, outreach, coordination with other agencies, the timeline of the project, and the budget.

**SCOPE OF PROPOSAL:**

- a. **Need/Target Group** Document the need for the project/program. If the project has been funded before, what were the primary accomplishments? Please note the amount and date of any prior HOME Funds received. In addition, quantify the number of low- and moderate-income persons/households to be assisted per service/activity/project.
- b. **Project Description/Benefit** Describe the proposed service/activity/project to be carried out with the funds requested. If the proposed project is ongoing, specify why the funds are needed to serve income eligible persons. **Discuss the cost-per-beneficiary in relation to private and other organizations delivering similar services.**

Discuss how the project/program provides benefit to low-income persons. How does the proposed project respond to the critical needs listed in Section 8?

- c. **Outreach** Discuss outreach efforts for the proposed service/activity/project; provide a list of the languages your current advertising is in, as well as the capacity of your organization to provide services to individuals who do not speak English.
- d. **Organizational Capacity** Summarize the organization's background/programmatic capacity, including major grant awards and organizational structure. Does your organization or proposed service fill a unique niche among clients who are not currently served, or are under-served?

Attach a list of the Board of Directors and Agency officers. Include a copy of your **non-profit or organizational incorporation**. If a non-profit, include a **copy of your most recent 990**. If a for profit, include a copy of most recent audit. **If subject to the federal Single Audit, please include your most recent Single Audit.**

- e. **Partnerships and Other Resources** Has your organization developed this project in collaboration with other groups? What are other community groups offering to complement the proposed project? **Is the proposed project duplicative of other projects operated by local public or non-profit organizations?** Identify other potential or actual sources of funds. What fundraising has the organization done to support the proposed project?

## PERFORMANCE MEASUREMENTS AND SCHEDULE

Prepare a Performance Measurements and Schedule table listing the major activities, the direct product/service numbers for each activity, the outcome description and the date the activity is projected to be completed using the template provided.

| <b>ACTIVITY</b><br>(What the program does to fulfill its mission)   | <b>INDICATOR</b><br>(The direct products of program activities)<br><b>SERVICE #s</b>                | <b>OUTCOME</b><br>(Benefits that result from the program)  | <b>COMPLETION DATE</b><br>(When the specific task is completed) |
|---|---|--|---|
| <b>Example:</b><br>Retrofit loans to handicapped homeowners for accessibility modifications; loan underwriting and processing; cost estimating and contract negotiation support | <b>Example:</b><br>Process three (3) retrofit loans to qualifying homeowners in Davis               | <b>Example:</b><br>Increased percentage of homes accessible to the handicapped<br><br>Improved quality of life for program participants      | <b>Example:</b> April 15, 2019                                  |
| <b>Example:</b><br>Construction of a 30-unit, senior apartment complex for low and very-low income Davis seniors  | <b>Example:</b><br>Complete 30-units of rental housing for low and very-low income seniors in Davis | <b>Example:</b><br>Increased number of “affordable” housing units for Davis seniors<br><br>Improved quality of life for program participants | <b>Example:</b> June 30, 2020                                   |

## PROJECT BUDGET

On a separate page, prepare a budget summarizing the use of proposed funding and all other resources available for the project. A sample “Capital Budget Summary” format is included on the following worksheets. A sample budget summary for non-capital projects is also included. Please use Excel budget available on the City of Davis website and revise the budget items as they relate to your project. Use Excel budgets available on City of Davis website as **Capital Budget Summary** and **Project Budget Summary**.

**Part Four:** This section contains a description of the documents required for the city to undertake an underwriting and subsidy layering review of the proposed HOME-funded activity.

## HOME APPLICATION SUBMISSION REQUIREMENTS FOR UNDERWRITING AND SUBSIDY LAYERING REVIEW

Per 24 CFR 92.250, the City of Davis is required to establish guidelines for subsidy layering review and underwriting reviews on all HOME-funded housing projects. The City reserves the right to be more stringent than the

underwriting guidelines, dependent upon project type, construction type, and other varying factors. The application contains a checklist of all information required for submittal.

To apply for HOME funding, all applicants must submit **all materials** required by the HOME Request for Proposals checklist. Applicants will need to submit all items prior to receiving a formal commitment of funds from the City. All items should be available with the initial application.

The City reserves the right to require additional due diligence items as needed, to evaluate the project according to federal HOME guidelines, and to document compliance with HOME and other applicable federal regulations. The City further reserves the right to request additional documentation in circumstances where a project is requesting other types of City affordable housing funds, a land dedication site, or other local resources or subsidies.

**SECTION 7**

2019 - 2020

HOME INVESTMENT PARTNERSHIPS PROGRAM

APPLICATION FORM

CITY OF DAVIS  
2019-2020 HOME INVESTMENT PARTNERSHIPS PROGRAM APPLICATION

PART ONE:

Organization Name: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

PART TWO:

Proposed Project Location: \_\_\_\_\_

Total Proposal Request: \$ \_\_\_\_\_ Minimum Request: \$ \_\_\_\_\_

Is the applicant claiming status as a Non-Profit Community Housing Development Organization (CHDO)? (Applicants will be required to provide qualifying documentation)

\_\_\_\_\_ Yes \_\_\_\_\_ No

HOME Eligible Activities Category: \_\_\_\_\_  
(See List A)

Low Income Benefit: \_\_\_\_\_  
(See List B)

City Council Identified Critical Needs: (See List C)

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

Beneficiary Information:

- \_\_\_\_\_ Total number of beneficiaries in proposed project
- \_\_\_\_\_ Number of beneficiaries in proposed project to be served with **HOME** funds
- \_\_\_\_\_ Percentage of the **HOME** beneficiaries with low income
- \_\_\_\_\_ Cost (\$) per **HOME** beneficiary (HOME Request/HOME Beneficiaries)

### PART THREE: Scope of Proposal

a. **Need/Target Group** (Describe the need for the activity and the group being served)

b. **Project Description/Benefit** (Activity Summary: Describe the activities of the proposed budget and benefit)

c. **Outreach** (Describe the outreach your organization will provide for the CDBG-funded project, as well as provide a list of the languages currently included in your organizational outreach)

d. **Organizational Capacity** (Summarize your organizational capacity for the proposed project)

**e. Partnerships and Other Resources** (List other agencies you collaborate with and indicate whether or not your proposed project is duplicative of other projects operated by local public or non-profit organizations)

**PERFORMANCE MEASUREMENTS AND SCHEDULE**

| ACTIVITY<br>(What the program does to fulfill its mission) | INDICATOR<br>(The direct products of program activities)<br><b>SERVICE #s</b> | OUTCOME<br>(Benefits that result from the program) | COMPLETION DATE<br>(When the specific task is completed) |
|--|---|--|--|
|  |   |  |  |
|  |   |  |  |
|  |   |  |  |
|  |   |  |  |
|  |   |  |  |

CAPITAL PROJECT BUDGET SUMMARY\*

\* Please use Capital Budget Summary Excel form available on the City of Davis website and revise budget items as needed

**CITY OF DAVIS  
HOME INVESTMENT PARTNERSHIPS PROGRAM  
CAPITAL BUDGET SUMMARY\***

| Budget Category                                  | CDBG/HOME Portion |                 |                       |                              | Other Funds For Project (Non-CDBG/HOME) |             |             |                             |                     |        |
|--|-------------------|-----------------|-----------------------|------------------------------|---|-------------|-------------|-----------------------------|---------------------|--------|
|  | Salaries & Wages  | Fringe Benefits | Total Salary + Fringe | Direct Project Related Costs | Other Federal Funds                     | State Funds | Local Funds | Private Funds (List Source) | Other (List Source) | Totals |
| <b>Project Development and Management Staff</b>  |                   |                 |                       |                              |   |             |             |                             |                     |        |
| Salaries/Wages (Specify each position)           |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| 1  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| 2  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| 3  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| 4  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| <b>Land Acquisition</b>                          |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| <b>Design</b>                                    |                   |                 |                       |                              |   |             |             |                             |                     |        |
| Architect  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Engineer Fees                                    |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Materials  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Other: (Specify)                                 |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Other: (Specify)                                 |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Other: (Specify)                                 |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Other: (Specify)                                 |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| <b>Final Development</b>                         |                   |                 |                       |                              |   |             |             |                             |                     |        |
| Materials  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Soft Costs                                       |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Carrying Costs                                   |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Fees   |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Permits  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Other: (Specify)                                 |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Other: (Specify)                                 |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Other: (Specify)                                 |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| <b>Renovation or Construction (Specify Each)</b> |                   |                 |                       |                              |   |             |             |                             |                     |        |
| Electrical                                       |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Plumbing   |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Heating  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Interior Rehabilitation                          |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Exterior Rehabilitation                          |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Grounds  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Improvements                                     |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Framing  |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| Other: (Specify)                                 |                   |                 |                       |                              |   |             |             |                             |                     | \$0.00 |
| <b>TOTAL PROJECT BUDGET</b>                      | \$0.00            | \$0.00          | \$0.00                | \$0.00                       | \$0.00                                  | \$0.00      | \$0.00      | \$0.00                      | \$0.00              | \$0.00 |

REQUIREMENTS: All applicants are requested to submit a copy of their organizations operating budget and documents requested by the city to complete the required HOME Underwriting and Subsidy Layering Review (Section 10).

PROJECT BUDGET SUMMARY\*

\* Please use Project Budget Summary Excel form available on the City of Davis website and revise budget items as needed

**CITY OF DAVIS**  
**HOME INVESTMENT PARTNERSHIPS PROGRAM**  
**PROJECT BUDGET SUMMARY\***

| Budget Category                                     | CDBG/HOME Portion |                 |                       | Other Funds for Project (Non-CDBG/HOME) |             |             |                             |                     | Totals |
|---|-------------------|-----------------|-----------------------|---|-------------|-------------|-----------------------------|---------------------|--------|
|   | Salaries & Wages  | Fringe Benefits | Total Salary + Fringe | Other Federal Funds                     | State Funds | Local Funds | Private Funds (List Source) | Other (List Source) |        |
| Salaries/Wages (Specify each position)              |                   |                 |                       |   |             |             |                             |                     |        |
| Direct Service Personnel                            |                   |                 |                       |   |             |             |                             |                     |        |
|   |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
|   |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Administrative Personnel                            |                   |                 |                       |   |             |             |                             |                     |        |
|   |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
|   |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Consultant/Contract Services                        |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| <b>TOTAL PERSONNEL BUDGET</b>                       |                   |                 |                       |   |             |             |                             | 00                  | \$0.00 |
| Supplies and Equipment for Service                  |                   |                 |                       |   |             |             |                             |                     |        |
| <b>DIRECT SERVICE SUPPLIES AND EQUIPMENT BUDGET</b> |                   |                 |                       |   |             |             |                             |                     |        |
| Office Rent   |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Utilities   |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Telephone   |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Office Supplies                                     |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Project supplies (Specify)                          |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Printing  |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Travel  |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Training  |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Internet  |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Postage   |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| Other (Specify)                                     |                   |                 |                       |   |             |             |                             |                     | \$0.00 |
| <b>TOTAL DIRECT SERVICE BUDGET</b>                  |                   |                 |                       |   |             |             |                             | 00                  | \$0.00 |
| <b>ADMINISTRATIVE COST BUDGET</b>                   |                   |                 |                       |   |             |             |                             |                     |        |
| Insurance   |                   |                 |                       |   |             |             |                             |                     | 0.00   |
| Fidelity Bond                                       |                   |                 |                       |   |             |             |                             |                     | 0.00   |
| Utilities   |                   |                 |                       |   |             |             |                             |                     | 0.00   |
| Telephone   |                   |                 |                       |   |             |             |                             |                     | 0.00   |
| Other (Specify)                                     |                   |                 |                       |   |             |             |                             |                     | 0.00   |
| <b>TOTAL DIRECT COST BUDGET</b>                     | \$0.00            | \$0.00          | \$0.00                | \$0.00                                  | \$0.00      | \$0.00      | \$0.00                      | \$0.00              | \$0.00 |
| <b>TOTAL PROJECT BUDGET</b>                         | \$0.00            | \$0.00          | \$0.00                | \$0.00                                  | \$0.00      | \$0.00      | \$0.00                      | \$0.00              | \$0.00 |

REQUIREMENTS: All applicants are requested to submit a copy of their organizations operating budget and documents requested by the city to complete the required HOME Underwriting and Subsidy Layering Review (Section 10).

## HOME APPLICATION SUBMISSION REQUIREMENTS FOR UNDERWRITING AND SUBSIDY LAYERING REVIEW

### – IF APPLICABLE

Per 24 CFR 92.250, the City of Davis is required to establish guidelines for subsidy layering review and underwriting reviews on all HOME-funded housing projects. The City reserves the right to be more stringent than the underwriting guidelines, dependent upon project type, construction type, and other varying factors.

To apply for HOME funding, all applicants must submit **all materials** required by the HOME Request for Proposals checklist. Applicants will need to submit all items prior to receiving a formal commitment of funds from the City. All items should be available with the initial application.

The City reserves the right to require additional due diligence items as needed, to evaluate the project according to federal HOME guidelines, and in order to document compliance with HOME and other applicable federal regulations. The City further reserves the right to request additional documentation in circumstances where a project is requesting other types of City affordable housing funds, a land dedication site, or other local resources or subsidies.

**Below please find a list of the items required to be submitted for this review.**

### APPLICATION

- Complete response to the City's HOME Request for Proposals, including all required certifications and attachments.
- Executive summary containing a brief synopsis of the proposed development and number of units, location, project cost and proposed financing. This should include a brief description of proposed complex (frontal elevation and floor plan only), proposed site plan, amenities, and accessibility/adaptability provisions.

**MARKET DATA:** *Developers must, as part of their application, provide evidence of sufficient demand for the proposed units (all unit types, including HOME and non-HOME units and special needs units).*

- Recent sale/vacancy data for neighborhood - assess sales and rentals for planned units, pricing, demand for similar units, time on the market, vacancy rates, etc.
- Evidence of demand - applications/waitlists, analysis of the pool of potential buyers/renters in eligible income range, vacancy rates and market context (project area and citywide).

Using this data, the application is required to:

- A. Evaluate general demographic, economic, and housing conditions in the community.
- B. Delineate the market area by identifying the geographic area from which the majority of a project's tenants or buyers are likely to come. (census tracts, neighborhoods, etc.)
- C. Quantify the pool of eligible tenants or buyers in terms of household size, age, income, tenure, and other relevant factors.
- D. Analyze the competition by evaluating other housing opportunities with an emphasis on other affordable rental developments or sales opportunities in the market area.
- E. Assess the market for the planned units and determine if there is sufficient demand to sell the HOME-assisted housing within nine months of construction completion or to rent the HOME-assisted housing within 18 months of project completion.
- F. Evaluate the effective demand and the capture rate, usually expressed as a percentage (the project's units divided by the applicant pool). The capture rate is the percentage of likely eligible and interested households living nearby who will need to rent units in the proposed project in order to fully occupy it. The lower this rate, the more likely a project will succeed.

- G. Estate the absorption period. Plan how many units can be successfully leased or sold each month and how long it will take to achieve initial occupancy/sale of the HOME units and stabilized occupancy for the project as a whole.

**DEVELOPER CAPACITY AND FISCAL SOUNDNESS:** *All HOME applications must include financial statements from all underlying owners and guarantors. Developers must have a net worth equal to 10% the total development cost with net liquid assets equal to 3% of the total development cost. At its discretion, the City will consider lower net worth and net liquid assets, if adequate information is provided to the developer's capacity and fiscal soundness. Applicant must provide the amounts and terms for any other financing being provided to the project.*

- Developer Statement of Qualifications that identifies:
  - Recently completed comparable projects
  - All projects underway and/or pending
  - Staff assigned to this project and their role and experience
  - Disclosure of any identity of interest purchases/contracting relationships
  - Current balance sheet
  - Current year budget with comparison of actual performance YTD vs. projections
  - Most recent corporate audit or reviewed financial statements
  - Most recent tax returns (990s for nonprofit developers)
  - Completed CHDO Staff Experience & Organizational Capacity Checklist (as applicable)
- Site and Product Information:
  - Evidence of site control (e.g. option, purchase agreement, city resolution, or deed)
  - Uniform Relocation Act (URA) documentation (as applicable)
  - URA Notice to Seller of Voluntary Sale (as applicable)
  - Seller certification regarding vacancy (as applicable)
  - Rent Roll and evidence of General Information Notices to existing tenants (occupied properties only)
  - Preliminary title report (as applicable)
  - Statement regarding availability of utility connections
  - Assessment record-or other public record documenting date of original construction for rehabilitation projects, showing applicability of Lead-based Paint and/or historic reviews (as applicable)
  - Site-specific environmental record and (as applicable) estimate of remediation costs
  - Radon and mold testing (as applicable)
  - Lead-based Paint risk assessment (as applicable)
  - Evidence of subdivision approval (as applicable)
  - Plans and specifications, including site plan and elevation drawings (if available)
  - Zoning/site plan and building/code review approvals (if available)
  - Resident services and amenities information, including supportive services staff
- Underwriting/Financial Projections:
  - Proforma showing all project costs, construction sources, and estimated sales proceeds
    - The proforma must explicitly show: An itemized breakdown of development hard and soft costs by unit including any allowances for soft costs such as architectural fees, carrying costs, etc.; the hard costs of any buildings and their uses so that the city can complete preliminary HOME cost allocation calculations. (Stand-alone accessory structures like a detached garage may be included in the project but are not HOME-eligible and must be paid for with another funding source.)
  - Commitments and/or pending applications for other financing, both permanent and construction loan sources.
  - Documentation of construction/rehabilitation costs (e.g., estimate by general contractor, preliminary bids, etc.)

- Estimates/documentation of professional services and soft costs (e.g. architectural fees, construction period taxes/insurance, marketing expenses, etc.)

All project costs must be reasonable and customary. The City reserves the right to review any line-item cost to ensure that total project costs are not excessive. Additionally, HOME projects will be subject to the following specific cost limitations:

- The maximum allowable developer fee is 15% total development costs, or as otherwise permitted under TCAC regulations if the project plans to utilize tax credits.
- Acquisition costs are limited to fair market value as determined by a third-party appraisal.

Unless prior approval has been obtained from the City, all project hard costs and all professional fees should be the result of a competitive bidding process. The City expects developers to seek multiple bids, including outreach to women and minority-owned businesses, and identify the most advantageous bidder based on cost, track record of accomplishment, references, experience with similar type projects and other pertinent factors.

#### **MARKETING EFFORT AND BUYER/RENTER INFORMATION**

- Leasing/Sales & Marketing plan outline
- Description of primary market and outreach strategies
- Availability of homebuyer counseling services and appropriate referral plan (as appropriate)
- Availability of appropriate first mortgage products (as appropriate)
- Waiting list(s) of interested buyers/renters
- Income verification package outline

#### **PRIOR TO USE OR ESCROW CLOSING ON HOME FUNDING**

- Documentation of existing property value (e.g. tax assessment, appraisal, etc.)
- Title insurance (as applicable)
- Documentation of utility availability and connection costs
- Water/sewer, electric, gas connections map
- New projects will be required to provide an independent market study for the City

### **HOME PROGRAM**

#### **Background and Program Information**

HOME was created by the National Affordable Housing Act of 1990 (NAHA). In addition to HOME, this Act incorporates several other major new housing initiatives including:

|                          |   |
|--------------------------|---|
| <b>HOPE I</b>            | Transfer of public and Indian housing to home ownership                       |
|                          | Transfer of subsidized, privately owned multifamily housing to home ownership |
| <b>HOPE III</b>          | Promotion of single family ownership for first time home buyers               |
| <b>Preservation</b>      | Preservation of federally subsidized rental housing with expiring subsidies   |
|                          | <b>Special Needs</b> Programs for the elderly and those with special needs    |
| <b>Consolidated Plan</b> | Established comprehensive housing strategy requirements                       |

HOME is a federally funded, large scale grant for housing. Funds are allocated by a formula to participating jurisdictions (PJs), the state and local government who receive funds to operate the program. As a housing program with great flexibility, state and local governments have choices with respect to:

- Type of properties to be assisted
- The types of development (new construction, modest or major rehab, etc.) to be undertaken
- The forms and amounts of financing to be offered

- The quality and type of housing provided
- The households assisted
- Procedures for running the program

The intent of HOME is:

- To expand the supply of decent, safe, sanitary and affordable housing, primarily rental housing.
- To strengthen the abilities of state and local governments to provide housing.
- To assure that federal housing services, financing and other investments are provided to state and local governments in a coordinated, supportive fashion.

HOME is designed as a partnership among the Federal governments, state and local governments and those in the for-profit and non-profit sectors who build, own, manage, finance and support low income housing initiatives. The partnership features of HOME include:

- Matching funds: PJs must add their own resources to the federal funds appropriated for HOME. PJs are required to annually contribute a 25% match for funds disbursed for affordable housing activities.
- Non-profit Partnerships: HOME not only allows, but mandates, partnerships with non-profit developers, sponsors and owners. 15% of each PJ allocation must be set-aside for non-profit.
- Federal Rules, but Local Design and Implementations: The HOME regulations provide the policy framework for HOME, but state and local jurisdictions design programs within the boundaries of national policy that meet their needs.
- Federal Money, but Local Monitoring: The federal government provides much of the money, but PJs must carefully monitor rents and occupancy to assure that the funds benefit low income households.

## **ALLOCATION OF FUNDS**

Each PJ receives a formula allocation. Overall, 40% of funds are allocated to states and 60% to local governments.

Within the formulas allocation, PJs must set-aside a minimum of 15% of every allocation for Community Housing Development Organizations (CHDOs).

## **MINIMUM FORMULA ALLOCATIONS**

States receive a minimum allocation of \$3 million dollars.

Local Governments may participate in the HOME program if:

- Their formula allocation is \$750,000 or greater; or
- Their formula allocation is less than \$750,000 but more than \$500,000 and
  - the state, local government or both transfer sufficient resources to the jurisdiction to achieve at least a \$750,000 funding level;
  - the local government has a PHA; and
  - the local government has a demonstrated capacity to carry out the HOME program.

States may transfer their HOME monies to local governments in order to help them achieve the \$750,000 threshold.

In fiscal years in which Congress appropriates less than \$1.5 billion for the HOME Program, the minimum threshold is reduced to \$500,000.

## **DESIGNATION AS A PARTICIPATING JURISDICTION AND PROGRAM DESCRIPTIONS**

In order to become a PJ, government must:

- Meet the \$750,000 (\$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion) funding threshold or provide one or both of the following:
  - Authorization from the State that it will transfer state HOME funds. States not wishing to become PJs may transfer funds sufficient to allow local PJs to achieve the \$750,000 threshold level.

- Evidence (a letter from the governor or chief executive officer) that state or local funds are approved and budgeted.
- Notify HUD of their intent to become a PJ within 30 days of publication of the NOFA.
- Have a HUD approved Consolidated Plan (comprehensive housing affordability strategy.)

Program descriptions are submitted annually, general within 45 days of the publication of a NOFA, or 45 days of designation as a PJ, whichever is later.

## **COMMITMENT AND EXPENDITURE DEADLINES**

Time frames for committing and expending HOME funds are very short. From the time HUD executes a HOME Investment Partnership Agreement with the PJ, the PJ has:

- **24 months** to enter into written agreements with developers, owners, contractors, sub-recipients, state recipients and Community Housing Development Organizations to reserve funds.
- **5 years** to expend funds.

Failure to meet these time frames results in loss of HOME funding.

## **HOME – THE FOUNDATION**

Affordable housing needs identified in a State or local government Consolidated Plan are typically diverse. HOME Program Funds can be used to address many of these diverse needs – whether for property purchases, property development or property improvement and for homebuyers, existing homeowners or tenants.

## **OVERVIEW**

The HOME Program offers communities the opportunity to address a wide array of affordable housing needs.

The HOME Program statute and regulations also contain numerous new concepts and requirements, often expressed as thresholds and percentages. This module is designed to provide “the foundation” or basic requirements of the Program. It provides a summary of the key terms, players and program activities possible in the HOME Program. These requirements will be discussed in more detail later in this training.

## **SECTION 8**

CITY OF DAVIS

CRITICAL NEEDS

## **II. HOME GENERAL POLICIES**

The HOME Grant program provides federal funding to provide affordable housing through the development or implementation of projects such as homebuyer programs, development of rental units, tenant-based rental assistance and owner-occupied property rehabilitation.

The primary beneficiaries of HOME funded projects are low income persons and households at or below 60% of the median income. At least 90% of the activities of a project must serve this population.

Organizations applying for HOME grant funds receive preference if one or more of the following are met:

- Serve clients who are very low and extremely low income (50% of median income and below.)
- Leverage funds from the community or other private sources
- Benefit clients who are not currently served or are under-served

## **SECTION 9**

### **GUIDELINES AND REGULATIONS**

# **HOME Investment Partnerships Program**

## **Final Rule**

### **24 CFR Part 92**

# HOME Investment Partnerships Program Final Rule

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## **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 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 are able to 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 HUD, Indian Housing Authority (IHA), Public Housing Agency (PHA), and Secretary are defined in 24 CFR Part 5.

**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 Secs. 92.203 and 92.610.

**Annual income.** See Secs. 92.203 and 92.610.

**Certification** means a written assertion, based on supporting evidence, which must be kept available for inspection by HUD, the Inspector General and the public, which assertion is deemed to be accurate for purposes of this part, unless HUD determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

**Commitment means:**

1. The participating jurisdiction has entered into a legally binding agreement with a state recipient, a sub-recipient, or a contractor to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance or has entered into a written agreement reserving a specific amount of funds to a CHDO, or commit to a specific local project, as defined in paragraph (2) of this definition.
2. Commit to a specific local project, which means:
  - i. For a project which is privately owned when the commitment is made:
    - A. If the project is for rehabilitation or new construction, a written legally binding agreement between the participating jurisdiction and the project owner under which the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or sub-recipient) agrees to provide HOME assistance to the owner for an identifiable project as defined in this part that can reasonably be expected to start construction within twelve months of the agreement and in which the owner agrees to start construction within that period.
    - B. If funds are used for tenant-based rental assistance, the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or sub-recipient) has entered into a rental assistance contract with the owner or the tenant in accordance with the provisions of Sec. 92.211.
    - C. If the project is for acquisition, a written legally binding agreement, i.e., contract for sale, between the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or sub-recipient) and the project owner under which the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or sub-recipient) agrees to provide HOME assistance to the owner for purchase of the project that can reasonably be expected to be accomplished within six months of the agreement and in which the owner agrees to transfer title within that period.
  - ii. For a project that is publicly owned when the commitment is made, the Project Set-Up Report submitted under the Cash and Management Information System which identifies a specific project that will start construction within twelve months of receipt of the Project Set-Up Report.
  - iii. Under both paragraphs (2)(i) and (ii) of this definition, the date HUD enters into the Cash and Management Information System (Sec. 92.502) an acceptable Project Set-Up Report for a project is deemed to be the date of project commitment.

**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-exempt ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986;
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. 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 representatives 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 accomplished 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 (from the date the participating jurisdiction provides HOME funds to 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 by part 812 of this title.

**HOME funds** means funds made available under this part through allocations and reallocations, plus all repayments and interest or other return on the investment of these funds.

**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, ownership or membership in a cooperative, or equivalent form of ownership approved by HUD. The ownership interest may be subject only to the restrictions on resale required under Sec. 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.

**Household** means one or more persons occupying a housing unit.

**Housing** includes manufactured housing and manufactured housing lots. 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.

**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 Sec. 570.3 of this title.

**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. 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 any jurisdiction (as defined in this section) that has been so designated by HUD in accordance with Sec. 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 sub-recipient 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 sub-recipient, 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 Sec. 92.205(b) of HOME funds or matching contributions.

**Project** means a site or an entire building (including a manufactured housing unit), or two or more buildings, together with the site or (when permissible) sites on which the building or buildings are located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under this part. Project includes all the activities associated with the site and building. A project may include more than one site only if the sites are within a four-block area of each other or if the project is undertaken pursuant to subpart M (HOME Funds for Indian Tribes) of this part.

**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 Sec. 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. The reconstructed housing must be substantially similar (i.e., single- or multi-family housing) to the original housing. 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. SRO does not include facilities for students.

**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 Sec. 92.201(b)(2).

**Sub-recipient** 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 sub-recipient. The participating jurisdiction's selection of a sub-recipient 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; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by HUD in accordance with Sec. 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 Sec. 570.3 of this title.

**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.

## **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
  1. Units of general local governments that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved under Sec. 92.101; and
  2. 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:
  1. For grants to Indian tribes, one percent (or such other percentage or amount, as authorized by Congress) of the total funds appropriated;
  2. Up to such amounts as may be authorized by law for housing education and organization support and for coordinated federal support activities; and
  3. For allocations to insular areas, an amount that is the greater of \$750,000 or 0.2 percent of the total funds appropriated.
- 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.
  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 pro rata basis, except that no unit of general local government allocation is reduced below \$500,000.
  5. For the purpose of determining the formula allocation in fiscal years in which Congress appropriates less than \$1.5 billion of HOME funds, \$335,000 is substituted for \$500,000 each time it appears in this paragraph (d), and \$167,500 is substituted for \$250,000 each time it appears in this paragraph (d).
- 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 pro rata 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 pro rata 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.

## **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 responsible 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 pertinent 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 and agreed to. This restriction does not apply if the Field Office manager 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 area 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 to the states as provided in accordance with the requirements in subpart J for reallocating funds initially allocated to a state.
- e. *Notice of allocation amounts.* HUD will notify each insular area, in writing, as to the amount of its HOME allocation that HUD has determined for the insular area in accordance with this section.

## **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 to HUD containing the information described in paragraph (b) of this section.
- b. *Content of program description.* The program description must provide the following information:
  - 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, households 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 Sec. 92.254(a)(4);
  - 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 Secs. 92.210 and/or 92.211.

6. If an insular area intends to use other forms of investment not described in Sec. 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 Secs. 92.350 and 92.351, respectively.
- c. *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 federal assistance than is necessary to provide affordable housing;
  2. If the insular area intends to provide tenant-based rental assistance, the certification required by Sec. 92.210 or Sec. 92.211.
  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 Sec. 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 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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, Sec. 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, Sec. 92.65 applies.
- b. The requirements of subpart H (Other Federal Requirements) of this part apply as follows: Sec. 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 “**sub-recipient**”, “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.

## **SUB-PART 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 sub-recipients.
- 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's; 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. A unit of general local government must have a formula allocation under Sec. 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:
  1. HUD finds that 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. A state, subject to the distribution of assistance requirements in Sec. 92.201, may authorize such a transfer even if the state is not designated a participating jurisdiction. If the state is not designated a participating jurisdiction or does not receive an allocation, it may only make

transfers to units of general local government in the amount necessary for the respective units of general local government to meet the \$750,000 participation threshold.

- 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 Sec. 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 or has submitted an abbreviated consolidated plan (as provided for in Sec. 91.235 of this subtitle) must submit to HUD, not later than 90 days after providing notification under Sec. 92.103, a consolidated plan in accordance with part 91 of this subtitle.

#### **92.105 DESIGNATION AS A PARTICIPATING JURISDICTION**

When a jurisdiction has complied with the requirements of Secs. 92.102 through 92.104 and HUD has approved the jurisdiction's consolidated plan in accordance with part 91 of this subtitle, 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 Sec. Sec. 92.102 through 92.105 do not apply, unless HUD revokes the designation in accordance with Sec. 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 Sec. 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, plus funds provided under Sec. 91.102(b), 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 Sec. 92.500 in accordance with Sec. 92.451.

## **SUB-PART 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 attachments.

## **SUBPART E – PROGRAM REQUIREMENTS**

### **92.200 PRIVATE-PUBLIC PARTNERSHIP**

Each participating jurisdiction must make all reasonable efforts, consistent with the purposes of this part, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in the implementation of the jurisdiction's approved consolidated plan, including participation in the financing, development, rehabilitation and management of affordable housing.

Nothing in the previous sentence shall preclude public housing authorities from fully participating in the implementation of a jurisdiction's approved consolidated plan.

### **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 Sec. 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, and 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, and 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 Sec. 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.
  3. The participating jurisdiction must follow the requirements in Sec. 5.617 when making subsequent income determinations of persons with disabilities who are tenants in HOME-assisted rental housing or who receive tenant-based rental assistance.

- 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 Sec. 92.218 through Sec. 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 Sec. 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, Sec. 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 sub-recipient, "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 Sec. 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 Sec. 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 Sec. 92.503(b) (except for project-specific assistance to community housing development organizations as provided in Sec. 92.301(a)(3) and Sec. 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 Sec. 92.251;
  - 2. For rehabilitation, costs:
    - i. To meet the property standards in Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 92.102(b) to meet or exceed participation threshold requirements that fiscal year. A State that transfers any HOME funds in accordance with Sec. 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 Sec. 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 Sec. 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 Sec. 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 sub-recipient 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 Sec. 92.300 (e) and (f).
- b. HOME funds may be used for capacity building costs under Sec. 92.300(b).

- 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 Sec. 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. *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.
  - 3. *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 Sec. 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 Sec. 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.

- 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. *Sub-recipient or State recipient costs.* The participating jurisdiction may authorize its sub-recipient 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 Sec. 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 Sec. 92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see Sec. 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under Sec. 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 Sec. Sec. 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**

- a. 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:
- 1. Not less than 90 percent of:
    - i. 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
    - ii. The dwelling units assisted with such funds are occupied by families having such incomes;and
  - 2. The remainder of:
    - i. 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
    - ii. 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.

## MATCHING CONTRIBUTION OF 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.
- b. *Shortfall amount from State or Local resources.* Amounts made available under Sec. 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 Sec. 92.207), CHDO operating expenses (pursuant to Sec. 92.208) and capacity building (pursuant to Sec. 92.300(b)) of community housing development organizations are not required to be matched.
- d. *Match contribution for other programs.* Contributions that have been or will be counted towards satisfying a matching requirement of another Federal grant or award may not count toward 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:
  - 1. It is made with respect to a tenant who is assisted with HOME funds; or
  - 2. It is made with respect to HOME-assisted housing; or
  - 3. It is made with respect to any portion of a project (including a mixed-use project under Sec. 92.256) not less than 50 percent of the dwelling units of which 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 (TBRA) 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 Secs. 92.203 (income determinations), 92.210 (security deposits), 92.211 (TBRA, except for 92.211(c), term of rental assistance
    - ii. The participating jurisdiction must demonstrate in writing that such assistance meets the provisions of Secs. 92.203, 92.210, 92.211, and 92.253(a) and (b).
  - 2. For affordable housing projects that are not HOME-assisted:
    - i. The contribution must be made with respect to housing that qualifies as affordable housing under Sec. 92.252 or Sec. 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 Sec. 92.252 and Sec. 92.253(a) and (b) (tenant protections), or Sec. 92.254, whichever are applicable, the property standards requirements of Sec. 92.251, and income determinations made in accordance with Sec. 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 these HOME match-eligible projects to ensure continued compliance with the requirements of Secs. 92.203

(income determinations), 92.252(rental), 92.253(a) and (b) (tenant protections) and 92.254 (ownership). No other HOME requirements apply.

- iv. The match contribution may be in any eligible form of match except those in Secs. 92.220(a)(2) and (4).
- 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 Sec. 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 Sec. 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.
  4. With respect to housing receiving financing for rehabilitation; a rate equal to the 10-year Treasury note rate plus 400 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 Sec. 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 Sec. 92.258(d)(3)(ii), payments to a project reserve account beyond payments permitted by Sec. 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 Sec.

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 (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. 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 Sec. 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 Sec. 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, forgone, or deferred is credited at the time the state or local government officially waives, foregoes, or defers the taxes, fees, or other charges and notifies the project owner.
- 4.** The value of land or other real property is credited at the time ownership of the property is transferred.
- 5.** The cost of investment in infrastructure directly required for affordable housing assisted with HOME funds is credited at the time funds are expended for the infrastructure or at the time the HOME funds are committed to the affordable housing if the infrastructure was completed before the commitment of HOME funds.
- 6.** Donated material is credited as match at the time it is used for affordable housing; donated or voluntary labor is credited at the time the work is performed.
- 7.** A loan made from bond proceeds under Sec. 92.220(a)(5) is credited at the time of the loan closing.

- 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 will be carried over and applied to future fiscal years match liability.

- 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.

**a.** *Reduction for fiscal distress*

1. *Distress criteria for local government participating jurisdictions.* As determined and published annually by HUD, 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 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 of the Bureau of the Census.
2. *Distress criteria for participating jurisdictions that are States.* As determined and published annually by HUD, 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 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 of 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 of 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 of 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 made 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, HUD may reduce the matching requirement specified in Sec. 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 local participating jurisdiction, and for a State participating jurisdiction, 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. [Participating

jurisdictions for which a declaration of major disaster was made in FY 1992 are permitted to request a match reduction for FY 1993 and FY 1994.] To request a reduction, a participating jurisdiction must submit to the local HUD Field Office a copy of the disaster declaration.

## **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 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.

- 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 Sec. 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.
- 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.

| <b>HOME Ownership Assistance/HOME amount per unit</b>   | <b>Minimum period of affordability in years</b> |
|---|---|
| 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  |

- 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 Sec. 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 Sec. 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 Sec. 92.203(a)(1)(ii), must examine the income of each tenant, in accordance with Sec. 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 Sec. 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 transitional housing tenancy period; or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.
- 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. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
  4. 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.
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.

| 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                                       |

- 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 Sec. 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 down payment 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: TC12OC91.007

|   |                |                                |
|---|----------------|--------------------------------|
| HOME Investment/HOME Investment + homeowner investment      | X Net Proceeds | = HOME amount to be recaptured |
| Homeowner investment/HOME investment + homeowner investment | X Net Proceeds | = amount to homeowner          |

4. *Owner investment returned first.* The participating jurisdiction may permit the homebuyer to recover the homebuyer's entire investment (down payment 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 Sec. 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 Sec. 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of Sec. 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 Sec. 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.
8. *Contract to Purchase.* If HOME funds are used to assist a homebuyer who has entered into a contract to purchase housing to be constructed, the homebuyer must qualify as a low-income family at the time the contract is signed.

*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.

*Ownership interest.* The ownership in the housing assisted under this section must meet the definition of "homeownership" in Sec. 92.2.

*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 Sec. 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 Sec. 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 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 Sec. 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 Sec. 92.252.
  - 3.**     The ECHO housing must remain affordable for the period specified in Sec. 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 (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 DEVELOPMENT HOUSING ORGANIZATIONS**

### **92.300 SET ASIDE FOR COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS (CHDO)**

#### **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, its subsidiary or a partnership of which it or its subsidiary is the managing general partner. 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. down-payment assistance) and not be considered a sub-recipient.
- 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 CHDOs, up to 20 percent of the minimum CHDO set aside of 15 percent specified in paragraph (a) of this section (but not more than \$150,000 during the 24 month period) may be committed to develop the capacity of CHDOs in the jurisdiction.
- c. Up to 10 percent of the HOME funds reserved under this section may be used for activities specified under Sec. 92.301.
- d. HOME funds required to be reserved under this section are subject to reduction, as provided in Sec. 92.500(d).

- e. If funds for operating expenses are provided under Sec. 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 includes organization support and housing education provided under Sec. 92.302 (c)(1), (c)(2), and (c)(6), as well as funds for operating expenses provided under Sec. 92.208 and administrative funds provided under Sec. 92.207 (if the community housing development organization is a sub-recipient or contractor of the participating jurisdiction).

## **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 Sec. 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 expenses.* A loan under this paragraph (a) of this section may be provided to cover project expenses 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, site control and title clearance. General operational expenses of the community housing development organization are not allowable expenses.
  - 3. *Repayment.* A community housing development organization that receives a loan under paragraph (a) of this section 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 limit specified in paragraph (a) of this section, 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 under paragraph (b) of this section 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 buy the property), a preliminary financial commitment, and a capable development team.
  - 3. *Repayment.* A community housing development organization that receives a loan under paragraph (b) of this section 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 part 5 apply 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 Sta. 108).

### **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) 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, decision making, 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. In accordance with 24 CFR part 58, the jurisdiction or insular area must carry out the environmental review of an activity and obtain approval of its request for release of funds before HOME funds are committed for the activity.
  - 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 (as defined in Sec. 92.206), including construction or non-construction 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.
- 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 constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), The Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M AND R of this title.

[64 FR 50224, Sept. 15, 1999]

- a. *Applicability.* In the procurement of property and services by participating jurisdictions, State recipients, and sub-recipients, 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 decision-making 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 sub-recipient 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 decision making 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 decision making process with respect to the specific assisted housing in question;
  - iii. Whether the tenant protection requirements of Sec. 92.253 are being observed;
  - iv. Whether the affirmative marketing requirements of Sec. 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.

#### **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.

### **SUBPART I – TECHNICAL ASSISTANCE**

#### **92.400 COORDINATED FEDERAL SUPPORT FOR HOUSING STRATEGIES**

- a. *General.* HUD will provide assistance to increase the capacity to identify and meet the needs to increase the supply of affordable housing 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 Sec. 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 Sec. 92.102;
    - ii. Provide notice of its intent to become a participating jurisdiction in accordance with Sec. 92.103; or
    - iii. Submit its consolidated plan in accordance with part 91 of this subtitle; or
  - 2. HUD after providing for amendments and resubmissions in accordance with part 91 of this subtitle, disapproves the jurisdiction's housing strategy.
- 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 Sec. 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 Sec. 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 Sec. 92.454.
  - 2. If the funds to be reallocated are from a unit of general local government:
    - i. Located in a State that is a 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 Sec. 92.454.

HUD will reallocate, under this section, any HOME funds reduced or recaptured by HUD from a participating jurisdiction's HOME Investment Trust Fund under Sec. 92.300(d). HUD will reallocate these funds by competition in accordance with criteria in Sec. 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. HUD will invite applications through Federal Register publication of a Notice of Funding Availability (NOFA), in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and the requirements of sec. 217(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)), for HOME funds that become available for competitive reallocation under Sec. 92.451 or Sec. 92.452, or both. The NOFA will describe the application requirements and procedures, including the total funding available for the competition and any maximum amount of individual awards. The NOFA will also describe the selection criteria and any special factors to be evaluated in awarding points under the selection criteria.
- b. The NOFA will include the selection criteria at sec. 217(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)), with the following maximum number of points awarded for each category of criteria:
  1. *Commitment.* Up to 25 points for the criteria at sec. 217(c)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(1));
  2. *Actions.* Up to 50 points for the criteria at sec. 217(c)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(2)); and
  3. *Policies.* Up to 25 points for the criteria at sec. 217(c)(3) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(3)).

### 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 Secs. 92.451 and 92.452;
  2. Any HOME funds available for reallocation because HUD reduced or recaptured funds from participating jurisdiction under Sec. 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 Sec. 91.75(c)(2) of this title for failure to submit in a timely manner a performance report required by Sec. 91.75 of this title that is satisfactory to HUD; and
  4. Any HOME funds remitted to HUD under Sec. 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 Sec. 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 Sec. 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.

## SUBPARK 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 Sec. 92.50 (including for a local participating jurisdiction, any transfer of the State's allocation pursuant to Sec. 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 Sec. 92.102(b)(2)) or local funds that enable the jurisdiction to meet the participating threshold amount in Sec. 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 Sec. 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 Sec. 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.
  - 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 Sec. 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 Sec. 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.

## **92.501 HOME INVESTMENT PARTNERSHIP AGREEMENT**

Allocated and reallocated funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement must ensure 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 Sec. 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 sub-recipient to retain the program income for additional HOME projects pursuant to the written agreement required by Sec. 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 Sec. 92.252 or Sec. 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 Secs. 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 Sec. 92.454.
- c. *Recaptures.* HOME funds recaptured in accordance with Sec. 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, sub-recipient, or community housing development organization to retain the recaptured funds for additional HOME projects pursuant to the written agreement required by Sec. 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 Sec. 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, sub-recipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance of each contractor and sub-recipient 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, sub-recipient, 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 Sec. 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 Sec. 92.252 or Sec. 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 Sec. 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 Sec. 92.352 and the intergovernmental review process in Sec. 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 Sec. 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 Sec. 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, sub-recipients, 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. *Sub-recipient.* A sub-recipient 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 sub-recipient 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 sub-recipient for additional eligible activities.

- iii. *Uniform administrative requirements.* The agreement must require the sub-recipient to comply with applicable uniform administrative requirements, as described in Sec. 92.505.
  - iv. *Other program requirements.* The agreement must require the sub-recipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the sub-recipient does not assume the participating jurisdiction's responsibilities for environmental review under Sec. 92.352 and the intergovernmental review process in Sec. 92.357 does not apply.
  - v. *Affirmative marketing.* The agreement must specify the sub-recipient's affirmative marketing responsibilities in accordance with Sec. 92.351, if the HOME funds administered by the sub-recipient will be used for housing containing five or more assisted units.
  - vi. *Requests for disbursement of funds.* The agreement must specify that the sub-recipient 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 sub-recipient requests funds from the participating jurisdiction.
  - vii. *Reversion of assets.* The agreement must specify that upon expiration of the agreement, the sub-recipient 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 sub-recipient 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 sub-recipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers, sub-recipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors, the sub-recipient 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 Sec. 92.252 or Sec. 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 Sec. 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 Sec. 92.251 and the lead-based paint requirements in Sec. 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 Sec. 92.251 for the duration of the affordability period.
- v. *Other program requirements.* The agreement must require the owner, developer or sponsor to carry out each project in compliance with the following requirements of sub-part H of this part:
  - A. 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 Sec. 92.351.
  - B. The federal requirements and nondiscrimination established in Sec. 92.350.
  - C. Any displacement, relocation and acquisition requirements imposed by the participating jurisdiction consistent with Sec. 92.353.
  - D. The labor requirements in Sec. 92.354.
  - E. The conflict of interest provisions prescribed in Sec. 92.356(f).
- 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 Sec. 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 Sec. 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 Sec. 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 Sec. 92.300, the agreement must include the appropriate provisions under Sec. Sec. 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 Sec. 92.505 and 92.506 do not apply, and the contractor cannot assume the participating jurisdiction responsibilities for environmental review, decision making, and action under Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 92.251 and to verify the information submitted by the owners in accordance with the requirements of Sec. 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 Sec. 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 sub-recipient receiving HOME funds: Secs. 85.6, 85.12, 85.20, 85.22, 85.26, 85.32-85.34, 85.36, 85.44, 85.51, and 85.52, of this title.

- b. *Non-profit organizations.* The requirements of OMB Circular No. A-122 and the following requirements of 24 CFR part 84 apply to sub-recipients receiving HOME funds that are private nonprofit organizations: Secs. 84.2, 84.5, 84.13-84.16, 84.21, 84.22, 84.26-84.28, 84.30, 84.31, 84.34-84.37, 84.40-84.48, 84.51, 84.60-84.62, 84.72, and 84.73, of this title.
- c. OMB Circulars referenced in this part may be obtained from: Executive Office of the President, Publication Service, 725 17<sup>th</sup> Street, N.W., Suite G-220, Washington D.C. 20503; telephone: (202) 395-7332.

## **92.506            AUDIT**

Audits of the participating jurisdiction, State recipients, and sub-recipients must be conducted in accordance with 24 CFR 84.26 and 85.26.

## **92.507            CLOSEOUT**

HOME funds will be closed out in accordance with procedures established by HUD.

## **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 Sec. 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 Sec. 92.102(b).
  - 2. *Program records.*
    - i. Records of the efforts to maximize participation by the private sector as required by Sec. 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 Sec. 92.205(b).
    - iii. The subsidy layering guidelines adopted in accordance with Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 92.254(a)(5), in the Consolidated Plan.
- ix. Records demonstrating compliance with the matching requirements of Sec. 92.218 through Sec. 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 Sec. 92.500(d).
- xi. Records demonstrating compliance with the fifteen percent CHDO set-aside requirement of Sec. 92.300(a).
- xii. Records documenting compliance with the ten percent limitation on administrative and planning costs in accordance with Sec. 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 Sec. 92.205(c), the maximum per-unit subsidy amount of Sec. 92.250(a) and the subsidy layering guidelines adopted in accordance with Sec. 92.250(b).
- iv. Records demonstrating that each project meets the property standards of Sec. 92.251 and the lead based paint requirements of Sec. 92.355.
- v. Records demonstrating that each family is income eligible in accordance with Sec. 92.203.
- vi. Records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of Sec. 92.209(c), including the tenant preference requirements, the rent reasonableness requirements of Sec. 92.209(f), the maximum subsidy provisions of Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 92.254 for the required period.
- xii. Records demonstrating that any pre-award costs charged to the HOME allocation meet the requirements of Sec. 92.212.

**4. *Community Housing Development Organizations (CHDOs) Records.***

- i. Written agreements reserving HOME funds to CHDOs in accordance with Sec. 92.300(a).
- ii. Records setting forth the efforts made to identify and encourage CHDOs, as required by Sec. 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 Sec. 92.504.
- v. Records concerning the use of CHDO set-aside funds, including funds used to develop CHDO capacity pursuant to Sec. 92.300(b).
- vi. Records concerning the use of funds for CHDO operating expenses and demonstrating compliance with the requirements of Sec. 92.208, Sec. 92.300(e) and Sec. 92.300(f).
- vii. Records concerning the tenant participation plan required by Sec. 92.303.
- viii. Records concerning project-specific assistance to CHDOs pursuant to Sec. 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 Sec. 92.102(b).
- ii. Records concerning the HOME Investment Trust Fund Treasury account and local account required to be established and maintained by Sec. 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 Sec. 92.504.

- ii. Records demonstrating compliance with the applicable uniform administrative requirements required by Sec. 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 Sec. 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 Sec. 92.352 and 24 CFR part 58, including flood insurance requirements.
- iv. Records demonstrating compliance with the requirements of Sec. 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 Sec. 92.353(c)(2)(i)(A), moving into the property on or after the date described in Sec. 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.
- v. Records demonstrating compliance with the labor requirements of Sec. 92.354, including contract provisions and payroll records.
- vi. Records demonstrating compliance with the lead-based paint requirements of Sec. 92.355.
- vii. Records supporting exceptions to the conflict of interest prohibition pursuant to Sec. 92.356.
- viii. Debarment and suspension certifications required by 24 CFR parts 24 and 91.
- ix. Records concerning intergovernmental review, as required by Sec. 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 Sec. 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 Sec. 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 sub-recipients, 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 Sec. 92.500 and expended the funds in the United States Treasury account as required by Sec. 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 Sec. 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 Sec. 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 Sec. 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. Proceedings will be conducted in accordance with 24 CFR part 26, subpart B.

## **SECTION 10**

### **HOME UNDERWRITING & SUBSIDY LAYERING REVIEW GUIDELINES**

## HOME Underwriting Guidelines and Subsidy Layering Review

Before committing funds to a HOME project, the City of Davis must evaluate the project in accordance with set underwriting and subsidy layering guidelines adopted to aid the city in determining:

- A. A reasonable level of profit or return on owner's or developer's investment in the project and must not invest any more HOME funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at minimum, the period of HOME unit affordability) and;
- B. Will not provide a profit or return on the owner or developer's investment that exceeds the city's established standards for the size, type, and complexity of the project.

City's guidelines also require the City to undertake and complete:

- C. An examination of the sources and uses of funds for the project and determine that the costs are reasonable; and
- A. An assessment, at minimum, of the current market demand in the neighborhood in which the project will be located, as well as an assessment of the experience and financial capacity of the project development team; and review firm written financial commitments for the project.

Underwriting capacity does not apply to owner-occupied rehabilitation projects where assistance is provided as an amortizing loan, grant or deferred, forgivable loans to owner-occupants, or to homebuyer assistance projects that do not involve development or rehabilitation of housing, such as downpayment assistance. In addition, the City is not required to perform neighborhood market analyses or evaluate developer capacity for owner-occupied rehabilitation projects, or projects involving HOME-funded downpayment assistance, but no HOME-funded development.

### Overview of Application and Review Process

Applications submitted through the annual CDBG/HOME Request for Proposals (RFP) process in request of HOME funding will be reviewed by staff and the applicant will be contacted to clarify any issues and/or request additional information during the process. When staff has all of the necessary information, a review of the project requesting HOME funds, using the Underwriting and Subsidy Layering Guidelines, will be completed.

The Social Services Commission will evaluate the underwriting and subsidy layering review, as well as the application and any additional information supplied on the project by the developer. Their recommendation will be brought before the Davis City Council for a final determination of funding. The City reserves the right to exceed or modify discretionary aspects of the guidelines based on the type and ongoing needs of the specific project being reviewed (e.g. adequate reserves for special needs housing, debt service coverage for extremely low income units, etc.) and the requirements of its other funding sources.

The applications are evaluated on the following criteria:

- A. Experience of the applicant and of the development team members in projects of similar size and type
- B. The financial strength of the applicant to carry out the project and the project's financial feasibility, both the development and operating budgets
- C. A subsidy layering analysis that determines the minimum amount of HOME funds necessary for project feasibility
- D. Documented market need for the project and a satisfactory marketing plan
- E. Readiness to secure necessary financing, proceed and ability to close and expend HOME funds in a timely manner

While the above are the primary criteria, the City reserves the right to consider other factors - including high need areas, population served, other community benefit, leveraging opportunities, preservation of existing housing units, etc. in making its funding awards.

City of Davis HOME project review will utilize the underwriting criteria as set forth below.

Generally underwriting will review the risk analysis of the project including market risk, developer risk, and project risk.

- Market risk is defined as the likelihood that the units can be sold or leased/absorbed in the market.
- Developer risk is defined as the likelihood that the developer can complete the project on time and budget.
- Project risk is defined as the adequacy and reasonableness of the costs and sources to complete and lease or sell the project within HOME deadlines and for required affordability periods.

The assessment of each portion of the underwriting criteria is detailed on the following pages.

### **Development Entity and Project Team's Capacity**

The City will assess the capacity of the developer/development entity and key members of the development team - in particular, the contractor (if one is selected); the architect; the marketing entity; and the management entity - to successfully complete the project. In particular, the City will assess the level of risk associated with the following:

- A. The experience of the developer and development team on projects of similar size, scope, and complexity. The City will review the resumes and, when appropriate, the references of the developer, contractor, architect, marketing agent, and property management entity.
- B. The overall staff capacity and the assigned staff to the project of the developer and development team to carry out the project tasks within the projected construction and occupancy period.
- C. The financial strength of the developer, including its liquidity and level of unrestricted net assets or net worth. The City will primarily review the two most recent years of audited financial statements to make a determination.

### **Market Need/Study and Marketing/Tenant Selection Plan**

Projects that submit for HOME grant funds will be required to provide market data (comparable rents, wait lists, etc.) as part of the initial application, as described in the application checklist, and new projects or projects with a change of housing type will be required to provide a full market study done by an independent third party prior to closing on the funds. Small projects may provide evidence of the local need and market demand for the project through documentation of local market conditions and the demand for comparable new or existing affordable rental developments in the primary market area. The City will assess the level of market risk associated with the project through a review of the submitted data, along with the City's experience on recently completed affordable rental developments.

As a condition of any HOME funding for substantial rehabilitation or new developments, the City will require the submission of an outline of a Leasing/Sales and Marketing Plan. The plan will describe the proposed marketing efforts (including translations and outreach to special needs and minority groups), the process for filling the units initially and upon turnover, including any approved local preference. The City will review the capacity of the point person for the marketing and outreach on the project.

### **Location, Property and Neighborhood Standards**

To the greatest extent feasible, the City looks to fund developments that are integrated into new and existing subdivisions and are:

- A. located close to employment opportunities, grocery stores, public services, health care, public transportation, schools, and recreational areas;
- B. without foreseeable environmental impacts, or none that cannot be mitigated; and
- C. consistent with local sustainable development principles and goals.

An analysis of the locational, environmental, and sustainability issues, along with whether the project provides a greater choice of housing opportunities for low income and minority households through a variety of housing types and sizes, will be included in staff's Underwriting Risk Analysis.

### **Design and Accessibility Issues**

The City of Davis has an established Universal Access Ordinance, which all new projects with single family units and units not otherwise exempt from the ordinance must adhere to when designing a project. The City also has a policy goal of maximizing accessibility within its affordable rental housing projects as a means for providing housing that can accommodate and integrate a variety of needs groups. For new construction of five (5) or more rental units and substantial rehabilitation projects of fifteen (15) dwelling units or more, a minimum of two (2) percent of the dwelling units (but at a minimum no less than one unit) must be accessible to individuals with sensory impairments (i.e. hearing or vision impairments). An analysis of the design and accessibility issues is also included in the City's Underwriting Risk Analysis for the project.

### **Financial Feasibility Analysis**

The City needs to make a determination that the project is financially feasible in order to make any conditional funding award. The financial feasibility analysis, included in the Underwriting Risk Analysis, will include a review of both the project's development (sources and uses) and operating budgets.

#### **A. Development Budget:**

**Sources:** To the extent that other financing has already been secured by the project, applicants will be required to provide copies of commitment letters or at a minimum letters of interest from lenders for all the funding sources identified in the development budget. For low income housing tax credit projects, staff will analyze the projected amount of equity raised with the guidance provided to applicants. Staff will compare the total amount of public subsidy requested against that of recent HOME-funded projects of similar affordability, size, and type, taking into consideration market changes and availability of other affordable housing funding sources.

**Uses-Acquisition:** For projects that have an acquisition expense, the applicant will be required to provide an appraisal from an independent party that justifies the acquisition cost.

**Uses-Construction:** The applicant will be required to provide a line item construction cost estimate that includes both site work and building construction. Staff will assess the reliability of the estimate based upon by whom (developer, architect, contractor) and by what method (comparable projects, contractor pricing, actual bids) the estimate was produced. A construction contingency of 5% above the estimate for new construction and 10% for substantial rehab projects is acceptable. Moderate rehab project contingency will be reviewed individually based on rehab scope, age, and type of project.

Staff will compare the overall per square foot (PSF) total construction cost to the range of PSF costs of recent similar HOME projects. The analysis will note any unusual project factors- lack of nearby infrastructure or environmental issues that affect site work costs, special project design elements such as enhanced accessibility or sustainability, etc.- that impact the cost estimate, as was as current construction market conditions.

In general, the City shall expect that the contractor's general conditions, overhead, and profit should be no more than the industry standard of 14% of the site and building construction costs.

**Uses-Soft Costs:** These include financing costs such as loan interest, permits, legal fees, property appraisals, credit and title costs, etc. Also included are engineering, architectural, or related professional services, project related audit costs, relocation costs, affirmative marketing expenses, and any lender required

capitalized reserves. HUD requirements specifically state that project soft costs must be "reasonable and necessary". A soft cost contingency of up to 5% of total development costs is acceptable.

The City will require additional documentation and justification from the applicant when soft costs exceed 5% of total development costs on non-tax credit projects and when soft costs exceed 20% of total development costs on tax credit projects.

**Uses-Developer Overhead and Fee:** The City's maximum allowable developer overhead and fee is 15% of the total of hard (acquisition and construction) and soft costs, or as otherwise permitted under TCAC regulations.

**Uses-Total Development Cost (TDC) Per Unit:** The City does not have a maximum per unit TDC limit; however, the City has an obligation to use its limited HOME resources in the most efficient manner possible. As with other parts of the development budget, the City will review the project's per unit TDC in comparison with that of other recent, similar HOME-funded projects to make its assessment of the reasonableness of the project's overall costs.

## **B. Operating Budget:**

**Revenue-Rents and Other Revenue:** All the HOME-assisted units shall have rents that are at or below the published HOME rents as of the date of the application.

The Applicant will need to document the basis of its estimate of any additional revenue sources, e.g. laundry income. Application/wait list fees and any other fees other than those that the City has deemed reasonable and customary for the particular location or market area shall not be allowed.

**Expenses-Operating Costs:** The City will review both individual line item expenses as well as the overall per unit per year operating expenses against other recent, similar HOME-funded projects. Property management fees of 5%-6% of collected rents shall be acceptable. The City's replacement reserve requirement will be consistent with that of TCAC regulations for tax credit projects, or \$350 per unit per year. However, the City may approve a lower replacement reserve requirement or require a higher replacement reserve requirement on projects based on unit type, construction type, and other factors.

The City's annual monitoring fee currently is currently \$6,000 per year under the city's affordable housing program requirements. Such a fee must be carried as an expense in the project's operating budget, with a 3% inflation rate.

## **Debt Service Coverage (DSC):**

Applications will be required to provide an analysis of revenues and expenses over a thirty (30) year period. The minimum debt service coverage (annual net operating income divided by annual mortgage(s) expense) shall be 1.15 and the maximum allowable DSC shall be 1.25. At the City's discretion, and with the concurrence of the permanent lender(s), the City may accept a DSC as low as 1.10. The permanent loan shall have a fixed rate for a minimum of fifteen (15) years. At the discretion of the City, in cases where the project's rents are significantly targeted to very low and extremely low income households, there will not be a cap on the maximum allowable DSC in the project's initial year of operations if the high DSC is to ensure positive cash flow over time. The Applicant will be required to provide a proforma that projects the DSC over the term of the permanent loan to demonstrate that the initially high DSC is necessary to enable the project's Net Operating Income (NOI) to pay debt service throughout the term of the loan. For a project that has no loan requiring regular payment, the Applicant will be required to provide an analysis of revenues and expenses over a thirty (30) year period to ensure positive cash flow.

## **C. Maximum Per Unit/Total HOME Subsidy Limit for Project:**

HOME has maximum allowable subsidy limits for the amount of HOME funds permitted in projects depending upon the number of HOME units and the bedroom composition. While the amount of HOME funding the city receives will likely never exceed the allowable maximums, staff's Underwriting Risk Analysis will include this HOME required calculation.

**D. Subsidy Layering Analysis/Conclusion:**

HOME requires that the amount of HOME funds invested in a project be the minimum amount needed to make the project feasible. Based upon the results of the foregoing financial feasibility analysis, staff's Underwriting Risk Analysis will include a determination of the amount of HOME funding that satisfies the subsidy-layering requirement.