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Subtitle A —Office of the Secretary, Department of Housing and Urban Development

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PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

Authority: 42 U.S.C. 3535(d) and 12701—12839, 12 U.S.C. 1701x.

Source: 61 FR 48750, Sept. 16, 1996, unless otherwise noted.

Subpart A—General

§ 92.1 Overview.

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

§ 92.2 Definitions.

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

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

Adjusted income. See § 92.203.

Annual income. See § 92.203.

CDBG program means the Community Development Block Grant program under 24 CFR part 570.

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

Commitment means:

(1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) that meets the minimum requirements for a written agreement in § 92.504(c). An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (*e.g.,* an agency whose officials or employees are officials or employees of the participating jurisdiction) does not constitute a commitment. An agreement between the representative unit and a member unit of general local government of a consortium does not constitute a commitment. Funds for administrative and planning costs of the HOME program are committed based on the amount in the program disbursement and information system for administration and planning. The written agreement must be:

(i) With a State recipient or a subrecipient to use a specific amount of HOME funds to produce affordable housing, provide homeownership assistance, or provide tenant-based rental assistance;

(ii) With a community housing development organization to provide operating expenses;

(iii) With a community housing development organization to provide project-specific technical assistance and site control loans or project-specific seed money loans, in accordance with § 92.301;

(iv) To develop the capacity of community housing development organizations in the jurisdiction, in accordance with § 92.300(b); or

(v) To commit to a specific local project, as defined in paragraph (2) of this definition.

(2) ***Commit to a specific local project*** means:

(i) If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or sub recipient) and project owner have executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project for which all necessary financing has been secured, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within twelve months of the agreement date. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project set-up date.

(ii)

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

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

(C) If the participating jurisdiction (or State recipient or subrecipient) is providing HOME funds to a family to acquire single family housing for homeownership that does not meet the participating jurisdiction's property standards, as described in § 92.251(c)(3), then the commitment must meet the requirements of this paragraph (2)(ii)(C). The participating jurisdiction (or State recipient or subrecipient) and the family must have executed a written agreement under which HOME assistance will be provided for the purchase of the single family housing. The written agreement will require the property to meet the standards in accordance with § 92.251(c)(3) and will require the property title to be transferred to the family within six months of the agreement date.

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

Community housing development organization means a private nonprofit organization that:

(1) Is organized under State or local laws;

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

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

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

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

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

(iv) The officers and employees of the for-profit entity may not be officers or employees of the community housing development organization.

(4) Is tax exempt as follows:

(i) The private nonprofit organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1 or 1.501(c)(4)-1));

(ii) The private nonprofit organization is a subordinate organization that has been included in its 501(c)(3) or (4) central organization's group exemption letter by the Internal Revenue Service; or

(iii) The private nonprofit organization is wholly owned by the community housing development organization, as defined in this part, and is disregarded as an entity separate from its owner organization for Federal tax purposes.

(5) Is not a governmental entity (including the participating jurisdiction, other jurisdiction, Indian Tribe, public housing authority, Indian housing authority, housing finance agency, or redevelopment authority) and is not controlled by a governmental entity. An organization that is created by a governmental entity may qualify as a community housing development organization; however, no more than one-third of the board members of the organization may be officials or employees of the participating jurisdiction or governmental entity that created the community housing development organization. Further, no governmental entity may have the right to appoint more than one-third of the organization's board members. The board members appointed by a governmental entity and the board members that are officials or employees of the participating jurisdiction or governmental entity that created the organization may not appoint any of the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a community housing development organization;

(6) Has standards of financial accountability that conform to 2 CFR 200.302, ‘Financial Management’ and 2 CFR 200.303, ‘Internal Controls;’

(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, low-income beneficiaries of HUD programs, other low-income community residents, designees of low-income neighborhood organizations, or designees of nonprofit organizations in the community that address the housing or supportive service needs of low-income residents or residents of low-income neighborhoods, including homeless providers, Fair Housing Initiatives Program providers, Legal Aid, disability rights organizations, and victim service providers. 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 housing projects assisted with Federal funds, Low-Income Housing Credits (26 U.S.C. 42), Federal Home Loan Bank Affordable Housing Program (12 U.S.C. 1430) funds, or local and State affordable housing funds.

(i) To satisfy this requirement and demonstrate capacity as a developer of a HOME-assisted project, the nonprofit organization must have paid employees with housing development experience who will work directly on the HOME-assisted project. Where the paid employees of the organization do not demonstrate capacity to develop a HOME-assisted project alone, the experience of paid employees may be supplemented by board members or officers of the organization that are volunteers. If a nonprofit organization is demonstrating capacity using a volunteer board member's or officer's experience, the volunteer may not be compensated by or have their services donated by another organization. For its first year of funding as a community housing development organization, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key, paid staff of the organization;

(ii) An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of § 92.300(a)(2);

(iii) An organization that will sponsor housing must demonstrate capacity as a developer or capacity to act as owner, as described in paragraphs (9)(i) and (ii) of this definition; and

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

Community land trust means a nonprofit organization that:

(1) Has as its primary purposes acquiring, developing, or holding land to provide housing that is permanently affordable to low-income persons;

(2) Is not sponsored or controlled by a for-profit organization;

(3) Uses a lease, covenant, agreement, or other enforceable mechanisms to require housing and related improvements on land held by the community land trust to be affordable to low-income persons for at least 30 years; and

(4) Retains a right of first refusal or preemptive right to purchase the housing and related improvements on land held by the community land trust to maintain long-term affordability.

Consolidated plan means the plan submitted and approved in accordance with 24 CFR part 91.

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

Foster adult has the same meaning given that term in 24 CFR 5.603.

Foster child has the same meaning given that term in 24 CFR 5.603.

Full-time student has the same meaning given that term in 24 CFR 5.603.

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

Homebuyer counseling has the same meaning as homeownership counseling in 24 CFR 5.100, and is a type of housing counseling.

Homeownership means ownership in fee simple title in single family housing or an equivalent form of ownership approved by HUD.

(1) The land upon which the housing is located may be owned in fee simple or the homeowner may have a ground lease for the lowest of the following time periods, as applicable:

(i) For housing, the ground lease must be for 99 years or more;

(ii) For housing located in an insular area, the ground lease must be 40 years or more;

(iii) For housing located on Indian trust or restricted Indian lands or a Community Land Trust, the ground lease must be 50 years or more; or

(iv) For manufactured housing, the ground lease must be for a period at least equal to the applicable period of affordability in § 92.254.

(2) Right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made) is not an equivalent form of ownership.

(3) The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

(4) The participating jurisdiction must determine whether or not ownership or membership in a cooperative or mutual housing project constitutes homeownership under State law; however, if the cooperative or mutual housing project receives Low-Income Housing Credits (26 U.S.C. 42), the ownership or membership does not constitute homeownership.

Household means one or more persons occupying a housing unit.

Housing includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free- standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single family housing units.

Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories).

Housing counseling has the meaning given the term in 24 CFR 5.100.

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

Jurisdiction means a State or unit of general local government.

Live-in aide has the same meaning given that term in 24 CFR 5.403.

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. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.

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

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

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

Period of affordability means the period of time, as specified in §§ 92.252 and 92.254, that requirements under this part apply to HOME-assisted housing.

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

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

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

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

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

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

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

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

(iii) Is likely to continue indefinitely;

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

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

Program income means gross income received by the participating jurisdiction, State recipient, or a subrecipient at any time, 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 program income shall be the amount prorated to reflect the percentage of HOME funds invested in the project. 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 or State recipient that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income. *Program income* does not include gross income from the use, rental, or sale of real property received by the project owner or developer, unless all or a portion of the income must be paid to the participating jurisdiction, subrecipient, or State recipient, in which case, the amount that must be paid to the participating jurisdiction, subrecipient, or State recipient is program income;

(3) Payments and repayments on grants, loans (*i.e.,* principal and interest), or investments made using HOME funds or matching contributions, including such payments and repayments made after the period of affordability;

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

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

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

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

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

Project completion means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under § 92.251); the final drawdown of HOME funds has been disbursed for the project; and the project

completion information has been entered into the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of § 92.502(d) of this part, project completion occurs upon completion of construction and before occupancy. 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, except that housing that was destroyed may be rebuilt on the same lot if HOME funds are committed within 12 months of the date of destruction. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is rehabilitation for purposes of this part, except that the property standards for new construction in § 92.251(a) apply to all reconstruction projects.

Single family housing means a one-to four-unit residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.

Single room occupancy (SRO) housing means housing (consisting of single- room housing 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 nonresidential 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. A project's designation as an SRO cannot be inconsistent with the building's zoning and building code classification.

Small-scale housing means a rental housing project of no more than four units or a homeownership project with no more than three rental units on the same site.

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 means a unit of general local government designated by a State participating jurisdiction to receive HOME funds to administer all or some of the State participating jurisdiction's HOME programs, own or develop affordable housing, provide homeownership assistance, or provide tenant-based rental assistance.

Subrecipient means a governmental entity or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME programs to produce affordable housing, provide homeownership assistance, or provide tenant-based rental assistance. A governmental entity or nonprofit organization that receives HOME funds as a developer or owner of a housing project is not a subrecipient. The participating jurisdiction's selection of a subrecipient is not subject to the procurement procedures and requirements.

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

Transitional housing means housing that:

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

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

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

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

Very low-income families means low- income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a very low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.

[61 FR 48750, Sept. 16, 1996, as amended at 67 FR 61755, Oct. 1, 2002; 69 FR 16765, Mar. 30, 2004; 72 FR 16685, Apr. 4, 2007; 78 FR 44664, July 24, 2013; 80 FR 75934, Dec. 7, 2015; 81 FR 86952, Dec. 2, 2016; 81 FR 90657, Dec. 14, 2016; 88 FR 30496, May 11, 2023; 88 FR 9662, Feb. 14, 2023; 90 FR 863, Jan. 6, 2025]

§ 92.3 Applicability of 2025 regulatory changes.

This part applies to projects based on when an income determination is made or when the HOME funds for the project were committed, as applicable. Projects where the HOME funds were committed before a certain date may be subject to previous versions of this part. This section provides instruction regarding which version of this part applies.

(a) ***Effective date of this part as it exists on April 20, 2025.*** Except as described in this section, this part, as it exists on April 20, 2025 is applicable to projects for which HOME funds are committed on or after April 20, 2025. A participating jurisdiction must perform income determinations in accordance with § 92.203 after April 20, 2025.

(b) ***One year compliance period.*** Participating jurisdictions are permitted to choose to continue to comply with the requirements of this part as they existed on April 19, 2025 for commitments made on or before April 20, 2026.

(c) ***Delayed compliance date for income determinations.*** Participating jurisdictions are permitted to continue to comply with the income determination requirements in accordance with § 92.203 that the participating jurisdiction was implementing on April 19, 2025 until February 5, 2026, or longer as determined by HUD.

(d) ***Applicability of this part as it exists on April 20, 2025 to prior agreement*** s. A participating jurisdiction may choose to amend its written agreements for funds committed prior to April 20, 2025 to conform to the requirements of this part, except that:

(1) ***Certain cost*** s allowed to be reimbursable under *§ 92.206(d)(1) and (2), as effective April 20, 2025* may only be included in written agreements for projects if the participating jurisdiction committed the HOME funds for the project on or after April 20, 2025.

(2) Requesting an increase in maximum per-unit subsidy in accordance with § 92.250(c) is only permitted for projects if the participating jurisdiction committed the HOME funds for the project on or after April 20, 2025.

(3) Use of the revised dollar thresholds for the periods of affordability in §§ 92.252 and 92.254 is only permitted for projects if the participating jurisdiction committed the HOME funds for the project on or after April 20, 2025.

(4) Tenant protections provided in § 92.253, including the tenancy addenda requirements in § 92.253(b) through (d), apply for rental housing projects if the participating jurisdiction committed the HOME funds for the project, entered into the rental assistance contract, or entered into an agreement to provide security deposit assistance on or after April 20, 2025.

(5) The revisions to the roles of community housing development organizations in owning, developing, and sponsoring affordable housing in § 92.300 only apply if the participating jurisdiction committed the community housing development organization set-aside funds for the project on or after April 20, 2025.

(e) The following table summarizes the information provided in this section:

Table 1 to Paragraph (e)—Summary of Effective Dates and Compliance Deadlines

2025 Rule effective date	April 20, 2025
Applicability	Rule applies to projects for which HOME funds are committed on or after April 20, 2025.
Compliance Date	Participating jurisdictions must set compliance date: as early as April 20, 2025, and no later than April 20, 2026.
Exceptions for Income Determinations	Participating jurisdictions must set compliance date: as early as April 20, 2025, and no later than April 20, 2026. Participating jurisdictions may continue to calculate income in accordance with the provisions that were being implemented by the participating jurisdiction on April 19, 2025 until compliance date set by the participating jurisdiction, or longer as determined by HUD.
Applicability Limitations	Listed provisions are not applicable to commitments made to projects prior to April 20, 2025. Participating jurisdictions may not amend written agreements of projects with commitments existing prior to April 20, 2025 to incorporate any of the following provisions: § 92.206(d)(1) and (2).

2025 Rule effective date	April 20, 2025
	§ 92.250(c). §§ 92.252 and 92.254. § 92.253. § 92.300.

[90 FR 865, Jan. 6, 2025; 90 FR 16086, Apr. 17, 2025]

§ 92.4 Waivers and suspension of requirements for disaster areas.

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

Subpart B—Allocation Formula

§ 92.50 Formula allocation.

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

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

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

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

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

(3) Rental units built before 1950 occupied by households below the poverty line.

(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) 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, except that jurisdictions that are participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) are not dropped. 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 or are participating jurisdictions. Only units of general local government which receive an allocation of $500,000 or more under the formula or which are participating jurisdictions will be awarded an allocation. In fiscal years in which Congress appropriates less than $1.5 billion of HOME funds, $335,000 is substituted for $500,000.

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

(e) ***Calculating formula allocations for States.***

(1) Forty percent of the funds available for allocation under paragraph (b) of this section are allocated to States. The allocation amounts for States are calculated by determining initial amounts for each State, based on the sum of the shares of the six factors. For 20 percent of the funds to be allocated to States, the shares are the ratio of the weighted factor for the entire State over the corresponding factor for the total for all States. For 80 percent of the funds to be allocated to States, the shares are the ratio of the weighted factor for all units of general local government within the State that do not receive a formula allocation over the corresponding factor for the total for all States.

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

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

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

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997; 67 FR 61755, Oct. 1, 2002; 90 FR 866, Jan. 6, 2025]

INSULAR AREAS PROGRAM

§ 92.60 Allocation amounts for insular areas.

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

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

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

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

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

§ 92.61 Program description.

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

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

(1) An executed Standard Form 424;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[61 FR 48750, Sept. 16, 1996, as amended at 72 FR 73493, Dec. 27, 2007]

§ 92.62 Review of program description and certifications.

(a) ***Review of program description.*** The responsible HUD Field Office will review an insular area's program description and will approve the description unless the insular area has failed to submit information sufficient to allow HUD to make the necessary determinations required for § 92.61 (b)(4), (b)(6), and

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

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

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

§ 92.63 Amendments to program description.

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

§ 92.64 Applicability of requirements to insular areas.

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

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

(2) Subpart K (Program Administration):

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

area may use either a separate local HOME account or a subsidiary account within its general fund (or other appropriate fund) as the local HOME account. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

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

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

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

(ii) Section 92.502 (Program disbursement and information system) applies, except that references to the HOME Investment Trust Fund mean HOME account. In addition, § 92.502(c) does not apply, and instead compliance with Treasury Circular No. 1075 (31 CFR part 205) and 2 CFR 200.305 is required.

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

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

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

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

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

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

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

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

[69 FR 15673, Mar. 26, 2004, as amended at 80 FR 75935, Dec. 7, 2015]

§ 92.65 Funding sanctions.

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

§ 92.66 Reallocation.

Any HOME funds which are reduced or recaptured from an insular area's allocation and which are not used to increase the allocation amount for one or more of the remaining insular areas as provided in § 92.60 of this part, will be reallocated by HUD to the States in accordance with the requirements in subpart J for reallocating funds initially allocated to a State.

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

§ 92.100 [Reserved]

§ 92.101 Consortia.

(a) A consortium of geographically contiguous units of general local government is a unit of general local government for purposes of this part if the requirements of this section are met. A unit of general local government separated by a body of water that is only accessible by the public through a permanent means other than a connecting road, bridge, railway, or highway may be considered geographically contiguous if the consortium demonstrates that the unit of general local government separated by the body of water is part of the same housing market and local commuting area as one or more members of the consortium. A local commuting area is the geographic area that encompasses neighborhoods where people live and are reasonably expected to routinely travel back and forth to a common employment hub, population center, or worksite.

(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 to the HUD Field Office of its intent to participate as a consortium in the HOME Program for the following fiscal year. HUD shall establish the deadline for this submission.

(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 a proposed 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. HUD, at its discretion, may review the performance of an existing consortium that wishes to requalify to determine whether it continues to have sufficient authority and administrative capacity to successfully administer the program.

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

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

(d) If the representative unit of general local government distributes HOME funds to member units of general local government, the representative unit is responsible for applying to the member units of general local government the same requirements as are applicable to subrecipients, including the written agreement requirements in § 92.504(c)(2).

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

(f) The consortium agreement may, at the option of its member units of general local government, contain a provision that authorizes automatic renewals for the successive qualification period of three Federal fiscal years. The provision authorizing automatic renewal must require the lead consortium member to give the consortium members written notice of their right to elect not to continue participation for the new qualification period.

(g) If a consortium changes its representative unit of general local government but retains the same membership, the consortium shall still be considered the same unit of general local government for purposes of this part. If the representative unit of general local government changes and the composition of the consortium changes, either by adding or removing individual members, then the consortium shall be a new unit of general local government for purposes of this part and shall be required to comply with all applicable consolidated plan requirements in 24 CFR part 91.

[61 FR 48750, Sept. 16, 1996, as amended at 67 FR 61756, Oct. 1, 2002; 90 FR 866, Jan. 6, 2025]

§ 92.102 Participation threshold amount.

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

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

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

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

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

§ 92.103 Notification of intent to participate.

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

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

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

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

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

§ 92.104 Submission of a consolidated plan.

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

[85 FR 47910, Aug. 7, 2020]

§ 92.105 Designation as a participating jurisdiction.

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

§ 92.106 Continuous designation as a participating jurisdiction.

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

§ 92.107 Revocation of designation as a participating jurisdiction.

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

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

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

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

Subpart D—Submission Requirements

§ 92.150 Submission requirements.

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

Subpart E—Program Requirements

§ 92.200 Private-public partnership.

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

§ 92.201 Distribution of assistance.

(a) ***Local.***

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

(2) The participating jurisdiction may only invest its HOME funds in eligible projects within its boundaries, or in jointly funded projects within the boundaries of contiguous local jurisdictions which serve residents from both jurisdictions. For a project to be jointly funded, both jurisdictions must make a financial contribution to the project. A jurisdiction's financial contribution may take the form of a grant or loan (including a loan of funds that comes from other federal sources and that are in the jurisdiction's control, such as CDBG program funds) or relief of a significant tax or fee (such as waiver of impact fees, property taxes, or other taxes or fees customarily imposed on projects within the jurisdiction). A participating jurisdiction may not commit HOME funds to a project outside its jurisdiction and within the boundaries of a contiguous local jurisdiction until it has secured the financial contribution of the jurisdiction in which the project is located.

(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.

(3)

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

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

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

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

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44666, July 24, 2013; 90 FR 866, Jan. 6, 2025]

§ 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 the site and neighborhood requirements with respect to new construction of rental housing, a participating jurisdiction is responsible for making the determination that proposed sites for new construction meet the requirements in 24 CFR 983.55(e)(2) and (3).

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997; 78 FR 44666, July 24, 2013; 89 FR 38290, May 7, 2024]

§ 92.203 Income determinations.

(a) ***Income eligibility.*** To determine a family is income eligible, the participating jurisdiction must determine the family's income as follows:

(1) If a family is applying for or living in a HOME-assisted rental unit, and the unit is assisted by a Federal or State project-based rental subsidy program, then a participating jurisdiction may accept the public housing agency, owner, or rental subsidy provider's determination of the family's annual income and adjusted income under that program's rules.

(2) If a family is applying for or living in a HOME-assisted rental unit, and the family is assisted by a Federal tenant-based rental assistance program (*e.g.,* housing choice vouchers, etc.), then a participating jurisdiction may accept the rental assistance provider's determination of the family's annual income and adjusted income under that program's rules.

(3) If a family is applying, renewing, or entering into a new rental assistance contract for tenant-based rental assistance pursuant to § 92.209, or applying for or living in a HOME-assisted rental unit in accordance with § 92.252, and the family is assisted by a form of Federal, State, or local public assistance (*e.g.,* TANF, Medicaid, LIHTC, local rental subsidy programs, etc.) which examines the annual income of the family each year, then a participating jurisdiction may accept a written statement from a Federal or non-Federal entity administering the assistance. The statement must indicate the tenant's family size and state the amount of the family's annual income. When accepting the statement from a government administrator, the participating jurisdiction must still adjust income in accordance with paragraph (f) of this section. The statement must be for an income determination made within the previous 12-month period.

(4) In all other cases, the participating jurisdiction must calculate annual income in accordance with paragraphs (b) through (e) of this section and calculate adjusted income in accordance with paragraph (f) of this section.

(b) ***Determining and documenting annual income.***

(1) For families who are tenants in HOME-assisted housing and not receiving HOME tenant-based rental assistance, the participating jurisdiction must initially determine annual income using the method in paragraph (b)(1)(i) of this section. For subsequent income determinations during the period of affordability, the participating jurisdiction may use one of the following two methods in accordance with § 92.252(g):

(i) Examine at least 2 months of source documents evidencing annual income (*e.g.,* wage statement, interest statement, unemployment compensation statement) for the family.

(ii) Obtain from the family a written statement or, where needed due to disability, a statement in another format, 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. If there is evidence that a tenant's statement and certification provided in accordance with this paragraph (b)(1)(ii) failed to completely and accurately state information about the family's size or income, a tenant's income must be re-examined in accordance with paragraph (b)(1)(i) of this section.

(2) For families applying for HOME homeownership activities (*i.e.,* homeowners receiving rehabilitation assistance, homebuyers), the participating jurisdiction must determine annual income by examining at least 2 months of source documents evidencing annual income (*e.g.,* wage statement, interest statement, unemployment compensation statement) for the family.

(3) For families applying for or receiving tenant-based rental assistance, the participating jurisdiction may determine annual income for the family in accordance with either paragraph (a)(3) or (b)(1)(i) of this section, as applicable. Income must be calculated at the times described in § 92.209(e)(3).

(c) ***Definitions of "annual income."*** When determining whether a family is income eligible, the participating jurisdiction must use one of the following two definitions of "annual income":

(1) Annual income as defined at 24 CFR 5.609(a) and (b) (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, as defined in § 5.603 of this title); or

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

(d) ***Use of income definitions.*** A participating jurisdiction may use either of the definitions of "annual income" in paragraph (c) of this section, however, the participating jurisdiction may use only one definition of "annual income" for each HOME-assisted program (*e.g.,* homeownership assistance program) that it administers and only one definition for each rental housing project. For rental housing projects containing units assisted by a Federal or State project-based rental subsidy program or tenants receiving Federal tenant-based rental assistance, where a participating jurisdiction is accepting a public housing agency, owner, or rental assistance provider's determination of annual and adjusted income, the participating jurisdiction must calculate annual income in accordance with paragraph (c)(1) of this section so that only one definition of annual income is used in the rental housing project.

(e) ***Determining family composition and projecting income.***

(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 includes income from all persons in the household, except live-in aides, foster children, and foster adults. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income. Families may use the certification process in 24 CFR 5.618 to certify that their net family assets are below the threshold for imputing income used in 24 CFR 5.609(a)(2), as applicable. Families using the certification process in 24 CFR 5.618 that are homeowners applying for an owner-occupied rehabilitation project may also exclude the value of the homeowner's principal residence from the calculation of their Net Family Assets for purposes of the certification. For families living in HOME-assisted rental housing units, any rental assistance provided to the family under a Federal tenant-based rental assistance program or any Federal or State project-based rental subsidy provided to the HOME rental housing unit shall not be counted as tenant income for purposes of determining annual income.

(2) The participating jurisdiction is not required to redetermine the family's income eligibility at the time the HOME assistance (*i.e.,* homeownership assistance and tenant-based rental assistance) is provided, unless more than six months has elapsed since the participating jurisdiction determined that the family is income eligible.

(3) The participating jurisdiction must follow the requirements in 24 CFR 5.617 when making subsequent income determinations of persons with disabilities who are tenants in HOME-assisted rental housing or who receive HOME tenant-based rental assistance. This paragraph (e)(3) will lapse on January 1, 2026.

(f) ***Determining Adjusted Income.***

(1) The three cases where a participating jurisdiction must calculate a tenant's adjusted income are as follows:

(i) A participating jurisdiction must calculate the adjusted income of a family receiving tenant-based rental assistance to determine the amount of assistance in accordance with § 92.209(h). To calculate the family's adjusted income for a family in tenant-based rental assistance, the participating jurisdiction must apply the deductions in 24 CFR 5.611(a) and may choose to grant financial hardship exemptions in accordance with the process described in 24 CFR 5.611(c) through (e).

(ii) A participating jurisdiction must calculate a tenant's adjusted income if the tenant is living in a Low HOME Rent unit and is subject to the provisions of § 92.252(a)(2)(ii). To calculate a family's adjusted income to determine the Low HOME Rent in accordance with § 92.252(a)(2)(ii), a participating jurisdiction must apply the deductions in 24 CFR 5.611(a) and may choose to grant financial hardship exemptions in accordance with the process described in 24 CFR 5.611(c) through (e).

(iii) A participating jurisdiction must calculate a tenant's adjusted income if the tenant is over-income, and rent must be recalculated in accordance with § 92.252(h)(2). To calculate the family's adjusted income for an over-income family, the participating jurisdiction must apply the deductions in 24 CFR 5.611(a).

(2) If a unit is assisted by a Federal or State project-based rental subsidy program, then a participating jurisdiction may accept the public housing agency, owner, or rental subsidy provider's determination of the family's adjusted income under that program's rules.

[88 FR 9662, Feb. 14, 2023, as amended at 90 FR 866, Jan. 6, 2025]

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

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

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

(2) Subpart K (Program Administration):

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

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

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

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

(ii) Section 92.502 (Program disbursement and information system) applies, except that references to the HOME Investment Trust Fund mean HOME account and the reference to 24 CFR part 58 does not apply. In addition, § 92.502(c) does not apply, and instead, compliance with Treasury Circular No. 1075 (31 CFR part 205) and 2 CFR 200.305 is required.

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

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

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

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

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

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

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

[69 FR 15673, Mar. 26, 2004, as amended at 80 FR 75935, Dec. 7, 2015]

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 nonluxury housing

with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing. The specific eligible costs for these activities are set forth in §§ 92.206 through 92.209. The activities and costs are eligible only if the housing meets the property standards in § 92.251 upon project completion.

(2) Acquisition of vacant land or demolition may only be undertaken for a project that will provide affordable housing and meets the requirements for a specific local project in paragraph (2)(i) of the definition of "commitment" in § 92.2.

(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 and specifically approves in writing.

(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.

(3) The participating jurisdiction must establish the terms of assistance, subject to the requirements of this part.

(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.

(1) Only the actual HOME eligible development costs of the assisted units may be charged to the HOME program. If the assisted and nonassisted 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 prorating 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.

(2) After project completion, the number of units designated as HOME- assisted may be reduced only in accordance with § 92.210, except that in a project consisting of all HOME- assisted units, one unit may be subsequently converted to an on-site manager's unit if the participating jurisdiction determines that the conversion will contribute to the stability or effectiveness of the housing and that, notwithstanding the loss of one HOME-assisted unit, the costs charged to the HOME program do not exceed the actual costs of the HOME- assisted units and do not exceed the subsidy limit in § 92.250(b).

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

(1) A project that does not meet the requirements for affordable housing must be terminated and the participating jurisdiction must repay all HOME funds invested in the project to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b).

(2) If project completion, as defined in § 92.2, does not occur within 4 years of the date of commitment of funds for a specific local project, the project is considered to be terminated, and the participating jurisdiction must repay all funds invested in the project to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b). The participating jurisdiction may request a one-year extension of this deadline in writing, by submitting information about the status of the project, steps being taken to overcome any obstacles to completion, proof of adequate funding to complete the project, and a schedule with milestones for completion of the project for HUD's review and approval.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997; 78 FR 44667, July 24, 2013; 90 FR 867, Jan. 6, 2025]

§ 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 projects, costs to meet the new construction standards in § 92.251(a);

(2) For rehabilitation, costs to meet the property standards for rehabilitation projects in § 92.251(b);

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

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

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

(1) For single family (one- to four- 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 and if the rehabilitation cost is greater than the amount of debt that is refinanced.

(2) For single family or multifamily projects, when loaning HOME funds to rehabilitate the units if refinancing is necessary to permit or continue affordability under § 92.252. The participating jurisdiction must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. Regardless of the amount of HOME funds invested, the minimum period of affordability 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 the minimum period of affordability of 15 years 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 single family or multifamily housing loans made or insured by any Federal program, including CDBG.

(c) ***Acquisition costs.*** Costs of acquiring improved or unimproved real property and costs for a long-term ground lease, including costs of 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, work write-ups; for HUD environmental reviews or other environmental studies, assessments, or fees; and for certain costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, legal fees, accounting fees, filing fees for zoning or planning review and approval, private appraisal fees, fees for independent cost estimates, and other lender required third-party reporting fees. The costs may be paid if they were incurred not more than 24 months before the date that HOME funds are committed to the project and the participating jurisdiction expressly permits HOME funds to be used to pay the costs in the written agreement committing the funds.

(2) Fees for recordation and filing of legal documents, building permits, and builders or developers fees.

(3) Costs of a project audit, including certification of costs performed by a certified public accountant, that the participating jurisdiction may require with respect to the development of the project.

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

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

(6) Staff and overhead costs of the participating jurisdiction 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. Although these costs may be charged as project costs, these costs (except housing counseling) cannot be charged to or paid by low-income families.

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

(8) Cost of property insurance during development.

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

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

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

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

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

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

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

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997; 64 FR 50224, Sept. 15, 1999; 78 FR 44667, July 24, 2013; 90 FR 867, Jan. 6, 2025]

§ 92.207 Eligible administrative and planning costs.

A participating jurisdiction may expend, for payment of reasonable administrative and planning costs of the HOME program and ADDI, an amount of HOME funds that is not more than ten percent of the sum of the Fiscal Year HOME basic formula allocation plus any funds received in accordance with § 92.102(b) to meet or exceed participation threshold requirements that Fiscal Year. A state that transfers any HOME funds in accordance with § 92.102(b) must exclude these funds in calculating the amount it may expend for administrative and planning costs. A participating jurisdiction may also expend, for payment of reasonable administrative and planning costs of the HOME program and the ADDI described in subpart M of this part, a sum up to ten percent of the program income deposited into its local account or received and reported by its state recipients or subrecipients during the program year. A participating jurisdiction may expend such funds directly or may authorize its state recipients or subrecipients, if any, to expend all or a portion of such funds, provided total expenditures for planning and administrative costs do not exceed the maximum allowable amount. Reasonable administrative and planning costs include:

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

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

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

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

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

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

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

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

(vii) Evaluating program results against stated objectives; and

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

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

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

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

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

(b) ***Staff and overhead.*** Staff and overhead costs of the participating jurisdiction directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, lead-based paint evaluations (visual assessments, inspections, and risk assessments) and other services related to assisting potential owners, tenants, and homebuyers (e.g., housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 92.206(d)(6) and (f)(2), at the discretion of the participating jurisdiction; however, these costs (except housing counseling) cannot be charged to or paid by the low-income families.

(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 in accordance with 2 CFR part 200, subpart E.

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

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

(h) ***Preserving affordable housing already assisted with HOME funds.*** Costs specified under § 92.254(a)(9) may be charged as an administrative cost or may be charged to the project as provided in § 92.254(a)(9). In addition, the foreclosure cost of a HOME-assisted rental housing project with a HOME loan in default is an eligible administrative cost.

[61 FR 48750, Sept. 16, 1996, as amended at 67 FR 61756, Oct. 1, 2002; 69 FR 16766, Mar. 30, 2004; 72 FR 16685, Apr. 4, 2007; 78 FR 44668, July 24, 2013; 80 FR 75935, Dec. 7, 2015; 90 FR 868, Jan. 6, 2025]

§ 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). This amount is in addition to amounts set aside for housing projects that are owned, developed, or sponsored by CHDOs as described in § 92.300(a). These funds may not be used to pay operating expenses incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials; and supplies. The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.300(e) and (f).

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

(c) An organization that meets the definition of “community housing development organization” in § 92.2, except for the requirements in paragraph (9) of the definition, may receive HOME funds for operating expenses in accordance with paragraph (a) of this section in order to develop demonstrated capacity and qualify as a community housing development organization.

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44668, July 24, 2013; 90 FR 868, Jan. 6, 2025]

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

(a) ***Eligible costs.*** Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family pursuant to this section. Eligible costs also include utility deposit assistance, but only if this assistance is provided with tenant-based rental assistance or security deposit payment. Administration of tenant-based rental assistance is eligible only under general management oversight and coordination at § 92.207(a), except that the costs of inspecting the housing and determining the income eligibility of the family are eligible as costs of the tenant-based rental assistance.

(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 low-income families in accordance with written tenant selection policies and criteria that are based on local housing needs and priorities established in the participating jurisdiction's consolidated plan.

(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.

(2) ***Targeted assistance.***

(i) The participating jurisdiction may establish a preference for individuals with special needs (e.g., homeless persons or elderly persons) or persons with disabilities. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of nonmandatory 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. Participation may be limited to persons with a specific disability if necessary to provide as effective housing, aid, benefit, or services as those provided to others in accordance with 24 CFR 8.4(b)(1)(iv).

(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) ***Self-sufficiency program.*** The participating jurisdiction may require the family to participate in a self- sufficiency program as a condition of selection for assistance. The family's failure to continue participation in the self-sufficiency program is not a basis for terminating the assistance; however, renewal of the assistance may be conditioned on participation in the program. Tenants living in a HOME- assisted rental project who receive tenant-based rental assistance as relocation assistance must not be required to participate in a self- sufficiency program as a condition of receiving assistance.

(iv) ***Homebuyer program.*** HOME tenant-based rental assistance may assist a tenant who has been identified as a potential low-income homebuyer through a lease-purchase agreement, with monthly rental assistance payments for a period up to 36 months (*i.e.,* 24 months, with a 12-month renewal in accordance with paragraph (e) of this section). The HOME tenant-based rental assistance payment may not be used to accumulate a downpayment or closing costs for the purchase; however, all or a portion of the homebuyer-tenant's monthly contribution toward rent may be set aside for this purpose, in accordance with the lease-purchase agreement. If a participating jurisdiction determines that the tenant has met the lease-purchase criteria and is ready to assume ownership, HOME funds may be provided for homeownership assistance in accordance with the requirements of this part.

(v) 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. Persons who are eligible for a preference must have the opportunity to participate in all programs of the participating jurisdiction, including programs that are not separate or different.

(3) ***Existing tenants in projects that will receive HOME assistance.*** A participating jurisdiction may select low-income families currently residing in housing units that will be rehabilitated or acquired with HOME funds under the participating jurisdiction's HOME program. Participating jurisdictions using

HOME funds for tenant-based rental assistance programs may establish local preferences for the provision of this assistance. Families so selected may use the tenant-based rental 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) ***Rental assistance contract*** —

(1) ***Parties to the rental assistance contract.*** A participating jurisdiction must enter into a rental assistance contract with the owner and the family. A participating jurisdiction may have one agreement with the owner and a separate agreement with the family, or one tri-party agreement with the participating jurisdiction, the owner, and the family.

(2) ***Term of the rental assistance contract.*** The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but the rental assistance contract may be amended or 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 or the beginning of the first month in which tenant-based rental assistance is provided.

(3) ***Amending or renewing a rental assistance contract.***

(i) A rental assistance contract within its term may only be amended through the consent of all parties. A rental assistance contract may be amended:

(A) Because the lease between the family and owner has been amended or renewed, if the lease term or amount charged under the lease are the only terms of the contract being changed.

(B) To extend its term up to 24 months from the original date of execution.

(C) When a tenant changes units within the same building or development if the parties to the lease, the family size, and the number of bedrooms in the housing remain the same.

(ii) Subject to the availability of HOME funds, a rental assistance contract may be renewed after the expiration of its initial term.

(iii) In all other instances, the participating jurisdiction must enter into a new rental assistance contract with the family and the owner in accordance with this paragraph (e).

(4) ***Initial and subsequent income determinations.***

(i) Before the participating jurisdiction enters into an initial or new rental assistance contract with the family, the participating jurisdiction must determine that the family is income eligible in accordance with § 92.203.

(ii) When a rental assistance contract is amended, the participating jurisdiction will not be required to perform a new income examination in accordance with § 92.203.

(iii) Before a rental assistance contract is renewed, the participating jurisdiction must determine that the family is income eligible in accordance with § 92.203.

(iv) If a family is participating in a HOME lease-purchase program and receiving tenant-based rental assistance, then the participating jurisdiction is only required to determine the family's income at the time that the family enters into the lease-purchase agreement and does not need to engage in further income examination during the term of the lease-purchase agreement.

(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 tenant must have a lease that complies with the requirements in § 92.253. Upon termination of the rental assistance contract, the HOME tenant-based rental assistance tenancy addendum shall automatically terminate.

(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, except that the participating jurisdiction may establish conditions in its written policies under which a tenant would be relieved of all or a portion of the minimum contribution due to financial hardship.

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

(i) Local market conditions; or

(ii) The Section 8 Housing Choice Voucher Program payment standard as determined in accordance with 24 CFR 982.503(a) through (c).

(i) ***Housing standards.*** The participating jurisdiction must require the housing occupied by a family receiving tenant-based rental assistance under this section to meet the participating jurisdiction's property standards under § 92.251. Initially and annually thereafter, the participating jurisdiction must determine the housing complies with its property standards and is decent, safe, sanitary, and in good repair in accordance with § 92.251(f).

(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 housing units whether or not the participating jurisdiction provides any other tenant-based rental assistance under this section.

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

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

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

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

(6) Surety bonds, security deposit insurance, or instruments similar to surety bonds or security deposit insurance may not be used in lieu of or in addition to a security deposit in units occupied by tenants receiving tenant-based rental 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 a rental assistance contract in accordance with paragraph (e) of this section. The participating jurisdiction (or entity operating the program) must approve the lease.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997; 67 FR 61756, Oct. 1, 2002; 78 FR 44668, July 24, 2013; 88 FR 30496, May 11, 2023; 90 FR 868, Jan. 6, 2025]

§ 92.210 Troubled HOME-assisted rental housing projects.

(a) The provisions of this section apply only to an existing HOME-assisted rental project that, within the HOME period of affordability, is no longer financially viable or its physical viability has substantively deteriorated due to unforeseen circumstances.

(1) For purposes of this section, a HOME-assisted rental project is no longer financially viable through the period of affordability if:

(i) The project's operating costs exceed its operating revenue, considering project reserves;

(ii) The owner is unable to pay for necessary capital repair costs or ongoing expenses for the project; or

(iii) The project reserves are insufficient to be able to operate the project.

(2) For purposes of this section, physical viability means a project's current or future ability to maintain affordability based on the physical characteristics and factors of the project's site and improvements.

(3) HUD may approve the actions described in paragraphs (b) and (c) of this section to strategically preserve the affordability of a rental project after consideration of market needs, available resources, and the likelihood of the long-term physical and financial viability of the project.

(b) Notwithstanding § 92.214, a participating jurisdiction may request and HUD may permit, pursuant to a written memorandum of agreement, a participating jurisdiction to invest additional HOME funds in the existing HOME-assisted rental project. The total HOME funding for the project (original investment plus additional investment) must be necessary to improve the physical and financial viability of the project and may not exceed the per-unit subsidy limit in § 92.250(a) in effect at the time of the additional investment. The use of HOME funds may include, but is not limited to, rehabilitation of the HOME units and recapitalization of project reserves for the HOME units (to fund capital costs). If additional HOME funds are invested, HUD may impose additional conditions, including requiring the participating jurisdiction to extend the period of affordability, increase the number of HOME-assisted units, and change the number or designation of Low HOME rent and High HOME rent units.

(c) HUD may, through written approval, permit the participating jurisdiction to reduce the total number of HOME-assisted units or change the designation of units from Low HOME rent units to High HOME rent units where there are more than the minimum number of Low HOME rent units in the project. In determining whether to permit a reduction in the number of HOME-assisted units, HUD will take into account the required period of affordability and the amount of HOME assistance provided to the project.

[90 FR 869, Jan. 6, 2025]

§ 92.212 Pre-award costs.

(a) ***General.*** Before the effective date of the HOME Investment Partnership Agreement, the participating jurisdiction may incur costs described in this section 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.***

(1) 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 HUD receives the consolidated plan describing the HOME allocation to which the costs will be charged, whichever is later.

(2) In any year in which an appropriation has not been enacted 90 days before a participating jurisdiction's program year start date, a participating jurisdiction may incur eligible administrative and planning costs as of the beginning of its program year or the date that HUD receives its consolidated plan describing the HOME allocation to which the costs will be charged, whichever is earlier.

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

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

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

[61 FR 48750, Sept. 16, 1996, as amended at 90 FR 869, Jan. 6, 2025]

§ 92.213 HOME Funds and Public Housing.

(a) ***General rule.*** HOME funds may not be used for public housing units. HOME-assisted housing units may not receive Operating Fund or Capital Fund assistance under section 9 of the 1937 Act during the HOME period of affordability.

(b) ***Exception.*** HOME funds may be used for the development of public housing units, if the units are developed under section 24 of the 1937 Act (HOPE VI) and no Capital Fund assistance under section 9(d) of the Act is used for the development of the unit. Units developed with both HOME and HOPE VI may receive operating assistance under section 9 of the 1937 Act. Units developed with HOME and HOPE VI funds under this paragraph may subsequently receive Capital Funds for rehabilitation or modernization.

(c) ***Using HOME funds in public housing projects.*** Consistent with § 92.205(d), HOME funds may be used for affordable housing units in a project that also contains public housing units, provided that the HOME funds are not used for the public housing units (except as provided in paragraph (b) of this section) and HOME funds are used only for eligible costs in accordance with this part.

(d) The HOME funds must be used in accordance with the requirements of this part and the project must meet the requirements of this part, including rent requirements in § 92.252.

[78 FR 44669, July 24, 2013]

§ 92.214 Prohibited activities and fees.

(a) HOME funds may not be used to:

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

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

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

(4) Provide assistance for uses authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds);

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

(6) Provide assistance (other than tenant-based rental assistance, assistance to a homebuyer to acquire housing previously assisted with HOME funds, assistance permitted under § 92.210, or assistance to preserve affordability of homeownership housing in accordance with § 92.254(b)) to a project previously assisted with HOME funds during the period of affordability. However, additional HOME funds may be committed to a project for up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250 at the time of underwriting;

(7) Pay for the acquisition of property owned by the participating jurisdiction, unless such property is acquired by the participating jurisdiction in anticipation of carrying out a HOME project;

(8) Pay delinquent taxes, fees, or charges on properties to be assisted with HOME funds;

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

(10) Pay for surety bonds, security deposit insurance, or instruments similar to surety bonds or security deposit insurance, in lieu of or in addition to a security deposit in units occupied by tenants receiving tenant-based rental assistance (including assistance in paying security deposits).

(b)

(1) Participating jurisdictions may not charge (and must prohibit State recipients, subrecipients, and community housing development organizations from charging) servicing, origination, or other fees for the purpose of covering costs of administering the HOME program (e.g., fees on low-income families for construction management or for inspections for compliance with property standards) (see § 92.206(d)(6) and § 92.207), except that:

(i) Participating jurisdictions and State recipients may charge owners of rental projects reasonable annual fees for compliance monitoring during the period of affordability. The fees must be based upon the average actual cost of performing the monitoring of HOME-assisted rental projects. The basis for determining the amount of for the fee amount must be documented and the fee must be included in the costs of the project as part of the project underwriting;

(ii) Participating jurisdictions, subrecipients and State recipients may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. The amount of application fees must be appropriate to the type of application and may not create an undue impediment to a low-income family's, subrecipient's, State recipient's, or other entity's participation in the participating jurisdiction's program; and

(iii) Participating jurisdictions, subrecipients and State recipients may charge homebuyers a fee for housing counseling.

(2) All fees charged under paragraph (b)(1) of this section are applicable credits under 2 CFR 200.406.

(3) The participating jurisdiction must prohibit project owners from charging for:

(i) Surety bonds, security deposit insurance, or instruments similar to surety bonds or security deposit insurance, in lieu of or in addition to a security deposit in units;

(ii) Fees that are not customarily charged in rental housing (*e.g.,* laundry room access fees); and

(iii) Fees to inspect units or correct deficiencies in the property condition of units or common areas of the project that were not caused by the tenant or are only due to normal wear and tear.

(4) Rental project owners may charge:

(i) Reasonable application fees to prospective tenants;

(ii) Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and

(iii) Fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28929, May 28, 1997; 67 FR 61756, Oct. 1, 2002; 72 FR 16685, Apr. 4, 2007; 78 FR 44669, July 24, 2013; 80 FR 75935, Dec. 7, 2015; 90 FR 869, Jan. 6, 2025]

§ 92.215 Limitation on jurisdictions under court order.

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

INCOME TARGETING

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

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

(a) Not less than 90 percent of:

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

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

(b) The remainder of:

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

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

[61 FR 48750, Sept. 16, 1996, as amended at 90 FR 870, Jan. 6, 2025]

§ 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 housing units that are occupied by households that qualify as low-income families.

[67 FR 61756, Oct. 1, 2002, as amended at 90 FR 870, Jan. 6, 2025]

MATCHING CONTRIBUTION REQUIREMENT

§ 92.218 Amount of matching contribution.

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

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

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

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

§ 92.219 Recognition of matching contribution.

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

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

(2) A HOME-assisted unit;

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

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

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

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

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

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

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

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

(ii) The participating jurisdiction 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 requirements applicable to the project, including

affordability requirements in § 92.252 or § 92.254; tenant protection requirements in § 92.253; property standards requirements in § 92.251; and income determination requirements in § 92.203. This written agreement must be executed before any match contributions may be made.

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

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

(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.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28929, May 28, 1997; 90 FR 870, Jan. 6, 2025]

§ 92.220 Form of matching contribution.

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

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

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

(ii) A cash contribution may be made from program income (as defined by 2 CFR 200.80) 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;

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

(*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 § 92.206 or § 92.209, or for the following (which are not HOME eligible costs): the cost of removing and relocating an ECHO housing unit during the period of affordability in accordance with § 92.258(d)(3)(ii), payments to a project reserve account beyond payments permitted by § 92.206(d)(5), operating subsidies, or costs relating to the portion of a mixed-income or mixed-use HOME-assisted project not related to the affordable housing units.

(2) ***Forbearance of fees*** —

(i) ***State and local taxes, charges or fees.*** The value (based on customary and reasonable means for establishing value) of State or local taxes, fees, or other charges that are normally and customarily imposed or charged by a State or local government on all transactions or projects in the conduct of its operations, which are waived, foregone, or deferred (including State low-income housing tax credits) in a manner that achieves affordability of HOME-assisted projects, may be counted as match. The amount of any real estate taxes may be based on post-improvement property value. For taxes, fees, or charges that are forgiven for future years, the value is the present discounted cash value, based on a rate equal to the rate for the Treasury security with a maturity closest to the number of years for which the taxes, fees, or charges are waived, foregone, or deferred.

(ii) ***Other charges or fees.*** The value of fees or charges associated with the transfer or development of real estate that are normally and customarily imposed or charged by public or private entities, which are waived or foregone, in whole or in part, in a manner that achieves

affordability of HOME-assisted projects, may be counted as match. Fees and charges under this paragraph do not include fees or charges for legal or other professional services; professional services which are donated, in whole or in part, are an eligible matching contribution in accordance with paragraph (a)(7) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Cash or other forms of contributions from applicants for or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for assistance for a HOME-assisted project. The prohibition in this paragraph (b)(4) does not apply to contractors (who do not own any HOME project) contributing professional services in accordance with paragraph (a)(8) of this section or to persons contributing sweat equity in accordance with paragraph (a)(9) of this section.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28929, May 28, 1997; 62 FR 44840, Aug. 22, 1997; 80 FR 75935, Dec. 7, 2015; 90 FR 870, Jan. 6, 2025]

§ 92.221 Match credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) To apply an excess matching contribution to a future fiscal year's match liability, the participating jurisdiction must have documentation, at the time of application, demonstrating the matching contribution complied with the matching requirements at §§ 92.218 through 92.221 at the time it was made. Documentation must include project records of the type and amount of the matching contribution.

(2) A participating jurisdiction must maintain the records in paragraph (b)(1) of this section for five years from the date of application of the excess matching contribution to the 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.

(d) Match credit for the development of affordable homeownership housing for sale to homebuyers. Contributions to the development of homeownership housing may be credited as a match only to the extent that the sales price of the housing is reduced by the amount of the contribution or, if the development costs exceed the fair market value of the housing, the contribution may be credited to the extent that the contributions enable the housing to be sold for less than the cost of development.

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44670, July 24, 2013; 90 FR 870, Jan. 6, 2025]

§ 92.222 Reduction of matching contribution requirement.

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

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

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

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

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

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

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

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

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

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

(b) Reduction of match for participating jurisdictions in disaster areas. If a participating jurisdiction is located in an area in which a declaration of major disaster is made pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5206), the participating jurisdiction may request a reduction of its matching requirement.

(1) In determining whether to grant the request and the amount and duration of the reduction, if any, HUD must consider the fiscal impact of the disaster on the participating jurisdiction.

(i) For a local participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218 by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year.

(ii) For a State participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218, by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year with respect to any HOME funds expended in an area to which the declaration of a major disaster applies.

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

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44670, July 24, 2013]

Subpart F—Project Requirements

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

Link to an amendment published at 90 FR 16087, Apr. 17, 2025.

This amendment was delayed until Apr. 30, 2026, at 90 FR 48443, Oct. 22, 2025.

(a) ***Maximum per-unit subsidy amount.*** The total 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 in accordance with section 212(e) of the Act. HUD will publish the per-unit dollar limits for the area in which the housing is located annually. HUD will publish its methodology for determining maximum per-unit dollar limits through a publication in the FEDERAL REGISTER with the opportunity for comment.

(b) ***Underwriting and subsidy layering.*** Before committing funds to a project, the participating jurisdiction must evaluate the project in accordance with guidelines that it has adopted for determining a reasonable level of profit or return on owner's or developer's investment in a 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 affordability in § 92.252 or § 92.254) and that will not provide a profit or return on the owner's or developer's investment that exceeds the participating jurisdiction's established standards for the size, type, and complexity of the project. The participating jurisdiction's guidelines must require the participating jurisdiction to undertake:

(1) An examination of the sources and uses of funds for the project and a determination that the costs are reasonable; and

(2) An assessment, at minimum, of the current market demand in the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer, and firm written financial commitments for the project.

(3) For projects involving rehabilitation of owner-occupied housing pursuant to § 92.254(b):

(i) An underwriting analysis of the homeowner's ability to repay the HOME-funded rehabilitation loan is required only if the loan is an amortizing loan; and

(ii) A market analysis or evaluation of developer capacity is not required.

(4) For projects involving HOME-funded homeownership assistance pursuant to § 92.254(a) and which do not include HOME-funded development activity, a market analysis or evaluation of developer capacity is not required.

[78 FR 44670, July 24, 2013, as amended at 90 FR 16086, Apr. 17, 2025]

§ 92.251 Property standards and inspections.

(a) ***New construction projects*** —

(1) ***State and local codes, ordinances, and zoning requirements.*** Housing that is newly constructed with HOME funds must meet all applicable State and local codes, ordinances, and zoning requirements. HOME-assisted new construction projects must meet State or local residential and building codes, as applicable or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon project completion.

(2) ***Construction progress and final inspections.*** The participating jurisdiction must conduct on-site progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents. Before completing the project in the disbursement and information system established by HUD, the participating jurisdiction must perform an on-site inspection of the project to determine that all contracted work

has been completed and that the project complies with the property standards and requirements in this paragraph (a). All inspections performed by the participating jurisdiction must be conducted in accordance with the participating jurisdiction's inspection procedures.

(3) ***HUD requirements.*** All new construction projects must also meet the following requirements upon project completion, unless an earlier deadline is otherwise required by the applicable statute, regulation, or standard:

(i) ***Accessibility.*** The housing must meet the accessibility requirements of 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).

(ii) ***Energy efficiency standards.*** Newly constructed housing shall qualify as affordable housing under this part only if it meets the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709).

(iii) ***Disaster mitigation.*** Where relevant, the housing must be constructed to mitigate the impact of future disasters (*e.g.,* earthquakes, hurricanes, flooding, and wildfires) in accordance with State and local codes, ordinances, and requirements, and such other requirements that HUD may establish.

(iv) ***Written cost estimates, construction contracts, and construction documents.*** The participating jurisdiction must require the construction contract(s) and construction documents to describe the work to be undertaken in adequate detail so that inspections can be conducted. The participating jurisdiction must review and approve written cost estimates for construction and determine that costs are reasonable.

(v) ***Broadband infrastructure.*** For new commitments made after January 19, 2017, for a new construction housing project of a building with more than 4 rental units, the construction must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the participating jurisdiction determines and, in accordance with § 92.508(a)(3)(iv), documents the determination that:

(A) The location of the new construction makes installation of broadband infrastructure infeasible; or

(B) The cost of installing the infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden.

(vi) ***Carbon monoxide and smoke detection*** —

(A) ***Carbon monoxide detection.*** A carbon monoxide alarm must be installed in the housing unit in a manner that meets or exceeds the carbon monoxide detection standards set by HUD through FEDERAL REGISTER publication.

(B) ***Smoke detection.***

(*1*) A hardwired smoke alarm must be installed:

(*i*) On each level of each housing unit;

(*ii*) In or near each sleeping area in each housing unit;

(*iii*) In the basement of each housing unit and in each common area of a project. A hardwired smoke alarm is not required in crawl spaces or unfinished attics of housing units;

(*iv*) Within 21 feet of any door to a sleeping area measured along a path of travel; and

(*v*) Where a smoke alarm installed outside a sleeping area is separated from an adjacent living area by a door, a smoke alarm must also be installed on the living area side of the door.

(*2*) Each hardwired smoke alarm must have an alarm system designed for hearing-impaired persons.

(*3*) The Secretary may establish additional standards through FEDERAL REGISTER publication.

(*4*) Following the relevant specifications of the International Code Council (ICC) or the National Fire Protection Association Standard (NFPA) 72 satisfies the requirements of this paragraph (a)(3)(vi)(B).

(vii) ***Green building standards.*** If a participating jurisdiction exceeds the maximum per-unit subsidy limit pursuant to § 92.250(c), then upon completion, the housing must meet one of the green building standards established by HUD through FEDERAL REGISTER publication.

(b) ***Rehabilitation projects.*** All rehabilitation that is performed using HOME funds must meet the requirements of this paragraph (b).

(1) ***Rehabilitation standards.*** The participating jurisdiction must establish rehabilitation standards for all HOME- assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The participating jurisdiction's description of its standards must be in sufficient detail to determine the required rehabilitation work including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. The rehabilitation standards must address each of the following:

(i) ***Health and safety.*** The participating jurisdiction's standards must identify life-threatening deficiencies that must be addressed immediately if the housing is occupied.

(ii) ***Major systems.*** Major systems are: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For rental housing, the participating jurisdiction's standards must require the participating jurisdiction to estimate (based on age and condition) the remaining useful life of these systems, upon project completion of each major systems. For multifamily housing projects of 26 units or more, the participating jurisdiction's standards must require the participating jurisdiction to determine the useful life of major systems through a capital needs assessment of the project. For rental housing, if the remaining useful life of one or more major system is less than the applicable period of affordability, the participating jurisdiction's standards must require the participating jurisdiction to ensure that a replacement reserve is established and monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. For homeownership housing, the participating jurisdiction's

standards must require, upon project completion, each of the major systems to have a remaining useful life for a minimum of 5 years or for such longer period specified by the participating jurisdiction, or the major systems must be rehabilitated or replaced as part of the rehabilitation work.

(iii) ***Lead-based paint.*** The participating jurisdiction's standards must require the housing to meet the lead-based paint requirements at 24 CFR part 35.

(iv) ***Accessibility.*** The participating jurisdiction's standards must require the housing to meet the accessibility requirements in 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619). Rehabilitation may include improvements that are not required by regulation or statute that permit use by a person with disabilities.

(v) [Reserved]

(vi) ***Disaster mitigation.*** Where relevant, the participating jurisdiction's standards must require the housing to be improved to mitigate the impact of future disasters (*e.g.,* earthquake, hurricanes, flooding, and wildfires) in accordance with State and local codes, ordinances, and requirements, and such other requirements that HUD may establish.

(vii) ***State and local codes, ordinances, and zoning requirements.*** The participating jurisdiction's standards must require the housing to meet all applicable State and local codes, ordinances, and requirements or, in the absence of a State or local building code, the International Existing Building Code of the International Code Council.

(viii) ***HUD housing standards.*** The standards of the participating jurisdiction must be such that, upon completion, the HOME-assisted project and units will be decent, safe, sanitary, and in good repair. This means that the HOME-assisted project and units will meet the standards in 24 CFR 5.703, except that the carbon monoxide detection requirements at 24 CFR 5.703(b)(2) and (d)(6) shall not apply. For all HOME-assisted projects and units, the requirements at 24 CFR 5.705 through 5.713 do not apply. At minimum, the participating jurisdiction's rehabilitation standards must require correction of the specific deficiencies published in the FEDERAL REGISTER for HOME-assisted projects and units. For SRO housing, 24 CFR 5.703(d) shall only apply to the extent that the SRO unit contains the room or facility referenced in 24 CFR 5.703(d).

(A) The participating jurisdiction may accept a determination in satisfaction of another funding source's requirements that, upon the completion of the rehabilitation, the HOME-assisted project and units are decent, safe, sanitary, and in good repair in an inspection conducted under the National Standards for the Condition of HUD housing (24 CFR part 5, subpart G) or an alternative inspection standard, which HUD may establish through FEDERAL REGISTER publication.

(B) If a participating jurisdiction is accepting a determination pursuant to paragraph (b)(1)(viii)(A) of this section, then the participating jurisdiction must document the determination in accordance with § 92.508(a)(3)(iv) and is not required to perform a HOME inspection of the project and units for compliance with 24 CFR 5.703.

(ix) ***Capital Needs Assessments.*** For multifamily rental housing projects of 26 or more total units, the participating jurisdiction must determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the project through a capital needs assessment of the project.

(x) ***Broadband infrastructure.*** For new commitments made after January 19, 2017 for a substantial rehabilitation project of a building with more than 4 rental units, any substantial rehabilitation, as defined in 24 CFR 5.100, must provide for installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the participating jurisdiction determines and, in accordance with § 92.508(a)(3)(iv), documents the determination that:

(A) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;

(B) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(C) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

(xi) ***Carbon monoxide and smoke detection*** —

(A) ***Carbon monoxide detection.*** A carbon monoxide alarm must be installed in the housing unit in a manner that meets or exceeds the carbon monoxide detection standards set by HUD through FEDERAL REGISTER publication.

(B) ***Smoke detection.***

(*1*) A hardwired smoke alarm must be installed:

(*i*) On each level of each housing unit;

(*ii*) In or near each sleeping area in each housing unit;

(*iii*) In the basement of each housing unit, and in each common area of a project. A hardwired smoke alarm is not required in crawl spaces or unfinished attics of housing units;

(*iv*) Within 21 feet of any door to a sleeping area measured along a path of travel; and

(*v*) Where a smoke alarm installed outside a sleeping area is separated from an adjacent living area by a door, a smoke alarm must also be installed on the living area side of the door.

(*2*) Each hardwired smoke alarm must have an alarm system designed for hearing-impaired persons.

(*3*) The Secretary may establish additional standards through FEDERAL REGISTER publication.

(*4*) Where the use of hardwired smoke detectors places an undue financial burden on the owner or is infeasible, a participating jurisdiction may provide a written exception to allow the owner to install a smoke detector that uses 10-year non rechargeable,

nonreplaceable primary batteries. The smoke detector must be sealed, tamper-resistant, contain a means to silence the alarm, and otherwise comply with the requirements of this section.

(*5*) Following the relevant specification of the International Code Council (ICC) or the National Fire Protection Association Standard (NFPA) 72 satisfies the requirements of this paragraph (b)(1)(xi)(B).

(xii) ***Green building standards.*** If a participating jurisdiction exceeds the maximum per-unit subsidy limit pursuant to § 92.250(c), then upon completion of the rehabilitation the housing must meet one of the green building standards established by HUD through FEDERAL REGISTER publication.

(2) ***Construction documents and cost estimates.*** The participating jurisdiction must require that the work to be undertaken will meet the participating jurisdiction's rehabilitation standards. The construction contract and documents (i.e., written scope of work to be performed) must be in sufficient detail to establish the basis for a uniform inspection of the housing to determine compliance with the participating jurisdiction's standards. The participating jurisdiction must review and approve a written cost estimate for rehabilitation after determining that costs are reasonable.

(3) ***Frequency of inspections.*** The participating jurisdiction must conduct an initial property inspection to identify the deficiencies that must be addressed and must conduct on-site progress and final inspections to determine that work was done in accordance with the construction contract and construction documents. Before completing the project in the disbursement and information system established by HUD, the participating jurisdiction must perform an on-site inspection of the project to determine that all contracted work has been completed and that the project complies with the property standards and requirements in this paragraph (b). All inspections performed by the participating jurisdiction must be conducted in accordance with the participating jurisdiction's inspection procedures.

(c) ***Acquisition of standard housing.***

(1) Existing housing that is acquired with HOME assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HOME funds, must meet the property standards for new construction in paragraph (a) or rehabilitation in paragraph (b) of this section, as applicable. The participating jurisdiction must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance.

(2) All other existing housing that is acquired with HOME assistance for rental housing must meet the rehabilitation property standards requirements of paragraph (b) of this section. The participating jurisdiction must document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the property does not meet these standards, HOME funds cannot be used to acquire the property unless it is rehabilitated to meet the standards of paragraph (b) of this section.

(3) Existing housing that is acquired for homeownership using homeownership assistance must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements, and the housing does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the FEDERAL REGISTER for HOME-assisted projects and units. The housing must also meet or exceed the carbon monoxide and smoke

detection standards contained in the participating jurisdiction's rehabilitation standards pursuant to paragraph (b) of this section. If the use of hardwired smoke detectors places an undue financial burden on the homebuyer or is infeasible, a participating jurisdiction may provide a written exception to the homebuyer consistent with the requirements contained in paragraph (b) of this section.

(i) The participating jurisdiction must inspect the housing and document compliance with this paragraph (c)(3) based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) before the acquisition, except as provided in paragraph (c)(3)(ii) of this section.

(ii) If the housing is not rehabilitated to meet the standards in this paragraph (c)(3) before acquisition, then the housing may still be acquired if all of the following conditions are satisfied:

(A) The written agreement between the participating jurisdiction and the homebuyer requires the property to meet the standards within 6 months of acquisition with HOME assistance;

(B) Funding is secured to complete the rehabilitation necessary to comply with the standards; and

(C) Unless an extension is provided pursuant to paragraph (c)(3)(ii)(D) of this section, the participating jurisdiction conducts a final inspection within six months after acquisition and determines that the property meets the standards.

(D) The participating jurisdiction may provide the homebuyer with an extension of up to 12 months from acquisition to meet the standards. If the participating jurisdiction provides an extension, the participating jurisdiction must amend the written agreement to reflect the extension and conduct a final inspection within 12 months of acquisition and determine that the property meets the standards.

(iii) All inspections performed by the participating jurisdiction must be conducted in accordance with the participating jurisdiction's inspection procedures.

(d) ***Projects involving a combination of rehabilitation and either new construction or reconstruction.*** If a project includes both rehabilitation of housing units and either new construction or reconstruction of housing units, then the participating jurisdiction must apply the rehabilitation standards to the housing units that are rehabilitated and the new construction requirements to housing that is either newly constructed or reconstructed.

(e) ***Manufactured housing.*** Construction of all manufactured housing including manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes which are not identical to the federal standards for the new construction of manufactured housing. Participating jurisdictions providing HOME funds to assist manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.43f(c)(i). All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” 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. In HOME-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or state codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285. Manufactured housing that is rehabilitated using HOME funds must meet the property standards requirements in paragraph (b) of this section, as applicable. The participating jurisdiction must document this compliance in accordance with inspection procedures that the participating jurisdiction has established pursuant to § 92.251, as applicable.

(f) ***Ongoing property condition standards and inspections: Rental housing and housing occupied by tenants receiving HOME tenant-based rental assistance*** —

(1) ***Ongoing property standards.*** The participating jurisdiction must establish property standards for rental housing (including manufactured housing) that apply throughout the period of affordability and for housing occupied by tenants receiving HOME tenant-based rental assistance. The standards must require that owners maintain the housing as decent, safe, sanitary, and in good repair. The participating jurisdiction's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HOME rental projects and housing occupied by tenants receiving HOME tenant-based rental assistance. The participating jurisdiction's ongoing property standards must address all of the following:

(i) ***Compliance with State and local codes, ordinances, and requirements.*** The participating jurisdiction's standards must require the housing to meet all applicable State and local code requirements and ordinances. In the absence of existing applicable State or local code requirements and ordinances, at a minimum, the participating jurisdiction's ongoing property standards must provide that the property does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the FEDERAL REGISTER for HOME rental housing (including manufactured housing) and housing occupied by tenants receiving HOME tenant-based rental assistance, except that the carbon monoxide detection requirements at 24 CFR 5.703(b)(2) and (d)(6) shall not apply. The participating jurisdiction's property standards are not required to comply with 24 CFR 5.705 through 5.713.

(ii) ***Health and safety.*** The participating jurisdiction's standards must require the housing to be free of all health and safety defects. The standards must identify life-threatening deficiencies that the owner must immediately correct and the time frames for addressing these deficiencies.

(iii) ***Lead-based paint.*** The participating jurisdiction's standards must require the housing to meet the lead-based paint requirements in 24 CFR part 35.

(iv) ***Carbon monoxide and smoke detection*** —

(A) ***Carbon monoxide detection.*** A carbon monoxide alarm must be installed in the housing unit in a manner that meets or exceeds the carbon monoxide detection standards set by HUD through FEDERAL REGISTER publication.

(B) ***Smoke detection.*** The participating jurisdiction's standards must require housing to contain smoke detectors in accordance with the requirements contained in 24 CFR 5.703(b) and (d).

(2) Projects to which HOME funds were committed before January 24, 2015 must meet all applicable State or local housing quality standards or code requirements, and if there are no such standard or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(3) ***Ongoing inspections of 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 in paragraph (f)(1) of this section and to verify the information submitted by owners in accordance with the requirements of § 92.252. The participating jurisdiction must perform inspections in accordance with its established inspection procedures. These procedures, at minimum, must include the following requirements:

(i) ***Frequency of inspections.*** The participating jurisdiction must perform an on-site inspection within 12 months after project completion and complete one of the following every 3 years during the period of affordability:

(A) Perform an on-site inspection in accordance with the participating jurisdiction's inspection procedures to determine compliance with the property standards; or

(B) Accept a determination made within the past 12 months in satisfaction of another funding source's requirements, that the HOME-assisted project and units are decent, safe, sanitary, and in good repair in an inspection conducted under the National Standards for the Condition of HUD housing (24 CFR part 5, subpart G) or an alternative inspection standard, which HUD may establish through FEDERAL REGISTER publication. If a participating jurisdiction is accepting a determination, then the participating jurisdiction must document the determination in accordance with § 92.508(a)(3)(iv) and is not required to perform an on-site HOME inspection of the project and the units for compliance with 24 CFR 5.703.

(ii) ***Annual certification.*** The owner must annually certify to the participating jurisdiction that each building and all HOME-assisted units in the project are suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the participating jurisdiction.

(iii) ***Units inspected.*** Inspections must be based on a random sample of the HOME-assisted units in the project with a mix of unit sizes (*e.g.,* a mix of one-bedroom, two-bedroom, and three-bedroom units) in accordance with the chart contained in this paragraph. All inspections must include the inspectable areas for each building containing HOME-assisted units. For projects with one-to-four HOME-assisted units, the participating jurisdiction must inspect 100 percent of the HOME-assisted units and the inspectable areas for each building with HOME-assisted units.

TABLE 1 TO PARAGRAPH (f)(3)(iii)—MINIMUM INSPECTION SAMPLE SIZE FOR HOME RENTAL HOUSING PROJECTS

Number of HOME-assisted units in the HOME project	Number of units that must be selected in the random sample (*i.e.*, minimum unit sample size)
1-20	4
21-25	5
26-30	6
31-35	7

Number of HOME-assisted units in the HOME project	Number of units that must be selected in the random sample (*i.e.*, minimum unit sample size)
36-40	8
41-45	9
46-50	10
51-55	11
56-60	12
61-65	13
66-70	14
71-75	15
76-80	16
81-85	17
86-90	18
91-95	19
96-100	20
101-105	21
106-110	22
111-115	23
116-120	24
121-125	25
126-130	26
131-166	27
167-214	28
215-295	29
296-455	30
456-920	31
921+	32

(iv) ***Financial oversight.*** During the period of affordability, the participating jurisdiction must at least annually examine the financial condition of projects with 10 or more HOME-assisted units to determine the continued financial viability of the housing and must take actions to correct problems, to the extent feasible.

(4) ***Annual inspections for housing with tenants receiving HOME tenant-based rental assistance.*** All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the property standards of paragraph (f)(1) of this section. The participating jurisdiction must annually determine that the housing is decent, safe, sanitary, and in good repair through one of the following methods:

(i) An annual on-site inspection in accordance with its inspection procedures for annual inspections to determine the housing meets the property standards in paragraph (f)(1) of this section; or

(ii) An inspection conducted within the past 3 months in satisfaction of another funding source's requirements under the National Standards for the Condition of HUD housing (24 CFR part 5, subpart G) or an alternative inspection standard, which HUD may establish through FEDERAL REGISTER publication. A participating jurisdiction may move its inspection cycle to align with an inspection covered by this paragraph. If a participating jurisdiction is accepting an inspection pursuant to this paragraph, then the participating jurisdiction must document the inspection's determination that the housing is decent, safe, sanitary, and in good repair in accordance with § 92.508(a)(3)(iv) and is not required to perform a HOME inspection of the project and units for compliance with 24 CFR 5.703.

(5) ***Corrective and remedial actions.*** The participating jurisdiction must have procedures for requiring that timely corrective and remedial actions are taken by the owner to address identified deficiencies.

(i) ***Health and safety deficiencies.*** Health and safety deficiencies must be corrected immediately. Except for small-scale housing, the participating jurisdiction must adopt a more frequent inspection schedule for properties that have been found to have health and safety deficiencies. For small-scale housing, the participating jurisdiction may adopt a more frequent inspection schedule if the small-scale housing is found to have health and safety deficiencies, as described in its inspection procedures.

(ii) ***Other deficiencies.*** If there are observed deficiencies for any of the inspectable areas in the property standards established by the participating jurisdiction, in accordance with the inspection procedures, a follow-up on-site inspection to verify that deficiencies are corrected must occur within 12 months. The participating jurisdiction may establish a list of non-hazardous deficiencies for which correction can be verified by third party documentation (*e.g.,* paid invoice for work order) rather than re-inspection.

(g) ***Inspection procedures.*** The participating jurisdiction must establish written inspection procedures. The procedures must include detailed inspection checklists, a description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors. For ongoing property inspections, the procedures must also describe how frequently the property will be inspected, consistent with this section and § 92.209.

[78 FR 44670, July 24, 2013, as amended at 81 FR 92635, Dec. 20, 2016; 88 FR 30496, May 11, 2023; 90 FR 870, Jan. 6, 2025]

§ 92.252 Qualification as affordable housing: Rental housing.

The HOME-assisted units in a rental housing project must be occupied by households that are eligible as low-income families and must meet the requirements of this section to qualify as affordable housing. If the housing is not occupied by eligible tenants within six months following the date of project completion, the participating jurisdiction must revise its marketing plan to enable the project to reach required occupancy. The participating jurisdiction must repay HOME funds invested in any housing unit that has not been rented to eligible tenants within 18 months after the date of project completion. The affordability requirements in this section also apply to the HOME-assisted non-owner-occupied units in single family housing purchased with HOME funds in accordance with § 92.254. A tenant must have a written lease that complies with § 92.253.

(a) ***HOME rent limits.*** The rent for a HOME-assisted unit must not exceed the rent limits in this section. HUD will publish the HOME rent limits on an annual basis, with adjustments for number of bedrooms in the unit. The rent limits do not apply to any rental assistance or subsidy payment provided under a Federal, State, or local rental assistance or subsidy program. Regardless of changes in fair market rents and in

median income over time, the 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. The participating jurisdiction may designate (in its written agreement with the owner) more than the minimum HOME units in a rental housing project, regardless of project size. The rent limits apply to the rent plus the utilities or utility allowance.

(1) ***High HOME rent limits.*** If a low-income family is participating in a program where the family pays as a contribution toward rent no more than 30 percent of the family's monthly adjusted income or 10 percent of the family's monthly income, then the maximum rent due from the family is the family's contribution. For all other cases, the rent does not exceed the lesser of:

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

(ii) 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.

(2) ***Low HOME rent limits.*** In rental projects with five or more HOME-assisted rental units, at least 20 percent of the HOME-assisted units must be occupied by very low-income families. If a very low-income family is participating in a program where the family pays as a contribution toward rent no more than 30 percent of the family's monthly adjusted income or 10 percent of the family's monthly income, then the maximum rent due from the family is the family's contribution. All other Low HOME Rent units must have rent that meet one of the following requirements:

(i) 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. If the rent determined under this paragraph is higher than the fair market rent under paragraph (a)(1)(i) of this section, then the maximum rent for units under this paragraph is the fair market rent under paragraph (a)(1)(i);

(ii) The rent contribution of the family is not more than 30 percent of the family's adjusted income; or

(iii) The unit is a LIHTC unit and has rents not greater than the gross rent for rent-restricted residential units as determined under 26 U.S.C. 42(g)(2).

(3) ***HOME rent limits for SRO projects.***

(i) For SRO units that have both sanitary and food preparation facilities, the rent limit is the zero-bedroom fair market rent as established by HUD under 24 CFR part 888. The project must meet the requirements of paragraphs (a)(1) and (2) of this section.

(ii) For SRO units that have no sanitary or food preparation facilities or only one of the two, the rent limit is 75 percent of the zero-bedroom fair market rent as established by HUD under 24 CFR part 888. The project must be occupied by very low-income tenants.

(b) ***Utility allowances.*** The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone, cable, and broadband) and update the allowances annually. The participating jurisdiction may determine the utility allowance for the project based on the type of utilities and services paid by the tenant, including any energy efficiency measures. The participating jurisdiction may use any of the following for its maximum monthly allowances: the HUD Utility Schedule Model, the utility allowance established by the applicable local public housing authority, or another method approved by HUD.

(c) ***Review and approval of rents.*** The participating jurisdiction must review and approve rents proposed by the owner for units, subject to the rent limits in paragraph (a) of this section. For all units subject to the rent limits in paragraph (a) for which the tenant is paying utilities and services, the participating jurisdiction must require that the rents do not exceed the rent limits in paragraph (a) minus the monthly allowances for utilities and services in paragraph (b) of this section.

(d) ***Period of affordability.*** The HOME-assisted units must meet requirements under this part for the applicable period specified in the table in this paragraph (d), beginning from project completion.

(1) The affordability requirements, including the applicable rent limits, period of affordability, and income requirements:

(i) Apply without regard to the term of any loan or mortgage, repayment of the HOME investment, or the transfer of ownership;

(ii) Must be imposed by a deed or use restriction, lien on real property, a covenant running with the land, a recorded agreement restricting the use of the property, or other mechanisms approved by HUD in writing, under which the participating jurisdiction has the right to require specific performance (except that the participating jurisdiction may provide that the affordability requirements may terminate upon foreclosure or transfer in lieu of foreclosure); and

(iii) Must be recorded in accordance with State recordation laws.

(2) 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 in order to preserve affordability.

(3) The affordability restrictions shall be revived according to the original terms if, during the original period of affordability, 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.

(4) The termination of the affordability requirements on the project does not terminate the participating jurisdiction's repayment obligation under § 92.503(b).

Table 1 to Paragraph (d)(4)—Minimum Period of Affordability for Rental Housing

Rental housing activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per-unit amount of HOME funds: Under $25,000	5
$25,000 to $50,000	10
Over $50,000 or rehabilitation involving refinancing	15

Rental housing activity	Minimum period of affordability in years
New construction or acquisition of newly constructed housing	20

(e) ***Subsequent rents during the period of affordability.***

(1) The HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. HUD then publishes the updated HOME rent limits.

(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 rent limits in paragraph (a) 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. The participating jurisdiction must review rents for compliance and approve or disapprove them every year.

(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 60 days prior written notice before implementing any increase in rents.

(f) ***Adjustment of HOME rent limits for an existing 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.

(g) ***Tenant income.*** The income of each tenant must be determined initially in accordance with § 92.203(b)(1)(i) unless the participating jurisdiction accepts an annual income determination pursuant to § 92.203(a)(1), (2), or (3) or determines income in accordance with § 92.203(b)(3). In addition, each year during the period of affordability, the participating jurisdiction must require the project owner to re-examine each tenant's annual income in accordance with the option in § 92.203(b)(1) selected by the participating jurisdiction and included in the written agreement, except as follows:

(1) A participating jurisdiction may permit an owner of small-scale housing to re-examine each tenant's annual income in accordance with the chart in this paragraph (g)(1), instead of annually, during the period of affordability.

Table 2 to Paragraph (g)(1)—Alternative Income Examination Cycle for Small-Scale Rental Housing Projects

Initial Examination (All Projects)	The income of each tenant must be determined initially in accordance with § 92.203(b)(1)(i) unless the participating jurisdiction accepts an annual income determination pursuant to § 92.203(a)(1), § 92.203(a)(2), or § 92.203(a)(3), or determines income in accordance with § 92.203(b)(3).
Year 3	The income of each tenant must be examined in accordance with the option selected by the participating jurisdiction in § 92.203(b)(1) and included in the written agreement between the owner and the participating jurisdiction pursuant to § 92.504(c)(3).
Year 6 (Projects with a period of affordability of greater than 5 years)	The income of each tenant must be examined in accordance with § 92.203(b)(1)(i).
Year 9 (Projects with a period of affordability of greater than 5 years)	The income of each tenant must be examined in accordance with the option selected by the participating jurisdiction in § 92.203(b)(1) and included in the written agreement between the owner and the participating jurisdiction pursuant to § 92.504(c)(3).
Year 12 (Projects with a period of affordability of greater than 10 years)	The income of each tenant must be examined in accordance with § 92.203(b)(1)(i).
Year 15 (Projects with a period of affordability of 20 years)	The income of each tenant must be examined in accordance with the option selected by the participating jurisdiction in § 92.203(b)(1) and included in the written agreement between the owner and the participating jurisdiction pursuant to § 92.504(c)(3).
Year 18 (Projects with a period of affordability of	The income of each tenant must be examined in accordance with § 92.203(b)(1)(i).

20 years)	

(2) A participating jurisdiction that permits an owner of a rental project (including small-scale housing projects) with a period of affordability of ten years or more to re-examine a tenant's annual income through a statement and certification in accordance with § 92.203(b)(1)(ii), must require the owner to re-examine the income of each tenant, in accordance with § 92.203(b)(1)(i), at minimum, every sixth year during the period of affordability; and,

(3) If the participating jurisdiction accepts an annual income determination pursuant to § 92.203(a)(1), (2), or (3), an owner is not required to re-examine a tenant's annual income in accordance with § 92.203(b) for HOME.

(h) ***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) A tenant who no longer qualifies as low-income must pay a rent amount equal to 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:

(i) A tenant of a HOME-assisted unit subject to rent restrictions under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay a rent amount that complies with that section;

(ii) A tenant in a HOME-assisted unit designated as floating pursuant to paragraph (j) of this section shall pay a rent amount no greater than the fair market rent for comparable, unassisted units in the neighborhood; and

(iii) The rent limits do not apply to any rental assistance or subsidy payment provided under a Federal, State, or local rental assistance or subsidy program.

(i) ***Surety bonds.*** Surety bonds, security deposit insurance, or instruments similar to surety bonds and security deposit insurance may not be used in lieu of or in addition to a security deposit in HOME-assisted units.

(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 in the written agreement between the participating jurisdiction and the owner, and the HOME units must be identified not later than the time of initial unit occupancy. 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.

(k) ***Tenant selection.*** The tenants must be selected in accordance with § 92.253(e).

(l) ***Ongoing responsibilities.*** The participating jurisdiction's responsibilities for on-site inspections and financial oversight of rental projects are set forth in § 92.251(f).

[90 FR 873, Jan. 6, 2025]

§ 92.253 Tenant protections and selection.

Link to an amendment published at 90 FR 876, Jan. 6, 2025.

This amendment was delayed until Apr. 20, 2025, at 90 FR 8780, Feb. 3, 2025.

This amendment was further delayed until Oct. 30, 2025 at 90 FR 16085, Apr. 17, 2025.

This amendment was further delayed until Apr. 30, 2026, at 90 FR 48443, Oct. 22, 2025.

(a) ***Lease.*** There must be a written lease between the tenant and the owner of rental housing assisted with HOME funds that is for a period of not less than 1 year, unless by mutual agreement between the tenant and the owner a shorter period is specified. The lease must incorporate the VAWA lease term/addendum required under § 92.359(e), except as otherwise provided by § 92.359(b).

(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;

(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; and

(9) ***Mandatory supportive services.*** Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

(c) ***Termination of tenancy.*** An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

(d) ***Tenant selection.*** An owner of rental housing assisted with HOME funds must comply with the affirmative marketing requirements established by the participating jurisdiction pursuant to § 92.351(a). The owner must adopt and follow written tenant selection policies and criteria that:

(1) Limit the housing to very low- income and low-income families;

(2) Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants);

(3) Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the participating jurisdiction (and only if the limitation or preference is described in the participating jurisdiction's consolidated plan).

(i) Any limitation or preference must not violate nondiscrimination requirements in § 92.350. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., the Housing Opportunity for Persons with AIDS program under 24 CFR part 574, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, supportive housing for the elderly or persons with disabilities under 24 CFR part 891), and the limit or preference is tailored to serve that segment of the population.

(ii) If a project does not receive funding from a Federal program that limits eligibility to a particular segment of the population, the project may have a limitation or preference for persons with disabilities who need services offered at a project only if:

(A) The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;

(B) Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and

(C) Such services cannot be provided in a nonsegregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

(4) Do not exclude an applicant with a voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher Program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such voucher or comparable HOME tenant-based assistance document.

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

(6) Give prompt written notification to any rejected applicant of the grounds for any rejection; and

(7) Comply with the VAWA requirements prescribed in § 92.359.

[61 FR 48750, Sept. 16, 1996, as amended at 67 FR 61756, Oct. 1, 2002; 78 FR 44674, July 24, 2013; 81 FR 80803, Nov. 16, 2016; 89 FR 38290, May 7, 2024]

§ 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.

(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 the rehabilitation of owner-occupied single family properties, the participating jurisdiction must use the HOME affordable homeownership limits provided by HUD for newly constructed housing and for existing housing.

(A) HUD will provide limits for affordable newly constructed housing based on 95 percent of the median purchase price for the area using Federal Housing Administration (FHA) single family mortgage program data for newly constructed housing, with a minimum limit based on 95 percent of the U.S. median purchase price for new construction for nonmetropolitan areas.

(B) HUD will provide limits for affordable existing housing based on 95 percent of the median area purchase price for the area using FHA single family mortgage program data for existing housing and other appropriate data that are available Nation-wide for purchase of existing housing, with a minimum limit based on 95 percent of the State-wide nonmetropolitan area median area purchase price using this data.

(iv) In lieu of the limits provided by HUD, the participating jurisdiction may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows:

(A) The participating jurisdiction must set forth the limits for single family housing of one, two, three, and four units, for the jurisdiction. The participating jurisdiction may determine separate limits for existing housing and newly constructed housing.

(B) For the limits on housing located outside of metropolitan areas, a State may aggregate sales data from more than one county if the counties are contiguous and similarly situated.

(C) The participating jurisdiction must include the following information in the annual action plan of the Consolidated Plan submitted to HUD for review and must update the information in each action plan.

(*1*) The 95 percent of median area purchase price must be established in accordance with a market analysis that ensured that a sufficient number of recent housing sales are included in the survey;

(*2*) Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a 1-month reporting period; for 250 through 499 sales per month, a 2-month reporting period; for less than 250 sales per month, at least a 3-month reporting period. The data must be listed in ascending order of purchase price;

(*3*) 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;

(*4*) The housing sales data must reflect all, or nearly all, of the single family housing sales in the entire participating jurisdiction; and.

(*5*) To determine the median area purchase price, a participating jurisdiction must 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 area purchase price, the amount should be multiplied by 0.95 to determine the 95 percent of the median area purchase price.

(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. If there is no ratified sales contract with an eligible homebuyer for the housing within 12 months of the date of completion of construction or rehabilitation, the housing must be rented to an eligible tenant as affordable rental housing and must comply with the requirements in § 92.252, including the period of affordability in § 92.252(d). In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing. The homebuyer must receive housing counseling. If housing is being purchased by an in-place tenant pursuant to § 92.255, then the housing may be acquired if the homebuyer's family was low-income at the time the homebuyer's family began occupying the HOME rental housing unit. If the housing does not meet the participating jurisdiction's property standards in § 92.251 at the time of acquisition, then the housing may still be acquired if the written agreement between the participating jurisdiction and the homebuyer requires the property to meet the standards within the period specified in § 92.251(c)(3)(ii) and funding is secured to complete the rehabilitation necessary to comply with the standards.

(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 execution of the instrument that requires the recapture of the HOME investment or recordation of the resale restrictions for sale to the next homebuyer. Execution of the instrument that requires the recapture of the HOME investment or recordation of the resale restrictions for sale to the next homebuyer may only occur after the housing meets the participating jurisdiction's property standards in accordance with § 92.251(c)(3) and the property title is transferred to the homebuyer. The per unit amount of

HOME funds and the period of affordability that they trigger are described more fully in paragraphs (a)(5)(i) (resale) and (ii) (recapture) of this section. The period of affordability is based on the total amount of HOME funds invested in the housing.

TABLE 1 TO PARAGRAPH (a)(4)

Homeownership assistance HOME amount per-unit	Minimum period of affordability in years
Under $25,000	5
$25,000 to $50,000	10
Over $50,000	15

(5) ***Resale and recapture.*** 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 and must specifically approve them in writing.

(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 the family's principal residence. The resale requirement must also ensure that the price at resale provides the HOME-assisted homeowner a fair return on investment (including the homeowner's investment and any improvements) and ensure the housing will remain affordable to a reasonable range of low-income homebuyers. The resale price is the fair return on investment added to the original sales price of the property, subject to market conditions. The participating jurisdiction must specifically define “fair return on investment” and “affordability to a reasonable range of low-income homebuyers,” and specifically address how it will make the housing affordable to a low-income homebuyer in the event that the resale price necessary to provide a fair return is not affordable to the subsequent homebuyer. The period of affordability is based on the total amount of HOME funds invested in the housing.

(A) Permissible methods of determining fair return and the resale price include but are not limited to the following:

(*1*) ***Itemized formula.*** To determine fair return on investment and resale price, the participating jurisdiction may use an itemized formula to add or subtract common, clearly defined factors that increase or decrease the value of a homeowner's investment in the property over the term of ownership. This formula must include the value of capital improvements and the sum of the downpayment and all principal payments by the homeowner on the loan secured by the property. The formula may depreciate the value of the capital improvements and may take into consideration any reduction in value due to property damage or delayed or deferred maintenance of the property condition. The fair return on a homeowner's investment under this

formula is calculated by taking the sum of the defined factors for the homeowner's investment in the property over the term of ownership and multiplying this amount by a clearly defined, publicly accessible index or standard.

Formula 1 to Paragraph (a)(5)(i)(A)(*1*)

Change in clearly defined, publicly accessible index or standard

MULTIPLIED BY

(Homeowner's downpayment + sum of all homeowner principal payments+ value of capital improvements)
MINUS
OPTIONAL (Depreciation of capital improvements + property damage + delayed or deferred maintenance)

EQUALS

Fair return

Original sales price + Fair return = Resale price

(*2*) ***Appraisal formula.*** The participating jurisdiction may use an appraisal formula to determine fair return on investment and resale price based on the amount of market appreciation, if any, over the term of ownership. Under this method, the appraisals must be conducted by a State licensed or certified third-party appraiser. The amount of market appreciation over the term of ownership is determined by subtracting the appraised value at the time of initial purchase from the appraised value of the property at the time of resale. The fair return on a homeowner's investment under this formula is calculated by multiplying a clearly defined, publicly accessible standard or index by the amount of market appreciation over the term of homeownership.

Formula 2 to Paragraph (a)(5)(i)(A)(*2*)

Clearly defined, publicly accessible index or standard x (New appraisal – initial appraisal) = Fair return

Original sales price + Fair return = Resale price

(*3*) ***Index formula.*** The participating jurisdiction may use an index formula to determine fair return on investment and resale price based on the change in value of a homeowner's investment over the term of ownership. Index formulas adjust the value of the homeowner's investment in proportion to changes in an index, such as the change in median household income. To determine the homeowner's fair return using this model, the sum of the property's original purchase price and the value of any capital improvements to the property is multiplied by the change in the specified index during the term of ownership. The formula may also depreciate the value of the capital improvements and may take into consideration any reduction in value due to property damage or delayed or deferred maintenance of the property condition.

Formula 3 to Paragraph (a)(5)(i)(A)(*3*)

Change in clearly defined, publicly accessible index
MULTIPLIED BY

(Original purchase price + value of capital improvements)
MINUS
OPTIONAL (Depreciation of capital improvements + property damage + delayed or deferred maintenance)

EQUALS

Fair return

Original sales price + Fair return = Resale price

(*4*) ***Fixed-rate formula.*** The participating jurisdiction may use a fixed-rate formula to determine the homeowner's fair return on investment. Fixed-rate formulas adjust the value of the homeowner's investment by a fixed percentage (rate) per year (*e.g.,* 3.5 percent). To determine the fair return on investment using this model, the fixed rate is multiplied by the number of years the homeowner owned and occupied the home (*e.g.,* 3.5 percent × 10 years = 35%). The resulting rate is then multiplied by the sum of the original purchase price of the home and the value of any capital improvements to the property to calculate the fair return to the homeowner. The formula may also depreciate the value of the capital improvements and may take into consideration any reduction in value due to property damage or delayed or deferred maintenance of the property condition.

Formula 4 to Paragraph (a)(5)(i)(A)(*4*)

(Fixed rate x length of homeownership)
MULTIPLIED BY

(Original purchase price + value of capital improvements)
MINUS
OPTIONAL (Depreciation of capital improvements + property damage + delayed or deferred maintenance)

EQUALS

Fair return

Original sales price + Fair return = Resale price

(B) Except as provided in paragraph (a)(5)(i)(C) of this section, deed or use restrictions, a recorded agreement restricting the use of the property, liens on real property, covenants running with the land, or other similar mechanisms approved by HUD in writing must be used to impose the resale requirements.

(C) 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. If the owner of record before the termination event obtains an ownership interest in the property after the termination event, then the affordability restrictions shall be revived under the same terms prior to the termination event, including a minimum period of affordability equal to the terminated period of affordability.

(D) 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 percent to 80 percent of the area median income can afford monthly payments under average FHA terms without other government assistance and housing will remain affordable at least during the next five to seven years compared to other housing in the market area; the size and amenities of the housing are modest and substantial rehabilitation will not significantly increase the market value; the neighborhood has housing that is not currently owned by the occupants, but the participating jurisdiction is encouraging homeownership in the neighborhood by providing homeownership assistance and by making improvements to the streets, sidewalks, and other public facilities and services. If a participating jurisdiction in preparing a neighborhood revitalization strategy under § 91.215(e)(2) of its Consolidated Plan 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.***

(A) Recapture provisions must require that the participating jurisdiction recoups all or a portion of the HOME assistance provided 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 amount of HOME funds that directly assisted the homebuyer to buy the housing unit. This amount includes any HOME assistance that assisted the homebuyer to purchase the housing or reduced the purchase price paid by the homebuyer from fair market value to an affordable price but excludes the amount of HOME assistance provided to develop the unit that does not assist the homebuyer or reduce the purchase price paid by the homebuyer. Recapture provisions may permit the subsequent homebuyer to assume the HOME assistance (subject to the HOME requirements for the remainder of the period of affordability) if the subsequent homebuyer is low-income and no additional HOME assistance is provided.

(B) 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. In establishing its recapture requirements, the participating jurisdiction is

subject to the limitation that when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

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

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

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

Formula 5 to Paragraph (*a*)(5)(*ii*)(A)(*2*)

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

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

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

(*5*) ***Amount subject to recapture.*** The HOME investment subject to recapture is the amount of HOME funds that directly assisted the homebuyer to buy the housing. This includes the amount that assisted the homebuyer to purchase the housing or reduced the purchase price paid by the homebuyer from fair market value to an affordable price but excludes the amount of HOME assistance provided to develop the unit that did not assist the homebuyer or reduce the purchase price paid by the homebuyer. 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 rental units in the single-family housing, the affordability requirements of § 92.252 apply to the 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 a single-family property, then the requirements of § 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of § 92.254.

(7) ***Lease-purchases in the HOME program.*** A homeownership project may consist of acquisition, rehabilitation, or new construction of housing to be sold to an eligible low-income homebuyer through a lease-purchase program.

(i) The homebuyer must qualify as a low-income family at the time of signing the lease-purchase agreement. In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing. If a family is also receiving HOME tenant-based rental assistance, the participating jurisdiction is not required to reexamine the family's income during the term of the lease-purchase agreement.

(ii) The owner and homebuyer must execute a lease-purchase agreement under an existing lease-purchase program prior to occupancy of the unit. The lease-purchase agreement must require the purchase of the housing within 36 months of execution. Owners and homebuyers that have entered into a lease-purchase agreement pursuant to the requirements in this paragraph are subject to the affordability requirements in this section unless the housing is not purchased within the required timeframes in this paragraph in accordance with the lease-purchase agreement.

(iii) If the first homebuyer does not acquire the housing in accordance with the lease-purchase agreement, the owner must sell the housing to another eligible low-income homebuyer within 48 months from the execution of the original lease-purchase agreement. The next homebuyer is eligible for homeownership assistance from the participating jurisdiction. The owner is not permitted to sell the unit through another lease-purchase agreement. When the next homebuyer purchases the housing, the homebuyer shall be subject to the affordability requirements in this section.

(iv) If the owner is unable to sell the unit within 48 months from the execution of the lease-purchase agreement, the housing is subject to the requirements for affordable rental housing in § 92.252.

(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.

(b) ***Preserving affordability of housing assisted with HOME funds.*** When there is a termination event for affordability restrictions, a participating jurisdiction may take the following actions to preserve the affordability of the property:

(1) The participating jurisdiction may exercise purchase options, rights of first refusal, or other preemptive rights to obtain ownership of the housing before foreclosure to preserve affordability, subject to the following requirements:

(i) The housing must be sold to an eligible homebuyer in accordance with paragraph (a)(3) of this section within 12 months of the date the participating jurisdiction obtains ownership;

(ii) The period of affordability for the eligible homebuyer must be equal to the remaining period of affordability of the former homeowner unless additional HOME funds are used to directly assist the eligible homebuyer (*i.e.,* homeownership assistance);

(iii) If the participating jurisdiction directly assists the eligible homebuyer with additional HOME funds, then the period of affordability must be recalculated in accordance with the table in § 92.254(a)(4) based on the total amount of additional HOME funds invested. The additional investment must be treated as a new project; and

(iv) The total HOME funds for a project (original investment plus additional investment) must not exceed the per-unit subsidy limit in § 92.250(a) in effect at the time of the additional investment, subject to HUD approval.

(2) The participating jurisdiction may use additional HOME funds for the following costs:

(i) The cost for the participating jurisdiction to obtain ownership of the HOME-assisted housing through a purchase option, right of first refusal, or other preemptive right before foreclosure or at the foreclosure sale. This cost must be treated as an amendment to the original project. The foreclosure costs to acquire housing with a HOME loan in default is an eligible cost; however, HOME funds may not be used to repay a loan made with HOME funds.

(ii) The cost of the participating jurisdiction to undertake any necessary rehabilitation for the housing acquired. This includes the rehabilitation required for the housing to meet applicable property standards in § 92.251. This cost must be treated as an amendment to the original project.

(iii) The cost to the participating jurisdiction of owning the housing pending resale to another homebuyer. This cost must be treated as an amendment to the original project.

(iv) The cost to assist an eligible homebuyer in purchasing the housing. This cost must be treated as a cost for a new project and not as an amendment to the original project.

(v) As an alternative to charging costs to the HOME program under § 92.206, the participating jurisdiction may charge the costs to the HOME program under § 92.207 as a reasonable administrative cost of its HOME program. To the extent administrative funds are used, they may be reimbursed, in whole or in part, when the housing is sold to a new eligible homebuyer. If the housing is sold for more than the amount of administrative funds that the participating jurisdiction expended to preserve the affordability, then the excess sale proceeds shall be program income.

(3) The participating jurisdiction may permit the Community Land Trust, as defined in § 92.2, that originally developed the HOME-assisted housing, to exercise a purchase option, right of first refusal, or other preemptive right to obtain ownership of the housing to preserve affordability, including but not limited to the right to purchase the housing in lieu of foreclosure, under the following conditions:

(i) The Community Land Trust obtains ownership of the housing, subject to existing HOME affordability restrictions;

(ii) The housing must be resold to an eligible homebuyer in accordance with paragraph (a)(3) of this section within 12 months;

(iii) The period of affordability for the eligible homebuyer is equal to the remaining period of affordability of the former homeowner, unless the participating jurisdiction provides additional HOME funds to directly assist the eligible homebuyer in accordance with subparagraph (b)(3)(iv) below (*i.e.,* homeownership assistance); and,

(iv) The participating jurisdiction may not provide additional HOME funds to the Community Land Trust to obtain ownership, rehabilitate the housing, own/hold the housing pending resale to the next homebuyer, or provide homeownership assistance to the next eligible homebuyer. The participating jurisdiction may provide homeownership assistance to the next eligible homebuyer and the period of affordability shall be based upon the homeownership assistance provided to the homebuyer, in accordance with subparagraphs (b)(1)(iii) and (b)(1)(iv) of this section.

(c) ***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. In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing.

(d) ***Ownership interest.*** The ownership in the housing assisted under this section must meet the definition of "homeownership" in § 92.2, except that housing that is rehabilitated pursuant to paragraph (b) of this section may also include inherited property with multiple owners, life estates, living trusts and beneficiary deeds under the following conditions. The participating jurisdiction has the right to establish the terms of assistance.

(1) ***Inherited property.*** Inherited property with multiple owners: Housing for which title has been passed to several individuals by inheritance, but not all heirs reside in the housing, sharing ownership with other nonresident heirs. (The occupant of the housing has a divided ownership interest.) The participating jurisdiction may assist the owner-occupant if the occupant is low-income, occupies the housing as his or her principal residence, and pays all the costs associated with ownership and maintenance of the housing (e.g., mortgage, taxes, insurance, utilities).

(2) ***Life estate.*** The person who has the life estate has the right to live in the housing for the remainder of his or her life and does not pay rent. The participating jurisdiction may assist the person holding the life estate if the person is low-income and occupies the housing as his or her principal residence.

(3) ***Inter vivos trust, also known as a living trust.*** A living trust is created during the lifetime of a person. A living trust is created when the owner of property conveys his or her property to a trust for his or her own benefit or for that of a third party (the beneficiaries). The trust holds legal title and the beneficiary holds equitable title. The person may name him or herself as the beneficiary. The trustee is under a fiduciary responsibility to hold and manage the trust assets for the beneficiary. The participating jurisdiction may assist if all beneficiaries of the trust qualify as a low-income family and occupy the property as their principal residence (except that contingent beneficiaries, who receive no benefit from the trust nor have any control over the trust assets until the beneficiary is deceased, need not be low-income). The trust must be valid and enforceable and ensure that each beneficiary has the legal right to occupy the property for the remainder of his or her life.

(4) ***Beneficiary deed.*** A beneficiary deed conveys an interest in real property, including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that expressly states that the deed is effective on the death of the owner. Upon the death of the owner, the grantee beneficiary receives ownership in the property, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime. The participating jurisdiction may assist if the owner qualifies as low-income and the owner occupies the property as his or her principal residence.

(e) ***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.

(f) ***Providing homeownership assistance through lenders.*** Subject to the requirements of paragraph (f) of this section, the participating jurisdiction may provide homeownership assistance through a lending institution that is a contractor or nonprofit lending institution that is a subrecipient that also provides the first mortgage loan to a low-income family.

(1) The homeownership assistance may be provided only as specified in a written agreement between the participating jurisdiction and the lender. The written agreement must specify the forms and amounts of homeownership assistance that the participating jurisdiction authorizes the lender to provide to families and any conditions that apply to the provision of such homeownership assistance.

(2) Before the lender provides any homeownership assistance to a family, the participating jurisdiction must verify that the family is low-income and must inspect the housing for compliance with the property standards in § 92.251.

(3) No fees (e.g., origination fees or points) may be charged to a family for the HOME homeownership assistance provided pursuant to this paragraph (e), and the participating jurisdiction must determine that the fees and other amounts charged to the family by the lender for the first mortgage financing are reasonable. Reasonable administrative costs may be charged to the HOME program as a project cost. If the participating jurisdiction requires lenders to pay a fee to participate in the HOME program, the fee is program income to the HOME program.

(4) If the nonprofit lender is a subrecipient or contractor that is receiving HOME assistance to determine that the family is eligible for homeownership assistance, but the participating jurisdiction or another entity is making the assistance to the homebuyer (e.g., signing the documents for the loan or the grant), the requirements of paragraphs (e)(2) and (3) of this section are applicable.

(g) ***Homebuyer program policies.*** The participating jurisdiction must have and follow written policies for:

(1) Underwriting standards for homeownership assistance to determine the amount of assistance necessary to achieve sustainable homeownership. These standards must evaluate the projected overall debt of the family after the purchase of the housing, the maximum amount that a participating jurisdiction may provide a family, the appropriateness of the amount of assistance, assets available to a family to acquire the housing, and financial resources to sustain homeownership. A participating jurisdiction may not provide a single, fixed amount of assistance to each homebuyer that participates in the participating jurisdiction's homebuyer program;

(2) Responsible lending, and

(3) Refinancing loans to which HOME loans are subordinated to require that the terms of the new loan are reasonable.

[61 FR 48750, Sept. 16, 1996, as amended at 67 FR 61756, Oct. 1, 2002; 68 FR 10161, Mar. 4, 2003; 69 FR 16766, Mar. 30, 2004; 69 FR 68052, Nov. 22, 2004; 72 FR 16685, Apr. 4, 2007; 78 FR 44674, July 24, 2013; 90 FR 881, Jan. 6, 2025]

§ 92.255 Purchase of HOME units by in-place tenants.

(a) During a HOME-assisted rental unit's period of affordability, the participating jurisdiction may permit an owner to sell or otherwise convey a HOME-assisted rental unit to an existing tenant in accordance with the requirements of § 92.254. However, refusal by the tenant to purchase the housing does not constitute good cause for termination of tenancy or failure to renew the lease. The participating jurisdiction may not permit the use of a lease-purchase program under this section.

(b) If no additional HOME funds are used to enable the tenants to become homeowners, the homeownership units are subject to a period of affordability equal to the remaining period of affordability if the units continued as rental units. The participating jurisdiction must impose resale requirements that comply with § 92.254(a) for the required period of affordability. The period of affordability and resale restrictions must be applied to the property regardless of the income of the family at purchase. If the tenant's family is no longer low-income at the time of the purchase, then the family must occupy the housing as a principal residence in accordance with § 92.254(a)(3) and must agree to the imposition of resale restrictions on the housing, in accordance with § 92.254(a)(5), for the period of affordability specified in this paragraph (b).

(c) If additional HOME funds are used to directly assist the tenants to become homeowners, the period of affordability is the remaining period of affordability if the unit had remained a rental unit or the required period under § 92.254(a)(4) for the amount of direct homeownership assistance provided, whichever is longer. No additional HOME funds may be provided to an in-place tenant to become a homebuyer if the tenant's family is no longer low-income at the time of the purchase.

[90 FR 886, Jan. 6, 2025]

§ 92.256 [Reserved]

§ 92.257 Equal participation of faith-based organizations.

The HUD program requirements in § 5.109 apply to the HOME program, including the requirements regarding disposition and change in use of real property by a faith-based organization.

[81 FR 19418, Apr. 4, 2016]

§ 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 housing units.

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

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

(1) Only one ECHO unit may be provided per host property.

(2) The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit rent, but if a rent is charged, it must meet the requirements of § 92.252.

(3) The ECHO housing must remain affordable for the period specified in § 92.252(d). If within the period of affordability the original occupant no longer occupies the unit, the ECHO unit owner must:

(i) Rent the unit to another eligible occupant on site;

(ii) Move the ECHO unit to another site for occupancy by an eligible occupant; or

(iii) If the owner of the ECHO unit is the host property owner-occupant, the owner may repay the HOME funds in accordance with the recapture provisions imposed by the participating jurisdiction consistent with § 92.254(a)(5)(ii). The participating jurisdiction must use the recaptured HOME funds for additional HOME activities.

(4) The participating jurisdiction has the responsibility to enforce the project requirements applicable to ECHO units.

[61 FR 48750, Sept. 16, 1996, as amended at 90 FR 886, Jan. 6, 2025]

Subpart G—Community Housing Development Organizations

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

(a) Within 24 months after the date that 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 owned, developed, or sponsored 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, includes funds transferred from a State under § 92.102(b). The participating jurisdiction must certify the organization as meeting the definition of “community housing development organization” and must document that the organization has capacity to own, develop, or sponsor housing each time it commits funds to the organization. For purposes of this paragraph:

(1) Funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization (or project owner as described in paragraph (a)(4) of this section) committing the funds to a specific local project in accordance with paragraph (2) of the definition of “commitment” in § 92.2.

(2) Rental housing is “owned” by the community housing development organization if the community housing development organization is the owner in fee simple absolute of rental housing (or has a long term ground lease running for the full period of affordability in § 92.252) leased to low-income

families in accordance with § 92.252. If the housing is to be rehabilitated or constructed, the community housing development organization hires and oversees the developer that rehabilitates or constructs the housing. The community housing development organization must oversee or hire and contract with an experienced project manager to oversee all aspects of the development, including obtaining zoning, securing non-HOME financing, selecting a developer or general contractor, overseeing the progress of the work, and determining the reasonableness of costs. The community housing development organization must own the rental housing during development and for a period at least equal to the period of affordability in § 92.252. If the CHDO acquires housing that meets the property standards in § 92.251, the CHDO must own the rental housing for a period at least equal to the period of affordability in § 92.252.

(3) Rental housing is "developed" by the community housing development organization if the community housing development organization is the owner in fee simple absolute (or has a long term ground lease running for the full period of affordability in § 92.252) and the developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for rent to low-income families in accordance with § 92.252. To be the "developer," the community housing development organization may share developer responsibilities with another entity but must be in charge of all aspects of the development process, including selecting the site, obtaining permit approvals and all project financing, selecting architects, engineers, and general contractors, overseeing project progress, and determining the reasonableness of costs. The requirement that a community housing development organization is in charge of all aspects of the development process must be enforceable through a written agreement (*e.g.,* a joint venture agreement or master development agreement). At a minimum, the community housing development organization must own the housing during development and for a period at least equal to the period of affordability in § 92.252. The participating jurisdiction may permit the community housing development organization to sell or otherwise convey the housing to a nonprofit organization other than a community housing development organization, subject to all applicable requirements of this part, if the participating jurisdiction determines and documents that the community housing development organization no longer has the capacity to own and manage the housing for the full period of affordability and there are no other community housing development organizations within the jurisdiction with capacity to own and manage the project for the full period of affordability.

(4) Rental housing is "sponsored" by the community housing development organization if it is rental housing "owned" or "developed" in accordance with paragraph (a)(2) or (3) of this section, as applicable, by a subsidiary of a community housing development organization, a limited partnership of which the community housing development organization or its subsidiary is the managing general partner, or a limited liability company of which the community housing development organization or its subsidiary is the managing member.

(i) The subsidiary of the community housing development organization may be a for-profit or nonprofit organization and must be wholly owned by the community housing development organization. If the limited partnership or limited liability company agreement permits the community housing development organization or its subsidiary to be removed as the managing general partner or managing member, the agreement must provide that the removal must be for cause and that the community housing development organization must be replaced with another community housing development organization.

(ii) The HOME funds must be provided by the participating jurisdiction directly to the entity that owns the project.

(5) HOME-assisted rental housing is also "sponsored" by a community housing development organization if the community housing development organization "developed" the rental housing project in accordance with paragraph (a)(3) of this section and agrees to convey the project to an identified private nonprofit organization at a predetermined time after completion of the project. Sponsored rental housing, as provided in this paragraph (a)(5), is subject to the following requirements:

(i) The private nonprofit organization may not be created by a governmental entity.

(ii) The HOME funds must be invested in the project that is owned by the community housing development organization.

(iii) Before commitment of HOME funds, the community housing development organization sponsor must select the private nonprofit organization that will obtain ownership of the property.

(A) The nonprofit organization assumes the community housing development organization's HOME obligations (including any repayment of loans) for the rental project at a specified time after completion of development.

(B) If the housing is not transferred to the nonprofit organization, the community housing development organization sponsor remains responsible for the HOME assistance and the HOME project.

(6) Housing for homeownership is "developed" by the community housing development organization if the community housing development organization is the owner (in fee simple absolute) and developer of housing that will be constructed or existing substandard housing that will be rehabilitated for sale to low-income families in accordance with § 92.254.

(i) To be the "developer," the community housing development organization may share the developer role with another entity but must be in charge of all aspects of the development process, including selecting the site, obtaining permit approvals and all project financing, selecting architects, engineers, and general contractors, overseeing project progress, determining the reasonableness of costs, identifying eligible homebuyers, and overseeing the sale of homeownership units. The community housing development organization may provide direct homeownership assistance (*e.g.,* assistance with a downpayment, payment of closing costs, mortgage rate buy-downs, etc.) when it sells the housing to low-income families and the community housing development organization will not be considered a subrecipient. The HOME funds for homeownership assistance shall not be greater than 10 percent of the amount of HOME funds for development of the housing.

(ii) The participating jurisdiction must determine and set forth in its written agreement with the community housing development organization the actual sales prices of the housing or the method by which the sales prices for the housing will be established and whether the proceeds must be returned to the participating jurisdiction or may be retained by the community housing development organization.

(A) While proceeds retained by the community housing development organization 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 the proceeds are to be used for HOME-eligible activities or other housing activities to benefit low-income families.

(B) Funds that are recaptured because the 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.

(7) The participating jurisdiction must determine the form of assistance (*e.g.,* grant or loan) in accordance with § 92.205(b) that it will provide to the community housing development organization for a rental housing project under paragraph (a)(4) of this section and must provide the assistance directly to the entity that owns the project.

(b) Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved consolidated plan and to encourage such community housing development organizations to do so. If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable community housing development organizations, up to 20 percent of the minimum community housing development organization set aside specified in paragraph (a) of this section (but not more than $150,000 during the 24 month period) may be committed to an organization that meets the definition of "community housing development organization" in § 92.2, except for the requirements in paragraph (9) of the definition, in order to develop demonstrated capacity and qualify as a community housing development organization in the jurisdiction.

(c) Up to 10 percent of the HOME funds reserved under this section may be used for activities specified under § 92.301.

(d) HOME funds required to be reserved under this section are subject to reduction, as provided in § 92.500(d).

(e) If funds for operating expenses are provided under § 92.208 to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be owned, developed, or sponsored by the community housing development organization, the participating jurisdiction's written agreement with the community housing development organization must provide that the community housing development organization is expected to receive funds under paragraph (a) of this section for a project within 24 months of the date of receiving the funds for operating expenses, and must specify the terms and conditions upon which this expectation is based.

(f) The participating jurisdiction must ensure that a community housing development organization does not receive HOME funding for any fiscal year in an amount that provides more than $50,000 or 50 percent of the community housing development organization's total operating expenses in that fiscal year, whichever is greater. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under § 92.208.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28930, May 28, 1997; 78 FR 44677, July 24, 2013; 90 FR 886, Jan. 6, 2025]

§ 92.301 Project-specific assistance to community housing development organizations.

(a) ***Project-specific technical assistance and site control loans*** —

(1) ***General.*** Within the percentage specified in § 92.300(c), HOME funds may be used by a participating jurisdiction to provide technical assistance and site control loans to community housing development organizations in the early stages of site development for an eligible project. These

loans may not exceed amounts that the participating jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (a)(2) of this section. All costs must be related to a specific eligible project or projects.

(2) ***Allowable costs.*** A loan may be provided to cover project costs necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, option to acquire property, site control and title clearance. General operational expenses of the community housing development organization are not allowable costs.

(3) ***Repayment.*** The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(b) ***Project-specific seed money loans*** —

(1) ***General.*** Within the percentage specified in § 92.300(c), HOME funds may be used to provide loans to community housing development organizations to cover preconstruction project costs that the participating jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies, and legal fees.

(2) ***Eligible sponsors.*** A loan may be provided only to a community housing development organization that has, with respect to the project concerned, site control (evidenced by a deed, a sales contract, or an option contract to acquire the property), a preliminary financial commitment, and a capable development team.

(3) ***Repayment.*** The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the community housing development organization.

§ 92.302 Housing education and organizational support.

HUD is authorized to provide education and organizational support assistance, in conjunction with HOME funds made available to community housing development organizations in accordance with section 233 of the Act.

(a) HUD will issue a publication in the FEDERAL REGISTER announcing the availability of funding under this section, as appropriate. The publication need not include funding for each of the eligible activities but may target funding from among the eligible activities.

(b) Notwithstanding the definition of "community land trust" in § 92.2, HUD may provide housing education and organizational support assistance under this section to a community land trust only if the following requirements are met:

(1) The community land trust meets the definition of a "community housing development organization" at § 92.2, except for the requirements in paragraphs (9) and (10) of the definition.

(2) The community land trust is established to complete the activities in paragraph (b)(3) of this section.

(3) The community land trust:

(i) Acquires land to hold in perpetuity and primarily for conveyance under long-term ground leases;

(ii) Transfers ownership of any structural improvements located on such leased land to the lessees; and

(iii) Retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity;

(4) The community land trust's corporate membership is open to residents of a particular geographic area, as specified in the organization's bylaws; and

(5) The board of directors:

(i) Includes a majority of members who are elected by the corporate membership; and

(ii) Is composed of equal numbers of lessees pursuant to paragraph (b)(2)(ii), members who are not lessees, and any other category of persons described in the organization's bylaws.

[90 FR 887, Jan. 6, 2025]

§ 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 and nondiscrimination.

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

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

[62 FR 28930, May 28, 1997, as amended at 81 FR 90657, Dec. 14, 2016]

§ 92.351 Affirmative marketing; minority outreach program.

(a) ***Affirmative marketing.***

(1) Each participating jurisdiction must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME- funded programs, including, but not limited to, tenant-based rental assistance and homeownership assistance programs. 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. If the participating jurisdiction's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with § 92.253(e)(3), the participating jurisdiction must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

(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 subrecipient and 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 subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the 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 subrecipients and owners to affirmatively market the program and 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 200.321 of title 2 Code of Federal Regulations 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.

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44678, July 24, 2013; 80 FR 75935, Dec. 7, 2015; 90 FR 887, Jan. 6, 2025]

§ 92.352 Environmental review.

(a) ***General.*** The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. The applicability of the provisions of 24 CFR part 50 or part 58 is based on the HOME project (new construction, rehabilitation, acquisition) or activity (tenant-based rental assistance) as a whole, not on the type of cost paid with HOME funds.

(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. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR part 58.

(2) A State participating jurisdiction must also assume responsibility for approval of requests for release of HOME funds submitted by State recipients.

(3) HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction.

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44678, July 24, 2013; 90 FR 887, Jan. 6, 2025]

§ 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 5.628, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;

(*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 in accordance with § 92.253.

(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) For purposes of the URA, the person meets the definition of "persons not displaced" as defined in 49 CFR 24.2; 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 C.

(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.

[61 FR 48750, Sept. 16, 1996, as amended at 61 FR 51760, Oct. 3, 1996; 62 FR 28930, May 28, 1997; 67 FR 61756, Oct. 1, 2002; 78 FR 44678, July 24, 2013; 90 FR 887, Jan. 6, 2025]

§ 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. 3141), 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. 3701).

(2) The contract for construction must contain these wage provisions if HOME funds are used for any project costs in § 92.206, including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards, as applicable. Participating jurisdictions shall be responsible for ensuring compliance by contractors and subcontractors with labor standards described in this section. In accordance with procedures specified by HUD, participating jurisdictions shall:

(i) Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations;

(ii) Conduct on-site inspections and employee interviews;

(iii) Collect and review certified weekly payroll reports;

(iv) Correct all labor standards violations promptly;

(v) Maintain documentation of administrative and enforcement activities; and

(vi) Require certification as to compliance with the provisions of this section before making any payment under such contracts.

(b) ***Volunteers.*** The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

(c) ***Sweat equity.*** The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44678, July 24, 2013; 90 FR 888, Jan. 6, 2025]

§ 92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), 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]

§ 92.356 Conflict of interest.

(a) ***Applicability.*** In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 2 CFR 200.317 and 2 CFR 200.318, apply. In all cases not governed by 2 CFR 200.317 and 2 CFR 200.318, 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 financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

(c) ***Persons covered.*** The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) ***Exceptions: Threshold requirements.*** Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict (public disclosure is considered a combination of at least two of the following: publication on the recipient's website, including social media; electronic mailings; media advertisements; public service announcements; and display in public areas such as libraries, grocery store bulletin boards, and neighborhood centers), evidence of the public disclosure, 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 an opportunity was provided for open competitive bidding or negotiation;

(3) 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;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(6) 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

(7) 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, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (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 during the required period of affordability specified in § 92.252(d) or § 92.254(a)(4). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) ***Exceptions.*** Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the

exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28930, May 28, 1997; 78 FR 44679, July 24, 2013; 80 FR 75935, Dec. 7, 2015; 90 FR 888, Jan. 6, 2025]

§ 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.

[62 FR 28930, May 28, 1997]

§ 92.359 VAWA requirements.

(a) ***General.***

(1) The Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, apply to all HOME tenant-based rental assistance and rental housing assisted with HOME funds, as supplemented by this section.

(2) For the HOME program, the "covered housing provider," as this term is used in HUD's regulations in 24 CFR part 5, subpart L, refers to:

(i) The housing owner for the purposes of 24 CFR 5.2005(d)(1), (d)(3), and (d)(4) and § 5.2009(a); and

(ii) The participating jurisdiction and the owner for purposes of 24 CFR 5.2005(d)(2), 5.2005(e), and 5.2007, except as otherwise provided in paragraph (g) of this section.

(b) ***Effective date.*** The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking became applicable upon enactment of VAWA 2013 on March 7, 2013. Compliance with the VAWA regulatory requirements under this section and 24 CFR part 5, subpart L, are required for any tenant-based rental assistance or rental housing project for which the date of the HOME funding commitment is on or after *December 16, 2016*.

(c) ***Notification requirements.*** The participating jurisdiction must provide a notice and certification form that meet the requirements of 24 CFR 5.2005(a) to the owner of HOME-assisted rental housing.

(1) ***For HOME-assisted units.*** The owner of HOME-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for a HOME-assisted unit at the time the applicant is admitted to a HOME-assisted unit, or denied admission to a HOME-assisted unit based on the owner's tenant selection policies and criteria. The owner of HOME-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HOME-assisted unit.

(2) ***For HOME tenant-based rental assistance.*** The participating jurisdiction must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for HOME tenant-based rental assistance when the applicant's HOME tenant-based rental assistance is approved or denied. The participating jurisdiction must also provide the notice and certification form described in 24 CFR 5.2005(a) to a tenant receiving HOME tenant-based rental assistance when the participating jurisdiction provides the tenant with notification of termination of the HOME tenant-based rental assistance, and when the participating jurisdiction learns that the tenant's housing owner intends to provide the tenant with notification of eviction.

(d) ***Bifurcation of lease requirements.*** For the purposes of this part, the following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):

(1) If a family living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.

(2) If a family who is receiving HOME tenant-based rental assistance separates under 24 CFR 5.2009(a), the remaining tenant(s) will retain the HOME tenant-based rental assistance. The participating jurisdiction must determine whether the tenant that was removed from the unit will receive HOME tenant-based rental assistance.

(e) ***VAWA lease term/addendum.*** The participating jurisdiction must develop a VAWA lease term/addendum to incorporate all requirements that apply to the owner or lease under 24 CFR part 5, subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24

CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the participating jurisdiction determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). When HOME tenant-based rental assistance is provided, the lease term/addendum must require the owner to notify the participating jurisdiction before the owner bifurcates the lease or provides notification of eviction to the tenant. If HOME tenant-based rental assistance is the only assistance provided (*i.e.,* the unit is not receiving project-based assistance under a covered housing program, as defined in 24 CFR 5.2003), the VAWA lease term/addendum may be written to expire at the end of the rental assistance period.

(f) ***Period of applicability.*** For HOME-assisted rental housing, the requirements of this section shall apply to the owner of the housing for the duration of the period of affordability. For HOME tenant-based rental assistance, the requirements of this section shall apply to the owner of the tenant's housing for the period for which the rental assistance is provided.

(g) ***Emergency Transfer Plan.***

(1) The participating jurisdiction must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies under the plan. The plan must meet the requirements in 24 CFR 5.2005(e), as supplemented by this section.

(2) For the purposes of § 5.2005(e)(7), the required policies must specify that for tenants who qualify for an emergency transfer and who wish to make an external emergency transfer when a safe unit is not immediately available, the participating jurisdiction must provide a list of properties in the jurisdiction that include HOME-assisted units. The list must include the following information for each property: The property's address, contact information, the unit sizes (number of bedrooms) for the HOME-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HOME-assisted units. In addition, the participating jurisdiction may:

(i) Establish a preference under the participating jurisdiction's HOME program for tenants who qualify for emergency transfers under 24 CFR 5.2005(e);

(ii) Provide HOME tenant-based rental assistance to tenants who qualify for emergency transfers under 24 CFR 5.2005(e); or

(iii) Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units.

[81 FR 80803, Nov. 16, 2016, as amended at 90 FR 888, Jan. 6, 2025]

Subpart I—Technical Assistance

§ 92.400 Coordinated Federal support for housing strategies.

(a) ***General.*** HUD will provide assistance in accordance with Subtitle C of the Act.

(b) ***Notice of funding.*** HUD will publish a notice in the FEDERAL REGISTER announcing the availability of funding under this section as appropriate.

Subpart J—Reallocations

§ 92.450 General.

(a) This subpart J sets out the conditions under which HUD reallocates HOME funds that have been allocated, reserved, or placed in a HOME Investment Trust Fund.

(b) A jurisdiction that is not a participating jurisdiction but is meeting the requirements of §§ 92.102, 92.103, and 92.104, (participation threshold, notice of intent, and submission of consolidated plan) is treated as a participating jurisdiction for purposes of receiving a reallocation under subpart J of this part.

§ 92.451 Reallocation of HOME funds from a jurisdiction that is not designated a participating jurisdiction or has its designation revoked.

(a) ***Failure to be designated a participating jurisdiction.*** HUD will reallocate, under this section, any HOME funds allocated to or reserved for a jurisdiction that is not a participating jurisdiction if:

(1) HUD determines that the jurisdiction has failed to:

(i) Meet the participation threshold amount in § 92.102;

(ii) Provide notice of its intent to become a participating jurisdiction in accordance with § 92.103; or

(iii) Submit its consolidated plan, in accordance with 24 CFR part 91; or

(2) HUD after providing for amendments and resubmissions in accordance with 24 CFR part 91 disapproves the jurisdiction's consolidated plan.

(b) ***Designation revoked.*** HUD will reallocate, under this section, any funds remaining in a jurisdiction's HOME Investment Trust Fund after HUD has revoked the jurisdiction's designation as a participating jurisdiction under § 92.107.

(c) ***Manner of reallocation.*** HUD will reallocate funds that are subject to reallocation under this section in the following manner:

(1) If the funds to be reallocated under this section are from a State, HUD will:

(i) Make the funds available by competition in accordance with criteria in § 92.453 among applications submitted by units of general local government within the State and with preference being given to applications from units of general local government that are not participating jurisdictions, and

(ii) Reallocate the remainder by formula in accordance with § 92.454.

(2) If the funds to be reallocated are from a unit of general local government:

(i) Located in a State that is participating jurisdiction, HUD will reallocate the funds to that State. The State, in distributing these funds, must give preference to the provision of affordable housing within the unit of general local government; or

(ii) Located in a State that is not a participating jurisdiction, HUD will reallocate the funds by competition among units of general local government and community housing development organizations within the State, with priority going to applications for affordable housing within the unit of general local government; and reallocate the remainder by formula in accordance with § 92.454.

§ 92.452 Reallocation of community housing development organization set-aside.

HUD will reallocate, under this section, any HOME funds reduced or recaptured by HUD from a participating jurisdiction's HOME Investment Trust Fund under § 92.300(d). HUD will reallocate these funds by competition in accordance with criteria in § 92.453 to other participating jurisdictions for affordable housing developed, sponsored, or owned by community housing development organizations.

§ 92.453 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 § 92.451 or § 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)).

[62 FR 44840, Aug. 22, 1997]

§ 92.454 Reallocations by formula.

(a) HUD will reallocate under this section:

(1) Any HOME funds remaining available for reallocation after HUD has made competitive reallocations under § 92.451 and § 92.452;

(2) Any HOME funds available for reallocation because HUD reduced or recaptured funds from participating jurisdiction under § 92.500(d) for failure to commit the funds within the time specified;

(3) Any HOME funds withdrawn by HUD from a participating jurisdiction under 24 CFR 91.520(f) for failure to submit in a timely manner a performance report required by 24 CFR 91.520 that is satisfactory to HUD;

(4) Any HOME funds remitted to HUD under § 92.503(b) when a jurisdiction ceases to be a participating jurisdiction; and

(5) Any HOME funds available for reallocation as a result of any reductions under 24 CFR 92.551 or 92.552.

(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 whose funds were reduced under § 92.551 or that HUD has removed from participating in reallocations under § 92.552.

(c) A local participating jurisdiction's share of a reallocation is calculated by multiplying the amount available for reallocation to units of general local government by a factor that is that ratio of the participating jurisdiction's formula allocation provided under § 92.50 to the total of the formula allocations provided for all local participating jurisdictions sharing in the reallocation. A State participating jurisdiction's share is comparably determined using the amount available for reallocation to States.

(d) HUD will make reallocations under this section quarterly, unless the amount available for such reallocation is insufficient to warrant making a reallocation. In any event, HUD will make a reallocation under this section at least once a year. The minimum amount of a reallocation is $1000.

[61 FR 48750, Sept. 16, 1996, as amended at 90 FR 888, Jan. 6, 2025]

Subpart K—Program Administration

§ 92.500 The HOME Investment Trust Fund.

(a) ***General.*** A HOME Investment Trust Fund consists of the accounts described in this section solely for investment in accordance with the provisions of this part. HUD will establish a HOME Investment Trust Fund United States Treasury account for each participating jurisdiction. Each participating jurisdiction may use either a separate local HOME Investment Trust Fund account or, a subsidiary account within its general fund (or other appropriate fund) as the local HOME Investment Trust Fund account.

(b) ***Treasury Account.*** The United States Treasury account of the HOME Investment Trust Fund includes funds allocated to the participating jurisdiction under § 92.50 (including for a local participating jurisdiction, any transfer of the State's allocation pursuant to § 92.102(b)(2)) and funds reallocated to the participating jurisdiction, either by formula or by competition, under subpart J of this part; and

(c) ***Local account.***

(1) The local account of the HOME Investment Trust Fund includes deposits of HOME funds disbursed from the Treasury account; the deposit of any State funds (other than HOME funds transferred pursuant to § 92.102(b)(2)) or local funds that enable the jurisdiction to meet the participating threshold amount in § 92.102, any program income (from both the allocated funds and matching contributions in accordance with the definition of program income), and any repayments or recaptured funds as required by § 92.503. The local account must be interest-bearing.

(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 affordable housing trust fund to be made to the local account;

(iii) The participating jurisdiction establishes a separate account within its own trust fund for repayments of the matching contributions; and

(iv) The funds in the account are used solely for investment in eligible activities within the participating jurisdiction's boundaries in accordance with the provisions of this part, except as provided under § 92.201(a)(2).

(3) The funds in the local account cannot be used for the matching contribution and do not need to be matched.

(d)

(1) ***Reductions of Fiscal Year 2015 and subsequent fiscal year allocations.*** HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund, as follows:

(i) Any funds from a specific fiscal year allocation that are in the United States Treasury account that are not committed (including funds for community housing development organizations under § 92.300) 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 for the specific fiscal year allocation;

(ii) Any funds from a specific fiscal year allocation that were committed to a State recipient or subrecipient that are not committed to a specific local project within 36 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 for the specific fiscal year allocation;

(iii) Any funds from a specific fiscal year allocation that are in the United States Treasury account that are not expended (drawn down) by September 30 of the fifth year after the end of the period of availability of the fiscal year allocation for obligation by HUD. Due to end-of-year financial system closeouts that begin before this date and prevent electronic access to the payment system, requests to draw down the funds must be made at least 7 full business days before this date to ensure that the funds still can be drawn from the United States Treasury account through the computerized disbursement and information system; and

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

(2)

(i) ***Reductions of Fiscal Year 2014 and prior fiscal year allocations.*** HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of:

(A) Any funds from Fiscal Year 2014 and prior fiscal year allocations in the United States Treasury account that are required to be reserved (*i.e.,* 15 percent of the funds) by a participating jurisdiction, under § 92.300, and which are not committed to a community housing development organization project 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 from Fiscal Year 2014 and prior fiscal year allocations 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 from Fiscal Year 2014 and prior fiscal year allocations in the United States Treasury account that are not expended within 5 years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement; and

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

(ii) For purposes of determining the amount by which the HOME Investment Trust Fund will be reduced or recaptured under paragraphs (d)(2)(i)(A), (B), and (C) of this section, HUD will consider the sum of commitments to CHDOs, commitments, or expenditures, as applicable, from all fiscal year allocations through the Fiscal Year 2014 allocation. This sum must be equal to or greater than the sum of all fiscal year allocations through the fiscal year allocation being examined (minus previous reductions to the HOME Investment Trust Fund), or in the case of commitments to CHDOs, 15 percent of those fiscal year allocations.

(iii) HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of all fiscal year allocations through the Fiscal Year 2014 allocation that are uncommitted by the commitment deadline for the Fiscal Year 2015 allocation.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28930, May 28, 1997; 78 FR 44679, July 24, 2013; 81 FR 86952, Dec. 2, 2016; 90 FR 888, Jan. 6, 2025]

§ 92.501 HOME Investment Partnership Agreement.

Allocated and reallocated funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement ensures that HOME funds invested in affordable housing are repayable if the housing ceases to qualify as affordable housing before the period of affordability expires.

§ 92.502 Program disbursement and information system.

(a) ***General.*** The HOME Investment Trust Fund account established in the United States Treasury is managed through a computerized disbursement and information system established by HUD. The system disburses HOME funds that are allocated or reallocated, and collects and reports information on the use of HOME funds in the United States Treasury account. (For purposes of reporting in the Integrated Disbursement and Information System, a HOME project is an activity.) The participating jurisdiction must report all program income in HUD's computerized disbursement and information system.

(b) ***Project funding.*** 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 provide funding to an activity by identifying specific investments in the disbursement and information system. The participating jurisdiction is required to enter complete project set-up information before providing funding to the project.

(c) ***Disbursement of HOME funds.***

(1) After complete project 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 to the United States as provided in 2 CFR 200.305(b)(9), except interest amounts up to $500 per year may be retained for administrative expenses.

(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. Beginning with the Fiscal Year 2015 allocation, the specific funds that are committed to a project will be disbursed for that project. If both funds in the local account and funds in the United States Treasury account are committed to a project, the funds in the local account must be disbursed before requests are made for HOME funds in the United States Treasury account for the project.

(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 to HUD.

(2) Additional HOME funds may be committed to a project up to one year after project completion, but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250 at the time of underwriting.

(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. Only participating jurisdictions and State recipients (if permitted by the State) may request disbursement.

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44679, July 24, 2013; 80 FR 75935, Dec. 7, 2015; 81 FR 86952, Dec. 2, 2016; 90 FR 888, Jan. 6, 2025]

§ 92.503 Program income, repayments, and recaptured funds.

(a) ***Program income.***

(1) Program income must be used in accordance with the requirements of this part. Program income must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient or subrecipient to retain the program income for additional HOME projects pursuant to the written agreement required by § 92.504.

(2) If the jurisdiction is not a participating jurisdiction when the program income is received, the funds are not subject to the requirements of this part.

(3) Program income derived from consortium activities undertaken by or within a member unit of general local government which thereafter terminates its participation in the consortium continues to be program income of the consortium.

(b) ***Repayments.***

(1) Any HOME funds invested in housing that does not meet the affordability requirements for the period specified in § 92.252 or § 92.254, as applicable, must be repaid by the participating jurisdiction in accordance with paragraph (b)(3) of this section.

(2) Any HOME funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the participating jurisdiction, in accordance with paragraph (b)(3) of this section, except for repayments of project-specific community housing development organization loans that are waived, in accordance with § 92.301(a)(3) and (b)(3). In addition, any HOME funds used for costs that are not eligible under this part must be repaid by the participating jurisdiction, in accordance with paragraph (b)(3) of this section.

(3) HUD will instruct the participating jurisdiction to either repay the funds to the HOME Investment Trust Fund Treasury account or the local account. If the jurisdiction is not a participating jurisdiction at the time the repayment is made, the funds must be remitted to HUD and reallocated, in accordance with § 92.454.

(c) ***Recaptures.*** HOME funds recaptured in accordance with § 92.254(a)(5)(ii) must be used in accordance with the requirements of this part. Recaptured funds must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient, subrecipient, or community housing development organization to retain the recaptured funds for additional HOME projects pursuant to the written agreement required by § 92.504. If the jurisdiction is not a participating jurisdiction when the recaptured funds are received, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

(d) ***Commitment of funds in the local account.*** Beginning with the Fiscal Year 2017 action plan, as provided in 24 CFR 91.220(l)(2) and 91.320(k)(2), program income, repayments, and recaptured funds in the participating jurisdiction's HOME Investment Trust Fund local account must be used in accordance with the requirements of this part, and the amount of program income, repayments, and recaptured funds in the participating jurisdiction's HOME Investment Trust Fund local account at the beginning of the program year must be committed before HOME funds in the HOME Investment Trust Fund United States Treasury account, except for the HOME funds in the United States Treasury account that are required to be reserved (*i.e.,* 15 percent of the funds), under § 92.300(a), for investment only in housing to be owned, developed, or sponsored by community housing development organizations. The deadline for committing program income, repayments, and recaptured funds received during a program year is the date of the participating jurisdiction's commitment deadline for the subsequent year's grant allocation.

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44680, July 24, 2013; 81 FR 86952, Dec. 2, 2016]

§ 92.504 Participating jurisdiction responsibilities; written agreements.

(a) ***Responsibilities.*** The participating jurisdiction is responsible for managing the day-to-day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance and compliance of each contractor, State recipient, and subrecipient must be reviewed

at least annually. The participating jurisdiction must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

(b) ***Executing a written agreement.*** Before disbursing any HOME funds to any entity, the participating jurisdiction must enter into a legally binding written agreement with that entity. Before disbursing any HOME funds to any entity, a State recipient, subrecipient, or contractor that is administering all or a part of the HOME program on behalf of the participating jurisdiction, must also enter into a legally binding written agreement with that entity. The written agreement must ensure compliance with the requirements of this part and be a separate agreement from project financing documents (*e.g.,* mortgage or deed of trust, regulatory agreement, or promissory note).

(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 and the minimum provisions by role and type of entity that must be included in a written agreement.

(1) ***State recipient.*** The provisions in the written agreement between the State and a State recipient will depend on the program functions that the State specifies the State recipient will carry out in accordance with § 92.201(b). In accordance with § 92.201, the written agreement must either require the State recipient to comply with the requirements established by the State or require the State recipient to establish its own requirements to comply with this part, including requirements for income determinations and underwriting subsidy layering guidelines, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability.

(i) ***Use of the HOME funds.*** The agreement must describe the amount and use of the HOME funds to administer one or more programs to produce affordable housing, provide homeownership assistance, or provide tenant-based rental assistance, including the anticipated type and number of housing projects to be funded (*e.g.,* the number of single family homeowner loans to be made or number of homebuyers to receive homeownership assistance), tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects that meet the deadlines established by this part), a budget for each program, and any requirement for matching contributions. These items must be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreement.

(ii) ***Affordability.*** The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the period of affordability. The agreement must require a means of enforcement of the affordability requirements by the State participating jurisdiction or, if the State recipient will be the owner at project completion of the affordable housing, the intended beneficiaries. The means of enforcement may include liens on real property, deed or use restrictions, a recorded agreement restricting the use of the property, covenants running with the land, or other mechanisms approved by HUD in writing, under which the participating jurisdiction has the right to require specific performance. The agreement must establish whether repayment of HOME funds must be remitted to the State or retained by the State recipient for additional eligible activities.

(iii) ***Program income.*** The agreement must state whether program income is to be remitted to the State or retained by the State recipient for additional eligible activities.

(iv) ***Uniform administrative requirements.*** The agreement must require the State recipient to comply with applicable uniform administrative requirements, as described in § 92.505.

(v) ***Project 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. For any projects involving HOME rental housing, tenant-based rental assistance, or security deposit assistance, the agreement must require that the applicable HOME tenancy addendum is used in accordance with § 92.253 for all HOME-assisted units or tenants.

(vi) ***Other program requirements.*** The agreement must require the State recipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the State recipient does not assume the State's responsibilities for release of funds under § 92.352 and the intergovernmental review process in § 92.357 does not apply to the State recipient. If HOME funds are provided for development of rental housing or provision of tenant-based rental assistance, the agreement must set forth all obligations the State imposes on the State recipient in order to meet the Violence Against Women Act (VAWA) requirements under § 92.359, including notice obligations and any obligations with respect to the emergency transfer plan (including whether the State recipient must develop its own plan or follow the State's plan).

(vii) ***Affirmative marketing.*** The agreement must specify the State recipient's affirmative marketing responsibilities in accordance with § 92.351.

(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 written agreement.*** The agreement must specify remedies for breach of the provisions of the written agreement. The agreement must specify that, in accordance with 2 CFR 200.339, 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 in whole or in part in accordance with 2 CFR 200.340.

(xi) ***Written agreement.*** Before providing HOME funds to any owner, community housing development organization, subrecipient, homeowner, homebuyer, tenant (or landlord) receiving tenant-based rental assistance, or contractor providing services to or on behalf of the State recipient, the State recipient must have a fully executed written agreement with such person or entity that meets the requirements of this section. For affordable housing assisted with HOME funds, the State recipient must provide HOME funds directly to the owner under the terms and conditions of the written agreement. The agreement must establish that any repayment on any form of assistance of HOME funds must be remitted to the State or, if permitted by the State, retained by the State recipient for additional eligible activities.

(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.

(xiii) ***Fees.*** The agreement must prohibit the State recipient and its subrecipients and community housing development organizations from charging for any of the prohibited costs listed in § 92.214, including but not limited to servicing, origination, processing, inspection, or other fees for the costs of administering a HOME program.

(2) ***Subrecipient.*** The agreement must set forth and require the subrecipient to follow the participating jurisdiction's requirements, including requirements for income determinations, underwriting and subsidy layering guidelines, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability requirements. The agreement between the participating jurisdiction and the subrecipient must include the following:

(i) ***Use of the HOME funds.*** The agreement must describe the amount and use of the HOME funds for one or more programs, including the anticipated type and number of housing projects to be funded (*e.g.,* the number of single family homeowner loans to be made or the number of homebuyers to receive homeownership assistance), tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects in accordance with deadlines established by this part), a budget, any requirement for matching contributions, and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement.

(ii) ***Program income.*** The agreement must state if program income is to be remitted to the participating jurisdiction or retained by the subrecipient for additional eligible activities.

(iii) ***Uniform administrative requirements.*** The agreement must require the subrecipient to comply with applicable uniform administrative requirements, as described in § 92.505.

(iv) ***Other program requirements.*** The agreement must require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the subrecipient does not assume the participating jurisdiction's responsibilities for environmental review under § 92.352 and the intergovernmental review process in § 92.357 does not apply. The agreement must set forth the requirements the subrecipient must follow to enable the participating jurisdiction to carry out environmental review responsibilities before HOME funds are committed to a project. If the subrecipient is administering a HOME rental housing program or tenant-based rental assistance program on behalf of the participating jurisdiction, the participating jurisdiction must set forth in the written agreement all obligations of the subrecipient to meet the VAWA requirements under § 92.359, including notice obligations and obligations under the emergency transfer plan.

(v) ***Affirmative marketing.*** The agreement must specify the subrecipient's affirmative marketing responsibilities in accordance with § 92.351.

(vi) ***Requests for disbursement of funds.*** The agreement must specify that the subrecipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subrecipient requests funds from the participating jurisdiction.

(vii) ***Reversion of assets.*** The agreement must specify that upon expiration of the agreement, the subrecipient must transfer to the participating jurisdiction any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(viii) ***Records and reports.*** The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(ix) ***Enforcement of the written agreement.*** The agreement must specify remedies for breach of the provisions of the written agreement. The agreement must specify that, in accordance with 2 CFR 200.339, suspension or termination may occur if the subrecipient materially fails to comply with any term of the agreement. The participating jurisdiction may permit the agreement to be terminated in whole or in part in accordance with 2 CFR 200.340.

(x) ***Written agreement.*** Before the subrecipient provides HOME funds to any owner, community housing development organization, subrecipient, homeowner, homebuyer, tenant (or landlord) receiving tenant-based rental assistance, or contractor providing services to or on behalf of the subrecipient, the subrecipient must have a fully executed written agreement with such entity that meets the requirements of this section. For housing projects assisted with HOME funds, the subrecipient must provide HOME funds directly to the owner under the terms and conditions of the written agreement. The agreement must establish whether repayment of HOME funds must be remitted to the participating jurisdiction or may be retained by the subrecipient for additional eligible activities.

(xi) ***Fees.*** The agreement must prohibit the subrecipient from charging for any of the prohibited costs listed in § 92.214, including but not limited to servicing, origination, or other fees for the costs of administering the HOME program.

(xii) ***Project requirements.*** The agreement must require enforcement of project requirements in subpart F of this part, as applicable in accordance with the type of project assisted. For any projects involving HOME rental housing, tenant-based rental assistance, or security deposit assistance, the agreement must require that the applicable HOME tenancy addendum is used in accordance with § 92.253 for all HOME-assisted units or tenants.

(3) ***For-profit or nonprofit housing owner (other than a community housing development organization or single family owner-occupant).*** The participating jurisdiction may preliminarily award HOME funds for a proposed project, contingent on conditions such as obtaining other financing for the project. This preliminary award is not a commitment to a project. The written agreement committing the HOME funds to the project must meet the requirements of "commit to a specific local project" in the definition of "commitment" in § 92.2. The HOME assistance must be provided directly to the owner under the terms and conditions of a written agreement that complies with the requirements of this part and contains the following:

(i) ***Use of the HOME funds.*** The agreement between the participating jurisdiction and a for-profit or nonprofit housing owner must include the address of the project or the legal description of the property if a street address has not been assigned to the property, the specific amount and use of the HOME funds and other funds for the project, including the tasks to be performed for the project, a schedule for completing the tasks and the project, and a complete budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement to achieve project completion and compliance with the HOME requirements. If HOME funds are being used to reimburse costs incurred not more than 24 months before the date that the HOME funds are committed to the project, the written agreement must explicitly permit the use of HOME funds for costs described in § 92.206(d)(1). The agreement must state that any and all repayments made by

the owner on HOME assistance (*e.g.,* grants or loans) must be remitted to the participating jurisdiction, unless the participating jurisdiction permits a subrecipient or State recipient to retain the funds.

(ii) ***Affordability.*** The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified period of affordability. The agreement must require a means of enforcement of the affordability requirements by the participating jurisdiction and the intended beneficiaries. The means of enforcement may include liens on real property, deed or use restrictions, a recorded agreement restricting the use of the property, covenants running with the land, or other mechanisms approved by HUD in writing, under which the participating jurisdiction has the right to require specific performance.

(A) If an owner is undertaking a rental project, the agreement must establish the initial rents, the procedures for rent increases pursuant to § 92.252(e)(2), the number of HOME units, the size of the HOME units, the designation of the HOME units as fixed or floating, and include the requirement that the owner provide the address (*e.g.,* street address and apartment number) of each HOME unit no later than the time of initial occupancy. In accordance with § 92.252(g), the written agreement must specify the option in § 92.203(b)(1) that the participating jurisdiction selected for calculating annual income.

(B) If the owner is undertaking a homeownership project for sale to homebuyers in accordance with § 92.254(a), the agreement must set forth the resale or recapture requirements that must be imposed on the housing, the sales price or the basis upon which the sales price will be determined, and the disposition of the sales proceeds. Recaptured funds must be returned to the participating jurisdiction. If the owner is a Community Land Trust, as defined in § 92.2, the Community Land Trust may preserve affordability in accordance with § 92.254.

(iii) ***Project requirements.*** As applicable and in accordance with the type of project assisted, the agreement must require compliance with the project requirements in subpart F of this part, including compliance with tenant protections in 24 CFR 92.253. The agreement may permit the owner to limit eligibility or give a preference to a particular segment of the population in accordance with § 92.253(e).

(iv) ***Property standards.*** The agreement must require the housing to meet the property requirements as specified in § 92.251. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing in compliance with § 92.251 for the duration of the period of affordability.

(v) ***Other program requirements.*** The agreement must require the owner to carry out each project in compliance with the following requirements of subpart H of this part:

(A) The agreement must specify the owner's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.

(B) The Federal and nondiscrimination requirements in § 92.350.

(C) Any displacement, relocation, and acquisition requirements imposed by the participating jurisdiction consistent with § 92.353.

(D) The labor requirements in § 92.354.

(E) The conflict of interest provisions prescribed in § 92.356(f).

(F) If HOME funds are being provided to develop rental housing, the agreement must set forth all obligations the participating jurisdiction imposes on the owner in order to meet the VAWA requirements under § 92.359, including the owner's notice obligations and owner obligations under the emergency transfer plan.

(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. The written agreement must require the owner of rental housing to annually provide the participating jurisdiction with information on rents (including rental amounts charged to the tenant), and occupancy of HOME-assisted units to demonstrate compliance with § 92.252. If the rental housing project has floating HOME units, the written agreement must require that the owner provide the participating jurisdiction with information regarding unit substitution and filling vacancies so that the project remains in compliance with § 92.252. The agreement must specify the reporting requirements (including copies of financial statements) to enable the participating jurisdiction to determine the financial condition (and continued financial viability) of the rental project.

(vii) ***Enforcement of the written agreement.*** The agreement must specify remedies for breach of the provisions of the written agreement. The agreement must require a means of enforcement of the affordability requirements by the participating jurisdiction and the intended beneficiaries. The means of enforcement may include liens on real property, deed or use restrictions, a recorded agreement restricting the use of the property, covenants running with the land, or other mechanisms approved by HUD in writing, under which the participating jurisdiction has the right to require specific performance.

(viii) ***Requests for disbursement of funds.*** The agreement must specify that the owner 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 period of affordability required by the participating jurisdiction under § 92.252. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the low-income family.

(x) ***Fees.*** The agreement must state the fees that may be charged by the owner in accordance with § 92.214(b)(4) and prohibit owners from charging tenants for any of the prohibited charges listed in § 92.214(b), including but not limited to fees that are not customarily charged in rental housing, such as laundry room access fees. The agreement must also prohibit the owner undertaking a homeownership project from charging servicing, origination, processing, inspection, or other fees for the costs of providing homeownership assistance.

(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 any of the participating jurisdiction's HOME programs or specific services for one or more programs, 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, and budget.

(ii) ***Program requirements.*** The agreement must provide that the contractor is subject to the requirements in this part that are applicable to the participating jurisdiction, except for §§ 92.505 and 92.506, and the contractor cannot assume the participating jurisdiction responsibilities for environmental review, decision making, and action under § 92.352. The agreement must provide that the requirements at 2 CFR part 200 applicable to a contractor apply. The agreement must list the requirements applicable to the activities the contractor is administering. If applicable to the work under the contract, the agreement must set forth all obligations the participating jurisdiction imposes on the contractor in order to meet the VAWA requirements under § 92.359, including any notice obligations and any obligations under the emergency transfer plan.

(iii) ***Duration of agreement.*** The agreement must specify the duration of the contract.

(5) ***Homebuyer, homeowner, tenant, or owner receiving tenant-based rental or security deposit assistance.*** When a participating jurisdiction provides assistance to a homebuyer, homeowner, tenant, or owner for tenant-based rental assistance, the written agreement may take many forms depending upon the nature of assistance. At minimum, it must include the following:

(i) For homebuyers, the agreement must contain the requirements in § 92.254(a), the value of the property, principal residence, lease-purchase, if applicable, and the resale or recapture provisions.

(A) 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.,* downpayment, closing costs, rehabilitation), and the time by which the housing must be acquired.

(B) For existing housing that is acquired for homeownership, the agreement must require the participating jurisdiction to inspect the housing to determine that the project meets the property standards in § 92.251 and require compliance with the requirements in § 92.251(c)(3).

(ii) For homeowners, the agreement must contain the requirements in § 92.254(b) and specify the amount and form of HOME assistance, rehabilitation work to be undertaken, date for completion, and property standards to be met.

(iii) For tenants or owners receiving payments under a HOME tenant-based rental assistance program, the rental assistance contract or the security deposit assistance contract must meet the requirements in § 92.209 and applicable requirements in § 92.253.

(6) ***Community housing development organization.*** When HOME funds are provided to a community housing development organization, the requirements in the written agreement depend upon the type of HOME assistance. At minimum, the agreement must comply with the following requirements for the type of HOME assistance:

(i) ***Using set-aside funds under § 92.300 for affordable housing.*** The written agreement must contain the requirements described in paragraph (c)(3) of this section and the following additional requirements:

(A) ***Role of community housing development organization.*** The agreement must state whether the community housing development organization will own, develop, or sponsor rental housing, as described in § 92.300(a)(2) through (5), and require the community housing development organization to comply with the applicable requirements in § 92.300(a), based on its role.

(B) ***Developer of homeownership housing*** —

(*1*) ***Retaining proceeds and recaptured funds.*** If the community development organization is a "developer" of homeownership housing, as defined in § 92.300(a)(6), the agreement must specify whether the organization may retain proceeds from the sale of the housing and whether the proceeds are to be used for HOME-eligible or other housing activities to benefit low-income families. A participating jurisdiction may permit a community housing development organization to retain recaptured funds for additional HOME projects pursuant to the written agreement required under this paragraph.

(*2*) ***Providing homeownership assistance.*** If a community housing development organization is providing homeownership assistance, then the agreement between the participating jurisdiction and the community housing development organization must describe the amount and use of the HOME funds for homeownership assistance, the number of homebuyers to receive homeownership assistance, any requirement for matching contributions, and the period of the agreement. The HOME funds for homeownership assistance shall not be greater than 10 percent of the amount of HOME funds for development of the housing. The community housing development organization must enter into agreements with homebuyers that meet the requirements in paragraph (c)(5)(i) of this section.

(C) ***Sharing of developer responsibilities.*** If the community housing development organization will share developer responsibilities with another entity pursuant to § 92.300(a)(3) or (6), the participating jurisdiction must enter into a written agreement only with the community housing development organization. The written agreement must require the community housing development organization to enter into a separate agreement with the co-developer. At minimum, the agreement between the community housing development organization and its co-developer must contain the following:

(*1*) The responsibilities of the community housing development organization and co-developer with descriptions of the responsibilities in sufficient detail to demonstrate compliance with § 92.300(a)(3) or (a)(6), as applicable;

(*2*) A description of the amount of developer fee and other compensation, if any, to be paid to the co-developer;

(*3*) A description of any ownership interest in the community housing development organization and, if applicable, any membership or partnership interest in the owner held by the co-developer; and

(*4*) A provision that the agreement's terms and conditions are subject to review by the participating jurisdiction and if such terms and conditions affect a project's compliance with HOME requirements, the terms and conditions are subject to approval by the participating jurisdiction.

(ii) ***Receiving assistance for operating expenses.*** The agreement must describe the use of HOME funds for operating expenses (*e.g.,* salaries, wages, and other employee compensation and benefits); employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; and materials and supplies. If the community housing development organization is not also receiving funds for a housing project to be developed, sponsored, or owned by the community housing development organization, the agreement must provide that the community housing development organization is expected to receive funds for a project within 24 months of the date of receiving the funds for operating expenses, and must specify the terms and conditions upon which this expectation is based and the consequences of failure to receive funding for a project. If the community housing development organization is also receiving funds for a project, there must be a separate written agreement that complies with this section for the use of HOME funds for the project and the agreement must contain the applicable requirements in paragraph (c)(6)(i) of this section.

(iii) ***Receiving assistance for project-specific technical assistance and site control loans or project-specific seed money loans.*** The agreement must identify the specific site or sites and describe the amount and use of the HOME funds (in accordance with § 92.301), including a budget for work, a period of performance, and a schedule for completion. The agreement must also set forth the basis upon which the participating jurisdiction may waive repayment of the loans, consistent with § 92.301, if applicable.

(7) ***Technical assistance provider to develop the capacity of community housing development organizations in the jurisdiction.*** The agreement must identify the specific nonprofit organization(s) to receive capacity building assistance. The agreement must describe the amount and use (scope of work) of the HOME funds, including a budget, a period of performance, and a schedule for completion.

[61 FR 48750, Sept. 16, 1996, as amended at 64 FR 50224, Sept. 15, 1999; 67 FR 61757, Oct. 1, 2002; 68 FR 56404, Sept. 30, 2003; 78 FR 44680, July 24, 2013; 80 FR 75935, Dec. 7, 2015; 81 FR 80804, Nov. 16, 2016; 81 FR 86952, Dec. 2, 2016; 88 FR 30497, May 11, 2023; 90 FR 888, Jan. 6, 2025]

§ 92.505 Applicability of uniform administrative requirements.

The requirements of 2 CFR part 200 apply to participating jurisdictions, State recipients, and subrecipients receiving HOME funds, except for the following provisions: §§ 200.306, 200.307, 200.308 (not applicable to participating jurisdictions), 200.311 (except as provided in § 92.257), 200.312, 200.328, 200.330, 200.334, 200.335, and 200.344 (except as provided in § 92.507). The provisions of 2 CFR 200.305 apply as modified by § 92.502(c). If there is a conflict between definitions in 2 CFR part 200 and 24 CFR part 92, the definitions in 24 CFR part 92 govern.

[80 FR 75935, Dec. 7, 2015, as amended at 90 FR 892, Jan. 6, 2025]

§ 92.506 Audit.

Audits of the participating jurisdiction, State recipients, and subrecipients must be conducted in accordance with 2 CFR part 200, subpart F.

[67 FR 61757, Oct. 1, 2002, as amended at 80 FR 75935, Dec. 7, 2015]

§ 92.507 Closeout.

This section specifies the procedure and actions that must be completed by a participating jurisdiction and HUD to closeout a grant. The requirements of 2 CFR 200.344 apply to closeouts, except to the extent that such requirements conflict with the following:

(a) ***Closeout process.***

(1) HUD will close out a grant after the period of performance has ended. A participating jurisdiction must complete all required activities and closeout actions for the grant, as required by HUD. If the participating jurisdiction fails to complete the requirements in accordance with this section, HUD may close out the Federal award with the information available. HUD may close out individual grants or multiple grants simultaneously.

(2) To prepare for closeout, before the end of the budget period of the grant, the participating jurisdiction shall. review all eligible activities under the grant and reconcile its accounts as follows:

(i) For any eligible costs incurred under the grant and not yet drawn down from the U.S. Treasury account, the grantee must draw down those funds in a timely manner.

(ii) The participating jurisdiction must promptly refund to the proper accounts any previously disbursed balances of unobligated cash paid in advance. All such refunds must be completed prior to submission of the information and reports required in paragraph (b) of this section.

(3) At the end of the grant budget period, no additional eligible activities may be undertaken by the participating jurisdiction using the grant funds and no additional eligible costs incurred after the budget period may be submitted by the participating jurisdiction. Unused funds remaining on the grant will be returned to the U.S. Treasury by HUD. The participating jurisdiction must promptly refund any unused grant funds not authorized to be retained, consistent with HUD's instructions.

(4) HUD will initiate closeout actions in the computerized disbursement and information system when the participating jurisdiction has met the requirements established in paragraph (b) of this section.

(i) If the participating jurisdiction does not submit and enter all required data, information, and reports or complete the actions described in paragraph (b) of this section, HUD will proceed to close out the grant with the information available within one year of the period of performance end date.

(ii) HUD may report the participating jurisdiction's material failure to comply with the terms and conditions of the award or requirements or the requirements of this section in *SAM.gov.* HUD may also pursue other enforcement actions in 2 CFR 200.339.

(5) A participating jurisdiction may request, and HUD may provide an extension of the period of performance or closeout deadlines provided good cause is demonstrated.

(b) ***Actions required for closeout.*** A participating jurisdiction must complete the following actions for closeout of the grant:

(1) Submit a complete and final Federal Financial Report for the grant to HUD within 120 days of the end date of the period of performance, as indicated in the grant agreement;

(2) Demonstrate that it has fulfilled all programmatic and administrative requirements for the project (*i.e.,* property inspections, obtaining certificates of occupancy, etc.) within the period of performance in accordance with 2 CFR 200.344(a);

(3) Enter all data for activities in the computerized disbursement and information system established by HUD, within one year from the end of the period of performance, as required by the grant agreement;

(4) Demonstrate that all HOME-assisted units are occupied by eligible occupants by entering accurate beneficiary data in the computerized disbursement and information system established by HUD, within one year from the end of the period of performance, as required by the grant agreement;

(5) Comply with the requirements in 2 CFR 200.313(e) for the disposition of any equipment acquired under one or more HOME grants, that is no longer needed for the HOME program, or for other activities previously supported by a Federal agency;

(6) Resolve and close all HOME monitoring findings for the grant (if applicable);

(7) Resolve and close all OIG audit findings for the grant (if applicable);

(8) Resolve and close all Single Audit findings for the grant (if applicable);

(9) Carry out all other responsibilities under the grant agreement and applicable laws and regulations satisfactorily; and

(10) Complete a closeout certification prepared by HUD. The certification shall identify the grant being closed out and include provisions with respect to the following:

(i) Identification of any unused grant funds that were returned to the U.S. Treasury by HUD;

(ii) Compliance with the recordkeeping requirements in § 92.508, including maintaining program, project, financial, program administration, community housing development organization records, records concerning other Federal requirements, and such other records as necessary to carry out responsibilities for the grant by the participating jurisdiction, its State recipients, and subrecipients;

(iii) Monitoring and enforcement of the requirements for all HOME-assisted units set forth in this part for the period specified in the HOME written agreement with the property owner;

(iv) Compliance with use of program income, recaptured funds, and repayments in accordance with § 92.503. If the jurisdiction is not a participating jurisdiction (as a State, metropolitan city, urban county, consortium, or consortium member) when it receives funds, the funds are not subject to the requirements of this part;

(v) All actions required in 2 CFR 200.344 applicable to the grant have been taken by the participating jurisdiction;

(vi) All actions required in 2 CFR 200.344 applicable to the participating jurisdiction's subrecipients have been taken;

(vii) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) and (2) of this section;

(viii) Acknowledge future monitoring by HUD, including that findings of noncompliance may be taken into account by HUD as unsatisfactory performance of the participating jurisdiction and in any risk-based assessment of a future grant award under this part; and

(ix) Unless otherwise provided in a closeout certification, the Consolidated Plan will remain in effect after closeout until the expiration of the program year covered by the most recent Consolidated Plan.

(c) ***Post closeout adjustments and continuing responsibilities.*** The closeout of a grant does not affect any of the obligations required under this part and under 2 CFR 200.345, including:

(1) The right of HUD to disallow costs and recover funds on the basis of a later audit or other review. HUD must make any cost disallowance determination and notify the participating jurisdiction within the record retention period;

(2) Compliance with the requirements in § 92.508;

(3) Compliance with the requirements in § 92.509;

(4) Records retention as required in 2 CFR 200.345, as applicable;

(5) Monitoring and enforcement of the requirements for all HOME-assisted units set forth in this part for the period of affordability specified in the HOME written agreement with the property owner;

(6) Compliance with use of program income, recaptured funds, and repayments in accordance with § 92.503. If the jurisdiction is not a participating jurisdiction (as a metropolitan city, urban county, State, consortium, or consortium member) when it receives funds, the funds are not subject to the requirements of this part;

(7) Compliance with the requirement in 2 CFR 200.345(a)(2) that the participating jurisdiction return any funds due as a result of a later refund, corrections, or other transactions including final indirect cost rate adjustments; and

(8) Compliance with the audit requirements at 2 CFR part 200, subpart F).

[90 FR 892, Jan. 6, 2025]

§ 92.508 Recordkeeping.

(a) ***General.*** Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of this part. At a minimum, the following records are needed:

(1) ***Records concerning designation as a participating jurisdiction.***

(i) For a consortium, the consortium agreement among the participating member units of general local government as required by § 92.101.

(ii) For a unit of general local government receiving a formula allocation of less than $750,000 (or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part), records demonstrating that funds have been made available (either by the State or the unit of general local government, or both) equal to or greater than the difference between its formula allocation and $750,000 (or $500,000 in fiscal years in which Congress appropriates less than $1.5 billion) as required by § 92.102(b).

(2) ***Program records.***

(i) Records of the efforts to maximize participation by the private sector as required by § 92.200.

(ii) The forms of HOME assistance used in the program, including any forms of investment described in the Consolidated Plan under 24 CFR part 91 that are not identified in § 92.205(b), and which are specifically approved by HUD.

(iii) The underwriting and subsidy layering guidelines adopted in accordance with § 92.250 that support the participating jurisdiction's Consolidated Plan certification.

(iv) If existing debt is refinanced for multi-family rehabilitation projects, the refinancing guidelines established in accordance with § 92.206(b), described in the Consolidated Plan.

(v) If HOME funds are used for tenant-based rental assistance, records supporting the participating jurisdiction's Consolidated Plan certification in accordance with § 92.209(b), including documentation of the local market conditions that led to the choice of this option; written selection policies and criteria; supporting documentation for preferences for specific categories of individuals with disabilities; and records supporting the rent standard and minimum tenant contribution established in accordance with § 92.209(h).

(vi) If HOME funds are used for tenant-based rental assistance or rental housing, records evidencing that not less than 90 percent of the families receiving such rental assistance meet the income requirements of § 92.216.

(vii) If HOME funds are used for homeownership housing, the procedures used for establishing 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2), in the Consolidated Plan.

(viii) If HOME funds are used for acquisition of housing for homeownership, the resale or recapture guidelines established in accordance with § 92.254(a)(5), as set forth in the Consolidated Plan.

(ix) Records demonstrating compliance with the matching requirements of § 92.218 through § 92.222 including a running log and project records documenting the type and amount of match contributions by project. If the participating jurisdiction will apply excess matching contribution to a future fiscal year's liability, records demonstrating compliance with the matching requirements of §§ 92.218 through 92.221 for the excess amount applied, as described in § 92.221(b)(1), must be provided at the time of application and maintained for five years from the date of application.

(x) Records documenting compliance with the 24 month commitment deadline of § 92.500(d).

(xi) Records demonstrating compliance with the fifteen percent CHDO set-aside requirement of § 92.300(a).

(xii) Records documenting compliance with the ten percent limitation on administrative and planning costs in accordance with § 92.207.

(3) ***Project records.***

(i) A full description of each project assisted with HOME funds, including the location (address of each unit), 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 2 CFR 200.302; and records to document the eligibility and permissibility of the project costs, including the documentation of the actual HOME-eligible development costs of each HOME-assisted unit (through allocation of costs, if permissible under § 92.205(d)) where HOME funds are used to assist less than all of the units in a multi-unit project.

(iii) Records demonstrating that each rental housing or homeownership project meets the minimum per-unit subsidy amount of § 92.205(c), the maximum per-unit subsidy amount in accordance with the requirement in § 92.250(a), the subsidy layering and underwriting evaluation adopted in accordance with § 92.250(b), and, if applicable, compliance with a green building standard established by HUD in accordance with the requirements in § 92.250(c).

(iv) Records (e.g., inspection reports) demonstrating that each project meets the property standards of § 92.251 at project completion. In addition, during the period of affordability, records for rental projects demonstrating compliance with the property standards and financial reviews and actions pursuant to § 92.251(f).

(v) Records demonstrating that each family is income eligible in accordance with § 92.203.

(vi) Records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of § 92.209(c), including any targeting requirements, the rent reasonableness requirements of § 92.209(f), the maximum subsidy provisions of § 92.209(h), housing standards of § 92.209(i) (including property inspection reports), security deposit requirements of § 92.209(j), and calculation of the HOME subsidy.

(vii) Records demonstrating that each rental housing project met the affordability and income targeting requirements of § 92.252 for the required period or met the requirements in § 92.255 for conversion to homeownership for in-place tenants. Records must be kept for each family assisted.

(viii) Records demonstrating that each multifamily rental housing project involving rehabilitation with refinancing complies with the refinancing guidelines established in accordance with § 92.206(b).

(ix) Records demonstrating that each lease for a tenant receiving tenant-based rental assistance, security deposit assistance, and for an assisted rental housing unit complies with the applicable tenant and participant protections of § 92.253. Records must be kept for each family.

(x) Records demonstrating that the purchase price or estimated value after rehabilitation for each homeownership housing project does not exceed 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2). The records must demonstrate how the estimated value was determined.

(xi) Records demonstrating that each homeownership project meets the affordability requirements of § 92.254 for the required period.

(xii) Records demonstrating that any pre-award costs charged to the HOME allocation meet the requirements of § 92.212.

(xiii) Records demonstrating that a site and neighborhood standards review was conducted for each project which includes new construction of rental housing assisted under this part to determine that the site meets the requirements of 24 CFR 983.55(e)(2) and (3), in accordance with § 92.202.

(xiv) Records (written agreements) demonstrating compliance with the written agreements requirements in § 92.504.

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

(i) Written agreements committing HOME funds to CHDO projects in accordance with § 92.300(a).

(ii) Records setting forth the efforts made to identify and encourage CHDOs, as required by § 92.300(b).

(iii) The name and qualifications of each CHDO and amount of HOME CHDO set-aside funds committed.

(iv) Records demonstrating that each CHDO complies with the written agreements required by § 92.504.

(v) Records concerning the use of CHDO setaside funds, including funds used to develop CHDO capacity pursuant to § 92.300(b).

(vi) Records concerning the use of funds for CHDO operating expenses and demonstrating compliance with the requirements of §§ 92.208, 92.300(e) and 92.300(f).

(vii) Records concerning the tenant participation plan required by § 92.303.

(viii) Records concerning project-specific assistance to CHDOs pursuant to § 92.301, including the impediments to repayment, if repayment is waived.

(5) ***Financial records.***

(i) Records, in accordance with 2 CFR 200.302, identifying the source and application of funds for each fiscal year, including the formula allocation, any reallocation (identified by federal fiscal year appropriation), and any State or local funds provided under § 92.102(b).

(ii) Records concerning the HOME Investment Trust Fund Treasury account and local account required to be established and maintained by § 92.500, including deposits, disbursements, balances, supporting documentation and any other information required by the program disbursement and information system established by HUD.

(iii) Records identifying the source and application of program income, repayments and recaptured funds.

(iv) Records demonstrating adequate budget control and other records required by 2 CFR 200.302 and 200.303, including evidence of periodic account reconciliations.

(6) ***Program administration records.***

(i) Written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

(ii) Records demonstrating compliance with the written agreements required by § 92.504.

(iii) Records demonstrating compliance with the applicable uniform administrative requirements required by § 92.505.

(iv) 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 that the participating jurisdiction submitted a certification that it will affirmatively further fair housing, consistent with §§ 5.150 and 5.151 of this title.

(ii) ***Affirmative marketing and MBE/WBE records.***

(A) Records demonstrating compliance with the affirmative marketing procedures and requirements of § 92.351.

(B) Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

(iii) Records demonstrating compliance with the environmental review requirements of § 92.352 and 24 CFR part 58, including flood insurance requirements.

(iv) Records demonstrating compliance with the requirements of § 92.353 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in § 92.353(c)(2)(i)(A), moving into the property on or after the date described in § 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.

(v) Records demonstrating compliance with the labor requirements of § 92.354, including contract provisions and payroll records.

(vi) Records demonstrating compliance with the lead-based paint requirements of part 35, subparts A, B, J, K, M and R of this title.

(vii) Records supporting exceptions to the conflict of interest prohibition pursuant to § 92.356.

(viii) Records demonstrating compliance with debarment and suspension requirements in 2 CFR part 2424.

(ix) Records concerning intergovernmental review, as required by § 92.357.

(x) Records of emergency transfers requested under 24 CFR 5.2005(e) and 92.359 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests.

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(b) ***States with State recipients.*** A State that distributes HOME funds to State recipients must require State recipients to keep the records required by paragraphs (a)(2), (a)(3), (a)(5), (a)(6) and (a)(7) of this section, and such other records as the State determines to be necessary to enable the State to carry out its responsibilities under this part. The State need not duplicate the records kept by the State recipients. The State must keep records concerning its review of State recipients required under § 92.201(b)(3).

(c) ***Period of record retention.*** All records pertaining to each fiscal year of HOME funds must be retained for the most recent five year period, except as provided below.

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

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

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

(5) Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 92.353.

(6) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

(d) ***Access to records.***

(1) The participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the participating jurisdiction, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts.

[61 FR 48750, Sept. 16, 1996, as amended at 64 FR 50224, Sept. 15, 1999; 67 FR 61757, Oct. 1, 2002; 72 FR 73493, Dec. 27, 2007; 78 FR 44682, July 24, 2013; 80 FR 42366, July 16, 2015; 80 FR 75935, Dec. 7, 2015; 81 FR 80805, Nov. 16, 2016; 85 FR 47910, Aug. 7, 2020; 85 FR 61567, Sept. 29, 2020; 85 FR 82137, Dec. 17, 2020; 86 FR 30792, June 10, 2021; 86 FR 34943, July 1, 2021; 86 FR 30792, June 10, 2021; 86 FR 32767, June 23, 2021; 89 FR 38290, May 7, 2024; 90 FR 11024, Mar. 3, 2025; 90 FR 894, Jan. 6, 2025]

§ 92.509 Performance reports.

(a) ***Management reports.*** Each participating jurisdiction must submit management reports on its HOME Investment Partnerships Program in such format and at such time as HUD may prescribe.

(b) ***Annual performance report.*** For annual performance report requirements, see 24 CFR part 91.

Subpart L—Performance Reviews and Sanctions

§ 92.550 Performance reviews.

(a) ***General.*** HUD will review the performance of each participating jurisdiction in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the participating jurisdiction's and, as appropriate, the State recipient's records and reports, findings from on-site monitoring, audit reports, and information generated from the disbursement and information system established by HUD. Where applicable, HUD may also consider relevant information pertaining to a participating jurisdiction's or State recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the participating jurisdiction or State recipient. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the participating jurisdiction.

(b) ***Standards for comprehensive performance review.*** A participating jurisdiction's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine:

(1) For local participating jurisdictions and State participating jurisdictions administering their own HOME programs, whether the participating jurisdiction has committed the HOME funds in the United States Treasury account as required by § 92.500 and expended the funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching requirements; or

(2) For State participating jurisdictions distributing HOME funds to State recipients, whether the State has met the matching contribution and other requirements of this part; has distributed the funds in accordance with the requirements of this part; and has made such reviews and audits of its State recipients as may be appropriate to determine whether they have satisfied the requirements of paragraph (b)(1) of this section.

§ 92.551 Corrective and remedial actions.

(a) ***General.*** HUD will use the procedures in this section in conducting the performance review as provided in § 92.550 and in taking corrective and remedial actions.

(b) ***Performance review.***

(1) If HUD determines preliminarily that the participating jurisdiction has not met a requirement of this part, the participating jurisdiction will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.

(2) If the participating jurisdiction fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or § 92.552.

(c) ***Corrective and remedial actions.*** Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the participating jurisdiction to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:

(i) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;

(iv) Reprogramming HOME funds that have not yet been expended from affected activities to other eligible activities;

(v) Reimbursing its HOME Investment Trust Fund in any amount not used in accordance with the requirements of this part;

(vi) Suspending disbursement of HOME funds for affected activities; and

(vii) Establishing procedures to ensure compliance with HOME requirements;

(viii) Making matching contributions as draws are made from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account and establishing a remedial plan to make up the matching contributions deficit; and

(ix) If the participating jurisdiction is a metropolitan city, forming a consortium with the urban county if the urban county is willing to carry out the HOME program in the metropolitan city.

(2) HUD may also change the method of payment from an advance to reimbursement basis and may require supporting documentation to be submitted for HUD review for each payment request before payment is made; determine the participating jurisdiction to be high risk and impose special conditions or restrictions on the next year's allocation in accordance with 2 CFR 200.207; and take other remedies that may be legally available, including remedies under 2 CFR 200.338.

(3) A participating jurisdiction may request HUD reduce grant payments by an amount equal to the amount of expenditures that did not comply with the requirements of this part. The amount of a reduction may be for the entire grant amount.

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44683, July 24, 2013; 80 FR 75935, Dec. 7, 2015; 90 FR 894, Jan. 6, 2025]

§ 92.552 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a participating jurisdiction has failed to comply with any provision of this part and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the participating jurisdiction's HOME Investment Trust Fund by the amount of any expenditures that were not in accordance with the requirements of this part; and

(2) HUD may do one or more of the following:

(i) Prevent withdrawals from the participating jurisdiction's HOME Investment Trust Fund for activities affected by the failure to comply;

(ii) Restrict the participating jurisdiction's activities under this part to activities that conform to one or more model programs which HUD has developed in accordance with section 213 of the Act;

(iii) Remove the participating jurisdiction from participation in allocations or reallocations of funds made available under subpart B or J of this part;

(iv) Require the participating jurisdiction to make matching contributions in amounts required by § 92.218(a) as HOME funds are drawn from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account. Provided, however, that HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by the failure to comply;

(v) Reduce grant amounts paid to the participating jurisdiction by an amount equal to the amount of any expenditures that did not comply with the requirements of this part. The amount of a reduction may be for the entire grant amount;

(vi) Revoke a jurisdiction's designation as a participating jurisdiction; and

(vii) Terminate the assistance in whole or in part in accordance with 2 CFR 200.340.

(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.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 44840, Aug. 22, 1997; 78 FR 44683, July 24, 2013; 90 FR 894, Jan. 6, 2025]