

MIAMI BEACH

City of Miami Beach Request for Proposals (RFP)

FY 2021

Community Development Block Grant (CDBG) Funds Home
Investment Partnership (HOME) Program Funds

Application Information and Guidance

Deadline for Submissions:
Wednesday, March 31 at 3:00pm

Applications must be received by 3:00pm on Wednesday, March 31, 2021. Any application received after that time will not be considered. The responsibility for submitting applications on or before the stated time and date is solely the responsibility of the Applicant.

City of Miami Beach
Office of Housing & Community Services
1700 Convention Center Drive
Miami Beach, Florida 33139

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**City of Miami Beach FY 2021
Request for Proposals Application
CDBG & HOME Program**

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MIAMI BEACH

Mayor & Members of the City Commission:

Dan Gelber, Mayor
Steven Meiner, Commissioner
Ricky Arriola, Commissioner
Mark Samuelian, Commissioner
Michael Gongora, Commissioner
Micky Steinberg, Commissioner
David Richardson, Commissioner

City Administration:

Raul Aguila, Interim City Manager
Eric Carpenter, Assistant City Manager
Mark Taxis, Assistant City Manager
Alina Hudak, Assistant City Manager

Housing & Community Development Staff:

Maria L. Ruiz, Director
Alba Tarre, Assistant Director
Marcela Rubio, HOME Coordinator
Cristina Cabrera, CDBG Coordinator
Alice Waters, Controller

Our Mission

"We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community."

Our Vision

The City of Miami Beach will be:

- Cleaner and Safer;
- More Beautiful and Vibrant;
- A Mature, Stable Residential Community with Well-improved Infrastructure;
- A Unique Urban and Historic Environment;
- A Cultural, Entertainment, Tourism Capital; and
- An International Center for Innovation in Culture, Recreation and Business.

Our Values

- We maintain the City of Miami Beach as a world-class city.
- We work as a cooperative team of well-trained professionals.
- We serve the public with dignity and respect.
- We conduct the business of the City with honesty, integrity, and dedication.
- We are ambassadors of good will to our residents, visitors, and the business community.

Notice of Funding Availability

The City of Miami Beach is an entitlement grantee of federal funds. It receives an annual allocation of funding for the HOME Investment Partnership Program (HOME) and Community Development Block Grant (CDBG) programs from the United States Department of Housing and Urban Development (HUD). The City is entitled to these funds because its population, housing and/or demographic characteristics meet the formula requirements needed to obtain funding.

HUD requires that the City complete a five-year *Consolidated Plan* that includes a housing assessment, market analysis and assessment of community development needs. The *Consolidated Plan* is meant to address the needs of low- and moderate-income persons and families, including homeless individuals. The Plan establishes the City's program priorities, goals and objectives for community development programs and sets the framework for subsequent One Year Action Plans that describe specific activities that will be funded through the City's HUD-funded grant programs.

As an entitlement grantee, the City develops its own programs and funding priorities. However, it must give maximum feasible priority to activities which:

- Benefit low- and moderate-income persons and households;
- Aid in the prevention or elimination of slums and blight; and/or
- Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community. Urgent needs are defined as those which have no other financial resources available.

The City of Miami Beach is projecting the following FY 2021 funds subject to the availability and allocation by HUD:

| CDBG Funds (estimated) | | |
|---------------------------|----|-------------------|
| CDBG Entitlement | \$ | 959,072.00 |
| City Administration (20%) | \$ | 191,814.00 |
| Public Services Cap (15%) | \$ | 143,860.00 |
| HOME Funds (estimated) | | |
| HOME Entitlement | \$ | 658,888.00 |
| City Administration (10%) | \$ | 65,888.80 |

Here is the timeline of events for this RFP:

| Date | Event/Expected Outcome |
|--------------------------------|--|
| February 10, 2021 | Authorization from the Mayor & Commission to issue RFP |
| March 1, 2021 | RFP Issued |
| March 9, 2021 | Applicant conference to address RFP questions convened - Attendance is Mandatory |
| March 19, 2021 | Last day for written questions |
| March 31, 2021 | Deadline for receipt of RFP applications (3pm) |
| April 1 - April 9, 2021 | Staff review of applications |
| April 20, 2021 | Meeting of Affordable Housing Advisory Committee to review applications and make funding recommendations to the Mayor and Commission via LTC |
| April 26, 2021 | Commence 30-Day Public Comment Period |
| June 23, 2021 | Submit funding recommendations to Mayor & Commission for award |

Priorities

In order to guide outside agencies that are seeking funding, establish parameters for the project selection process and enable success in project implementation, the following broadly defined priorities and operational imperatives have been established in the City's FY 2018-2022 Consolidated Plan (Link to Plan: <https://www.miamibeachfl.gov/wp-content/uploads/2019/12/2018-2022-Consolidated-Plan-FINAL.pdf>) and summarized for purposes of this RFP as:

→ Providing decent housing and suitable living environments and expanding economic opportunities for principally low- and moderate-income persons.

Operational Imperatives

In order to ensure accountability and the judicious use of finite, public resources, the following operational imperatives have been established in the *Five-Year Consolidated Plan* and City processes:

- Recipient organizations must have acceptable past and/or current performance on similar projects.
- As this is a reimbursable grant, recipient organizations must have the fiscal capacity to undertake the proposed project as demonstrated by the last 3 fiscal year audits.
- Activities will not be funded unless the organization has developed realistic cost estimates and timelines, and demonstrated past financial stability and current financial liquidity.
- Agency must demonstrate that the inclusion of the City's financial contribution will fully fund the proposed activity, i.e. City funds are the last needed to complete the project.
- Organizations requesting funds from more than one agency will be required to submit a Subsidy Layering Review which includes a certified Sources and Uses Summary for capital projects and a Cost Allocation Plan for all other proposed activities (time-sheets will be required for any position using split funding).
- Recipients will be expected to provide matching funds and/or otherwise participate in the cost of their proposed project, including the use in-kind resources to complete the proposed activity.
- Housing development and property improvement programs are expected to use quality, long-lasting methods and materials that require a minimum of maintenance or upkeep and provide a current Physical Needs Assessment for the proposed project.
- The cost of providing housing or services will be considered in evaluating applications and must meet HUD guidelines, including that the project is financially viable for the duration of the affordability period.
- Recipients must adhere to HUD and City guidelines for procurement of goods and services including professional services. Procurement records are subject to inspection to ensure compliance.
- Funded activities must meet a National Objective within two years of funding award.
- If you are awarded funding you will be required to submit any Fair Housing Complaints within the past 3 years.
- Construction projects will be required to submit evidence effort made to market procurement opportunities to Section 3 businesses.

Further priority is given to those established housing needs for which there is currently insufficient assistance including:

- 1 Acquisition for affordable rental housing and low- and moderate-income first-time homebuyers
- 2 Multi-family Housing rehabilitation

Priority will be given to projects that serve the North Beach area (33141) or predominantly serve residents of this area.

In addition, the City will prioritize awards to those projects that align with the objectives as defined in its current *Strategic Plan*.

Eligible Activities/ Priority Needs

The City's current *Consolidated Plan* was adopted July 25, 2018. This Five-Year Plan encompasses housing and non-housing community development activities, resources and projects to be undertaken to address the identified community needs for the fiscal years of 2018 through 2022. The Plan also includes a prioritization of needs as listed below:

Public Services

Youth Services

Senior Services

Childcare Services

Homeless Services

Services for people with HIV/AIDS

Housing

Construction of Affordable Housing

Rehabilitation: Multi-unit Residential

The Primary objective of the HOME program is to provide safe, decent and affordable housing to low- to moderate- income persons and households who own at or below 80% of the median income.

Funded activities must deliver affordable, decent, safe and sanitary housing for low- and moderate-income households in the City of Miami Beach.

Application Instructions

This application has been designed to minimize completion time and ensure consistency of applications submitted. **Only applications completed on the Neighborly platform will be accepted.**

| Tab | General Instructions |
|------------------------------------|--|
| Project Overview | <p>As you provide the Project Synopsis, please be succinct but complete in your narrative and run spellcheck before finalizing.</p> <p>If you have a Physical Needs Assessment for the proposed project, please include as an attachment.</p> <p>For Project Partners, list each entity separately and use the drop-down menu to indicate the type of support provided from each. In the final column, please list the cash value of the entity's support.</p> |
| Project Impact | Be certain to answer the questions asked fully. Be succinct but complete in your narrative and run spellcheck before finalizing. Please provide economic impact of the project in the |
| Organization Capacity | Be certain to answer the questions asked fully. Be succinct but complete in your narrative and run spellcheck before finalizing. Please include any evaluations or audits by current |
| Project Budget | <p>The Budget form has five columns. The first column should list all of the entities providing cash, financing or in-kind leverage to the proposed project.</p> <p>The second column, "Confirmed Receipt", enables you to insert the dollar value of any commitment that has been secured.</p> <p>The third column, "Pending Receipt", enables you to insert the value of any projected funds that have yet to be secured but may be reasonably expected.</p> <p>The fourth column, "City Request" enables you to insert the value of funds requested from the City through this RFP process.</p> |
| Funding Sources | <p>In the column labeled "Line Item Category," list the various project expenses using the drop-down menu provided.</p> <p>In each of the following columns to the right insert the respective amounts allocated to each line item by funding source. Provide the name of the funding entities in the text box at the end of the page. Please indicate separately if there is a deadline for use of these funds.</p> |
| Priority Alignment | <p>Using the drop-down menus provided, answer each question.</p> <p>Provide a brief but succinct narrative in the space provided that explains how your agency will measure its impact on the City's Key Intended Outcomes selected.</p> |
| Disclosure & Disclaimer | Requires signature of the preparing party and authorizing party |
| Affidavit of Compliance | Requires signature of the preparing party and authorizing party |
| Lobbying Certification | Requires signature of the preparing party and authorizing party |
| Submit | Requires signature of the preparing party and authorizing party |

Application Instructions

Application Submission

Applicants must submit their application(s) via Neighborly Software.

Required Documents

The following attachments are required and must be submitted with the digital application.

1. Agency's Articles of Incorporation in their entirety.
2. A current list of the Applicant's Board of Directors and their respective affiliation(s).
3. The Applicant's last three (3) annual financial audits.
4. Three (3) latest financial statements for organization.
5. Internal Revenue Services Designation Letter
6. Evidence of matching funds/leverage
7. For Capital Projects: Physical Needs Assessment (Must have been completed within 90 days of application)
8. For Capital Projects: Subsidy Layering Review
9. For Capital Projects: 5-year proforma

Failure to submit these items will result in immediate disqualification from consideration.

Recommended Attachments

- * Project renderings

Additional Attachments

If the applicant wishes to submit additional documents, it may do so. If provided, these should follow the required attachments.

Application Scoring

Minimum requirements for application submission: Applicants submitting applications may be not-for-profit or for-profit corporations or partnerships. Applicants requesting affordable housing acquisition and/or rehabilitation funds must have a minimum of five (5) years of experience in the acquisition and rehabilitation of owner-occupied affordable housing and/or first-time homebuyer programs.

Selection criteria will include, but is not limited to:

1. Ability to provide strong construction management practices and to provide first quality materials, including landscaping if applicable
2. Ability to perform all applicant selection and income certification processes in accordance with local, state, and federal regulations
3. Ability to comply with the City's reporting requirements
4. Total project cost
5. Total number of units
6. Leveraging
7. Ability to conform to the City's plan for spatial de-concentration
8. Ability to provide homeowners with HUD-Certified Homeownership Counseling
9. Ability to provide individualized training to homebuyers on issues such as home maintenance and budgeting
10. Ability to demonstrate that the organization participates in the Welfare Transition Program

The Office of Housing and Community Development will review all responses to the RFP to ensure compliance with the requirements of the RFP as well as under applicable Florida Statutes, Resolutions and the *Consolidated Plan* . All eligible affordable housing applications will be submitted to the City's Affordable Housing Advisory Committee and reviewed with HOME submissions. All applications for funding will be reviewed by the Affordable Housing Advisory Committee Committee in accordance with the criteria as outlined in the RFP.

Sections within the RFP are weighted and their respective values are noted below:

| Section/Tab | Maximum Points |
|-------------------------------|----------------|
| Applicant Info(rmation) | 5 |
| Project Overview | 20 |
| Project Impact | 20 |
| Applicant Experience | 25 |
| Project Budget | 20 |
| Sources & Uses | 5 |
| Priority Alignment | 5 |
| MAXIMUM POSSIBLE SCORE | 100 |

Application Scoring

Applicant Information

Information provided must be complete and accurate and include the required attachments.

Project Overview

This section provides overall summary of the project from an objective and fiscal context. Please ensure to be succinct but clear about your proposed project as well as indicate the community-based partners who will help you achieve your proposal. Make sure to complete the Objective, Outcome and Activity Code section. Double-check for accuracy.

Project Impact

This is the section that most describes the viability, impact, purpose and overall leverage for your project within a holistic context. In this section, please ensure to provide operational details for your project including specific beneficiaries, eligibility criteria, timelines, progress measures and outcome measures. If your project creates secondary benefits, i.e. creates new jobs or sustainable services for an area, provide such detail.

Applicant Experience

This section provides the applicant an opportunity to sell themselves as worthy recipients of public resources. Be specific in providing achievements, success stories, experience and expertise. Please indicate if any funder has rescinded funding within

Project Budget

The project budget must be sound, practical, achievable and sustainable throughout the project period. Your budget should provide the fiscal perspective of what was described in your project Overview and Project Impact sections. All expenses must be tied to the direct delivery of services. The cap on administrative costs is 5%. **A 2:1 cash match is required.**

Sources & Uses

This section serves to detail the Project Budget section by assigning costs to specific funding sources. Assignments should comply with funding source guidelines. All other funds must be secured before receipt of CDBG/HOME funds.

Cost Allocation Plan

If your budget includes personnel, you must provide cost allocation plan encompassing all personnel.

Priority Alignment

This section enables the applicant to identify the proposed project's alignment to the City's *Strategic Plan*. For more information about the City's *Strategic Plan*, visit www.miamibeachfl.gov

General Information

The following funding is available through this RFP, contingent upon final approval by HUD:

| CDBG Funds (estimated) | | |
|---|-----------|-------------------|
| CDBG Entitlement | \$ | 959,072.00 |
| City Administration (20%) | \$ | 191,814.00 |
| Public Services Cap (15%) | \$ | 143,860.00 |
| <i>PS Set-Aside for Elderly Grocery Program</i> | \$ | 40,000.00 |
| <i>PS Set-Aside for Prosperity Program</i> | \$ | 40,000.00 |
| Public Services Funds Available | \$ | 63,860.00 |
| Funding Available for other projects | \$ | 623,398.00 |

| HOME Funds (estimated) | | |
|---------------------------|----|------------|
| HOME Entitlement | \$ | 658,888.00 |
| City Administration (10%) | \$ | 65,888.80 |

Determination of Appropriateness

Prior to preparing an application for funds, applicants are strongly advised to determine if the proposed project is an eligible activity as defined by HUD regulations. CDBG projects must meet a National Objectives.

Deadline for Submission

All responses to this RFP must be received by **March 31, 2021 at 3:00 pm.**

Late applications will not be accepted.

Fatal Flaws

The following errors, omissions and/or conditions are considered fatal flaws preventing applications from consideration for funding:

- ! Incomplete applications (missing any section of the application or omission of required attachments)
- ! Factual errors resulting in the misrepresentation of an organization's experience, capacity or ownership
- ! Projects with funding gaps despite the potential award of City funds

Submission Requirements

Applicants must submit their via Neighborly software.

Directions for Completing the Application

This application has been designed to minimize completion time and ensure consistency of applications submitted. Only applications completed via Neighborly online platform will be accepted.

Applicants must complete all mandatory fields.

General Information

Modifications/Withdrawals of Proposals

An Applicant may submit a modified Application to replace all or any portion of a previously submitted Application up until the Application due date and time. Modifications received after the Application due date and time will not be considered. Applications shall be irrevocable until contract award unless withdrawn in writing prior to the Application due date, or after expiration of 120 calendar days from the opening of Applications without a contract award. Letters of withdrawal received after the Application due date and before said expiration date, and letters of withdrawal received after contract award will not be considered.

RFP Postponement/Cancellation/Rejection

The City may, at its sole and absolute discretion, reject any and all, or parts of any and all, Applications; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP, or in any Applications received as a result of this RFP.

Costs Incurred by Applicants

All expenses involved with the preparation and submission of Applications, or any work performed in connection therewith, shall be the sole responsibility (and shall be at the sole cost and expense) of the Applicant, and shall not be reimbursed by the City.

Exceptions to RFP

Applicants must clearly indicate any exceptions they wish to take to any of the terms in this RFP, and outline what, if any, alternative is being offered. All exceptions and alternatives shall be included and clearly delineated, in writing, in the Application. The City, at its sole and absolute discretion, may accept or reject any or all exceptions and alternatives. In cases in which exceptions and alternatives are rejected, the City shall require the Applicant to comply with the particular term and/or condition of the RFP to which Applicant took exception to (as said term and/or condition was originally set forth on the RFP).

Florida Public Records Laws

Applicants are hereby notified that all Applications including, without limitation, any and all information and documentation submitted therewith, will be available for public inspection after opening of Applications, in compliance with Florida Public Records Law including, without limitation, Chapter 119, Florida Statutes.

Negotiations

The City reserves the right to enter into further negotiations with the selected Applicant(s). Notwithstanding the preceding, the City is in no way obligated to enter into a contract with the selected Applicant(s) in the event the parties are unable to negotiate a contract. It is also understood and acknowledged by Applicants that by submitting an Application, no property interest or legal right of any kind shall be created at any time until and unless a contract has been agreed to; approved by the City; and executed by the parties.

General Information

Observance of Laws

Applicants are expected to be familiar with, and comply with, all Federal, State, County, and City laws, ordinances, codes, rules and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, may affect the scope of services and/or project contemplated by this RFA (including, without limitation, the Americans with Disabilities Act, Title VII of the Civil Rights Act, the EEOC Uniform Guidelines, and all EEO regulations and guidelines). Ignorance of the law(s) on the part of the Applicant will in no way relieve it from responsibility for compliance.

Conflict of Interest

All Applicants must disclose in their Application the name(s) of any officer, director, agent, or immediate family member (spouse, parent, sibling, and child) who is also an employee of the City of Miami Beach. Further, all Applicants must disclose the name of any City employee who owns, either directly or indirectly, an interest of ten (10%) percent or more in the Applicant entity or any of its affiliates.

Applicant's Responsibility

Before submitting an Application, each Applicant shall be solely responsible for making any and all investigations, evaluations, and examinations, as it deems necessary, to ascertain all conditions and requirements affecting the full performance of the contract. Ignorance of such conditions and requirements, and/or failure to make such evaluations, investigations, and examinations, will not relieve the Applicant from any obligation to comply with every detail and with all provisions and requirements of the contract, and will not be accepted as a basis for any subsequent claim whatsoever for any monetary consideration on the part of the Applicant.

Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crimes may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Sec. 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

American With Disabilities Act (ADA)

Call (305) 673-7260/VOICE to request material in accessible format; sign language interpreters (five days in advance when possible), or information on access for persons with disabilities. For more information on ADA compliance, please call the Public Works Department at 305-673-7631.

Acceptance of Gifts, Favors, Services

Applicants shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the City, for the purpose of influencing consideration of this Application. Pursuant to Sec. 2-449 of the City Code, no officer or employee of the City shall accept any gift, favor or service that might reasonably tend improperly to influence him in the discharge of his official duties.

HUD FY 2020 Income Tables for the City of Miami Beach

| Family Size | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|--------------------|----------|----------|----------|----------|----------|----------|----------|----------|
| 30% | \$19,200 | \$21,950 | \$24,700 | \$27,400 | \$30,680 | \$35,160 | \$39,640 | \$44,120 |
| 50% | \$32,000 | \$36,600 | \$41,150 | \$45,700 | \$49,400 | \$53,050 | \$56,700 | \$60,350 |
| 80% | \$51,200 | \$58,500 | \$65,800 | \$73,100 | \$78,950 | \$84,800 | \$90,650 | \$96,500 |

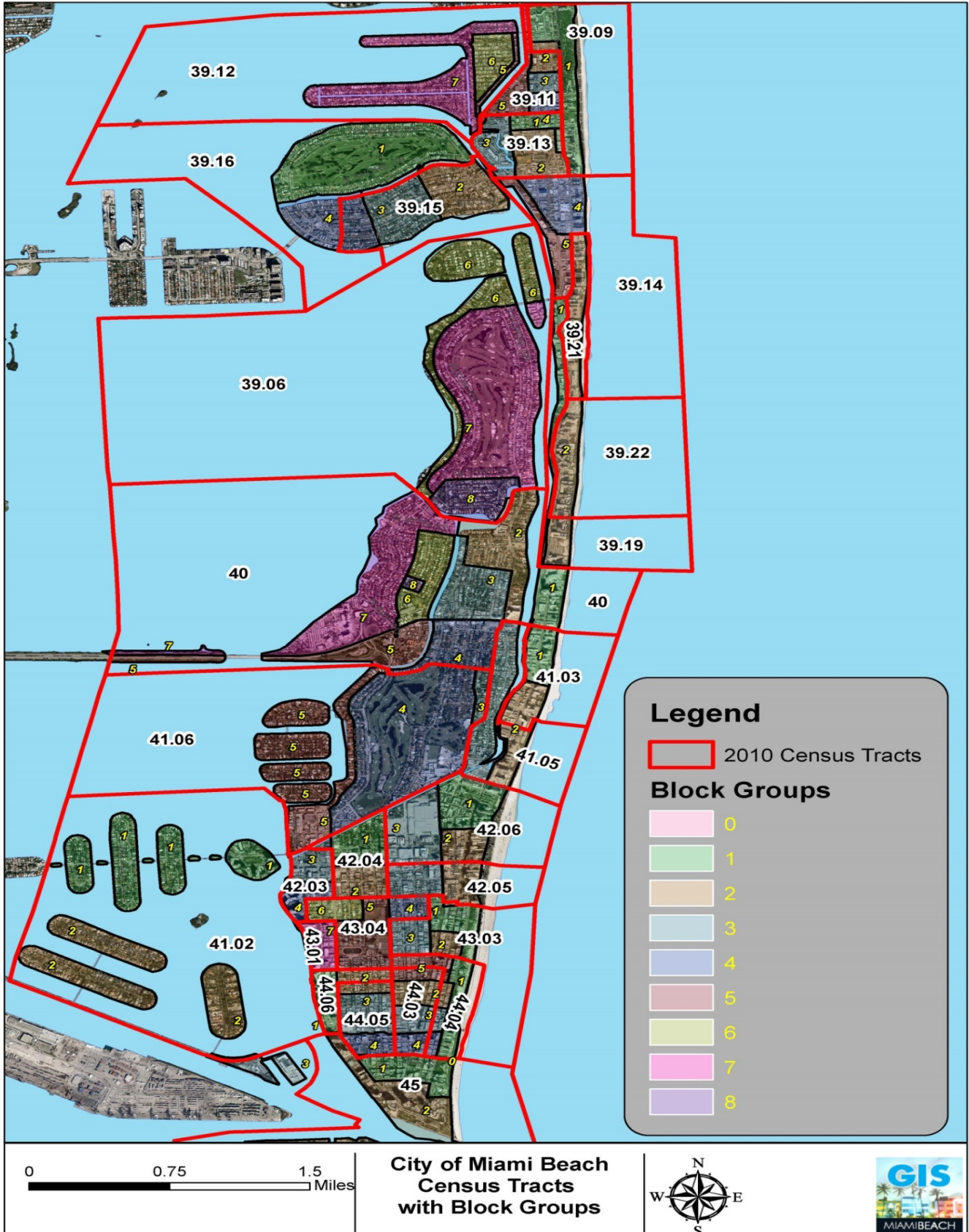
City of Miami Beach Census Tracts (1 of 2)

| State Code | County Code | Tract Code | Tract Income Level | 2010 MSA/MD Statewide non-MSA/MD Median Family Income | 2015 FFIEC Est. MSA/MD non-MSA/MD Median Family Income | % Below Poverty Line | Tract Median Family Income % | 2010 Tract Median Family Income | 2015 Est. Tract Median Family Income | 2010 Tract Median Household Income |
|------------|-------------|------------|--------------------|---|--|----------------------|------------------------------|---------------------------------|--------------------------------------|------------------------------------|
| 12 | 86 | 39.06 | Upper | \$50,065 | \$49,900 | 7.77 | 374.27 | \$187,381 | \$186,761 | \$170,417 |
| 12 | 86 | 39.09 | Moderate | \$50,065 | \$49,900 | 30.46 | 52.1 | \$26,087 | \$25,998 | \$37,629 |
| 12 | 86 | 39.11 | Middle | \$50,065 | \$49,900 | 15.95 | 91.57 | \$45,846 | \$45,693 | \$30,156 |
| 12 | 86 | 39.12 | Middle | \$50,065 | \$49,900 | 10.81 | 84.23 | \$42,171 | \$42,031 | \$41,292 |
| 12 | 86 | 39.13 | Moderate | \$50,065 | \$49,900 | 18.48 | 67.67 | \$33,882 | \$33,767 | \$32,707 |
| 12 | 86 | 39.14 | Middle | \$50,065 | \$49,900 | 8.85 | 86.55 | \$43,333 | \$43,188 | \$38,495 |
| 12 | 86 | 39.15 | Moderate | \$50,065 | \$49,900 | 18.95 | 71.92 | \$36,008 | \$35,888 | \$29,710 |
| 12 | 86 | 39.16 | Middle | \$50,065 | \$49,900 | 24.33 | 80.41 | \$40,260 | \$40,125 | \$31,937 |
| 12 | 86 | 39.17 | Upper | \$50,065 | \$49,900 | 6.71 | 124.38 | \$62,273 | \$62,066 | \$47,675 |
| 12 | 86 | 39.18 | Middle | \$50,065 | \$49,900 | 15.46 | 113.23 | \$56,693 | \$56,502 | \$55,833 |
| 12 | 86 | 39.19 | Upper | \$50,065 | \$49,900 | 8.11 | 222.11 | \$111,204 | \$110,833 | \$79,185 |
| 12 | 86 | 39.21 | Middle | \$50,065 | \$49,900 | 10.61 | 116.45 | \$58,301 | \$58,109 | \$38,412 |
| 12 | 86 | 39.22 | Upper | \$50,065 | \$49,900 | 3.24 | 195.5 | \$97,880 | \$97,555 | \$121,103 |
| 12 | 86 | 40 | Upper | \$50,065 | \$49,900 | 10.11 | 208.77 | \$104,522 | \$104,176 | \$89,609 |
| 12 | 86 | 41.02 | Upper | \$50,065 | \$49,900 | 5.49 | 273.98 | \$137,171 | \$136,716 | \$90,694 |
| 12 | 86 | 41.03 | Middle | \$50,065 | \$49,900 | 20.86 | 83.99 | \$42,050 | \$41,911 | \$39,075 |
| 12 | 86 | 41.05 | Upper | \$50,065 | \$49,900 | 10.26 | 191.67 | \$95,962 | \$95,643 | \$85,217 |
| 12 | 86 | 41.06 | Upper | \$50,065 | \$49,900 | 2.43 | 165.74 | \$82,981 | \$82,704 | \$84,567 |
| 12 | 86 | 42.03 | Middle | \$50,065 | \$49,900 | 13.92 | 84.88 | \$42,500 | \$42,355 | \$42,159 |
| 12 | 86 | 42.04 | Moderate | \$50,065 | \$49,900 | 14.72 | 69.8 | \$34,946 | \$34,830 | \$34,951 |
| 12 | 86 | 42.05 | Middle | \$50,065 | \$49,900 | 20.19 | 96.93 | \$48,533 | \$48,368 | \$40,866 |
| 12 | 86 | 42.06 | Middle | \$50,065 | \$49,900 | 28.05 | 89.77 | \$44,944 | \$44,795 | \$48,088 |
| 12 | 86 | 43.01 | Upper | \$50,065 | \$49,900 | 7.99 | 204.99 | \$102,632 | \$102,290 | \$52,475 |
| 12 | 86 | 43.03 | Middle | \$50,065 | \$49,900 | 17.97 | 81.03 | \$40,571 | \$40,434 | \$41,477 |
| 12 | 86 | 43.04 | Moderate | \$50,065 | \$49,900 | 19.96 | 77.07 | \$38,589 | \$38,458 | \$51,941 |
| 12 | 86 | 44.03 | Upper | \$50,065 | \$49,900 | 22.53 | 124.21 | \$62,188 | \$61,981 | \$28,407 |
| 12 | 86 | 44.04 | Low | \$50,065 | \$49,900 | 36.93 | 30.98 | \$15,515 | \$15,459 | \$15,488 |
| 12 | 86 | 44.05 | Moderate | \$50,065 | \$49,900 | 31.5 | 54.36 | \$27,216 | \$27,126 | \$22,247 |
| 12 | 86 | 44.06 | Middle | \$50,065 | \$49,900 | 12.99 | 88.13 | \$44,125 | \$43,977 | \$43,638 |
| 12 | 86 | 45 | Upper | \$50,065 | \$49,900 | 20.24 | 253.42 | \$126,875 | \$126,457 | \$76,056 |

City of Miami Beach Census Tracts (2 of 2)

| Tract Population | Tract Minority % | Number of Families | # of Households | Non-Hisp White Population | Tract Minority Population | American Indian Population | Asian/Hawaiian/Pacific Islander Population | Black Population | Hispanic Population | Other Population/Two or More Races |
|------------------|------------------|--------------------|-----------------|---------------------------|---------------------------|----------------------------|--|------------------|---------------------|------------------------------------|
| 2699 | 32.6 | 688 | 934 | 1819 | 880 | 4 | 20 | 29 | 793 | 34 |
| 1584 | 72.85 | 282 | 841 | 430 | 1154 | 0 | 16 | 92 | 1027 | 19 |
| 4106 | 79.08 | 923 | 1764 | 859 | 3247 | 12 | 37 | 141 | 2992 | 65 |
| 4237 | 77.13 | 1083 | 1622 | 969 | 3268 | 2 | 76 | 269 | 2875 | 46 |
| 4298 | 80.22 | 1080 | 2019 | 850 | 3448 | 9 | 51 | 142 | 3198 | 48 |
| 3812 | 73.85 | 746 | 1980 | 997 | 2815 | 5 | 37 | 107 | 2619 | 47 |
| 4953 | 76.9 | 1115 | 2216 | 1144 | 3809 | 5 | 54 | 143 | 3545 | 62 |
| 3790 | 73.14 | 959 | 1536 | 1018 | 2772 | 2 | 65 | 210 | 2433 | 62 |
| 4382 | 70.79 | 1160 | 2108 | 1280 | 3102 | 4 | 140 | 205 | 2661 | 92 |
| 2755 | 66.21 | 505 | 1034 | 931 | 1824 | 2 | 149 | 150 | 1478 | 45 |
| 2991 | 51.12 | 684 | 1293 | 1462 | 1529 | 2 | 36 | 39 | 1397 | 55 |
| 2612 | 67.69 | 671 | 1504 | 844 | 1768 | 0 | 40 | 42 | 1653 | 33 |
| 1932 | 62.01 | 530 | 1031 | 734 | 1198 | 1 | 27 | 18 | 1134 | 18 |
| 5062 | 32.87 | 1171 | 2081 | 3398 | 1664 | 4 | 142 | 92 | 1381 | 45 |
| 3127 | 34.86 | 665 | 1575 | 2037 | 1090 | 2 | 51 | 46 | 946 | 45 |
| 2733 | 69.15 | 226 | 1460 | 843 | 1890 | 2 | 45 | 88 | 1722 | 33 |
| 2930 | 54.61 | 720 | 1562 | 1330 | 1600 | 3 | 52 | 65 | 1446 | 34 |
| 3152 | 33.19 | 652 | 1545 | 2106 | 1046 | 0 | 63 | 54 | 894 | 35 |
| 4825 | 47.59 | 716 | 2491 | 2529 | 2296 | 6 | 142 | 171 | 1860 | 117 |
| 2158 | 65.11 | 380 | 1267 | 753 | 1405 | 4 | 42 | 75 | 1246 | 38 |
| 2625 | 56.84 | 351 | 1421 | 1133 | 1492 | 5 | 64 | 69 | 1323 | 31 |
| 1836 | 66.18 | 362 | 1050 | 621 | 1215 | 0 | 39 | 63 | 1086 | 27 |
| 2389 | 50.73 | 444 | 1576 | 1177 | 1212 | 3 | 57 | 62 | 1035 | 55 |
| 2436 | 63.1 | 469 | 1632 | 899 | 1537 | 6 | 61 | 104 | 1324 | 42 |
| 2327 | 57.63 | 389 | 1413 | 986 | 1341 | 3 | 46 | 53 | 1204 | 35 |
| 2944 | 65.52 | 281 | 1665 | 1015 | 1929 | 4 | 62 | 193 | 1613 | 57 |
| 2014 | 61.62 | 375 | 1375 | 773 | 1241 | 2 | 26 | 36 | 1148 | 29 |
| 3000 | 71.33 | 501 | 1933 | 860 | 2140 | 1 | 47 | 120 | 1918 | 54 |
| 2978 | 51.88 | 357 | 1761 | 1433 | 1545 | 8 | 95 | 95 | 1293 | 54 |
| 4302 | 40.19 | 717 | 2051 | 2573 | 1729 | 0 | 104 | 92 | 1465 | 68 |

City of Miami Beach Census Map (1 of 1)



Contractual Scope of Services

The following is a sample of Attachment A (General Requirements) for awarded contracts provided as reference:

Related Definitions:

Evidence of Procurement – All expenses incurred with grant funds require evidence of procurement according to 2 CFR Part 200 Subpart D, Procurement Standards. Please carefully read the Agreement and related HUD rules to ensure compliance.

Monthly Accomplishment Report – The Sub-Recipient is required to submit a Monthly Accomplishment Report by the 10th of the following month. The report will detail the demographics of the Project beneficiaries regardless of the service being provided. In order to avoid duplication, beneficiaries are only to be reported once after the first time a service is provided. Sub-Recipient is to report only the new clients (people) benefiting from the Project each month with the Accomplishment Report matching race, income and other information requested. Year-to-Date clients must reflect the total amount of beneficiaries served from the beginning of the term to the month of the report.

Monthly Financial Report – The Sub-Recipient is required to submit a Monthly Financial Report by the 10th of the following month regardless of whether or not funds are requested. The report delineates Project expenses incurred including non-City funds and must include the corresponding evidence of expenses incurred for any Project related expense which is being submitted for reimbursement as detailed in Exhibit “B” Documentation. City is only to reimburse expenses related to the provision of services related to this Agreement.

Monthly Progress Report – The Sub-Recipient is required to submit a Monthly Project Progress Report by the 10th of the following month. The report summarizes the progress made including photos and Units of Service completed.

Professional Services Contracts – Professional services funded through this Agreement must adhere to procurement guidelines as appropriate and have executed written Agreements between the Sub-Recipient and the respective Vendor. Contracts must, at a minimum, specify the cost, timeline and scope of service. A copy of all professional service contracts must be submitted to the City prior to reimbursement request.

Proof of Insurance – Evidence of appropriate and required insurance must be submitted prior to contract execution. No City funds will be dispersed prior to submission of required insurance coverage.

Applicable Rules and Regulations:

1. Davis-Bacon Act Compliance

The Davis-Bacon Act applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. Affordable housing rehabilitation projects of eight (8) or more units using CDBG funds must ensure Davis-Bacon Act compliance.

2. Certified Payroll

Certified payrolls shall be submitted weekly for each week in which any contract work is performed in compliance with Federal Labor Standard Provisions.

3. Environmental Review

Programs must have an Environmental Review unless they meet criteria specified in HUD regulations that would exempt or exclude them from Request for Release of Funds (RROF) and environmental certification requirements (24 CFR sections 58.1, 58.22, 58.34, 58.35 and 570.604).

4. Compliance with National Objective

In compliance with 24 CFR 570.202 (2) Eligible Rehabilitation and Preservation Activities, CDBG funds may be used to finance the rehabilitation of “publicly owned residential buildings and

improvements;” and that includes Rehabilitation services detailed in 24 CFR 570.202 (9) ... “preparation of work specifications, ... inspections and other services related to assisting owners, ... and contractors participating ...in rehabilitation activities authorized under this section...”. As further supported by 24 CFR 570.205(a)(4)(iii) and (iv) that state that “...engineering and design costs related to a specific activity... are eligible as part of the cost of such activity under 570.201-570.204.”

5. Income Verification

Sub-Recipient will ensure and maintain evidence that activities assisted with CDBG funds comply with the primary National Objective, "Benefit to Low- and Moderate- Income Persons" and will provide services or activities that benefit at least 51% low- and moderate-income persons. A low- or moderate-income household is defined as: a household having an income equal to or less than the limits cited below.

Sub-Recipient may utilize the CDP Income Eligibility Calculator provided at <https://www.hudexchange.info/incomecalculator/> to determine the Household eligibility. It is the responsibility of the Sub-Recipient to become familiar with this tool. Sub-Recipient agrees to provide the City the eligibility form provided at the end of the Calculator review process along with the Monthly Finance Report to be submitted in the month following the household’s transition. Sub-Recipient shall proceed to do the income verification as quickly as possible to avoid disruption of services.

Low- and Moderate- Income Household Limits

Low-Income (80% of Median Income), Very Low-Income (50 % of Median Income), Extremely Low (30% of Median Income)

HUD Income Limits for FY 2019

| Household Size | Extremely Low Income 30% to 0% | Very Low Income 50% - 31% | Low Income 80% - 51% | 81% and Above |
|----------------|-----------------------------------|------------------------------|-------------------------|---------------------|
| 1 Person | \$0 - \$17,800 | \$17,801 - \$29,650 | \$29,651 - \$47,450 | \$47,451 or greater |
| 2 Person | \$0 - \$20,350 | \$20,351 - \$33,900 | \$33,901 - \$54,200 | \$54,201 or greater |
| 3 Person | \$0 - \$22,900 | \$22,901 - \$38,150 | \$38,151 - \$61,000 | \$61,001 or greater |
| 4 Person | \$0 - \$25,750 | \$25,751 - \$42,350 | \$42,351 - \$67,750 | \$67,751 or greater |
| 5 Person | \$0 - \$30,170 | \$30,171 - \$45,750 | \$45,751 - \$73,200 | \$73,201 or greater |
| 6 Person | \$0 - \$34,590 | \$34,591 - \$49,150 | \$49,151 - \$78,600 | \$78,601 or greater |
| 7 Person | \$0 - \$39,010 | \$39,011 - \$52,550 | \$52,551 - \$84,050 | \$84,051 or greater |
| 8 Person | \$0 - \$43,430 | \$43,431 - \$55,950 | \$55,951 - \$89,450 | \$89,451 or greater |

(Source: U.S. Department of Housing & Urban Development)

6. Budget Amendments

The goal should be to limit the use of Budget Amendments. Budget Amendments require prior written approval by the City Manager.

To request a Budget Amendment, a written request for changes must be submitted to your Grant Monitor delineating the changes and providing a detailed justification for making the request. Approvals of any changes are at the sole discretion of the City Manager.

No budget amendment will be processed after June 30, 2020. Budget amendments that deviate from the original scope will be rejected and the funds in question may be subject to recapture at the sole discretion of the City Manager.

7. Sub-Recipient File Review

The following documentation must be included in the Sub-Recipient’s file for those employees providing services under this Agreement.

- Current Florida Driver License
- Resume with evidence of Required Experience

- State of Florida Board Teacher Certification/License, if applicable
- Administrative Rule 6a-4.01795 - ESE education/experience, if applicable
- Childcare Affidavit of Good Moral Character
- Level 2 Florida Background Criminal Screening
- Child Abuse and Neglect Reporting Requirement
- Data Confidentiality Agreement
- I-9 Verification on File
- CDBG Training Certificate

8. Evaluation

In its continuing effort to ensure contract compliance and performance, HCD will evaluate the Sub-Recipient in its fulfillment of the terms of this Agreement including, but not limited to, the following measures:

- Agreement compliance
- Accuracy and timeliness of *Monthly Accomplishment Reports*
- Accuracy and timeliness of *Monthly Financial Reports*
- Accuracy and timeliness of *Monthly Progress Reports*
- Adherence to Project timelines and Technical Assistance and Sub-Recipient Instructions
- Fulfillment of prescribed outcomes

9. Monitoring & Performance Reviews

City reserves the right to inspect, monitor and/or audit the Sub-Recipient to ensure contractual compliance. Monitoring visits will take place within 120 days of the Agreement’s execution date. City will notify Sub-Recipient a minimum of three (3) business days prior to a monitoring visit.

10. Compliance with Local Rules, Regulations, Ordinances and Laws

The Sub-Recipient must remain in compliance with all local rules, regulations, ordinances and laws (including having an active business license) in addition to those specified in the body of the Agreement. In addition, the Sub-Recipient must not owe any monies to the City at the time of Agreement execution or final release of grant funds.

The City will verify with the Finance Department to ensure that no monies are due the City prior to Agreement execution

11. Rent Roll Submissions

Sub-Recipients using City funds for the creation or rehabilitation of affordable housing must submit tenant rent rolls within thirty (30) days of meeting the National Objective and every year thereafter for a minimum of fifteen (15) years in adherence with the affordability period required with use of these funds. For completed projects, certified tenant rolls must be submitted annually by November 1st.

12. Performance Ratings

Sub-Recipient agrees that its Performance Rating, the score awarded for performance on the following measures, will be posted on the City’s website on an annual basis:

- Timely and accurate submission of *Monthly Progress/ Accomplishment Report*
- Timely and accurate submissions of *Monthly Financial Reports* (reimbursement requests)
- Adherence to Technical Assistance and Sub-Recipient instructions
- Delivery of contracted service units

Ratings will be given for each performance measure based on the following:

| Performance Measure | Rating Rationale & Score |
|---|--|
| Timely and accurate submission of <i>Monthly Progress/Accomplishment Report</i> | ➤ “0” for failing to submit on time ➤ “25” for submitting on time |

| | |
|---|--|
| Timely and accurate submissions of <i>Monthly Financial Report</i> (reimbursement requests) | <ul style="list-style-type: none"> ➤ “0” for failing to submit accurate report with back-up material on time ➤ “25” for submitting accurate report on time |
| Follow Technical Assistance (TA) and Sub-Recipient instructions once provided | <ul style="list-style-type: none"> ➤ “0” for failing to follow TA instructions once provided ➤ “10” for following TA instructions as provided |
| Delivery of contracted service units within contracted timeframe | Possible score of 0 to 40 based upon completion of projected service units. Score is pro-rated if total projected service units are not met. |

13. Reporting Requirements

The Sub-Recipient will provide the City with a complete *Monthly Accomplishment, Financial and Progress Report* by the 10th of the following month. In the event that the 10th of the month lands on a Saturday, Sunday or holiday, the report must be submitted the following business day.

Monthly reports will be submitted via any of the following methods:

- Standard mail
- Hand delivery

Monthly reports will not be considered acceptable unless the following is met:

- Forms are completely and accurately completed including draw number and submittal date
- Necessary back-up materials are included (as stated in Exhibit “B” Documentation.)
- Reports bear the signature of the person preparing the report and the Sub-Recipient’s authorized signatory

Monthly Progress Reports should encapsulate a Project’s progress in alignment with the funds expended.

14. Procurement Records

Sub-Recipient must retain and include the following rationale and documents supporting any acquisition of goods and services that are being charged to this Project in compliance with 2 CFR 200 Subpart D, Procurement Standards:

- Rationale for the method of procurement;
- Selection of contract type;
- Contractor selection or rejection; and
- Basis for the contract price

15. Timeliness of Reimbursement Requests

Reimbursement requests must be submitted no later than sixty (60) days from the incurrence of the expense. The City will strictly monitor this element. Please note that cancelled checks must be submitted in conjunction with all reimbursement requests. Therefore, the Sub-Recipient should calendar itself accordingly to ensure that reimbursement requests are submitted to the City in a timely manner.

Furthermore, at least sixty (60) percent of your allotted grant funds must be expended by June 30, 2020 as demonstrated by the total value of reimbursements processed.

16. Training Requirements

Sub-Recipient must ensure that the person responsible for preparing the *Monthly Progress, Accomplishment and Financial Reports* attends the HCD’s Sub-Recipient Reporting Training and places the attendance certificate in the Project’s file for inspection by HCD during its monitoring visit.

Uniform Relocation Assistance (URA)

If a project proposed in response to this RFP includes the purchase of a building or an offer to purchase a building which is occupied, the tenants are entitled to the benefits provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). The following information is provided to assist the applicant in complying with the URA.

1. **URA preparation needs to start early.** A URA notice needs to be given to the Seller when the purchase offer/option is made.
2. **HUD and the City of Miami Beach care about this.** Developers who are working on HUD-funded projects need to understand that the URA is basic consumer legislation that addresses “fairness” issues. Tenants whose living circumstances are changed by a project - either by higher rents or involuntary moves - must be protected and compensated.
3. **The relocation rules are not all one-sided.** There are actions that can be taken to control costs and prevent displacement. These actions include informing tenants about the project, treating them fairly during the process, staging work if it is feasible, and keeping their rents affordable. Tenants must continue to pay rent and comply with the lease during the process.
4. **Mistakes can be costly.** Planning for relocation and tenant concerns is critical because grantees, owners and developers can all take actions which can incur a financial liability. Displaced tenants are entitled to 42 or 60 months of rental assistance, depending on their situation. Many claims exceed \$10,000. Although some claims are unavoidable, **there is no reason to incur costs for failing to follow the rules.**
5. **Planning is critical.** Relocation concerns must be thought out early in the process so decisions about rents, construction timing and project feasibility can be considered before they are a crisis.
6. **Cooperation is essential.** All parties involved in the project must do the right thing in order to make the process work. The Developer and the City must work together.
7. **There are three basic requirements for tenants in rental rehabilitation projects.** Tenants must be given timely information about the pending application. If the project is approved, they must be advised of any changes that will occur to their situation. If they are not advised - and move - they could claim that they were displaced even if that was not intended and they could be eligible for considerable financial compensation. If they must be displaced, tenants must be offered a comparable replacement unit (as defined by HUD). Moving expenses must be paid. No one can be required to move without 90 days notice. Tenants who will stay in the property after work is completed must be offered a suitable unit that is affordable to them.

CDBG National Objectives

CDBG-funded activities must meet one of three National Objectives.

- **National Objective A:** Principally benefits low- and moderate- income persons
- **National Objective B:** Aids in the prevention or elimination of slums or blight
- **National Objective C:** Qualifies as an urgent need

National Objective A is selected above, required compliance with one of the subcategories below

- **Area Benefit Activities** are those carried out in a neighborhood consisting predominantly of LMI persons and providing services for such persons, yet could be available to other non-income-eligible persons in the area.
- **Limited Clientele Activities** is an activity which provides benefits to a specific group of persons rather than all the residents in a particular area. At least 51% of the beneficiaries of the activity must be L/M income persons as evidenced by certifying documentation.
- **Income Eligible Housing Activities** add or improve a permanent residential structure wherein, upon completion, income eligible persons will occupy 51% or more of the housing units
- **Job Creation or Retention Activities** create or retain permanent jobs, of which at least 51% are either taken by or available to income eligible persons

L/M Income Area Benefit

For these purposes, an area benefit activity is an activity *which is available to benefit all the residents of an area* which is primarily residential. In order to qualify as addressing the national objective of benefit to L/M income persons on an area basis, an activity must meet the identified needs of L/M income persons residing in an area where at least 51% of the residents (or less if the “upper quartile” applies to the grantee, as described below) are L/M income persons. The benefits of this type of activity are available to all residents in the area regardless of income.

The requirement that an area benefit activity must qualify on the basis of the income levels of the persons who reside in the area served by the activity is statutory. (See section 105(c)(2) of the Housing and Community Development Act of 1974 as amended.) This means that the activity may not qualify as meeting the L/M income area benefit national objective on any other basis. For example, if the assisted activity is a park that *serves* an area having a L/M income concentration that falls below the required percentage, the activity may not qualify even if there is reason to believe that the park will actually be *used* primarily by L/M income persons.

L/M Income Limited Clientele

A L/M income limited clientele activity is an activity which provides benefits to a specific group of persons rather than everyone in an area generally. It may benefit particular persons without regard to the area in which they reside, or it may be an activity which provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51% of the beneficiaries of the activity must be L/M income persons.

To qualify under this subcategory, a limited clientele activity must meet one of the following tests:

- ❖ Exclusively benefit a clientele who are generally *presumed by HUD to be principally L/M income persons*. The following groups are currently presumed by HUD to be made up principally of L/M income persons:
 - abused children,
 - elderly persons,
 - battered spouses,
 - homeless persons,
 - adults meeting Bureau of Census' definition of severely disabled persons*,
 - illiterate adults,
 - persons living with AIDS, and
 - migrant farm workers.

OR

- ❖ Require information on family size and income so that it is evident that at least 51% of the clientele are persons whose family income does not exceed the L/M income limit. (This includes the case where the activity is restricted exclusively to L/M income persons). Reference: §570.208(a)(2)(i)(B) and (C)

OR

- ❖ Be *of such nature and in such location* that it may reasonably be concluded that the activity's clientele will primarily be L/M income persons (e.g., a day care center that is designed to serve residents of a public housing complex)

OR

- ❖ Be an activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," provided it is restricted, to the extent practicable, to the removal of such barriers by assisting:
 - the reconstruction of a public facility or improvement, or portion thereof, that does not qualify under the L/M income area benefit criteria;
 - the rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under the L/M income area benefit criteria or the L/M income jobs criteria; or
 - the rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under the L/M income housing criteria.

OR

- ❖ Be a microenterprise assistance activity carried out in accordance with the provisions of §570.201(o) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year who are low- and moderate-income persons. (Note that, for these purposes, once a person is determined to be L/M income, he/she may be presumed to continue to qualify as such for up to a three-year period. This would enable the provision of general support services to such a person during that three-year period, without having to check to determine whether the person's income has risen.) Reference: §570.208(a)(2)(iii)

OR

- ❖ Be an activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar

L/M Income Housing

Section 105(c)(3) of the authorizing statute requires that an activity which assists in the acquisition, construction, or improvement of permanent, residential structures may qualify as benefiting L/M income persons only to the extent that the housing is occupied by L/M income persons. (This includes activities directed towards homeownership assistance.) Thus, this subcategory provides that for such activities to qualify under the L/M Income Benefit national objective, it must result in housing that will be occupied by L/M income households upon completion. The housing can be either owner- or renter-occupied and can be either one family or multi-unit structures. When the housing is to be rented, in order for a dwelling unit to be considered to benefit a L/M income household, it must be occupied by the household at affordable rents. The grantee is responsible for establishing the criteria it will use to determine rent affordability for this purpose and must make these criteria public. Reference: §570.208(a)(3)

Note that L/M Income Benefit status for this purpose is based on households and not persons. This distinction is very important because there can be situations where the persons residing in an assisted housing unit are not all members of the same family. For example, consider the case where two working persons are sharing a housing unit but are not related by blood, marriage, or adoption, and their individual incomes qualify them both as L/M income persons. It is possible, however, that their combined income might exceed the applicable Section 8 income limit for a two-person family and thus their household income would not qualify them to be a L/M income household.

L/M Jobs

Most (but not all) job creation or retention activities emanate from special economic development activities (§570.203). Section 105(c)(1) of the authorizing statute provides that these “special economic development” activities may meet the L/M Income Benefit national objective *only* in the following three ways:

1. Be located in a predominantly L/M income neighborhood and serve the L/M income residents (e.g., a grocery store serving a L/M income neighborhood qualifies as area benefit); **or**
2. Involve facilities designed for use predominantly by L/M income persons (e.g., a for-profit hospital that is designed to serve patients on Medicaid or welfare qualifies as limited clientele); **or**
3. Involve the employment of persons, the majority of whom are L/M income persons (e.g., a retail clothing store creates or retains jobs principally for L/M income persons).

A *L/M income jobs activity* is one which creates or retains permanent jobs, at least 51% of which, on a full time equivalent (FTE) basis, are either *held by* L/M income persons or considered to be *available to* L/M income persons.

HOME Investment Partnerships Program

Final Rule

24 CFR Part 92

September 16, 1996

(updated through December 22, 2004)

HOME Investment Partnerships Program Final Rule Table of Contents

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SUBPART A – GENERAL

§ 92.1 Overview

This part implements the HOME Investment Partnerships Act (the HOME Investment Partnerships Program).

In general, under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income families.

Generally, HOME funds must be matched by nonfederal resources.

State and local governments that become participating jurisdictions may use HOME funds to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance.

Participating jurisdictions may provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

§ 92.2 Definitions

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

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

ADDI funds means funds made available under subpart M through allocations and reallocations.

Adjusted income. See § 92.203.

Annual income. See § 92.203.

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

Commitment means

1. The participating jurisdiction has executed a legally binding agreement with a State recipient, a subrecipient or a contractor to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance; or has executed a written agreement reserving a specific amount of funds to a community

housing development organization; or has met the requirements to commit to a specific local project, as defined in paragraph (2), below.

2. Commit to a specific local project, which means:
 - i. If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or subrecipient) and project owner have executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project under which construction can reasonably be expected to start within twelve months of the agreement date. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project set-up date.
 - ii.
 - A. If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is acquiring the property with HOME funds, the participating jurisdiction (or State recipient or subrecipient) and the property owner have executed a legally binding contract for sale of an identifiable property and the property title will be transferred to the participating jurisdiction (or State recipient or subrecipient) within six months of the date of the contract.
 - B. If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is providing HOME funds to a family to acquire single family housing for homeownership or to a purchaser to acquire rental housing, the participating jurisdiction (or State recipient or subrecipient) and the family or purchaser have executed a written agreement under which HOME assistance will be provided for the purchase of the single family housing or rental housing and the property title will be transferred to the family or purchaser within six months of the agreement date.
 - iii. If the project consists of tenant-based rental assistance, the participating jurisdiction (or State recipient, or subrecipient) has entered into a rental assistance contract with the owner or the tenant in accordance with the provisions of § 92.209.

Community housing development organization means a private nonprofit organization that:

1. Is organized under State or local laws;
2. Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

3. Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:
 - i. The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.
 - ii. The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members; and
 - iii. The community housing development organization must be free to contract for goods and services from vendors of its own choosing;
4. Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(C)(3)-1);
5. Does not include a public body (including the participating jurisdiction). An organization that is State or locally chartered may qualify as a community housing development organization; however, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of the participating jurisdiction or State recipient. Board members appointed by the State or local government may not appoint the remaining two-thirds of the board members;
6. Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems;"
7. Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;
8. Maintains accountability to low-income community residents by:
 - i. Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and
 - ii. Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

9. Has a demonstrated capacity for carrying out activities assisted with HOME funds. An organization may satisfy this requirement by hiring experienced key staff members who have successfully completed similar projects, or a consultant with the same type of experience and a plan to train appropriate key staff members of the organization; and
10. Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

Displaced homemaker means an individual who:

1. Is an adult;
2. Has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and
3. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

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

First-time homebuyer means an individual and his or her spouse who have not owned a home during the three-year period prior to purchase of a home with assistance under the American Dream Downpayment Initiative (ADDI) described in subpart M of this part. The term first-time homebuyer also includes an individual who is a displaced homemaker or single parent, as those terms are defined in this section.

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

Homeownership means ownership in fee simple title or a 99 year leasehold interest in a one-to four-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD. The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest. For purposes of the insular areas, homeownership includes leases of 40 years or more. For purposes of housing located on trust or restricted Indian lands, homeownership includes leases of 50 years. The participating jurisdiction must determine whether or not ownership or membership in a cooperative or mutual housing project constitutes homeownership under State law.

Household means one or more persons occupying a housing unit.

Housing includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities and student dormitories.

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

Jurisdiction means a State or unit of general local government.

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

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

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

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

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

1. A person is considered to have a disability if the person has a physical, mental, or emotional impairment that:
 - i. Is expected to be of long-continued and indefinite duration;
 - ii. Substantially impedes his or her ability to live independently; and
 - iii. Is of such a nature that such ability could be improved by more suitable housing conditions.
2. A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that:

- i. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- ii. Is manifested before the person attains age 22;
- iii. Is likely to continue indefinitely;
- iv. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and
- v. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated. Notwithstanding the preceding provisions of this definition, the term "person with disabilities" includes two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted with HOME funds, with the deceased member of the household at the time of his or her death.

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

1. Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;
2. Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income;
3. Payments of principal and interest on loans made using HOME funds or matching contributions;
4. Proceeds from the sale of loans made with HOME funds or matching contributions;
5. Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions;
6. Interest earned on program income pending its disposition; and
7. Any other interest or return on the investment permitted under § 92.205(b) of HOME funds or matching contributions.

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

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

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

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

Single parent means an individual who:

1. Is unmarried or legally separated from a spouse; and
2. Has one or more minor children of whom the individual has custody or joint custody, or is pregnant.

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

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the state with regard to the provisions of this part; however, for purposes of the American Dream Downpayment Initiative (ADDI) described in subpart M of this part, the term “state” does not include the Commonwealth of Puerto Rico (except for FY2003 ADDI funds).

State recipient. See § 92.201(b)(2).

Subrecipient means a public agency or nonprofit organization selected by the participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subrecipient. The participating jurisdiction's selection of a subrecipient is not subject to the procurement procedures and requirements.

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

Transitional housing means housing that:

1. Is designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and
2. Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the participating jurisdiction or project owner before occupancy.

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

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

Very low-income families means low-income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

§ 92.4 Waivers and Suspension of Requirements for Disaster Areas

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

SUBPART B – ALLOCATION FORMULA

§ 92.50 Formula Allocation

- a. *Jurisdictions eligible for a formula allocation.* HUD will provide allocations of funds in amounts determined by the formula described in this section to units of general local governments that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved under § 92.101; and States.
- b. *Amounts available for allocation; State and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving amounts for insular areas, housing education and organizational support, other support for State and local housing strategies, and other purposes authorized by Congress, in accordance with the Act and appropriations.
- c. *Formula factors.* The formula for determining allocations uses the following factors. The first and sixth factors are weighted 0.1; the other four factors are weighted 0.2.
 1. Vacancy-adjusted rental units where the household head is at or below the poverty level. These rental units are multiplied by the ratio of the national rental vacancy rate over a jurisdiction's rental vacancy rate.
 2. Occupied rental units with at least one of four problems (overcrowding, incomplete kitchen facilities, incomplete plumbing, or high rent costs). Overcrowding is a condition that exists if there is more than one person per room occupying the unit. Incomplete kitchen facilities means the unit lacks a sink with running water, a range, or a refrigerator. Incomplete plumbing means the unit lacks hot and cold piped water, a flush toilet, or a bathtub or shower inside the unit for the exclusive use of the occupants of the unit. High rent costs occur when more than 30 percent of household income is used for rent.
 3. Rental units built before 1950 occupied by poor households.
 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.

§ 92.60 Allocation Amounts for Insular Areas

- a. *Initial allocation amount for each insular area.* The initial allocation amount for each insular area is determined based upon the insular area's population and occupied rental units compared to all insular areas.
- b. *Threshold requirements.* The HUD Field Office shall review each insular area's progress on outstanding allocations made under this section, based on the insular area's performance report, the timeliness of close-outs, and compliance with fund management requirements and regulations, taking into consideration the size of the allocation and the degree and complexity of the program. If HUD determines from this review that the insular area does not have the capacity to administer effectively a new allocation, or a portion of a new allocation, in addition to allocations currently under administration, HUD may reduce the insular area's initial allocation amount.
- c. *Previous audit findings and outstanding monetary obligations.* HUD shall not make an allocation to an insular area that has either an outstanding audit finding for any HUD program, or an outstanding monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been established. This restriction does not apply if the HUD Field Office finds that the insular area has made a good faith effort to clear the audit and, when there is an outstanding monetary obligation to HUD, the insular area has made a satisfactory arrangement for repayment of the funds due HUD and payments are current.
- d. *Increases to the initial allocation amount.* If funds reserved for the insular areas are available because HUD has decreased the amount for one or more insular areas in accordance with paragraphs (b) or (c) of this section, or for any other reason, HUD may increase the allocation amount for one or more of the remaining insular areas based upon the insular area's performance in committing HOME funds within the 24 month deadline, producing housing units described in its program description, and meeting HOME program requirements. Funds that become available but which are not used to increase the allocation amount for one or more of the remaining insular areas will be reallocated in accordance with § 92.66.
- e. *Notice of allocation amounts.* HUD will notify each insular area, in writing, as to the amount of its HOME allocation.

§ 92.61 Program Description

- a. *Submission requirement.* Not later than 90 days after HUD notifies the insular area of the amount of its allocation, the insular area must submit a program description and certifications to HUD.
- b. *Content of program description.* The program description must contain the following:
 1. An executed Standard Form 424;
 2. The estimated use of HOME funds and a description of projects and eligible activities, including number of units to be assisted, estimated costs, and tenure type (rental or owner occupied) and, for tenant assistance, number of households to be assisted;
 3. A timetable for the implementation of the projects or eligible activities;
 4. If the insular area intends to use HOME funds for homebuyers, the guidelines for resale or recapture as required in § 92.254(a)(5);
 5. If the insular area intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in § 92.209;
 6. If an insular area intends to use other forms of investment not described in § 92.205(b), a description of the other forms of investment;
 7. A statement of the policy and procedures to be followed by the insular area to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under § 92.351;
 8. If the insular intends to use HOME funds for refinancing along with rehabilitation, the insular area's guidelines described in § 92.206(b).
- c. *Certifications.* The following certifications must accompany the program description:
 1. A certification that, before committing funds to a project, the insular area will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other governmental assistance than is necessary to provide affordable housing;
 2. If the insular area intends to provide tenant-based rental assistance, the certification required by § 92.209;
 3. A certification that the submission of the program description is authorized under applicable law and the insular area possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

4. A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of § 92.353;
5. A certification that the insular area will use HOME funds in compliance with all requirements of this part;
6. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F; and
7. The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by 24 CFR part 87.

§ 92.62 Review of Program Description and Certifications

- a. *Review of program description.* The responsible HUD Field Office will review an insular area's program description and will approve the description unless the insular area has failed to submit information sufficient to allow HUD to make the necessary determinations required for § 92.61(b)(4), (b)(6), and (b)(7), or the guidelines under (b)(8) are not satisfactory to HUD, if applicable; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs. If the insular area has not submitted information on § 92.61(b)(4), (b)(6), and (b)(7), or the guidelines under (b)(8) are not satisfactory to HUD, if applicable; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory program description.
- b. *Review period.* Within thirty days of receipt of the program description, the HUD Field Office will notify the insular area if determinations cannot be made under § 92.61(b)(4), (b)(6), (b)(7), or (b)(8) with the supporting information submitted, or if the proposed projects or activities are beyond currently demonstrated capability. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information or to revise the proposed projects or activities in its program description.
- c. *HOME Investment Partnership Agreement.* After HUD Field Office approval under this section, a HOME funds allocation is made by HUD execution of the agreement, subject to execution by the insular area. The funds are obligated on the date HUD notifies the insular area of HUD's execution of the agreement.

§ 92.63 Amendments to Program Description

An insular area must submit to HUD for approval any substantial change in its HUD-approved program description that it makes and must document any other changes in its file. A substantial change involves a change in the guidelines for resale or recapture (§ 92.61(b)(4)), other forms of investment (§ 92.61(b)(6)), minority and women business outreach program (§ 92.61(b)(7)) or refinancing (§ 92.61(b)(8)); or a change in the tenure type of the project or activities; or a funding increase to a project or activity of \$100,000 or 50% (whichever is greater).

The HUD Field Office will notify the insular area if its program description, as amended, does not permit determinations to be made under § 92.61(b)(4), (b)(6), (b)(7), or (b)(8), or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt.

The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to revise the proposed projects or activities in its program description.

§ 92.64 Applicability of Requirements to Insular Areas

- a. Insular areas are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following.
 1. Subpart E (Program Requirements): Administrative costs, as described in § 92.207, are eligible costs for insular areas in an amount not to exceed 15 percent of the HOME funds provided to the insular area. The matching contribution requirements in this part do not apply.
 2. Subpart K (Program Administration):
 - i. Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury for each insular area and the HOME funds must be used for approved activities. A local account must be established for program income. Each insular area may use either a separate local HOME account or a subsidiary account within its general fund (or other appropriate fund) as the local HOME account. HUD will recapture HOME funds in the HOME Treasury account by the amount of:
 - A. Any funds that are not committed within 24 months after the last day of the month in which HUD notifies the insular area of HUD's execution of the HOME Investment Partnership Agreement;
 - B. Any funds that are not expended within five years after the last day of the month in which HUD notifies the insular area of HUD's execution of the HOME Investment Partnership Agreement; and

- C. Any penalties assessed by HUD under § 92.552.
 - ii. Section 92.502 (Program disbursement and information system) applies, except that references to the HOME Investment Trust Fund mean HOME account. In addition, § 92.502(c) does not apply, and instead compliance with Treasury Circular No. 1075 (31 CFR part 205) and 24 CFR 85.21 is required.
 - iii. Section 92.503 (Program income, repayments, and recaptured funds) applies, except that the funds may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.
- 3. Section 92.504 (Participating jurisdiction responsibilities; written agreements; on-site inspections) applies, except that the written agreement must ensure compliance with the requirements in this section.
- 4. Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.
- 5. Section 92.509 (Performance reports) applies, except that a performance report is required for the fiscal year allocation only after completion of the approved projects funded by the allocation.
- 6. Subpart L (Performance Reviews and Sanctions): Section 92.552 does not apply. Instead, § 92.65 applies.
- b. The requirements of subpart H (Other Federal Requirements) of this part apply as follows: § 92.357 Executive Order 12372 applies as written, and the requirements of the remaining sections which apply to participating jurisdictions are applicable to the insular areas.
- c. Subpart B (Allocation Formula), subpart C (Consortia; Designation and Revocation as a Participating Jurisdiction), subpart D (Submission Requirements), and subpart G (Community Housing Development Organizations) of this part do not apply.
- d. Subpart A (General) applies, except that for the definitions of commitment, program income, and subrecipient, “participating jurisdiction” means “insular area.”

§ 92.65 Funding Sanctions

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

§ 92.66 Reallocation

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

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

SUBPART C – CONSORTIA; DESIGNATION AND REVOCATION OF DESIGNATION AS A PARTICIPATING JURISDICTION

§ 92.100 [Reserved]

§ 92.101 Consortia

- a. A consortium of geographically contiguous units of general local government is a unit of general local government for purposes of this part if the requirements of this section are met.
 1. One or more members of a proposed consortium or an existing consortium whose consortium qualification terminates at the end of the fiscal year, must provide written notification 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.
- 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.

§ 92.102 Participation Threshold Amount

- a. To be eligible to become a participating jurisdiction, a unit of general local government must have a formula allocation under § 92.50 that is equal to or greater than \$750,000; or
- b. If a unit of general local government's formula allocation is less than \$750,000, HUD must find:
 - 1. The unit of general local government has a local PHA and has demonstrated a capacity to carry out the provisions of this part, as evidenced by satisfactory performance under one or more HUD-administered programs that provide assistance for activities comparable to the eligible activities under this part; and

2. The State has authorized HUD to transfer to the unit of general local government a portion of the State's allocation or the State, the unit of general local government, or both, has made available its own resources such that the sum of the amounts transferred or made available are equal to or greater than the difference between the unit of general local government's formula allocation and \$750,000.
- c. In fiscal years in which Congress appropriates less than \$1.5 billion for this part, \$500,000 is substituted for \$750,000 each time it appears in this section.

§ 92.103 Notification of Intent to Participate

- a. Not later than 30 days after receiving notice of its formula allocation amount, a jurisdiction must notify HUD in writing of its intention to become a participating jurisdiction.
- b. A unit of general local government that has a formula allocation of less than \$750,000, or less than \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion for this part, must submit, with its notice, one or more of the following, as appropriate, as evidence that it has met the threshold allocation requirements in § 92.102(b):
 1. Authorization from the State to transfer a portion of its allocation to the unit of general local government;
 2. A letter from the governor or designee indicating that the required funds have been approved and budgeted for the unit of general local government;
 3. A letter from the chief executive officer of the unit of general local government indicating that the required funds have been approved and budgeted.

§ 92.104 Submission of a Consolidated Plan

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

§ 92.105 Designation as a Participating Jurisdiction

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

§ 92.106 Continuous Designation as a Participating Jurisdiction

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

§ 92.107 Revocation of Designation as a Participating Jurisdiction

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

- a. HUD finds, after reasonable notice and opportunity for hearing as provided in § 92.552(b) that the jurisdiction is unwilling or unable to carry out the provisions of this part, including failure to meet matching contribution requirements; or
- b. The jurisdiction's formula allocation falls below \$750,000 (or below \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion for this part) for three consecutive years, below \$625,000 (or below \$410,000 in fiscal years in which Congress appropriates less than \$1.5 billion for this part) for two consecutive years, or the jurisdiction does not receive a formula allocation in any one year.
- c. When HUD revokes a participating jurisdiction's designation as a participating jurisdiction, HUD will reallocate any remaining funds in the jurisdiction's HOME Investment Trust Fund established under § 92.500 in accordance with § 92.451.

SUBPART D – SUBMISSION REQUIREMENTS

§ 92.150 Submission Requirements

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

SUBPART E – PROGRAM REQUIREMENTS

§ 92.200 Private-public Partnership

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

§ 92.201 Distribution of Assistance

- a. *Local.*
 1. Each local participating jurisdiction must, insofar as is feasible, distribute HOME funds geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in its approved consolidated plan.
 2. The participating jurisdiction may only invest its HOME funds in eligible projects within its boundaries, or in joint projects within the boundaries of contiguous local jurisdictions which serve residents from both jurisdictions.

b. *State.*

1. Each State participating jurisdiction is responsible for distributing HOME funds throughout the State according to the State's assessment of the geographical distribution of the housing needs within the State, as identified in the State's approved consolidated plan. The State must distribute HOME funds to rural areas in amounts that take into account the non-metropolitan share of the State's total population and objective measures of rural housing need, such as poverty and substandard housing, as set forth in the State's approved consolidated plan. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need.
2. A State may carry out its own HOME program without active participation of units of general local government or may distribute HOME funds to units of general local government to carry out HOME programs in which both the State and all or some of the units of general local government perform specified program functions. A unit of general local government designated by a State to receive HOME funds from a State is a State recipient.
3.
 - i. A State that uses State recipients to perform program functions shall ensure that the State recipients use HOME funds in accordance with the requirements of this part and other applicable laws. The State may require the State recipient to comply with requirements established by the State or may permit the State recipient to establish its own requirements to comply with this part.
 - ii. The State shall conduct such reviews and audit of its State recipients as may be necessary or appropriate to determine whether the State recipient has committed and expended the HOME funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching contribution requirements.
4. A State and local participating jurisdiction may jointly fund a project within the boundaries of the local participating jurisdiction. The State may provide the HOME funds to the project or it may provide the HOME funds to the local participating jurisdiction to fund the project.
5. A State may fund projects on Indian reservations located within the State provided that the State includes Indian reservations in its consolidated plan.

§ 92.202 Site and Neighborhood Standards

- a. *General.* A participating jurisdiction must administer its HOME program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601 et seq.), E.O. 11063

(3 CFR, 1959-1963 Comp., p. 652), and HUD regulations issued pursuant thereto; and promotes greater choice of housing opportunities.

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

§ 92.203 Income Determinations

- a. The HOME program has income targeting requirements for the HOME program and for HOME projects. Therefore, the participating jurisdiction must determine each family is income eligible by determining the family's annual income.
 - 1. For families who are tenants in HOME-assisted housing and not receiving HOME tenant-based rental assistance, the participating jurisdiction must initially determine annual income using the method in paragraph (a)(1)(i) of this section. For subsequent income determinations during the period of affordability, the participating jurisdiction may use any one of the following methods in accordance with § 92.252(h):
 - i. Examine the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.
 - ii. Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.
 - iii. Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.
 - 2. For all other families, the participating jurisdiction must determine annual income by examining the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.
- b. When determining whether a family is income eligible, the participating jurisdiction must use one of the following three definitions of "annual income":
 - 1. "Annual income" as defined at 24 CFR 5.609 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets); or

2. Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:
 - i. Wages, salaries, tips, commissions, etc.;
 - ii. Self-employment income from owned non-farm business, including proprietorships and partnerships;
 - iii. Farm self-employment income;
 - iv. Interest, dividends, net rental income, or income from estates or trusts;
 - v. Social Security or railroad retirement;
 - vi. Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;
 - vii. Retirement, survivor, or disability pensions; and
 - viii. Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or
 3. Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.
- c. Although the participating jurisdiction may use any of the three definitions of "annual income" permitted in paragraph (b) of this section, to calculate adjusted income it must apply exclusions from income established at 24 CFR 5.611. The HOME rents for very low-income families established under § 92.252(b)(2) are based on adjusted income. In addition, the participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family.
- d.
1. The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income shall include income from all family members. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.
 2. The participating jurisdiction is not required to re-examine the family's income at the time the HOME assistance is provided, unless more than six months has elapsed since the participating jurisdiction determined that the family qualified as income eligible.
 3. The participating jurisdiction must follow the requirements in § 5.617 when making subsequent income determinations of persons with disabilities who are tenants in HOME-assisted rental housing or who receive tenant-based rental assistance.

§ 92.204 Applicability of Requirements to Entities that Receive a Reallocation of HOME Funds, Other than Participating Jurisdictions

- a. Jurisdictions other than participating jurisdictions and community housing development organizations receiving competitive reallocations from HUD are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following:
 1. Subpart E (Program Requirements): the matching contribution requirements in § 92.218 through § 92.221 do not apply.
 2. Subpart K (Program Administration):
 - i. Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury and the HOME funds must be used for approved activities. A local account must be established for program income. HUD will recapture HOME funds in the HOME Treasury account by the amount of:
 - A. Any funds that are not committed within 24 months after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement;
 - B. Any funds that are not expended within five years after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement; and
 - C. Any penalties assessed by HUD under § 92.552.
 - ii. Section 92.502 (Program disbursement and information system) applies, except that references to the HOME Investment Trust Fund mean HOME account and the reference to 24 CFR part 58 does not apply. In addition, § 92.502(c) does not apply, and instead, compliance with Treasury Circular No. 1075 (31 CFR part 205) and 24 CFR 85.21 is required.
 - iii. Section 92.503 (Program income, repayments, and recaptured funds) applies, except that program income may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.
 3. Section 92.504 (Participating jurisdiction responsibilities; written agreements; on-site inspections) applies, except that the written agreement must ensure compliance with the requirements in this section.
 4. Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.
 5. Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

- b. The requirements in subpart H (Other Federal Requirements) of this part apply as written, except that jurisdictions and community housing development organizations receiving reallocations from HUD must comply with affirmative marketing requirements, labor requirements, and lead-based paint requirements, applicable to participating jurisdictions.
- c. Subpart B (Allocation Formula), subpart C (Consortia; Designation and Revocation of Designation as a Participating Jurisdiction), and subpart G (Community Housing Development Organizations) of this part do not apply.
- d. Subpart A (General) applies, except that for the definitions of commitment, program income, and subrecipient, “participating jurisdiction” means jurisdiction or community housing development organization receiving the competitive reallocation.

ELIGIBLE AND PROHIBITED ACTIVITIES

§ 92.205 Eligible Activities: General

- a. *Eligible activities.*
 - 1. HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing. The specific eligible costs for these activities are set forth in §§ 92.206 through 92.209.
 - 2. Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing.
 - 3. Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding one or more units beyond the existing walls, in which case, the project is new construction for purposes of this part.
 - 4. *Manufactured housing.* HOME funds may be used to purchase and/or rehabilitate a manufactured housing unit, or purchase the land upon which a manufactured housing unit is located. Except for existing, owner-occupied manufactured housing that is rehabilitated with HOME funds, the manufactured housing unit must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

- b. *Forms of assistance.*
 - 1. A participating jurisdiction may invest HOME funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.
 - 2. A participating jurisdiction may invest HOME funds to guarantee loans made by lenders and, if required, the participating jurisdiction may establish a loan guarantee account with HOME funds. The HOME funds may be used to guarantee the timely payment of principal and interest or payment of the outstanding principal and interest upon foreclosure of the loan. The amount of the loan guarantee account must be based on a reasonable estimate of the default rate on the guaranteed loans, but under no circumstances may the amount on deposit exceed 20 percent of the total outstanding principal amount guaranteed; except that the account may include a reasonable minimum balance. While loan funds guaranteed with HOME funds are subject to all HOME requirements, funds which are used to repay the guaranteed loans are not.
- c. *Minimum amount of assistance.* The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is \$1,000 times the number of HOME-assisted units in the project.
- d. *Multi-unit projects.* HOME funds may be used to assist one or more housing units in a multi-unit project. Only the actual HOME eligible development costs of the assisted units may be charged to the HOME program. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation. If the assisted and non-assisted units are comparable in terms of size, features and number of bedrooms, the actual cost of the HOME-assisted units can be determined by pro-rating the total HOME eligible development costs of the project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME-assisted units in the project.
- e. *Terminated projects.* A HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and any HOME funds invested in the project must be repaid to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b) (except for project-specific assistance to community housing development organizations as provided in § 92.301(a)(3) and § 92.301(b)(3)).

§ 92.206 Eligible Project Costs

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

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

1. For new construction, costs to meet the applicable new construction standards of the participating jurisdiction and the Model Energy Code referred to in § 92.251;
 2. For rehabilitation, costs:
 - i. To meet the property standards in § 92.251;
 - ii. To make essential improvements, including energy-related repairs or improvements, improvements necessary to permit use by persons with disabilities, and the abatement of lead-based paint hazards, as required by part 35 of this title.
 3. For both new construction and rehabilitation, costs:
 - i. To demolish existing structures;
 - ii. To make utility connections including off-site connections from the property line to the adjacent street; and
 - iii. To make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.
 4. For both new construction and rehabilitation of multifamily rental housing, costs to construct or rehabilitate laundry and community facilities which are located within the same building as the housing and which are for the use of the project residents and their guests.
 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 housing that is being rehabilitated with HOME funds:
1. For single-family (1- to 4-family) owner-occupied housing when loaning HOME funds to rehabilitate the housing, if the refinancing is necessary to reduce the overall housing costs to the borrower and make the housing more affordable.
 2. For multifamily projects, when loaning HOME funds to rehabilitate the units if refinancing is necessary to permit or continue affordability under § 92.252. The participating jurisdiction must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. Regardless of the amount of HOME funds invested, the minimum affordability period shall be 15 years. The guidelines shall describe the conditions under which the participating jurisdictions will refinance existing debt. At minimum, the guidelines must:

- i. Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing;
 - ii. Require a review of management practices to demonstrate that disinvestment in the property has not occurred, that the long term needs of the project can be met and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated;
 - iii. State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both;
 - iv. Specify the required period of affordability, whether it is the minimum 15 years or longer;
 - v. Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR 91.215(e)(2) or a Federally designated Empowerment Zone or Enterprise Community; and
 - vi. State that HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.
- c. *Acquisition costs.* Costs of acquiring improved or unimproved real property, including acquisition by homebuyers.
- d. *Related soft costs.* Other reasonable and necessary costs incurred by the owner or participating jurisdiction and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:
- 1. Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups.
 - 2. Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees.
 - 3. Costs of a project audit that the participating jurisdiction may require with respect to the development of the project.
 - 4. Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by § 92.351.
 - 5. For new construction or rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay project operating expenses, scheduled payments to a replacement reserve, and debt

service. Any HOME funds placed in an operating deficit reserve that remain unexpended after the period of project rent-up may be retained for project reserves if permitted by the participating jurisdiction.

6. Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers, e.g., housing counseling, may be charged to project costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project. For multi-unit projects, such costs must be allocated among HOME-assisted units in a reasonable manner and documented.
 7. For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.
 8. Costs of environmental review and release of funds in accordance with 24 CFR Part 58 which are directly related to the project.
- e. *Community housing development organization costs.* Eligible costs of project-specific assistance are set forth in § 92.301.
- f. *Relocation costs.* The cost of relocation payments and other relocation assistance to persons displaced by the project are eligible costs.
1. Relocation payments include replacement housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in the temporary relocation of persons.
 2. Other relocation assistance means staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.
- g. *Costs relating to payment of loans.* If the HOME funds are not used to directly pay a cost specified in this section, but are used to pay off a construction loan, bridge financing loan, or guaranteed loan, the payment of principal and interest for such loan is an eligible cost only if:
1. The loan was used for eligible costs specified in this section, and
 2. The HOME assistance is part of the original financing for the project and the project meets the requirements of this part.

§ 92.207 Eligible Administrative and Planning Costs

A participating jurisdiction may expend, for payment of reasonable administrative and planning costs of the HOME program 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 directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, and other services related to assisting potential owners, tenants, and homebuyers (e.g., housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 92.206 (d)(6) and (f)(2), at the discretion of the participating jurisdiction.
 - c. *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HOME funds.
 - d. *Fair housing.* Activities to affirmatively further fair housing in accordance with the participating jurisdiction's certification under 24 CFR part 91.
 - e. *Indirect Costs.* Indirect costs may be charged to the HOME program under a cost allocation plan prepared in accordance with OMB Circulars A-87 or A-122 as applicable.
 - f. *Preparation of the consolidated plan.* Preparation of the consolidated plan required under 24 CFR part 91. Preparation includes the costs of public hearings, consultations, and publication.
 - g. *Other Federal requirements.* Costs of complying with the Federal requirements in subpart H of this part. Project-specific environmental review costs may be charged as administrative costs or as project costs in accordance with § 92.206(d)(8), at the discretion of the participating jurisdiction.

§ 92.208 Eligible Community Housing Development Organization (CHDO) Operating Expense and Capacity Building Costs

- a. Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). These funds may not be used to pay operating expenses incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee

compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials and supplies. The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.300(e) and (f).

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

§ 92.209 Tenant-based Rental Assistance: Eligible Costs and Requirements

- a. *Eligible costs.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family pursuant to this section. Administration of tenant-based rental assistance is eligible only under general management oversight and coordination at § 92.207(a).
- b. *General requirement.* A participating jurisdiction may use HOME funds for tenant-based rental assistance only if the participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with 24 CFR 91.225(d)(1), 91.325(d)(1), or 91.425(a)(2)(i), and specifies local market conditions that lead to the choice of this option.
- c. *Tenant selection.* The participating jurisdiction must select families in accordance with written tenant selection policies and criteria that are consistent with the following:
 - 1. *Low-income families.* Tenant-based rental assistance may only be provided to very low- and low-income families. The participating jurisdiction must determine that the family is very low- or low-income before the assistance is provided. During the period of assistance, the participating jurisdiction must annually determine that the family continues to be low-income.
 - 2. *Preferences for Individuals with Special Needs.*
 - i. The participating jurisdiction may establish a preference for individuals with special needs. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of non-mandatory services that may be most appropriate for persons with a special need or a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with special needs or disabilities who can benefit from such services.
 - ii. The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.
 - iii. Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a). For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance.

3. *Existing tenants in the HOME-assisted projects.* A participating jurisdiction may select low-income families currently residing in housing units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program. 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 assistance in the rehabilitated or acquired housing unit or in other qualified housing.
 - d. *Portability of assistance.* A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.
 - e. *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a participating jurisdiction and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a participating jurisdiction and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.
 - f. *Rent reasonableness.* The participating jurisdiction must disapprove a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.
 - g. *Tenant protections.* The lease must comply with the requirements in § 92.253(a) and (b).
 - h. *Maximum subsidy.*
 1. The amount of the monthly assistance that a participating jurisdiction may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the participating jurisdiction and 30 percent of the family's monthly adjusted income.
 2. The participating jurisdiction must establish a minimum tenant contribution to rent.
 3. The participating jurisdiction's rent standard for a unit size must be based on:
 - i. Local market conditions; or
 - ii. For each unit size, may not be less than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the participating jurisdiction adopts its rent standard amount). (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under 24 CFR 882.106(a)(3) for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.) A participating jurisdiction may approve on a unit-by-unit basis a subsidy based on a rent

standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

- i. *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the requirements set forth in 24 CFR 982.401. The participating jurisdiction must inspect the housing initially and re-inspect it annually.
- j. *Security deposits.*
 1. A participating jurisdiction may use HOME funds provided for tenant-based rental assistance to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units whether or not the participating jurisdiction provides any other tenant-based rental assistance under this section.
 2. The relevant State or local definition of “security deposit” in the jurisdiction where the unit is located is applicable for the purposes of this part, except that the amount of HOME funds that may be provided for a security deposit may not exceed the equivalent of two month’s rent for the unit.
 3. Only the prospective tenant may apply for HOME security deposit assistance, although the participating jurisdiction may pay the funds directly to the tenant or to the landlord.
 4. HOME funds for security deposits may be provided as a grant or as a loan. If they are provided as a loan, the loan repayments are program income to be used in accordance with § 92.503.
 5. Paragraphs (b), (c), (d), (f), (g) and (i) of this section are applicable to HOME security deposit assistance, except that income determinations pursuant to paragraph (c)(1) of this section and Housing Quality Standard inspections pursuant to paragraph (i) of this section are required only at the time the security deposit assistance is provided.
- k. *Program operation.* A tenant-based rental assistance program must be operated consistent with the requirements of this section. The participating jurisdiction may operate the program itself, or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family. In either case, the participating jurisdiction (or entity operating the program) must approve the lease.
 1. *Use of Section 8 assistance.* In any case where assistance under section 8 of the 1937 Act becomes available to a participating jurisdiction, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

§ 92.212 Pre-award Costs

- a. *General.* Before the effective date of the HOME Investment Partnership Agreement, the participating jurisdiction may incur costs which may be charged to the HOME allocation after the award of the HOME allocation, provided the costs are in compliance with the requirements of this part (including environmental review requirements) and with the statutory and regulatory requirements in effect at the time the costs are charged to the HOME allocation.
- b. *Administrative and planning costs.* Eligible administrative and planning costs may be incurred as of the beginning of the participating jurisdiction's consolidated program year (see 24 CFR 91.10) or the date the consolidated plan describing the HOME allocation to which the costs will be charged is received by HUD, whichever is later.
- c. *Project costs.* Eligible project costs may be incurred during the current program year in an amount not to exceed 25% of the current HOME allocation amount, to be charged to the following year's HOME allocation. Before incurring the pre-award costs, the participating jurisdiction must comply with its citizen participation plan requirements addressing 24 CFR 91.105(b)(2), (4), (5) and (g) (local governments) or 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 91.220(c) and includes, if applicable, 91.220(g)(2) (local governments) or 91.320(c) and, if applicable, 91.320(g)(2) (States). The mini-action plan must state that HOME funding for the project(s) is subject to the future availability of HOME funds. The subsequent action plan (i.e., action plan for the HOME allocation to which the costs will be charged) must also include the use of HOME funds contained in the mini-action plan.
- d. *Subrecipient or State recipient costs.* The participating jurisdiction may authorize its subrecipient or State recipient to incur pre-award costs in accordance with the requirements of this section. The authorization must be in writing.
- e. *Other pre-agreement costs.* Pre-agreement costs in excess of the amount set forth in paragraph (c) of this section must be approved, in writing, by the HUD Field Office before the costs are incurred.

§ 92.213 [Reserved]

§ 92.214 Prohibited Activities

- a. HOME funds may not be used to:
 1. Provide project reserve accounts, except as provided in § 92.206(d)(5), or operating subsidies;
 2. Provide tenant-based rental assistance for the special purposes of the existing section 8 program, in accordance with section 212(d) of the Act;

3. Provide non-federal matching contributions required under any other Federal program;
 4. Provide assistance authorized under section 9 of the 1937 Act (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 or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction in the written agreement under § 92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.
 7. Pay for the acquisition of property owned by the participating jurisdiction, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project; or
 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.
- b. Participating jurisdictions may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, participating jurisdictions may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. Such fees are applicable credits under OMB Circular A-87.

§ 92.215 Limitation on Jurisdictions under Court Order

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

INCOME TARGETING

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

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

- a. Not less than 90 percent of:
 1. The families receiving such rental assistance are families whose annual incomes do not exceed 60 percent of the median family income for the area, as determined and

made available by HUD with adjustments for smaller and larger families (except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later; or

2. The dwelling units assisted with such funds are occupied by families having such incomes; and
- b. The remainder of:
1. The families receiving such rental assistance are households that qualify as low-income families (other than families described in paragraph (a)(1) of this section) at the time of occupancy or at the time funds are invested, whichever is later; or
 2. The dwelling units assisted with such funds are occupied by such households.

§ 92.217 Income Targeting: Homeownership

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

MATCHING CONTRIBUTION REQUIREMENT

§ 92.218 Amount of Matching Contribution

- a. *General.* Each participating jurisdiction must make contributions to housing that qualifies as affordable housing under the HOME program, throughout a fiscal year. The contributions must total not less than 25 percent of the funds drawn from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year, excluding funds drawn for purposes identified in paragraph (c) of this section.
- b. *Shortfall amount from State or local resources.* Amounts made available under § 92.102(b)(2) from the resources of a State (other than a transfer of the State's formula allocation), the local participating jurisdiction, or both, to enable the local participating jurisdiction to meet the participation threshold amount are not required to be matched and do not constitute matching contributions.
- c. *HOME funds not required to be matched.* HOME funds used for administrative and planning costs (pursuant to § 92.207); community housing development organization operating expenses (pursuant to § 92.208); capacity building (pursuant to 92.300(b)) of community housing development organizations; and project specific assistance to community housing development organizations (pursuant to § 92.301) when the participating jurisdiction waives repayment under the provisions of § 92.301(a)(3) or § 92.301(b)(3) are not required to be matched.

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

§ 92.219 Recognition of Matching Contribution

- a. *Match contribution to HOME-assisted housing.* A contribution is recognized as a matching contribution if it is made with respect to:
 - 1. A tenant who is assisted with HOME funds;
 - 2. A HOME-assisted unit;
 - 3. The portion of a project that is not HOME-assisted provided that at least 50 percent of the housing units in the project are HOME-assisted. If the match contribution to the portion of the project that is not HOME-assisted meets the affordable housing requirements of § 92.219(b)(2), the percentage requirement for HOME-assisted units does not apply; or
 - 4. The commercial space in a mixed-use project in which at least 51 percent of the floor space is residential provided that at least 50 percent of the dwelling units are HOME-assisted.
- b. *Match contribution to affordable housing that is not HOME-assisted.* The following requirements apply for recognition of matching contributions made to affordable housing that is not HOME-assisted:
 - 1. For tenant-based rental assistance that is not HOME-assisted:
 - i. The contribution must be made with respect to a tenant who is assisted with tenant-based rental assistance that meets the requirements of § 92.203 (Income determinations) and 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 or its instrumentality must execute, with the owner of the housing (or, if the participating jurisdiction is the owner, with the manager or developer), a written agreement that imposes and enumerates all of the affordability requirements from § 92.252 and § 92.253(a) and (b) (Tenant protections), or § 92.254, whichever are applicable; the property standards requirements of § 92.251; and income determinations made in accordance with § 92.203. This written agreement must be executed before any match contributions may be made.

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

§ 92.220 Form of Matching Contribution

- a. *Eligible forms.* Matching contributions must be made from nonfederal resources and may be in the form of one or more of the following:
 - 1. *Cash contributions from nonfederal sources.* To be recognized as a cash contribution, funds must be contributed permanently to the HOME program (or to affordable housing not assisted with HOME funds), regardless of the form of investment provided to the project. Therefore, to receive match credit for the full amount of a loan to a HOME project, all repayment, interest, or other return on investment of the contribution must be deposited in the local account of the participating jurisdiction's HOME Investment Trust Fund to be used for eligible HOME activities in accordance with the requirements of this part. A cash contribution to affordable housing that is not assisted with HOME funds must be contributed permanently to the project. Repayments of matching contributions in affordable housing projects, as defined in § 92.219(b), that are not HOME-assisted, must be made to the local account of the participating jurisdiction's HOME Investment Trust Fund to get match credit for the full loan amount.
 - i. A cash contribution may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals, except as prohibited under paragraph (b)(4) of this section. A cash contribution made to a nonprofit organization for use in a HOME project may be counted as a matching contribution.
 - ii. A cash contribution may be made from program income (as defined by 24 CFR § 85.25(b)) from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G) and the Housing Development Grant Program (24 CFR part 850), and from the Rental Rehabilitation Grant Program (24 CFR part 511) after all fiscal year Rental Rehabilitation grants have been closed out.

- iii. The grant equivalent of a below-market interest rate loan to the project that is not repayable to the participating jurisdiction's HOME Investment Trust Fund may be counted as a cash contribution, as follows:
 - A. If the loan is made from funds borrowed by a jurisdiction or public agency or corporation the contribution is the present discounted cash value of the difference between the payments to be made on the borrowed funds and payments to be received from the loan to the project based on a discount rate equal to the interest rate on the borrowed funds.
 - B. If the loan is made from funds other than funds borrowed by a jurisdiction or public agency or corporation, the contribution is the present discounted cash value of the yield foregone. In determining the yield foregone, the participating jurisdiction must use as a measure of a market rate yield one of the following, as appropriate:
 - 1. With respect to one- to four-unit housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points;
 - 2. With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points;
 - 3. With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points;
 - 4. With respect to housing receiving financing for rehabilitation, a rate equal to the 10-year Treasury note rate plus 400 basis points.
- iv. Proceeds of bonds that are not repaid with revenue from an affordable housing project (e.g., general obligation bonds) and that are loaned to a HOME-assisted or other qualified affordable housing project constitute a cash contribution under this paragraph.
- v. A cash contribution may be counted as a matching contribution only if it is used for costs eligible under §§ 92.206 or 92.209, or for the following (which are not HOME eligible costs): the cost of removing and relocating 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.

§ 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 donated use of site preparation or construction equipment is credited as match at the time the equipment is used for affordable housing.
 8. The value of donated or voluntary labor or professional services is credited at the time the work is performed.
 9. A loan made from bond proceeds under § 92.220(a)(5) is credited at the time of the loan closing.
 10. The direct cost of social services provided to residents of HOME-assisted units is credited at the time that the social services are provided during the period of affordability.
 11. The direct cost of homebuyer counseling services provided to families that purchase HOME-assisted units is credited at the time that the homebuyer purchases the unit or for post-purchase counseling services, at the time the counseling services are provided.
- b. *Excess match.* Contributions made in a fiscal year that exceed the participating jurisdiction's match liability for the fiscal year in which they were made may be carried over and applied to future fiscal years' match liability. Loans made from bond proceeds in excess of 25 percent of a participating jurisdiction's total annual match contribution may be carried over to subsequent fiscal years as excess match, subject to the annual 25 percent limitation.
- c. Credit for match contributions shall be assigned as follows:
1. For HOME-assisted projects involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution may decide to retain the match credit or permit the other participating jurisdiction to claim the credit.
 2. For HOME match contributions to affordable housing that is not HOME-assisted (match pursuant to § 92.219(b)) involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution receives the match credit.
 3. A State that provides non-Federal funds to a local participating jurisdiction to be used for a contribution to affordable housing, whether or not HOME-assisted, may take the match credit for itself or may permit the local participating jurisdiction to receive the match credit.

§ 92.222 Reduction of Matching Contribution Requirement

- a. *Reduction for fiscal distress.* HUD will determine match reductions annually.
1. *Distress criteria for local government participating jurisdictions.* If a local government participating jurisdiction satisfies both of the distress factors in

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

- i. *Poverty rate.* The average poverty rate in the participating jurisdiction was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information of the Bureau of the Census.
 - ii. *Per capita income.* The average per capita income in the participating jurisdiction was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.
2. *Distress criteria for participating jurisdictions that are States.* If a State satisfies at least 2 of the 3 distress factors in paragraphs (a)(2)(i) - (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) - (iii) of this section, it is in fiscal distress and its match requirement will be reduced by 50 percent, for the period specified in paragraph (a)(4) of this section.
 - i. *Poverty rate.* The average poverty rate in the State was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.
 - ii. *Per capita income.* The average per capita income in the State was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.
 - iii. *Personal income growth.* The average personal income growth rate in the State over the most recent four quarters for which the data are available was less than 75 percent of the average national personal income growth rate during that period, as determined according to information from the Bureau of Economic Analysis.
3. *Period of match reduction for severe fiscal distress.* A 100% match reduction is effective for the fiscal year in which the severe fiscal distress determination is made and for the following fiscal year.
4. *Period of match reduction for fiscal distress.* A 50% match reduction is effective for the fiscal year in which the fiscal distress determination is made and for the following fiscal year, except that if a severe fiscal distress determination is published in that following fiscal year, the participating jurisdiction starts a new

two-year match reduction period in accordance with the provisions of paragraph (a)(3) of this section.

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

SUBPART F – PROJECT REQUIREMENTS

§ 92.250 Maximum Per-unit Subsidy Amount and Subsidy Layering

- a. *Maximum per-unit subsidy amount.* The total amount of HOME funds and ADDI funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limitations established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the area in which the housing is located. These limits are available from the Multifamily Division in the HUD Field Office. If the participating jurisdiction's per-unit subsidy amount has already been increased to 210% as permitted under section 221(d)(3)(ii) of the National Housing Act, upon request to the Field Office, HUD will allow the per-unit subsidy amount to be increased on a program-wide basis to an amount, up to 240% of the original per unit limits.
- b. *Subsidy layering.* Before committing funds to a project, the participating jurisdiction must evaluate the project in accordance with guidelines that it has adopted for this purpose and will not invest any more HOME funds, in combination with other governmental assistance, than is necessary to provide affordable housing.

§ 92.251 Property Standards

- a.
 1. Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion, except as provided in paragraph (b) of this section. The participating jurisdiction must have written standards for rehabilitation that ensure that HOME-assisted housing is decent, safe, and sanitary. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable: one of three model codes (Uniform Building Code (ICBO), National Building Code (BOCA), Standard

(Southern) Building Code (SBCCI)); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926. To avoid duplicative inspections when FHA financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

2. All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.
 3. The housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).
 4. Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing. Participating jurisdictions providing HOME assistance to install manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the participating jurisdiction must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using HOME funds must meet the requirements set out in paragraph (a)(1) of this section.
- b. The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:
1. Before the transfer of the homeownership interest, the participating jurisdiction must:
 - i. Inspect the housing for any defects that pose a danger to health; and
 - ii. Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.
 2. The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer.
 3. The housing must meet the property standards in paragraph (a)(1) of this section not later than 2 years after transfer of the ownership interest.
- c. An owner of rental housing assisted with HOME funds must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

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

§ 92.252 Qualification as Affordable Housing: Rental Housing

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

- a. *Rent limitation.* HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of:
 - 1. The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or
 - 2. A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.
- b. *Additional Rent limitations.* In rental projects with five or more HOME-assisted rental units, twenty (20) percent of the HOME-assisted units must be occupied by very low-income families and meet one of following rent requirements:
 - 1. The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits which include average occupancy per unit and adjusted income assumptions. However, if the rent determined under this paragraph is higher than the applicable rent under (a) of this section, then the maximum rent for units under this paragraph is that calculated under paragraph (a).
 - 2. The rent does not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.
- c. *Initial rent schedule and utility allowances.* The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone). The participating jurisdiction must review and approve rents proposed by the owner for units subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure

that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.

- d. *Nondiscrimination against rental assistance subsidy holders.* The owner cannot refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982—Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.
- e. *Periods of Affordability.* The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

| Rental Housing Activity | Minimum period of affordability in years |
|--|--|
| Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under \$15,000 | 5 |
| \$15,000 to \$40,000 | 10 |
| Over \$40,000 or rehabilitation involving refinancing | 15 |
| New Construction or acquisition of newly constructed housing | 20 |

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

2. The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (f)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner. Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section.
 3. Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.
- g. *Adjustment of HOME rent limits for a particular project.*
1. Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of a project within the HOME rent limits in this section.
 2. HUD may adjust the HOME rent limits for a project, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly.
- h. *Tenant income.* The income of each tenant must be determined initially in accordance with § 92.203(a)(1)(i). In addition, each year during the period of affordability the project owner must re-examine each tenant's annual income in accordance with one of the options in § 92.203 selected by the participating jurisdiction. An owner of a multifamily project with an affordability period of 10 years or more who re-examines tenant's annual income through a statement and certification in accordance with § 92.203(a)(1)(ii), must examine the income of each tenant, in accordance with § 92.203(a)(1)(i), every sixth year of the affordability period. Otherwise, an owner who accepts the tenant's statement and certification in accordance with § 92.203(a)(1)(ii) is not required to examine the income of tenants in multifamily or single-family projects unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.
- i. *Over-income tenants.*
1. HOME-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.
 2. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted income, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by section 42. In addition, in projects in which the HOME units are designated as floating pursuant to paragraph (j), tenants who no longer qualify as

low-income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood.

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

§ 92.253 Tenant and Participant Protections

- a. *Lease.* The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.
- b. *Prohibited lease terms.* The lease may not contain any of the following provisions:
 - 1. *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
 - 2. *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
 - 3. *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
 - 4. *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
 - 5. *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
 - 6. *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;
 - 7. *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
 - 8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a

court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

- c. *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.
- d. *Tenant selection.* An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that:
 - 1. Are consistent with the purpose of providing housing for very low-income and low-income families;
 - 2. Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
 - 3. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
 - 4. Give prompt written notification to any rejected applicant of the grounds for any rejection.

§ 92.254 Qualification as Affordable Housing: Homeownership

- a. *Acquisition with or without rehabilitation.* Housing that is for acquisition by a family must meet the affordability requirements of this paragraph (a).
 - 1. The housing must be single-family housing.
 - 2. The housing must be modest housing as follows:
 - i. In the case of acquisition of newly constructed housing or standard housing, the housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area, as described in paragraph (a)(2)(iii) of this section.
 - ii. In the case of acquisition with rehabilitation, the housing has an estimated value after rehabilitation that does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section.
 - iii. If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single-family properties, the participating jurisdiction may use the Single Family Mortgage Limits under Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) (which may be obtained from the HUD Field Office) or it may determine 95 percent of the median area purchase price for single family housing in the jurisdiction, as

follows. The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. The 95 percent of median area purchase price must be established in accordance with a market analysis which ensured that a sufficient number of recent housing sales are included in the survey. Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a two-month reporting period; for less than 250 sales per month, at least a three-month reporting period. The data must be listed in ascending order of sales price. The address of the listed properties must include the location within the participating jurisdiction. Lot, square and subdivision data may be substituted for the street address. The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire participating jurisdiction. To determine the median, take the middle sale on the list if an odd number of sales and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by .95 to determine the 95 percent of the median area purchase price. This information must be submitted to the HUD Field Office for review.

3. The housing must be acquired by a homebuyer whose family qualifies as a low-income family and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section.
4. *Periods of affordability.* The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The per unit amount of HOME funds and the affordability period that they trigger are described more fully in paragraphs (a)(5)(i) (resale) and (ii) (recapture) of this section.

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

5. *Resale and recapture.* To ensure affordability, the participating jurisdiction must impose either resale or recapture requirements, at its option. The participating jurisdiction must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate.
 - i. *Resale.* Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the

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

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

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

part 597 has incorporated the type of market data described above, that submission may serve as the required analysis under this section. If the participating jurisdiction continues to provide homeownership assistance for housing in the neighborhood, it must periodically update the market analysis to verify the original presumption of continued affordability.

- ii. *Recapture*. Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. The period of affordability is based upon the total amount of HOME funds subject to recapture described in paragraph (a)(5)(ii)(A)(5) of this section.
 - A. The following options for recapture requirements are acceptable to HUD. The participating jurisdiction may adopt, modify or develop its own recapture requirements for HUD approval. 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, and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, the participating jurisdiction can only recapture 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 affordability period*. The participating jurisdiction may reduce the HOME investment amount to be recaptured on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.
 3. *Shared net proceeds*. If the net proceeds are not sufficient to recapture the full HOME investment (or a reduced amount as provided for in paragraph (a)(5)(ii)(A)(2) of this section) plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the participating jurisdiction may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

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

4. *Owner investment returned first.* The participating jurisdiction may permit the homebuyer to recover the homebuyer's entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HOME investment.
5. *Amount subject to recapture.* The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The recaptured funds must be used to carry out HOME-eligible activities in accordance with the requirements of this part. If the HOME assistance is only used for the development subsidy and therefore not subject to recapture, the resale option must be used.
6. *Special considerations for single-family properties with more than one unit.* If the HOME funds are only used to assist a low-income homebuyer to acquire one unit in single-family housing containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit. If HOME funds are also used to assist the low-income homebuyer to acquire one or more of the rental units in the single-family housing, the affordability requirements of § 92.252 apply to assisted rental units, except that the participating jurisdiction may impose resale or recapture restrictions on all assisted units (owner-occupied and rental units) in the single family housing. If resale restrictions are used, the affordability requirements on all assisted units continue for the period of affordability. If recapture restrictions are used, the affordability requirements on the assisted rental units may be terminated, at the discretion of the participating jurisdiction, upon recapture of the HOME investment. (If HOME funds are used to assist only the rental units in such a property then the requirements of § 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of § 92.254.)

7. *Lease-purchase.* HOME funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. The housing must be purchased by a homebuyer within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed. If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in § 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.
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.
9. *Preserving affordability.*

(i) Notwithstanding § 92.214 (a)(6), to preserve the affordability of housing that was previously assisted with HOME funds and subject to the requirements of § 92.254(a), a participating jurisdiction may use additional HOME funds to acquire the housing through a purchase option, right of first refusal, or other preemptive right before foreclosure, or to acquire the housing at the foreclosure sale, to undertake any necessary rehabilitation, and to provide assistance to another homebuyer. The housing must be sold to a new eligible homebuyer in accordance with the requirements of § 92.254(a). Additional HOME funds may not be used if the mortgage in default was funded with HOME funds.

(ii) The total amount of original and additional HOME assistance may not exceed the maximum per-unit subsidy amount established under § 92.250. Alternatively to charging the cost to the HOME program under § 92.206, the participating jurisdiction may charge the cost to the HOME program under § 92.207, as a reasonable administrative cost of its HOME program, so that the additional HOME funds for the housing are not subject to the maximum per-unit subsidy amount.

- b. *Rehabilitation not involving acquisition.* Housing that is currently owned by a family qualifies as affordable housing only if:
 1. The estimated value of the property, after rehabilitation, does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section; and
 2. The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

- c. *Ownership interest.* The ownership in the housing assisted under this section must meet the definition of “homeownership” in § 92.2.
- d. *New construction without acquisition.* Newly constructed housing that is built on property currently owned by a family which will occupy the housing upon completion, qualifies as affordable housing if it meets the requirements under paragraph (a) of this section.

§ 92.255 Converting Rental Units to Homeownership Units for Existing Tenants

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

§ 92.256 Reserved

§ 92.257 Religious Organizations

- a. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME program. Neither the federal government nor a state or local government receiving funds under HOME programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.
- b. Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- c. A religious organization that participates in the HOME program will retain its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOME funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOME-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization’s name, select its board members on a religious basis, and include religious references in its organization’s mission statements and other governing documents.

- d. An organization that participates in the HOME program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- e. HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOME funds in this part. Sanctuaries, chapels, or other rooms that a HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for HOME-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).
- f. If a state or local government voluntarily contributes its own funds to supplement federally funded activities, the state or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

§ 92.258 Elder Cottage Housing Opportunity (ECHO) Units

- a. *General.* HOME funds may be used for the initial purchase and initial placement costs of elder cottage housing opportunity (ECHO) units that meet the requirements of this section, and that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings.
- b. *Eligible owners.* The owner of a HOME-assisted ECHO unit may be:
 - 1. The owner-occupant of the single-family host property on which the ECHO unit will be located;
 - 2. A participating jurisdiction; or
 - 3. A non-profit organization.
- c. *Eligible tenants.* During the affordability period, the tenant of a HOME-assisted ECHO unit must be an elderly or disabled family as defined in 24 CFR 5.403 and must also be a low-income family.
- d. *Applicable requirements.* The requirements of § 92.252 of this part apply to HOME-assisted ECHO units, with the following modifications:
 - 1. Only one ECHO unit may be provided per host property.
 - 2. The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit rent, but if a rent is charged, it must meet the requirements of § 92.252.

3. The ECHO housing must remain affordable for the period specified in § 92.252(e). If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:
 - i. Rent the unit to another eligible occupant on site;
 - ii. Move the ECHO unit to another site for occupancy by an eligible occupant; or
 - iii. If the owner of the ECHO unit is the host property owner-occupant, the owner may repay the HOME funds in accordance with the recapture provisions imposed by the participating jurisdiction consistent with § 92.254(a)(5)(ii). The participating jurisdiction must use the recaptured HOME funds for additional HOME activities.
4. The participating jurisdiction has the responsibility to enforce the project requirements applicable to ECHO units.

SUBPART G – COMMUNITY DEVELOPMENT HOUSING ORGANIZATIONS

§ 92.300 Set-aside for Community Housing Development Organizations (CHDO)

- a.
 1. Within 24 months after HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be developed, sponsored, or owned by community housing development organizations. For a State, the HOME allocation includes funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, funds transferred from a State under § 92.102(b). The funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization. The funds must be provided to a community housing development organization, its subsidiary or a partnership of which it or its subsidiary is the managing general partner. If a CHDO owns the project in partnership, it or its wholly owned for-profit or non-profit subsidiary must be the managing general partner. In acting in any of the capacities specified, the community housing development organization must have effective project control. In addition, a community housing development organization, in connection with housing it develops, sponsors or owns with HOME funds provided under this section, may provide direct homeownership assistance (e.g. downpayment assistance) and not be considered a subrecipient.
 2. The participating jurisdiction determines the form of assistance, e.g., grant or loan, that the community housing development organization receives and whether any proceeds must be returned to the participating jurisdiction or may be retained by the community housing development organization. While the proceeds the participating jurisdiction permits the community housing development organization to retain are

not subject to the requirements of this part, the participating jurisdiction must specify in the written agreement with the community housing development organization whether they are to be used for HOME-eligible or other housing activities to benefit low-income families. However, funds recaptured because housing no longer meets the affordability requirements under § 92.254(a)(5)(ii) are subject to the requirements of this part in accordance with § 92.503.

- b. Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved consolidated plan and to encourage such community housing development organizations to do so. If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable community housing development organizations, up to 20 percent of the minimum community housing development organization setaside of 15 percent specified in paragraph (a) of this section, above, (but not more than \$150,000 during the 24 month period) may be committed to develop the capacity of community housing development organizations in the jurisdiction.
- c. Up to 10 percent of the HOME funds reserved under this section may be used for activities specified under § 92.301.
- d. HOME funds required to be reserved under this section are subject to reduction, as provided in § 92.500(d).
- e. If funds for operating expenses are provided under § 92.208 to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be developed, sponsored or owned by the community housing development organization, the participating jurisdiction must enter into a written agreement with the community housing development organization that provides that the community housing development organization is expected to receive funds under paragraph (a) of this section within 24 months of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.
- f. *Limitation on community housing development organization operating funds.* A community housing development organization may not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or \$50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under § 92.208.

§ 92.301 Project-specific Assistance to Community Housing Development Organizations

- a. *Project-specific technical assistance and site control loans.*
 - 1. *General.* Within the percentage specified in § 92.300(c), HOME funds may be used by a participating jurisdiction to provide technical assistance and site control loans

to community housing development organizations in the early stages of site development for an eligible project. These loans may not exceed amounts that the participating jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (a)(2) of this section. All costs must be related to a specific eligible project or projects.

2. *Allowable costs.* A loan may be provided to cover project costs necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, option to acquire property, site control and title clearance. General operational expenses of the community housing development organization are not allowable costs.
 3. *Repayment.* The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.
- b. *Project-specific seed money loans.*
1. *General.* Within the percentage specified in § 92.300(c), HOME funds may be used to provide loans to community housing development organizations to cover preconstruction project costs that the participating jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies, and legal fees.
 2. *Eligible sponsors.* A loan may be provided only to a community housing development organization that has, with respect to the project concerned, site control (evidenced by a deed, a sales contract, or an option contract to acquire the property), a preliminary financial commitment, and a capable development team.
 3. *Repayment.* The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the community housing development organization.

§ 92.302 Housing Education and Organizational Support

HUD is authorized to provide education and organizational support assistance, in conjunction with HOME funds made available to community housing development organizations in accordance with section 233 of the Act. HUD will publish a notice in the Federal Register announcing the availability of funding under this section, as appropriate. The notice need not include funding for each of the eligible activities, but may target funding from among the eligible activities.

§ 92.303 Tenant Participation Plan

A community housing development organization that receives assistance under this part must adhere to a fair lease and grievance procedure approved by the participating jurisdiction and provide a plan for and follow a program of tenant participation in management decisions.

SUBPART H – OTHER FEDERAL REQUIREMENTS

§ 92.350 Other Federal Requirements

- a. The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.
- b. The nondiscrimination requirements at section 282 of the Act are applicable. These requirements are waived in connection with the use of HOME funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat.108).

§ 92.351 Affirmative Marketing; Minority Outreach Program

- a. *Affirmative marketing.*
 1. Each participating jurisdiction must adopt affirmative marketing procedures and requirements for rental and homebuyer projects containing 5 or more HOME-assisted housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. (The affirmative marketing procedures do not apply to families with Section 8 tenant-based rental housing assistance or families with tenant-based rental assistance provided with HOME funds.)
 2. The affirmative marketing requirements and procedures adopted must include:
 - i. Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);
 - ii. Requirements and practices each owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
 - iii. Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of

worship, employment centers, fair housing groups, or housing counseling agencies);

- iv. Records that will be kept describing actions taken by the participating jurisdiction and by owners to affirmatively market units and records to assess the results of these actions; and
 - v. A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.
3. A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.
- b. *Minority outreach.* A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

§ 92.352 Environmental Review

- a. *General.* The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58.
- b. *Responsibility for review.*
 1. The jurisdiction (e.g., the participating jurisdiction or State recipient) or insular area must assume responsibility for environmental review, decisionmaking, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR part 58.
 2. A State participating jurisdiction must also assume responsibility for approval of requests for release of HOME funds submitted by State recipients.

3. HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction.

§ 92.353 Displacement, Relocation, and Acquisition

- a. *Minimizing displacement.* Consistent with the other goals and objectives of this part, the participating jurisdiction must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.
- b. *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:
 1. Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.
 2. Appropriate advisory services, including reasonable advance written notice of:
 - i. The date and approximate duration of the temporary relocation;
 - ii. The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
 - iii. The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and
 - iv. The provisions of paragraph (b)(1) of this section.
- c. *Relocation assistance for displaced persons.*
 1. *General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR part 24. A “displaced person” must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

2. *Displaced Person.*

- i. For purposes of paragraph (c) of this section, the term displaced person means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:
 - A. After notice by the owner to move permanently from the property, if the move occurs on or after:
 1. The date of the submission of an application to the participating jurisdiction or HUD, if the applicant has site control and the application is later approved; or
 2. The date the jurisdiction approves the applicable site, if the applicant does not have site control at the time of the application; or
 - B. Before the date described in paragraph (c)(2)(i)(A) of this section, if the jurisdiction or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or
 - C. By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
 1. The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:
 - i. The tenant's monthly rent before such agreement and estimated average monthly utility costs; or
 - ii. The total tenant payment, as determined under 24 CFR 5.613, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or
 2. The tenant is required to relocate temporarily, does not return to the building/complex, and either:

- i. The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
 - ii. Other conditions of the temporary relocation are not reasonable; or
 - 3. The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.
 - ii. Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person if:
 - A. The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the participating jurisdiction determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.
 - B. The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a “displaced person” (or for any assistance under this section) as a result of the project;
 - C. The person is ineligible under 49 CFR 24.2(g)(2); or
 - D. HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.
 - iii. The jurisdiction may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.
3. *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term initiation of negotiations means the execution of the agreement covering the acquisition, rehabilitation, or demolition.
- d. *Optional relocation assistance.* The participating jurisdiction may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section. The jurisdiction may also

provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by State or local law, the jurisdiction must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

- e. *Residential antidisplacement and relocation assistance plan.* The participating jurisdiction shall comply with the requirements of 24 CFR part 42, subpart 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.

§ 92.354 Labor

- a. *General.*
 - 1. Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
 - 2. The contract for construction must contain these wage provisions if HOME funds are used for any project costs in § 92.206, including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

3. Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.
- b. *Volunteers.* The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.
- c. *Sweat equity.* The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

§ 92.355 Lead-based paint

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), 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 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.
- b. *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decisionmaking process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- c. *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.
- d. *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this

section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 2. An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.
- e. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:
1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
 2. Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
 3. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;
 4. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
 5. Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
 6. Any other relevant considerations.
- f. *Owners and Developers.*
1. No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an 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 decision making process with respect to the specific assisted housing in question;
 - iii. Whether the tenant protection requirements of § 92.253 are being observed;
 - iv. Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and
 - v. Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

§ 92.357 Executive Order 12372

- a. *General.* Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and HUD's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.
- b. *Applicability.* Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

§ 92.358 Consultant Activities

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. 104-204 (September 26, 1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities,

standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

SUBPART I – TECHNICAL ASSISTANCE

§ 92.400 Coordinated Federal Support for Housing Strategies

- a. *General.* HUD will provide assistance in accordance with Subtitle C of the Act.
- b. *Notice of funding.* HUD will publish a notice in the Federal Register announcing the availability of funding under this section as appropriate.

SUBPART J – REALLOCATIONS

§ 92.450 General

- a. This subpart J sets out the conditions under which HUD reallocates HOME funds that have been allocated, reserved, or placed in a HOME Investment Trust Fund.
- b. A jurisdiction that is not a participating jurisdiction but is meeting the requirements of §§ 92.102, 92.103, and 92.104, (participation threshold, notice of intent, and submission of consolidated plan) is treated as a participating jurisdiction for purposes of receiving a reallocation under subpart J of this part.

§ 92.451 Reallocation of HOME Funds from a Jurisdiction that Is Not Designated a Participating Jurisdiction or Has Its Designation Revoked

- a. *Failure to be designated a participating jurisdiction.* HUD will reallocate, under this section, any HOME funds allocated to or reserved for a jurisdiction that is not a participating jurisdiction if:
 1. HUD determines that the jurisdiction has failed to:
 - i. Meet the participation threshold amount in § 92.102;
 - ii. Provide notice of its intent to become a participating jurisdiction in accordance with § 92.103; or
 - iii. Submit its consolidated plan, in accordance with 24 CFR part 91; or
 2. HUD after providing for amendments and resubmissions in accordance with 24 CFR part 91 disapproves the jurisdiction's consolidated plan.

- b. *Designation revoked.* HUD will reallocate, under this section, any funds remaining in a jurisdiction's HOME Investment Trust Fund after HUD has revoked the jurisdiction's designation as a participating jurisdiction under § 92.107.
- c. *Manner of reallocation.* HUD will reallocate funds that are subject to reallocation under this section in the following manner:
 - 1. If the funds to be reallocated under this section are from a State, HUD will:
 - i. Make the funds available by competition in accordance with criteria in § 92.453 among applications submitted by units of general local government within the State and with preference being given to applications from units of general local government that are not participating jurisdictions, and
 - ii. Reallocate the remainder by formula in accordance with § 92.454.
 - 2. If the funds to be reallocated are from a unit of general local government:
 - i. Located in a State that is participating jurisdiction, HUD will reallocate the funds to that State. The State, in distributing these funds, must give preference to the provision of affordable housing within the unit of general local government; or
 - ii. Located in a State that is not a participating jurisdiction, HUD will reallocate the funds by competition among units of general local government and community housing development organizations within the State, with priority going to applications for affordable housing within the unit of general local government; and reallocate the remainder by formula in accordance with § 92.454.

§ 92.452 Reallocation of Community Housing Development Organization Set-aside

HUD will reallocate, under this section, any HOME funds reduced or recaptured by HUD from a participating jurisdiction's HOME Investment Trust Fund under § 92.300(d). HUD will reallocate these funds by competition in accordance with criteria in § 92.453 to other participating jurisdictions for affordable housing developed, sponsored, or owned by community housing development organizations.

§ 92.453 Criteria for Competitive Reallocations

- a. 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)).

§ 92.454 Reallocations by Formula

- a. HUD will reallocate under this section:
 1. Any HOME funds remaining available for reallocation after HUD has made competitive reallocations under § 92.451 and § 92.452;
 2. Any HOME funds available for reallocation because HUD reduced or recaptured funds from participating jurisdiction under § 92.500(d) for failure to commit the funds within the time specified;
 3. Any HOME funds withdrawn by HUD from a participating jurisdiction under 24 CFR 91.520(f) for failure to submit in a timely manner a performance report required by 24 CFR 91.520 that is satisfactory to HUD; and
 4. Any HOME funds remitted to HUD under § 92.503(b) when a jurisdiction ceases to be a participating jurisdiction.
- b. Any reallocation of funds from a State must be made only among all participating States, and any reallocation of funds from units of general local government must be made only among all participating units of general local government, except those participating jurisdictions that HUD has removed from participating in reallocations under § 92.552.
- c. A local participating jurisdiction's share of a reallocation is calculated by multiplying the amount available for reallocation to units of general local government by a factor that is that ratio of the participating jurisdiction's formula allocation provided under § 92.50 to the total of the formula allocations provided for all local participating jurisdictions sharing in the reallocation. A State participating jurisdiction's share is comparably determined using the amount available for reallocation to States.
- d. HUD will make reallocations under this section quarterly, unless the amount available for such reallocation is insufficient to warrant making a reallocation. In any event, HUD will make a reallocation under this section at least once a year. The minimum amount of a reallocation is \$1000.

SUBPART K – PROGRAM ADMINISTRATION

§ 92.500 The HOME Investment Trust Fund

- a. *General.* A HOME Investment Trust Fund consists of the accounts described in this section solely for investment in accordance with the provisions of this part. HUD will establish a HOME Investment Trust Fund United States Treasury account for each participating jurisdiction. Each participating jurisdiction may use either a separate local HOME Investment Trust Fund account or, a subsidiary account within its general fund (or other appropriate fund) as the local HOME Investment Trust Fund account.
- b. *Treasury Account.* The United States Treasury account of the HOME Investment Trust Fund includes funds allocated to the participating jurisdiction under § 92.50 (including for a local participating jurisdiction, any transfer of the State's allocation pursuant to § 92.102(b)(2)) and funds reallocated to the participating jurisdiction, either by formula or by competition, under subpart J of this part; and
- c. *Local Account.*
 1. The local account of the HOME Investment Trust Fund includes deposits of HOME funds disbursed from the Treasury account; the deposit of any State funds (other than HOME funds transferred pursuant to § 92.102(b)(2)) or local funds that enable the jurisdiction to meet the participating threshold amount in § 92.102; any program income (from both the allocated funds and matching contributions in accordance with the definition of program income); and any repayments or recaptured funds as required by § 92.503.
 2. The participating jurisdiction may establish a second local account of the HOME Investment Trust Funds if:
 - i. The participating jurisdiction has its own affordable housing trust fund that the participating jurisdiction will use for matching contributions to the HOME program;
 - ii. The statute or local ordinance requires repayments from its own trust fund to be made to the trust fund;
 - iii. The participating jurisdiction establishes a separate account within its own trust fund for repayments of the matching contributions; and
 - iv. The funds in the account are used solely for investment in eligible activities within the participating jurisdiction's boundaries in accordance with the provisions of this part, except as provided under § 92.201(a)(2).
 3. The funds in the local account cannot be used for the matching contribution and do not need to be matched.

d.

1. *Reductions.* HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of:
 - A. Any funds in the United States Treasury account that are required to be reserved (i.e., 15 percent of the funds) by a participating jurisdiction under § 92.300 that are not reserved for a community housing development organization pursuant to a written agreement within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;
 - B. Any funds in the United States Treasury account that are not committed within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;
 - C. Any funds in the United States Treasury account that are not expended within five years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement; and
 - D. Any penalties assessed by HUD under § 92.552 of this part.
2. For purposes of determining the amount by which the HOME Investment Trust Fund will be reduced or recaptured under paragraphs (d)(1)(A), (B) and (C), HUD will consider the sum of commitments to CHDOs, commitments, or expenditures, as applicable, from the fiscal year allocation being examined from and from subsequent allocations. This sum must be equal to or greater than the amount of the fiscal year allocation being examined, or in the case of commitments to CHDOs, 15 percent of that fiscal year allocation.

§ 92.501 HOME Investment Partnership Agreement

Allocated and reallocated funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement ensures that HOME funds invested in affordable housing are repayable if the housing ceases to qualify as affordable housing before the period of affordability expires.

§ 92.502 Program Disbursement and Information System

- a. *General.* The HOME Investment Trust Fund account established in the United States Treasury is managed through a computerized disbursement and information system established by HUD. The system disburses HOME funds that are allocated or reallocated, and collects and reports information on the use of HOME funds in the United States Treasury account. [For purposes of reporting in the Integrated Disbursement and Information System, a HOME project is an activity.]

b. *Project set-up.*

1. After the participating jurisdiction executes the HOME Investment Partnership Agreement, submits the applicable banking and security documents, complies with the environmental requirements under 24 CFR part 58 for release of funds and commits funds to a specific local project, the participating jurisdiction may identify (set up) specific investments in the disbursement and information system. Investments that require the set-up of projects in the system are the acquisition, new construction, or rehabilitation of housing, and the provision of tenant-based rental assistance. The participating jurisdiction is required to enter complete project set-up information at the time of project set-up.
2. If the project set-up information is not completed within 20 days of the project set-up call, the project may be canceled by the system. In addition, a project which has been committed in the system for 12 months without an initial disbursement of funds may be canceled by the system.

c. *Disbursement of HOME funds.*

1. After complete project set-up information is entered into the disbursement and information system, HOME funds for the project may be drawn down from the United States Treasury account by the participating jurisdiction by electronic funds transfer. The funds will be deposited in the local account of the HOME Investment Trust Fund of the participating jurisdiction within 48 to 72 hours of the disbursement request. Any drawdown of HOME funds from the United States Treasury account is conditioned upon the provision of satisfactory information by the participating jurisdiction about the project or tenant-based rental assistance and compliance with other procedures, as specified by HUD.
2. HOME funds drawn from the United States Treasury account must be expended for eligible costs within 15 days. Any interest earned within the 15 day period may be retained by the participating jurisdiction as HOME funds. Any funds that are drawn down and not expended for eligible costs within 15 days of the disbursement must be returned to HUD for deposit in the participating jurisdiction's United States Treasury account of the HOME Investment Trust Fund. Interest earned after 15 days belongs to the United States and must be remitted promptly, but at least quarterly, to HUD, except that a local participating jurisdiction may retain interest amounts up to \$100 per year for administrative expenses and States are subject to the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.).
3. HOME funds in the local account of the HOME Investment Trust Fund must be disbursed before requests are made for HOME funds in the United States Treasury account.
4. A participating jurisdiction will be paid on an advance basis provided it complies with the requirements of this part.

- d. *Project completion.*
 - 1. Complete project completion information must be entered into the disbursement and information system, or otherwise provided, within 120 days of the final project drawdown. If satisfactory project completion information is not provided, HUD may suspend further project set-ups or take other corrective actions.
 - 2. Additional HOME funds may be committed to a project up to one year after project completion, but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.
- e. *Access by other participants.* Access to the disbursement and information system by other entities participating in the HOME program (e.g., State recipients) will be governed by procedures established by HUD.

§ 92.503 Program Income, Repayments, and Recaptured Funds

- a. *Program income.*
 - 1. Program income must be used in accordance with the requirements of this part. Program income must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient or subrecipient to retain the program income for additional HOME projects pursuant to the written agreement required by § 92.504.
 - 2. If the jurisdiction is not a participating jurisdiction when the program income is received, the funds are not subject to the requirements of this part.
 - 3. Program income derived from consortium activities undertaken by or within a member unit of general local government which thereafter terminates its participation in the consortium continues to be program income of the consortium.
- b. *Repayments.*
 - 1. Any HOME funds invested in housing that does not meet the affordability requirements for the period specified in § 92.252 or § 92.254, as applicable, must be repaid by the participating jurisdiction in accordance with paragraph (b)(3) of this section.
 - 2. Any HOME funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the participating jurisdiction in accordance with paragraph (b)(3) of this section except for repayments of project specific community housing development organization loans which are waived in accordance with §§ 92.301(a)(3) and 92.301(b)(3).
 - 3. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund Treasury account, they must be repaid to the Treasury account. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund local account, they must be repaid to the local account. If the jurisdiction is not a participating jurisdiction when the repayment is

made, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

- c. *Recaptures.* HOME funds recaptured in accordance with § 92.254(a)(5)(ii) must be used in accordance with the requirements of this part. Recaptured funds must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient, subrecipient, or community housing development organization to retain the recaptured funds for additional HOME projects pursuant to the written agreement required by § 92.504. If the jurisdiction is not a participating jurisdiction when the recaptured funds are received, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

§ 92.504 Participating Jurisdiction Responsibilities; Written Agreements; On-site Inspection

- a. *Responsibilities.* The participating jurisdiction is responsible for managing the day to day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance of each contractor and subrecipient must be reviewed at least annually.
- b. *Executing a written agreement.* Before disbursing any HOME funds to any entity, the participating jurisdiction must enter into a written agreement with that entity. Before disbursing any HOME funds to any entity, a State recipient, subrecipient, or contractor which is administering all or a part of the HOME program on behalf of the participating jurisdiction, must also enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of this part.
- c. *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. This section details basic requirements by role and the minimum provisions that must be included in a written agreement.
 - 1. *State recipient.* The provisions in the written agreement between the State and a State recipient will depend on the program functions that the State specifies the State recipient will carry out in accordance with § 92.201(b).
 - i. *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreement.
 - ii. *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

- iii. *Program income.* The agreement must state if program income is to be remitted to the State or to be retained by the State recipient for additional eligible activities.
- iv. *Uniform administrative requirements.* The agreement must require the State recipient to comply with applicable uniform administrative requirements, as described in § 92.505.
- v. *Project requirement.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted.
- vi. *Other program requirements.* The agreement must require the State recipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the State recipient does not assume the State's responsibilities for release of funds under § 92.352 and the intergovernmental review process in § 92.357 does not apply to the State recipient.
- vii. *Affirmative marketing.* The agreement must specify the State recipient's affirmative marketing responsibilities in accordance with § 92.351, if the HOME funds received by the State recipient will be used for housing containing five or more assisted units.
- viii. *Requests for disbursement of funds.* The agreement must specify that the State recipient may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the State recipient requests funds from the State.
- ix. *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the State in meeting its recordkeeping and reporting requirements.
- x. *Enforcement of the agreement.* The agreement must provide for a means of enforcement of affordable housing requirements by the State or the intended beneficiaries, if the State recipient will be the owner at project completion of the affordable housing. The means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The affordability requirements in § 92.252 must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the HOME requirements. The agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the State recipient materially fails to comply with any term of the agreement. The State may permit the agreement to be terminated for convenience in accordance with 24 CFR 85.44.
- xi. If the State recipient provides funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors who are

providing services to the State recipient, the State recipient must have a written agreement with such entities which meets the requirements of this section.

- xii. *Duration of the agreement.* The duration of the agreement will depend on which functions the State recipient performs (e.g., whether the State recipient or the State has responsibility for monitoring rental projects for the period of affordability) and which activities are funded under the agreement.
2. *Subrecipient.* A subrecipient is a public agency or nonprofit selected by the participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME Program. The agreement between the participating jurisdiction and the subrecipient must include:
- i. *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction effectively to monitor performance under the agreement.
 - ii. *Program income.* The agreement must state if program income is to be remitted to the participating jurisdiction or to be retained by the subrecipient for additional eligible activities.
 - iii. *Uniform administrative requirements.* The agreement must require the subrecipient to comply with applicable uniform administrative requirements, as described in § 92.505.
 - iv. *Other program requirements.* The agreement must require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the subrecipient does not assume the participating jurisdiction's responsibilities for environmental review under § 92.352 and the intergovernmental review process in § 92.357 does not apply.
 - v. *Affirmative marketing.* The agreement must specify the subrecipient's affirmative marketing responsibilities in accordance with § 92.351, if the HOME funds administered by the subrecipient will be used for housing containing five or more assisted units.
 - vi. *Requests for disbursement of funds.* The agreement must specify that the subrecipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subrecipient requests funds from the participating jurisdiction.
 - vii. *Reversion of assets.* The agreement must specify that upon expiration of the agreement, the subrecipient must transfer to the participating jurisdiction any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

- viii. *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.
 - ix. *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the agreement. The agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the agreement. The participating jurisdiction may permit the agreement to be terminated for convenience in accordance with 24 CFR 85.44.
 - x. If the subrecipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors, the subrecipient must have a written agreement which meets the requirements of this section.
3. *For-profit or nonprofit housing owner, sponsor or developer (other than single-family owner-occupant).*
- i. *Use of the HOME funds.* The agreement between the participating jurisdiction and a for-profit or non-profit housing owner, sponsor or developer must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement.
 - ii. *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. If the owner or developer is undertaking rental projects, the agreement must establish the initial rents and the procedures for rent increases. If the owner or developer is undertaking homeownership projects for sale to homebuyers in accordance with § 92.254(a), the agreement must set forth the resale or recapture requirements which must be imposed on the housing.
 - iii. *Project requirements.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted.
 - iv. *Property standards.* The agreement must require the housing to meet the property standards in § 92.251 and the lead-based paint requirements in part 35, subparts A, B, J, K, M and R of this title, upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing in compliance with § 92.251 for the duration of the affordability period.

- v. *Other program requirements.* The agreement must require the owner, developer or sponsor to carry out each project in compliance with the following requirements of subpart H of this part:
 - A. If the project contains 5 or more HOME-assisted units, the agreement must specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.
 - B. The federal requirements and nondiscrimination established 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).
 - vi. *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.
 - vii. *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the participating jurisdiction or the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions or covenants running with the land. The affordability requirements in § 92.252 must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the provisions of the agreement.
 - viii. *Requests for disbursement of funds.* The agreement must specify that the developer may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.
 - ix. *Duration of the agreement.* The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the affordability period required by the participating jurisdiction under § 92.252. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the low-income family.
 - x. *Community housing development organization provisions.* If the nonprofit owner or developer is a community housing development organization and is using set-aside funds under § 92.300, the agreement must include the appropriate provisions under §§ 92.300 and 92.301.
4. *Contractor.* The participating jurisdiction selects a contractor through applicable procurement procedures and requirements. The contractor provides goods or

services in accordance with a written agreement (the contract). For contractors who are administering all or a portion of the HOME program, the contract must include at a minimum the following provisions:

- i. *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and the length of the agreement.
 - ii. *Program requirements.* The agreement must provide that the contractor is subject to the requirements in Part 92 that are applicable to the participating jurisdiction, except §§ 92.505 and 92.506 do not apply, and the contractor cannot assume the participating jurisdiction responsibilities for environmental review, decisionmaking, and action under § 92.352. Where the contractor is administering only a portion of the program, the agreement must list the requirements applicable to the activities the contractor is administering.
 - iii. *Duration of agreement.* The agreement must specify the duration of the contract. Generally, the duration of a contract should not exceed two years.
5. *Homebuyer, homeowner or tenant receiving tenant-based rental or security deposit assistance.* When a participating jurisdiction provides assistance to a homebuyer, homeowner or tenant the written agreement may take many forms depending upon the nature of assistance. As appropriate, it must include as a minimum:
- i. For homebuyers, the agreement must conform to the requirements in § 92.254(a), the value of the property, principal residence, lease-purchase, if applicable, and the resale or recapture provisions. The agreement must specify the amount of HOME funds, the form of assistance, e.g., grant, amortizing loan, deferred payment loan, the use of the funds (e.g., down-payment, closing costs, rehabilitation) and the time by which the housing must be acquired.
 - ii. For homeowners, the agreement must conform to the requirements in § 92.254(b) and specify the amount and form of HOME assistance, rehabilitation work to be undertaken, date for completion, and property standards to be met.
 - iii. For tenants, the rental assistance contract or the security deposit contract must conform to §§ 92.209 and 92.253.
- d. *On site inspections.*
1. *HOME assisted rental housing.* During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards of § 92.251 and to verify the information submitted by the owners in accordance with the requirements of § 92.252 no less than: every three years for projects containing 1 to 4 units; every two years for projects containing 5 to 25 units; and every year for projects containing 26 or more units. Inspections must be based on a sufficient sample of units.

2. *Tenant-based rental assistance.* The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to determine compliance with the property standards of § 92.251.

§ 92.505 Applicability of Uniform Administrative Requirements

- a. *Governmental entities.* The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, State recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32-85.34, 85.36, 85.44, 85.51, and 85.52.
- b. *Non-profit organizations.* The requirements of OMB Circular No. A-122 and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are nonprofit organizations that are not governmental subrecipients: §§ 84.2, 84.5, 84.13-84.16, 84.21, 84.22, 84.26-84.28, 84.30, 84.31, 84.34-84.37, 84.40-84.48, 84.51, 84.60-84.62, 84.72, and 84.73.
- c. OMB Circulars referenced in this part may be obtained from: Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G-2200, Washington, DC 20503; telephone: (202) 395-7332.

§ 92.506 Audit

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

§ 92.507 Closeout

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

§ 92.508 Recordkeeping

- a. *General.* Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of this part. At a minimum, the following records are needed:
 1. *Records concerning designation as a participating jurisdiction.*
 - i. For a consortium, the consortium agreement among the participating member units of general local government as required by § 92.101.
 - ii. For a unit of general local government receiving a formula allocation of less than \$750,000 (or less than \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion for this part), records demonstrating that funds have been made available (either by the State or the unit of general local government, or both) equal to or greater than the difference between its formula allocation and \$750,000 (or \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion) as required by § 92.102(b).

2. *Program records.*

- i. Records of the efforts to maximize participation by the private sector as required by § 92.200.
- ii. The forms of HOME assistance used in the program, including any forms of investment described in the Consolidated Plan under 24 CFR part 91 which are not identified in § 92.205(b).
- iii. The subsidy layering guidelines adopted in accordance with § 92.250 which support the participating jurisdiction's Consolidated Plan certification.
- iv. If existing debt is refinanced for multi-family rehabilitation projects, the refinancing guidelines established in accordance with § 92.206(b), described in the Consolidated Plan.
- v. If HOME funds are used for tenant-based rental assistance, records supporting the participating jurisdiction's Consolidated Plan certification in accordance with 92.209(b), including documentation of the local market conditions that led to the choice of this option; written selection policies and criteria; supporting documentation for preferences for specific categories of individuals with disabilities; and records supporting the rent standard and minimum tenant contribution established in accordance with § 92.209(h).
- vi. If HOME funds are used for tenant-based rental assistance or rental housing, records evidencing that not less than 90 percent of the families receiving such rental assistance meet the income requirements of § 92.216.
- vii. If HOME funds are used for homeownership housing, the procedures used for establishing 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2), in the Consolidated Plan.
- viii. If HOME funds are used for acquisition of housing for homeownership, the resale or recapture guidelines established in accordance with § 92.254(a)(5), in the Consolidated Plan.
- ix. Records demonstrating compliance with the matching requirements of § 92.218 through § 92.222 including a running log and project records documenting the type and amount of match contributions by project.
- x. Records documenting compliance with the 24 month commitment deadline of § 92.500(d).
- xi. Records demonstrating compliance with the fifteen percent CHDO set-aside requirement of § 92.300(a).
- xii. Records documenting compliance with the ten percent limitation on administrative and planning costs in accordance with § 92.207.

3. *Project records.*
- i. A full description of each project assisted with HOME funds, including the location, form of HOME assistance, and the units or tenants assisted with HOME funds.
 - ii. The source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20.
 - iii. Records demonstrating that each rental housing or homeownership project meets the minimum per-unit subsidy amount of § 92.205(c), the maximum per-unit subsidy amount of § 92.250(a) and the subsidy layering guidelines adopted in accordance with § 92.250(b).
 - iv. Records demonstrating that each project meets the property standards of § 92.251 and the lead based paint requirements of § 92.355.
 - v. Records demonstrating that each family is income eligible in accordance with § 92.203.
 - vi. Records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of § 92.209(c), including the tenant preference requirements, the rent reasonableness requirements of § 92.209(f), the maximum subsidy provisions of § 92.209(h), HQS inspection reports, and calculation of the HOME subsidy.
 - vii. Records demonstrating that each rental housing project meets the affordability and income targeting requirements of § 92.252 for the required period. Records must be kept for each family assisted.
 - viii. Records demonstrating that each multifamily rental housing project involving rehabilitation with refinancing complies with the refinancing guidelines established in accordance with § 92.206(b).
 - ix. Records demonstrating that each lease for a tenant receiving tenant-based rental assistance and for an assisted rental housing unit complies with the tenant and participant protections of § 92.253. Records must be kept for each family.
 - x. Records demonstrating that the purchase price or estimated value after rehabilitation for each homeownership housing project does not exceed 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2). The records must demonstrate how the estimated value was determined.
 - xi. Records demonstrating that each homeownership project meets the affordability requirements of § 92.254 for the required period.
 - xii. Records demonstrating that any pre-award costs charged to the HOME allocation meet the requirements of § 92.212.

- 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 983.6(b), in accordance with § 92.202.
4. *Community Housing Development Organizations (CHDOs) Records.*
- i. Written agreements reserving HOME funds to CHDOs in accordance with § 92.300(a).
 - ii. Records setting forth the efforts made to identify and encourage CHDOs, as required by § 92.300(b).
 - iii. The name and qualifications of each CHDO and amount of HOME CHDO set-aside funds reserved and committed.
 - iv. Records demonstrating that each CHDO complies with the written agreements required by § 92.504.
 - v. Records concerning the use of CHDO setaside funds, including funds used to develop CHDO capacity pursuant to § 92.300(b).
 - vi. Records concerning the use of funds for CHDO operating expenses and demonstrating compliance with the requirements of § 92.208, § 92.300(e) and § 92.300(f).
 - vii. Records concerning the tenant participation plan required by § 92.303.
 - viii. Records concerning project-specific assistance to CHDOs pursuant to § 92.301, including the impediments to repayment, if repayment is waived.
5. *Financial records.*
- i. Records identifying the source and application of funds for each fiscal year, including the formula allocation, any reallocation (identified by federal fiscal year appropriation), and any State or local funds provided under § 92.102(b).
 - ii. Records concerning the HOME Investment Trust Fund Treasury account and local account required to be established and maintained by § 92.500, including deposits, disbursements, balances, supporting documentation and any other information required by the program disbursement and information system established by HUD.
 - iii. Records identifying the source and application of program income, repayments and recaptured funds.
 - iv. Records demonstrating adequate budget control, in accordance with 24 CFR 85.20, including evidence of periodic account reconciliations.

6. *Program administration records.*
 - i. Records demonstrating compliance with the written agreements required by § 92.504.
 - ii. Records demonstrating compliance with the applicable uniform administrative requirements required by § 92.505.
 - iii. Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.
7. *Records concerning other Federal requirements.*
 - i. *Equal opportunity and fair housing records.*
 - A. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.
 - B. Documentation of actions undertaken to meet the requirements of 24 CFR Part 135 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).
 - C. Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing.
 - ii. *Affirmative marketing and MBE/WBE records.*
 - A. Records demonstrating compliance with the affirmative marketing procedures and requirements of § 92.351.
 - B. Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.
 - iii. Records demonstrating compliance with the environmental review requirements of § 92.352 and 24 CFR part 58, including flood insurance requirements.
 - iv. Records demonstrating compliance with the requirements of § 92.353 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in § 92.353(c)(2)(i)(A),

moving into the property on or after the date described in § 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.

- v. Records demonstrating compliance with the labor requirements of § 92.354, including contract provisions and payroll records.
 - vi. Records demonstrating compliance with the lead-based paint requirements of 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. Debarment and suspension certifications required by 24 CFR parts 24 and 91.
 - ix. Records concerning intergovernmental review, as required by § 92.357.
- b. *States with State Recipients.* A State that distributes HOME funds to State recipients must require State recipients to keep the records required by paragraphs (a)(2), (a)(3), (a)(5), (a)(6) and (a)(7) of this section, and such other records as the State determines to be necessary to enable the State to carry out its responsibilities under this part. The State need not duplicate the records kept by the State recipients. The State must keep records concerning its review of State recipients required under § 92.201(b)(3).
- c. *Period of record retention.* All records pertaining to each fiscal year of HOME funds must be retained for the most recent five year period, except as provided below.
- 1. For rental housing projects, records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five year period, until five years after the affordability period terminates.
 - 2. For homeownership housing projects, records may be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the affordability period terminates.
 - 3. For tenant-based rental assistance projects, records must be retained for five years after the period of rental assistance terminates.
 - 4. Written agreements must be retained for five years after the agreement terminates.
 - 5. Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 92.353.
 - 6. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

- d. *Access to records.*
 - 1. The participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.
 - 2. HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the participating jurisdiction, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts.

§ 92.509 Performance Reports

- a. *Management reports.* Each participating jurisdiction must submit management reports on its HOME Investment Partnerships Program in such format and at such time as HUD may prescribe.
- b. *Annual performance report.* For annual performance report requirements, see 24 CFR part 91.

SUBPART L – PERFORMANCE REVIEWS AND SANCTIONS

§ 92.550 Performance Reviews

- a. *General.* HUD will review the performance of each participating jurisdiction in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the participating jurisdiction's and, as appropriate, the State recipient's records and reports, findings from on-site monitoring, audit reports, and information generated from the disbursement and information system established by HUD. Where applicable, HUD may also consider relevant information pertaining to a participating jurisdiction's or State recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the participating jurisdiction or State recipient. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the participating jurisdiction.
- b. *Standards for comprehensive performance review.* A participating jurisdiction's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine:
 - 1. For local participating jurisdictions and State participating jurisdictions administering their own HOME programs, whether the participating jurisdiction has committed the HOME funds in the United States Treasury account as required by § 92.500 and expended the funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching requirements; or

2. For State participating jurisdictions distributing HOME funds to State recipients, whether the State has met the matching contribution and other requirements of this part; has distributed the funds in accordance with the requirements of this part; and has made such reviews and audits of its State recipients as may be appropriate to determine whether they have satisfied the requirements of paragraph (b)(1) of this section.

§ 92.551 Corrective and Remedial Actions

- a. *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 92.550 and in taking corrective and remedial actions.
- b. *Performance review.*
 1. If HUD determines preliminarily that the participating jurisdiction has not met a requirement of this part, the participating jurisdiction will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.
 2. If the participating jurisdiction fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or § 92.552.
- c. *Corrective and remedial actions.* Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.
 1. HUD may instruct the participating jurisdiction to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:
 - i. Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;
 - ii. Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;
 - iii. Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;
 - iv. Reprogramming HOME funds that have not yet been expended from affected activities to other eligible activities;
 - v. Reimbursing its HOME Investment Trust Fund in any amount not used in accordance with the requirements of this part;
 - vi. Suspending disbursement of HOME funds for affected activities; and

- vii. Making matching contributions as draws are made from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account.
2. HUD may also change the method of payment from an advance to reimbursement basis; and take other remedies that may be legally available.

§ 92.552 Notice and Opportunity for Hearing; Sanctions

- a. If HUD finds after reasonable notice and opportunity for hearing that a participating jurisdiction has failed to comply with any provision of this part and until HUD is satisfied that there is no longer any such failure to comply:
 1. HUD shall reduce the funds in the participating jurisdiction's HOME Investment Trust Fund by the amount of any expenditures that were not in accordance with the requirements of this part; and
 2. HUD may do one or more of the following:
 - i. Prevent withdrawals from the participating jurisdiction's HOME Investment Trust Fund for activities affected by the failure to comply;
 - ii. Restrict the participating jurisdiction's activities under this part to activities that conform to one or more model programs which HUD has developed in accordance with section 213 of the Act;
 - iii. Remove the participating jurisdiction from participation in allocations or reallocations of funds made available under subpart B or J of this part;
 - iv. Require the participating jurisdiction to make matching contributions in amounts required by § 92.218(a) as HOME funds are drawn from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account. Provided, however, that HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by the failure to comply.
- b. Proceedings. When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the participating jurisdiction or, at HUD's option, the State recipient. Proceedings will be conducted in accordance with 24 CFR part 26, subpart B.

SUBPART M – AMERICAN DREAM DOWNPAYMENT INITIATIVE

§ 92.600 Purpose

This subpart describes the requirements for the HOME Program American Dream Downpayment Initiative (ADDI). Through the ADDI, HUD makes formula grants to

participating jurisdictions that qualify for allocations to assist low-income families achieve homeownership in accordance with the provisions of this subpart. Unless otherwise noted in this subpart, the HOME Program requirements contained in subparts B through L of this part do not apply to the ADDI.

§ 92.602 Eligible Activities

- a. *Eligible activities.* ADDI funds may only be used for:
 1. Downpayment assistance towards the purchase of single family housing by low-income families who are first-time homebuyers; and
 2. Rehabilitation that is completed in conjunction with the home purchase assisted with ADDI funds. The rehabilitation assisted with ADDI funds, including the reduction of lead paint hazards and the remediation of other home health hazards, must be completed within one year of the purchase of the home. Total rehabilitation shall not exceed 20 percent of the participating jurisdiction's ADDI fiscal year formula allocation. FY2003 ADDI funds may not be used for rehabilitation.
- b. *Eligible project costs.* ADDI funds may be used for the following eligible costs:
 1. *Acquisition costs.* The costs of acquiring single family housing.
 2. *Rehabilitation costs.* The eligible development hard costs for rehabilitation projects described in § 92.206(a) and the costs for reduction of lead paint hazards and the remediation of other home health hazards. FY2003 ADDI funds may not be used for rehabilitation.
 3. *Related soft costs.* Reasonable and necessary costs incurred by the homebuyer or participating jurisdiction and associated with the financing of single family housing acquisition and rehabilitation. These costs include, but are not limited to:
 - i. Costs to process and settle the financing for purchase of a home, such as private lender origination fees, credit report fees, fees for title evidence, fees for recordation and filing of legal documents, attorneys fees, and private appraisal fees.
 - ii. Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups.
 - iii. Costs to provide information services, such as fair housing information to prospective homeowners.
 - iv. Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting a potential homebuyer (e.g., housing counseling), which may be charged to project costs only if the individual purchases single family housing with ADDI assistance.

- v. Costs of environmental review and release of funds (in accordance with 24 CFR part 58) that are directly related to the project.
4. *Ineligible costs.* ADDI funds may not be used for the development costs (hard costs or soft costs) of new construction of housing or for rental assistance.
- c. *Forms of investment.* A participating jurisdiction may invest ADDI funds as interest-bearing loans or advances, non-interest bearing loans or advances, interest subsidies consistent with the purposes of this subpart, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with this subpart. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this subpart.
 - d. *Minimum amount of assistance.* The minimum amount of ADDI funds in combination with HOME funds that must be invested in a project is \$1,000.
 - e. *Maximum amount of assistance.* The amount of ADDI funds provided to any family shall not exceed the greater of six percent of the purchase price of the single family housing or \$10,000. This limitation does not apply to FY2003 ADDI funds.
 - f. *Limitation on subrecipients and contractors.* A participating jurisdiction may not provide ADDI funds to an entity or organization that provides downpayment assistance, if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing, whether or not made in conjunction with the sale of specific housing acquired with ADDI funds.

§ 92.604 ADDI Allocation Formula

- a. *General.* HUD will provide ADDI funds to participating jurisdictions in amounts determined by the formula described in this section.
- b. *Allocation to states that are participating jurisdictions.* HUD will provide ADDI funds to each state in an amount that is equal to the percentage of the national total of low-income households residing in rental housing in the state, as determined on the basis of the most recent available U.S. census data (as adjusted by HUD).
- c. *Local participating jurisdictions.* Subject to paragraph (d) of this section, HUD will further allocate to each local participating jurisdiction located within a state an amount equal to the percentage of the state-wide total of low-income households residing in rental housing in such participating jurisdiction, as determined on the basis of the most recent available U.S. census data (as adjusted by HUD).
- d. *Limitation on allocations to local participating jurisdictions.* (1) Allocations under paragraph (c) of this section shall be made only if the local participating jurisdiction:
 - i. Has a total population of 150,000 individuals or more, as determined on the basis of the most recent available U.S. census data (as adjusted by HUD); or
 - ii. Would receive an allocation of \$50,000 or more.

2. Any allocation that would have otherwise been made to a local participating jurisdiction that does not meet the requirements of paragraph (d)(1) of this section shall revert back to the state in which the participating jurisdiction is located.
- e. *Consortia with members in more than one state.* A consortium with members in more than one state will receive an allocation if the consortium meets the requirements described in paragraph (d) of this section.
 - f. *Allocation of FY2003 ADDI funds.* For the allocation of FY2003 ADDI funds, HUD will consider a participating jurisdiction's need for, and prior commitment to, assistance to homebuyers. Puerto Rico is a "state" for FY2003 ADDI funds.
 1. *Need.* The need of the participating jurisdiction for assistance to homebuyers is measured by its ADDI formula allocation, as calculated under paragraphs (b) through (e) of this section.
 2. *Prior commitment.* Only those participating jurisdictions that have demonstrated prior commitment to assistance to homebuyers will receive FY2003 ADDI funds. A participating jurisdiction has demonstrated prior commitment to homebuyers if it has previously committed funds to such purpose under the HOME program, the Community Development Block Grants (CDBG) program, mortgage revenue bonds, or existing funding from state and local governments.

§ 92.606 Reallocations

If any funds allocated to a participating jurisdiction under § 92.604 become available for reallocation, the funds shall be reallocated in the next fiscal year in accordance with § 92.604.

§ 92.608 Consolidated Plan

To receive an ADDI formula allocation, a participating jurisdiction must address the use of the ADDI funds in its consolidated plan submitted in accordance with 24 CFR part 91.

§ 92.610 Program Requirements

The following program requirements contained in part E of this part apply to the ADDI:

- a. *Private-public partnership.* The private-public partnership provisions contained in § 92.200 apply to the ADDI.
- b. *Distribution of assistance.* The distribution of assistance requirements contained in § 92.201 apply to the ADDI.
- c. *Income determinations.* The income determination requirements contained in § 92.203 apply to the ADDI.
- d. *Pre-award costs.* The requirements regarding pre-award costs contained in § 92.212 apply to the ADDI.

- e. *Matching contribution requirement.* The matching contribution requirements contained in §§ 92.218–92.222 apply to FY2003 ADDI funds only.

§ 92.612 Project Requirements

The following project requirements contained in subpart F of this part apply to the ADDI:

- a. *Maximum per-unit subsidy amount and subsidy layering.* The maximum per-unit subsidy limits and subsidy layering requirements contained in § 92.250 apply to the total HOME and ADDI funds in a project.
- b. *Property standards.* Housing assisted with ADDI funds must meet the property standards contained in § 92.251.
- c. *Qualification as affordable housing.* Housing assisted with ADDI funds must meet the affordability requirements contained in § 92.254(a) and (c). If a project receives both HOME and ADDI funds, the total of HOME and ADDI funds in the project is used for calculating the period of affordability described in § 92.254(a)(4) and applied to resales (§ 92.254(a)(5)(i)) and recaptures (§ 92.254(a)(5)(ii)).
- d. *Faith-based organizations.* Faith-based organizations are eligible to participate in the ADDI as subrecipients or contractors as provided in § 92.257.

§ 92.614 Other Federal Requirements

- a. The following federal requirements contained in subpart H of this part apply to the ADDI:
 - 1. *Other federal requirements and nondiscrimination.* The federal and nondiscrimination requirements contained in § 92.350 apply to the ADDI.
 - 2. *Environmental review.* The environmental review requirements contained in § 92.352 apply to the ADDI.
 - 3. *Labor.* The labor requirements contained in § 92.354 apply to ADDI.
 - 4. *Lead-based paint.* The lead-based paint prevention and abatement requirements contained in § 92.355 apply to the ADDI.
 - 5. *Conflict of interest.* The conflict of interest requirements contained in § 92.356 apply to the ADDI.
 - 6. *Consultant activities.* The requirements regarding consultant activities contained in § 92.358 apply to the ADDI.
- b. The following federal requirements contained in subpart H of this part do not apply to the ADDI:
 - 1. *Affirmative marketing.* The affirmative marketing requirements contained in § 92.351(a).

2. *Displacement, relocation, and acquisition.* The displacement, relocation, and acquisition requirements implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4201-4655) and the implementing regulations at 49 CFR part 24, contained in § 92.353 do not apply to ADDI, except the requirements do apply to FY2003 ADDI funds.
3. *Executive Order 12372.* The requirements of Executive Order 12372 (entitled “Intergovernmental Review”) described in § 92.357.

§ 92.616 Program Administration

The following program administration requirements contained in subpart K of this part apply to the ADDI:

- a. *HOME Investment Trust Fund.* The requirements regarding the HOME Investment Trust Fund contained in § 92.500 apply to the ADDI, with the exception of paragraphs (c)(2) and (d)(1)(A).
- b. *HOME Investment Partnership Agreement.* The requirements regarding HOME Investment Partnership Agreements contained in § 92.501 apply to the ADDI.
- c. *Program disbursement and information system.* The requirements regarding program disbursement and information systems contained in § 92.502 apply to the ADDI.
- d. *Program income, repayments and recaptured funds.* The requirements regarding program income, repayments, and recaptured funds contained in § 92.503 apply to the ADDI, except the program income and recaptured funds must be deposited in the participating jurisdiction’s HOME investments trust fund local account and used in accordance with the HOME program requirements.
- e. *Participating jurisdiction responsibilities and written agreements.* The requirements regarding participating jurisdiction responsibilities and written agreements contained in § 92.504 apply to the ADDI, with the modification that the written agreement is not required to cover any HOME requirement that is not applicable to the ADDI.
- f. *Applicability of uniform administrative requirements.* The uniform administrative requirements contained in § 92.505 apply to the ADDI.
- g. *Audit.* The audit requirements contained in § 92.506 apply to the ADDI.
- h. *Closeout.* The closeout requirements contained in § 92.507 apply to the ADDI.
- i. *Recordkeeping.* The project records must include records demonstrating that the family qualifies as a first-time homebuyer. The recordkeeping requirements contained in § 92.508 apply to the ADDI, with the exception of the following paragraphs:
 1. Paragraph (a)(1);
 2. Paragraphs (a)(2)(iv), (a)(2)(v), (a)(2)(vi), (a)(2)(xi), and (a)(2)(xii);

3. Paragraphs (a)(3)(vi), (a)(3)(vii), (a)(3)(viii), (a)(3)(ix), and (a)(3)(xiii);
 4. Paragraph (a)(4);
 5. Paragraphs (a)(7)(i)(B), (a)(7)(i)(C), (a)(7)(ii)(A), and (a)(7)(ix) (in addition, the requirements of paragraph (a)(7)(iv) apply to FY2003 ADDI funds only); and
 6. Paragraphs (c)(1) and (c)(3) (in addition, the requirements of paragraph (c)(5) apply to FY2003 ADDI funds only).
- j. *Performance reports.* The requirements regarding performance reports contained in § 92.509 apply to the ADDI.

§ 92.618 Performance Reviews and Sanctions

HUD will review the performance of participating jurisdictions in carrying out its responsibilities under the ADDI in accordance with the policies and procedures contained in subpart L of this part.

[FR-4832-I-01]

SUBCHAPTER C—COMMUNITY FACILITIES

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

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APPENDIX A TO PART 570—GUIDELINES AND OBJECTIVES FOR EVALUATING PROJECT COSTS AND FINANCIAL REQUIREMENTS

AUTHORITY: 42 U.S.C. 3535(d) and 5301-5320.

SOURCE: 40 FR 24693, June 9, 1975, unless otherwise noted.

Subpart A—General Provisions

SOURCE: 53 FR 34437, Sept. 6, 1988, unless otherwise noted.

§ 570.1 Purpose and primary objective.

(a) This part describes policies and procedures applicable to the following programs authorized under title I of the Housing and Community Development Act of 1974, as amended:

- (1) Entitlement grants program (subpart D);
- (2) Small Cities program: HUD administered CDBG nonentitlement funds (subpart F);
- (3) State program: State-administered CDBG nonentitlement funds (subpart I);

(4) Special Purpose Grants (subpart E);

(5) Urban Development Action Grant program (subpart G); and

(6) Loan Guarantees (subpart M).

(b) Subparts A, C, J, K, and O apply to all programs in paragraph (a) except as modified or limited under the provisions of these subparts or the applicable program regulations. In the application of the subparts to Special Purpose Grants or the Urban Development Action Grant program, the reference to funds in the form of grants in the term “CDBG funds”, as defined in § 570.3, shall mean the grant funds under those programs. The subparts do not apply to the State program (subpart I) except to the extent expressly referred to.

(c) The primary objective of the programs authorized under title I of the Housing and Community Development Act of 1974, as amended, is described in section 101(c) of the Act (42 U.S.C. 5301(c)).

[53 FR 34437, Sept. 6, 1988, as amended at 56 FR 56126, Oct. 31, 1991; 61 FR 11475, Mar. 20, 1996]

§ 570.3 Definitions.

The terms *HUD* and *Secretary* are defined in 24 CFR part 5. All of the following definitions in this section that rely on data from the United States Bureau of the Census shall rely upon the data available from the latest decennial census.

Act means title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 *et seq.*).

Age of housing means the number of year-round housing units, as further defined in section 102(a)(11) of the Act.

Applicant means a State, unit of general local government, or an Indian tribe which makes application pursuant to the provisions of subpart E, F, G or M.

Buildings for the general conduct of government shall have the meaning provided in section 102(a)(21) of the Act.

CDBG funds means Community Development Block Grant funds, including funds received in the form of grants under subpart D, F, or § 570.405 of this part, funds awarded under section 108(q) of the Housing and Community Development Act of 1974, loans guaranteed under subpart M of this part,

urban renewal surplus grant funds, and program income as defined in § 570.500(a).

Chief executive officer of a State or unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity’s governmental affairs. Examples of the “chief executive officer” of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

City means the following:

(1) For purposes of Entitlement Community Development Block Grant and Urban Development Action Grant eligibility:

(i) Any unit of general local government that is classified as a municipality by the United States Bureau of the Census, or

(ii) Any other unit of general local government that is a town or township and that, in the determination of the Secretary:

(A) Possesses powers and performs functions comparable to those associated with municipalities;

(B) Is closely settled (except that the Secretary may reduce or waive this requirement on a case by case basis for the purposes of the Action Grant program); and

(C) Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with the town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

(2) For purposes of Urban Development Action Grant eligibility only, Guam, the Virgin Islands, American

Samoa, the Commonwealth of the Northern Mariana Islands, the counties of Kauai, Maui, and Hawaii in the State of Hawaii, and Indian tribes that are eligible recipients under the State and Local Government Fiscal Assistance Act of 1972 and located on reservations in Oklahoma as determined by the Secretary of the Interior or in Alaskan Native Villages.

Community Development Financial Institution has the same meaning as used in the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 note).

Consolidated plan. The plan prepared in accordance with 24 CFR part 91, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the CDBG program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

Discretionary grant means a grant made from the various Special Purpose Grants in accordance with subpart E of this part.

Entitlement amount means the amount of funds which a metropolitan city is entitled to receive under the Entitlement grant program, as determined by formula set forth in section 106 of the Act.

Extent of growth lag shall have the meaning provided in section 102(a)(12) of the Act.

Extent of housing overcrowding shall have the meaning provided in section 102(a)(10) of the Act.

Extent of poverty means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time and the latest reports from the Office of Management and Budget. For purposes of this part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of “extent of poverty” for regional or area variations in income and cost of living.

Family means all persons living in the same household who are related by birth, marriage or adoption.

Household means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

Income. For the purpose of determining whether a family or household is low- and moderate-income under subpart C of this part, grantees may select any of the three definitions listed below for each activity, except that integrally related activities of the same type and qualifying under the same paragraph of § 570.208(a) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under § 570.208(a)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.208(a)(1)(vi). Activities qualifying under § 570.208(a)(1) generally must use the area income data supplied to recipients by HUD. The three definitions are as follows:

(1)(i) “Annual income” as defined under the Section 8 Housing Assistance Payments program at 24 CFR 813.106 (except that if the CDBG assistance being provided is homeowner rehabilitation under § 570.202, the value of the homeowner’s primary residence may be excluded from any calculation of Net Family Assets); or

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

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

(B) Self-employment income from own nonfarm business, including proprietorships and partnerships;

(C) Farm self-employment income;

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

(E) Social Security or railroad retirement;

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

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

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

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

(2) Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or household members, as applicable. Income or asset enhancement derived from the CDBG-assisted activity shall not be considered in calculating estimated annual income.

Indian tribe shall have the meaning provided in section 102(a)(17) of the Act.

Low- and moderate-income household means a household having an income equal to or less than the Section 8 low-income limit established by HUD.

Low- and moderate-income person means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Unrelated individuals will be considered as one-person families for this purpose.

Low-income household means a household having an income equal to or less than the Section 8 very low-income limit established by HUD.

Low-income person means a member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Metropolitan area shall have the meaning provided in section 102(a)(3) of the Act.

Metropolitan city shall have the meaning provided in section 102(a)(4) of the Act.

Microenterprise shall have the meaning provided in section 102(a)(22) of the Act.

Moderate-income household means a household having an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD.

Moderate-income person means a member of a family that has an income

equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Nonentitlement amount means the amount of funds which is allocated for use in a State's nonentitlement areas as determined by formula set forth in section 106 of the Act.

Nonentitlement area shall have the meaning provided in section 102(a)(7) of the Act.

Population means the total resident population based on data compiled and published by the United States Bureau of the Census available from the latest census or which has been upgraded by the Bureau to reflect the changes resulting from the Boundary and Annexation Survey, new incorporations and consolidations of governments pursuant to § 570.4, and which reflects, where applicable, changes resulting from the Bureau's latest population determination through its estimating technique using natural changes (birth and death) and net migration, and is referable to the same point or period in time.

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, 637).

State shall have the meaning provided in section 102(a)(2) of the Act.

Unit of general local government shall have the meaning provided in section 102(a)(1) of the Act.

Urban county shall have the meaning provided in section 102(a)(6) of the Act. For the purposes of this definition, HUD will determine whether the county's combined population contains the required percentage of low- and moderate-income persons by identifying the number of persons that resided in applicable areas and units of general local government based on data from the most recent decennial census, and using income limits that would have applied for the year in which that census was taken.

Urban Development Action Grant (UDAG) means a grant made by the

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Secretary pursuant to section 119 of the Act and subpart G of this part.

[53 FR 34437, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 56 FR 56126, Oct. 31, 1991; 60 FR 1915, 1943, Jan. 5, 1995; 60 FR 56909, Nov. 9, 1995; 61 FR 5209, Feb. 9, 1996; 61 FR 11475, Mar. 20, 1996; 61 FR 18674, Apr. 29, 1996]

§ 570.4 Allocation of funds.

(a) The determination of eligibility of units of general local government to receive entitlement grants, the entitlement amounts, the allocation of appropriated funds to States for use in non-entitlement areas, the reallocation of funds, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in sections 106 and 107 of the Act.

(b) The definitions in § 570.3 shall govern in applying the policies and procedures described in sections 106 and 107 of the Act.

(c) In determining eligibility for entitlement and in allocating funds under section 106 of the Act for any Federal fiscal year, HUD will recognize corporate status and geographical boundaries and the status of metropolitan areas and central cities effective as of July 1 preceding such Federal Fiscal Year, subject to the following limitations:

(1) With respect to corporate status as certified by the applicable State and available for processing by the Census Bureau as of such date;

(2) With respect to boundary changes or annexations, as are used by the Census Bureau in preparing population estimates for all general purpose governmental units and are available for processing by the Census Bureau as of such date, except that any such boundary changes or annexations which result in the population of a unit of general local government reaching or exceeding 50,000 shall be recognized for this purpose whether or not such changes are used by the Census Bureau in preparing such population estimates; and

(3) With respect to the status of Metropolitan Statistical Areas and central cities, as officially designated by the Office of Management and Budget as of such date.

(d) In determining whether a county qualifies as an urban county, and in computing entitlement amounts for urban counties, the demographic values of population, poverty, housing overcrowding, and age of housing of any Indian tribes located within the county shall be excluded. In allocating amounts to States for use in non-entitlement areas, the demographic values of population, poverty, housing overcrowding and age of housing of all Indian tribes located in all nonentitled areas shall be excluded. It is recognized that all such data on Indian tribes are not generally available from the United States Bureau of the Census and that missing portions of data will have to be estimated. In accomplishing any such estimates the Secretary may use such other related information available from reputable sources as may seem appropriate, regardless of the data's point or period of time and shall use the best judgement possible in adjusting such data to reflect the same point or period of time as the overall data from which the Indian tribes are being deducted, so that such deduction shall not create an imbalance with those overall data.

(e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of § 570.509, Grant closeout procedures, shall be considered as funds available for reallocation unless the appropriation under which the funds were provided to the Department has lapsed.

§ 570.5 Waivers.

HUD's authority for the waiver of regulations and for the suspension of requirements to address damage in a Presidentially declared disaster area is described in 24 CFR part 5 and in section 122 of the Act, respectively.

[61 FR 11476, Mar. 20, 1996]

Subpart B [Reserved]

Subpart C—Eligible Activities

SOURCE: 53 FR 34439, Sept. 6, 1988, unless otherwise noted.

§ 570.200 General policies.

(a) *Determination of eligibility.* An activity may be assisted in whole or in part with CDBG funds only if all of the following requirements are met:

(1) *Compliance with section 105 of the Act.* Each activity must meet the eligibility requirements of section 105 of the Act as further defined in this subpart.

(2) *Compliance with national objectives.* Grant recipients under the Entitlement and HUD-administered Small Cities programs must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low and moderate income families or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities which the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient under the Entitlement and HUD-administered Small Cities programs must ensure, and maintain evidence, that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are contained at § 570.208.

(3) *Compliance with the primary objective.* The primary objective of the Act is described in section 101(c) of the Act. Consistent with this objective, Entitlement recipients and recipients of the HUD-administered Small Cities program in Hawaii must ensure that over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) or § 570.208(d)(5) or (6) for benefitting low- and moderate-income persons; Insular area recipients must meet this requirement for each separate grant. The requirements for the HUD-administered Small Cities

program in New York are in § 570.420(e)(2). Additional requirements for the HUD-administered Small Cities program in Hawaii are in § 570.430(e). In determining the percentage of funds expended for such activities:

(i) Cost of administration and planning eligible under § 570.205 and § 570.206 will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the CDBG funds and, accordingly shall be excluded from the calculation;

(ii) Funds deducted by HUD for repayment of urban renewal temporary loans pursuant to § 570.802(b) shall be excluded;

(iii) Funds expended for the repayment of loans guaranteed under the provisions of subpart M shall also be excluded;

(iv) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under § 570.208(a)(3) shall be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons.

(v) Funds expended for any other activities qualifying under § 570.208(a) shall be counted for this purpose in their entirety.

(4) *Compliance with environmental review procedures.* The environmental review procedures set forth at 24 CFR part 58 must be completed for each activity (or project as defined in 24 CFR part 58), as applicable.

(5) *Cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars A-87, "Cost Principles for State, Local and Indian Tribal Governments"; A-122, "Cost Principles for Non-profit Organizations"; or A-21, "Cost Principles for Educational Institutions," as applicable.¹ All items of cost listed in Attachment B of these Circulars that require prior Federal

¹These circulars are available from the American Communities Center by calling the following toll-free numbers: (800) 998-9999 or (800) 483-2209 (TDD).

agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under this subpart C, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without HUD’s specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties (including punitive damages) are unallowable costs to the CDBG program.

(iii) Pre-award costs are limited to those authorized under paragraph (h) of this section.

(b) *Special policies governing facilities.* The following special policies apply to:

(1) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the CDBG program may be provided with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:

(i) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(ii) The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted.

(c) *Special assessments under the CDBG program.* The following policies relate to special assessments under the CDBG program:

(1) *Definition of special assessment.* The term “special assessment” means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the

installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

(2) *Special assessments to recover capital costs.* Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(i) Special assessments to recover the CDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

(ii) Special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(3) *Public improvements not initially assisted with CDBG funds.* The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments provided:

(i) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including environmental, citizen participation and Davis-Bacon requirements;

(ii) The installation of the public improvement meets a criterion for national objectives in § 570.208(a)(1), (b), or (c); and

(iii) The requirements of § 570.200(c)(2)(ii) are met.

(d) *Consultant activities.* Consulting services are eligible for assistance under this part for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36, and are not subject to the compensation limitation of Level IV of the Executive Schedule.

(e) *Recipient determinations required as a condition of eligibility.* In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, and 570.309.

(f) *Means of carrying out eligible activities.* (1) Activities eligible under this subpart, other than those authorized under § 570.204(a), may be undertaken, subject to local law:

(i) By the recipient through:

(A) Its employees, or

(B) Procurement contracts governed by the requirements of 24 CFR 85.36; or

(ii) Through loans or grants under agreements with subrecipients, as defined at § 570.500(c); or

(iii) By one or more public agencies, including existing local public agen-

cies, that are designated by the chief executive officer of the recipient.

(2) Activities made eligible under § 570.204(a) may only be undertaken by entities specified in that section.

(g) *Limitation on planning and administrative costs.* No more than 20 percent of the sum of any grant, plus program income, shall be expended for planning and program administrative costs, as defined in §§ 570.205 and 507.206, respectively. Recipients of entitlement grants under subpart D of this part shall conform with this requirement by limiting the amount of CDBG funds obligated for planning plus administration during each program year to an amount no greater than 20 percent of the sum of its entitlement grant made for that program year (if any) plus the program income received by the recipient and its subrecipients (if any) during that program year.

(h) *Reimbursement for pre-award costs.* The effective date of the grant agreement is the program year start date or the date that the consolidated plan is received by HUD, whichever is later. For a Section 108 loan guarantee, the effective date of the grant agreement is the date of HUD execution of the grant agreement amendment for the particular loan guarantee commitment.

(1) Prior to the effective date of the grant agreement, a recipient may incur costs or may authorize a subrecipient to incur costs, and then after the effective date of the grant agreement pay for those costs using its CDBG funds, provided that:

(i) The activity for which the costs are being incurred is included, prior to the costs being incurred, in a consolidated plan action plan, an amended consolidated plan action plan, or an application under subpart M of this part, except that a new entitlement grantee preparing to receive its first allocation of CDBG funds may incur costs necessary to develop its consolidated plan and undertake other administrative actions necessary to receive its first grant, prior to the costs being included in its consolidated plan;

(ii) Citizens are advised of the extent to which these pre-award costs will affect future grants;

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(iii) The costs and activities funded are in compliance with the requirements of this part and with the Environmental Review Procedures stated in 24 CFR part 58;

(iv) The activity for which payment is being made complies with the statutory and regulatory provisions in effect at the time the costs are paid for with CDBG funds;

(v) CDBG payment will be made during a time no longer than the next two program years following the effective date of the grant agreement or amendment in which the activity is first included; and

(vi) The total amount of pre-award costs to be paid during any program year pursuant to this provision is no more than the greater of 25 percent of the amount of the grant made for that year or \$300,000.

(2) Upon the written request of the recipient, HUD may authorize payment of pre-award costs for activities that do not meet the criteria at paragraph (h)(1)(v) or (h)(1)(vi) of this section, if HUD determines, in writing, that there is good cause for granting an exception upon consideration of the following factors, as applicable:

(i) Whether granting the authority would result in a significant contribution to the goals and purposes of the CDBG program;

(ii) Whether failure to grant the authority would result in undue hardship to the recipient or beneficiaries of the activity;

(iii) Whether granting the authority would not result in a violation of a statutory provision or any other regulatory provision;

(iv) Whether circumstances are clearly beyond the recipient's control; or

(v) Any other relevant considerations.

(i) *Urban Development Action Grant.* Grant assistance may be provided with Urban Development Action Grant funds, subject to the provisions of subpart G, for:

(1) Activities eligible for assistance under this subpart; and

(2) Notwithstanding the provisions of § 570.207, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.

(j) *Constitutional prohibition.* In accordance with First Amendment Church/State Principles, as a general rule, CDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities. The following restrictions and limitations therefore apply to the use of CDBG funds.

(1) CDBG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph (j)(2) of this section with respect to rehabilitation and under paragraph (j)(4) of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with CDBG funds at no more than fair market value for a non-religious use.

(2) CDBG funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

(i) The building (or portion thereof) that is to be improved with the CDBG assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

(ii) The CDBG assistance is provided to the lessee (and not the lessor) to make the improvements;

(iii) The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

(iv) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

(v) The portion of the cost of any improvements that also serve a non-

leased part of the building will be allocated to and paid for by the lessor;

(vi) The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

(vii) The lessee must remit the amount received from the lessor under paragraph (j)(2)(vi) of this section to the recipient or subrecipient from which the CDBG funds were derived.

The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph (j)(3) of this section.

(3) As a general rule, CDBG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient or subrecipient from which the CDBG funds are derived that, in connection with the provision of such services:

(i) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(ii) It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

(iii) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

(4) Where the public services provided under paragraph (j)(3) of this section are carried out on property owned by the primarily religious entity, CDBG

funds may also be used for minor repairs to such property which are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the CDBG expenditure for the public services.

[53 FR 34439, Sept. 6, 1988, as amended at 54 FR 47031, Nov. 8, 1989; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56910, Nov. 9, 1995; 61 FR 11476, Mar. 20, 1996; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000]

§ 570.201 Basic eligible activities.

CDBG funds may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 570.207.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.504.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 570.207(a), carried out by the recipient or other public or private nonprofit entities. (However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to public facilities and improvements, including those provided for in § 570.207(a)(1).) In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments

intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in § 570.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; half-way houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in § 570.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in § 570.200(b).

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies, and materials) including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under § 570.207(b)(4)), homebuyer downpayment assistance, or recreational needs. To be eligible for CDBG assistance, a public service must be either a new service or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the unit of general local government (through funds raised by the unit or received by the unit from the State in which it is located) in the 12 calendar months before the submission of the action plan. (An exception to

this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the unit of general local government.) The amount of CDBG funds used for public services shall not exceed paragraphs (e) (1) or (2) of this section, as applicable:

(1) The amount of CDBG funds used for public services shall not exceed 15 percent of each grant, except that for entitlement grants made under subpart D of this part, the amount shall not exceed 15 percent of the grant plus 15 percent of program income, as defined in § 570.500(a). For entitlement grants under subpart D of this part, compliance is based on limiting the amount of CDBG funds obligated for public service activities in each program year to an amount no greater than 15 percent of the entitlement grant made for that program year plus 15 percent of the program income received during the grantee's immediately preceding program year.

(2) A recipient which obligated more CDBG funds for public services than 15 percent of its grant funded from Federal fiscal year 1982 or 1983 appropriations (excluding program income and any assistance received under Public Law 98–8), may obligate more CDBG funds than allowable under paragraph (e)(1) of this section, so long as the total amount obligated in any program year does not exceed:

(i) For an entitlement grantee, 15% of the program income it received during the preceding program year; plus

(ii) A portion of the grant received for the program year which is the highest of the following amounts:

(A) The amount determined by applying the percentage of the grant it obligated for public services in the 1982 program year against the grant for its current program year;

(B) The amount determined by applying the percentage of the grant it obligated for public services in the 1983 program year against the grant for its current program year;

(C) The amount of funds it obligated for public services in the 1982 program year; or,

(D) The amount of funds it obligated for public services in the 1983 program year.

(f) *Interim assistance.* (1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the recipient determines that such an emergency condition exists and requires immediate resolution, CDBG funds may be used for:

(i) The activities specified in paragraph (f)(1) of this section, except for the repair of parks and playgrounds;

(ii) The clearance of streets, including snow removal and similar activities, and

(iii) The improvement of private properties.

(3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.

(g) *Payment of non-Federal share.* Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.

(h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in § 570.801.

(i) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals families, businesses, nonprofit organizations, and farm operations where the

assistance is (1) required under the provisions of § 570.606 (b) or (c); or (2) determined by the grantee to be appropriate under the provisions of § 570.606(d).

(j) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.

(k) *Housing services.* Housing services, as provided in section 105(a)(21) of the Act (42 U.S.C. 5305(a)(21)).

(l) *Privately owned utilities.* CDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

(m) *Construction of housing.* CDBG funds may be used for the construction of housing assisted under section 17 of the United States Housing Act of 1937.

(n) *Homeownership assistance.* CDBG funds may be used to provide direct homeownership assistance to low- or moderate-income households in accordance with section 105(a) of the Act.

(o)(1) The provision of assistance either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients) to facilitate economic development by:

(i) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;

(ii) Providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and

(iii) Providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, to owners of microenterprises and persons developing microenterprises.

(2) Services provided this paragraph (o) shall not be subject to the restrictions on public services contained in paragraph (e) of this section.

(3) For purposes of this paragraph (o), “persons developing microenterprises” means such persons who have expressed interest and who are, or after an initial screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed.

(4) Assistance under this paragraph (o) may also include training, technical assistance, or other support services to increase the capacity of the recipient or subrecipient to carry out the activities under this paragraph (o).

(p) *Technical assistance.* Provision of technical assistance to public or non-profit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities. (The recipient must determine, prior to the provision of the assistance, that the activity for which it is attempting to build capacity would be eligible for assistance under this subpart C, and that the national objective claimed by the grantee for this assistance can reasonably be expected to be met once the entity has received the technical assistance and undertakes the activity.) Capacity building for private or public entities (including grantees) for other purposes may be eligible under §570.205.

(q) *Assistance to institutions of higher education.* Provision of assistance by the recipient to institutions of higher education when the grantee determines that such an institution has demonstrated a capacity to carry out eligible activities under this subpart C.

[53 FR 34439, Sept. 6, 1988, as amended at 53 FR 31239, Aug. 17, 1988; 55 FR 29308, July 18, 1990; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 56911, Nov. 9, 1995; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000]

§570.202 Eligible rehabilitation and preservation activities.

(a) *Types of buildings and improvements eligible for rehabilitation assistance.* CDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements for residential purposes; improvements to a single-family residential property which is also used as a place of business, which are required in order to operate the business, need not

be considered to be rehabilitation of a commercial or industrial building, if the improvements also provide general benefit to the residential occupants of the building;

(2) Low-income public housing and other publicly owned residential buildings and improvements;

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvements to the exterior of the building and the correction of code violations (further improvements to such buildings may be undertaken pursuant to §570.203(b));

(4) Nonprofit-owned nonresidential buildings and improvements not eligible under §570.201(c); and

(5) Manufactured housing when such housing constitutes part of the community’s permanent housing stock.

(b) *Types of assistance.* CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section, except that rehabilitation of commercial or industrial buildings is limited as described in paragraph (a)(3) of this section.

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds if such financing is determined by the recipient to be necessary or appropriate to

achieve the locality's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water savings faucets and shower heads and repair of water leaks;

(6) Connection of residential structures to water distribution lines or local sewer collection lines;

(7) For rehabilitation carried out with CDBG funds, costs of:

(i) Initial homeowner warranty premiums;

(ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and

(iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to § 570.605.

(iv) Procedures concerning inspection and testing for and abatement of lead-based paint, pursuant to § 570.608.

(8) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under section 312 of the Housing Act of 1964, as amended, under section 810 of the Act, or under section 17 of the United States Housing Act of 1937;

(10) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937; and

(11) Improvements designed to remove material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to buildings and improvements eligible for assistance under paragraph (a) of this section.

(c) *Code enforcement.* Costs incurred for inspection for code violations and enforcement of codes (e.g., salaries and related expenses of code enforcement inspectors and legal proceedings, but not including the cost of correcting the violations) in deteriorating or deteriorated areas when such enforcement together with public or private improvements, rehabilitation, or services to be provided may be expected to arrest the decline of the area.

(d) *Historic preservation.* CDBG funds may be used for the rehabilitation, preservation or restoration of historic properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance. Historic preservation, however, is not authorized for buildings for the general conduct of government.

(e) *Renovation of closed buildings.* CDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.

(f) *Lead-based paint activities.* Lead-based paint activities as set forth in part 35 of this title.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1944, Jan. 5, 1995; 60 FR 56911, Nov. 9, 1995; 64 FR 50225, Sept. 15, 1999]

§ 570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Guidelines for selecting activities to assist under this paragraph are provided at § 570.209. The recipient must ensure that the appropriate level of public benefit will be derived pursuant to those guidelines before obligating funds under this authority. Special activities authorized under this section do not include assistance for the construction of new

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housing. Special economic development activities include:

(a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the recipient or public or private nonprofit subrecipients.

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a). In selecting businesses to assist under this authority, the recipient shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods.

(c) Economic development services in connection with activities eligible under this section, including, but not limited to, outreach efforts to market available forms of assistance; screening of applicants; reviewing and underwriting applications for assistance; preparation of all necessary agreements; management of assisted activities; and the screening, referral, and placement of applicants for employment opportunities generated by CDBG-eligible economic development activities, including the costs of providing necessary training for persons filling those positions.

[53 FR 34439, Sept. 6, 1988, as amended at 60 FR 1944, Jan. 5, 1995]

§ 570.204 Special activities by Community-Based Development Organizations (CBDOs).

(a) *Eligible activities.* The recipient may provide CDBG funds as grants or loans to any CBDO qualified under this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. The funded project activities may include those listed as eligible under this subpart, and, except as described in paragraph (b) of this section, activities not otherwise listed as eligible under this subpart. For purposes of

qualifying as a project under paragraphs (a)(1), (a)(2), and (a)(3) of this section, the funded activity or activities may be considered either alone or in concert with other project activities either being carried out or for which funding has been committed. For purposes of this section:

(1) Neighborhood revitalization project includes activities of sufficient size and scope to have an impact on the decline of a geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a unit of general local government which is under 25,000 population;

(2) Community economic development project includes activities that increase economic opportunity, principally for persons of low- and moderate-income, or that stimulate or retain businesses or permanent jobs, including projects that include one or more such activities that are clearly needed to address a lack of affordable housing accessible to existing or planned jobs and those activities specified at 24 CFR 91.1(a)(1)(iii);

(3) Energy conservation project includes activities that address energy conservation, principally for the benefit of the residents of the recipient's jurisdiction; and

(4) To carry out a project means that the CBDO undertakes the funded activities directly or through contract with an entity other than the grantee, or through the provision of financial assistance for activities in which it retains a direct and controlling involvement and responsibilities.

(b) *Ineligible activities.* Notwithstanding that CBDOs may carry out activities that are not otherwise eligible under this subpart, this section does not authorize:

(1) Carrying out an activity described as ineligible in § 570.207(a);

(2) Carrying out public services that do not meet the requirements of § 570.201(e), except that:

(i) Services carried out under this section that are specifically designed to increase economic opportunities

through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services; and

(ii) Services of any type carried out under this section pursuant to a strategy approved by HUD under the provisions of 24 CFR 91.215(e) shall not be subject to the limitations in § 570.201(e)(1) or (2), as applicable;

(3) Providing assistance to activities that would otherwise be eligible under § 570.203 that do not meet the requirements of § 570.209; or

(4) Carrying out an activity that would otherwise be eligible under § 570.205 or § 570.206, but that would result in the recipient's exceeding the spending limitation in § 570.200(g).

(c) *Eligible CBDOs.* (1) A CBDO qualifying under this section is an organization which has the following characteristics:

(i) Is an association or corporation organized under State or local law to engage in community development activities (which may include housing and economic development activities) primarily within an identified geographic area of operation within the jurisdiction of the recipient, or in the case of an urban county, the jurisdiction of the county; and

(ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and

(iii) May be either non-profit or for-profit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and

(iv) Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation; and

(v) Is not an agency or instrumentality of the recipient and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and

(vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and

(vii) Is not subject to requirements under which its assets revert to the recipient upon dissolution; and

(viii) Is free to contract for goods and services from vendors of its own choosing.

(2) A CBDO that does not meet the criteria in paragraph (c)(1) of this section may also qualify as an eligible entity under this section if it meets one of the following requirements:

(i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; or

(ii) Is an SBA approved Section 501 State Development Company or Section 502 Local Development Company, or an SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or

(iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e).

(3) A CBDO that does not qualify under paragraph (c)(1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the recipient demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar

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in purpose, function, and scope to those entities qualifying under paragraph (c)(1) or (2) of this section.

[60 FR 1944, Jan. 5, 1995]

§ 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to:

- (1) Comprehensive plans;
- (2) Community development plans;
- (3) Functional plans, in areas such as:
 - (i) Housing, including the development of a consolidated plan;
 - (ii) Land use and urban environmental design;
 - (iii) Economic development;
 - (iv) Open space and recreation;
 - (v) Energy use and conservation;
 - (vi) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;
 - (vii) Transportation;
 - (viii) Utilities; and
 - (ix) Historic preservation.
- (4) Other plans and studies such as:
 - (i) Small area and neighborhood plans;
 - (ii) Capital improvements programs;
 - (iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under §§ 570.201–570.204);
 - (iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies. However, costs necessary to comply with 24 CFR part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such activities under §§ 570.201–570.204. Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of § 570.200(g);
 - (v) Strategies and action programs to implement plans, including the devel-

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opment of codes, ordinances and regulations;

(vi) Support of clearinghouse functions, such as those specified in Executive Order 12372; and

(vii) Analysis of impediments to fair housing choice.

(6) Policy—planning—management—capacity building activities which will enable the recipient to:

- (1) Determine its needs;
- (2) Set long-term goals and short-term objectives, including those related to urban environmental design;
- (3) Devise programs and activities to meet these goals and objectives;
- (4) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and
- (5) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, but excluding the costs necessary to implement such plans.

[53 FR 34439, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991; 60 FR 1915, Jan. 5, 1995]

§ 570.206 Program administrative costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part and, where applicable, housing activities (described in paragraph (g) of this section) covered in the recipient's housing assistance plan. This does not include staff and overhead costs directly related to carrying out activities eligible under § 570.201 through § 570.204, since those costs are eligible as part of such activities.

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

- (1) Salaries, wages, and related costs of the recipient's staff, the staff of local public agencies, or other staff engaged in program administration. In charging costs to this category the recipient 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 involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The recipient may use only one of these methods during the program year (or the grant period for grants under subpart F). Program administration includes the following types of assignments:

- (i) Providing local officials and citizens with information about the program;
- (ii) Preparing program budgets and schedules, and amendments thereto;
- (iii) Developing systems for assuring compliance with program requirements;
- (iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;
- (v) Monitoring program activities for progress and compliance with program requirements;
- (vi) Preparing reports and other documents related to the program for submission to HUD;
- (vii) Coordinating the resolution of audit and monitoring findings;
- (viii) Evaluating program results against stated objectives; and
- (ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i) through (viii) 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; and

(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.

(b) *Public information.* The provisions of information and other resources to residents and citizen organizations participating in the planning, implemen-

tation, or assessment of activities being assisted with CDBG funds.

(c) *Fair housing activities.* Provision of fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601-20) by making all persons, without regard to race, color, religion, sex, national origin, familial status or handicap, aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proportion of low and moderate income persons.

(d) [Reserved]

(e) *Indirect costs.* Indirect costs may be charged to the CDBG program under a cost allocation plan prepared in accordance with OMB Circular A-21, A-87, or A-122 as applicable.

(f) *Submission of applications for Federal programs.* Preparation of documents required for submission to HUD to receive funds under the CDBG and UDAG programs, except as limited under subpart F at §570.433(a)(3). In addition, CDBG funds may be used to prepare applications for other Federal programs where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.

(g) *Administrative expenses to facilitate housing.* CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing as follows: for entitlement recipients, assistance authorized by this paragraph is limited to units which are identified in the recipient's HUD approved housing assistance plan; for HUD-administered small cities recipients, assistance authorized by the paragraph is limited to facilitating the purchase or occupancy of existing units which are to be occupied by low and moderate income households, or the construction of rental or owner units where at least 20 percent of the units in each project will be occupied at affordable rents/costs by low and moderate income persons. Examples of eligible actions are as follows:

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(1) The cost of conducting preliminary surveys and analysis of market needs;

(2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and “sketch drawings,” but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;

(3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 Housing Assistance Payments Program pursuant to 24 CFR parts 880–883;

(4) Fees associated with processing of applications for mortgage or insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA);

(5) The cost of issuance and administration of mortgage revenue bonds used to finance the acquisition, rehabilitation or construction of housing, but excluding costs associated with the payment or guarantee of the principal or interest on such bonds; and

(6) Special outreach activities which result in greater landlord participation in Section 8 Housing Assistance Payments Program-Existing Housing or similar programs for low and moderate income persons.

(h) *Section 17 of the United States Housing Act of 1937*. Reasonable costs equivalent to those described in paragraphs (a), (b), (e) and (f) of this section for overall program management of the Rental Rehabilitation and Housing Development programs authorized under section 17 of the United States Housing Act of 1937, whether or not such activities are otherwise assisted with funds provided under this part.

(i) Whether or not such activities are otherwise assisted with funds provided under this part, reasonable costs equivalent to those described in paragraphs (a), (b), (e), and (f) of this section for overall program management of:

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(1) A Federally designated Empowerment Zone or Enterprise Community; and

(2) The HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 note).

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 54 FR 37411, Sept. 8, 1989; 60 FR 56912, Nov. 9, 1995]

§ 570.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of §§ 570.201–570.206 is ineligible to be assisted with CDBG funds. This section identifies specific activities that are ineligible and provides guidance in determining the eligibility of other activities frequently associated with housing and community development.

(a) The following activities may not be assisted with CDBG funds:

(1) *Buildings or portions thereof, used for the general conduct of government* as defined at § 570.3(d) cannot be assisted with CDBG funds. This does not include, however, the removal of architectural barriers under § 570.201(c) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible, provided such acquisition meets a national objective described in § 570.208.

(2) *General government expenses*. Except as otherwise specifically authorized in this subpart or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

(3) *Political activities*. CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis,

and are assessed equal rent or use charges, if any.

(b) The following activities may not be assisted with CDBG funds unless authorized under provisions of § 570.203 or as otherwise specifically noted herein or when carried out by an entity under the provisions of § 570.204.

(1) *Purchase of equipment.* The purchase of equipment with CDBG funds is generally ineligible.

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A-21, A-87 or A-122 as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under § 570.201(c).

(ii) *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under § 570.201(c).

(iii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circular A-21, A-87 or A-122, as applicable) for such items when necessary for use by a recipient or its sub-recipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service pursuant to § 570.201(e).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable costs of op-

erating and maintaining a facility used in providing a public service would be eligible under § 570.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(3) *New housing construction.* For the purpose of this paragraph, activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing pre-construction costs set forth in § 570.206(g), are not considered as activities to subsidize or assist new residential construction. CDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR part 42;

(ii) As authorized under § 570.201(m) or (n);

(iii) When carried out by an entity pursuant to § 570.204(a);

(4) *Income payments.* The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG program, "income payments" means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to

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three consecutive months to the provider of such items or services on behalf of an individual or family.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1945, Jan. 5, 1995; 60 FR 56912, Nov. 9, 1995; 65 FR 70215, Nov. 21, 2000]

§ 570.208 Criteria for national objectives.

The following criteria shall be used to determine whether a CDBG-assisted activity complies with one or more of the national objectives as required under § 570.200(a)(2):

(a) *Activities benefiting low- and moderate-income persons.* Activities meeting the criteria in paragraph (a) (1), (2), (3), or (4) of this section as applicable, will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(ii) For metropolitan cities and urban counties, an activity that would otherwise qualify under § 570.208(a)(1)(i) except that the area served contains less than 51 percent low and moderate income residents will also be considered to meet the objective of benefiting low and moderate income persons where the proportion of low and moderate income persons in the area is within the highest quartile of all areas in the recipient's jurisdiction in terms of the degree of concentration of such persons. In applying this exception, HUD will determine the lowest proportion a recipient may use to qualify an area for this purpose as follows:

(A) All census block groups in the recipient's jurisdiction shall be rank ordered from the block group of highest proportion of low and moderate income persons to the block group with the lowest. For urban counties, the rank ordering shall cover the entire area constituting the urban county and shall not be done separately for each participating unit of general local government.

(B) In any case where the total number of a recipient's block groups does not divide evenly by four, the block group which would be fractionally divided between the highest and second quartiles shall be considered to be part of the highest quartile.

(C) The proportion of low and moderate income persons in the last census block group in the highest quartile shall be identified. Any service area located within the recipient's jurisdiction and having a proportion of low and moderate income persons at or above this level shall be considered to be within the highest quartile.

(D) If block group data are not available for the entire jurisdiction, other data acceptable to the Secretary may be used in the above calculations.

(iii) An activity to develop, establish, and operate for up to two years after the establishment of, a uniform emergency telephone number system serving an area having less than the percentage of low- and moderate-income residents required under paragraph (a)(1)(i) of this section or (as applicable) paragraph (a)(1)(ii) of this section, provided the recipient obtains prior HUD approval. To obtain such approval, the recipient must:

(A) Demonstrate that the system will contribute significantly to the safety of the residents of the area. The request for approval must include a list of the emergency services that will participate in the emergency telephone number system;

(B) Submit information that serves as a basis for HUD to determine whether at least 51 percent of the use of the system will be by low- and moderate-income persons. As available, the recipient must provide information that identifies the total number of calls actually received over the preceding 12-

month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, block numbering areas, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, HUD will assume that the distribution of income among the callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. If HUD can conclude that the users have primarily consisted of low- and moderate-income persons, no further submission is needed by the recipient. If a recipient plans to make other submissions for this purpose, it may request that HUD review its planned methodology before expending the effort to acquire the information it expects to use to make its case;

(C) Demonstrate that other Federal funds received by the recipient are insufficient or unavailable for a uniform emergency telephone number system. For this purpose, the recipient must submit a statement explaining whether the lack of funds is due to the insufficiency of the amount of the available funds, restrictions on the use of such funds, or the prior commitment of funds by the recipient for other purposes; and

(D) Demonstrate that the percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low- and moderate-income persons in the service area of the system. For this purpose, the recipient must include a description of the boundaries of the service area of the emergency telephone number system, the census divisions that fall within the boundaries of the service area (census tracts or block numbering areas), the total number of persons and the total number of low- and moderate-income persons within each census division, the percentage of low- and moderate-income persons within the service area, and the total cost of the system.

(iv) An activity for which the assistance to a public improvement that provides benefits to all the residents of an area is limited to paying special assessments (as defined in § 570.200(c)) levied against residential properties owned and occupied by persons of low and moderate income.

(v) For purposes of determining qualification under this criterion, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(vi) In determining whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by an activity to qualify under paragraph (a)(1) (i), (ii), or (vii) of this section, the most recently available decennial census information must be used to the fullest extent feasible, together with the section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Recipients that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income. HUD will accept information obtained through such surveys, to be used in lieu of the decennial census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of the decennial census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the decennial census data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the recipient rebut such evidence in order to demonstrate compliance with section 105(c)(2) of the Act.

(vii) Activities meeting the requirements of paragraph (d)(5)(i) of this section may be considered to qualify under this paragraph, provided that the area covered by the strategy is either a

Federally-designated Empowerment Zone or Enterprise Community or primarily residential and contains a percentage of low- and moderate-income residents that is no less than the percentage computed by HUD pursuant to paragraph (a)(1)(ii) of this section or 70 percent, whichever is less, but in no event less than 51 percent. Activities meeting the requirements of paragraph (d)(6)(i) of this section may also be considered to qualify under paragraph (a)(1) of this section.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons. (The following kinds of activities may not qualify under paragraph (a)(2) of this section: activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low- and moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (a)(2)(iv) of this section.) To qualify under paragraph (a)(2) of this section, the activity must meet one of the following tests:

(A) Benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, 51 percent of whom are low- and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or

(B) Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

(C) Have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(D) Be of such nature and be in such location that it may be concluded that

the activity's clientele will primarily be low and moderate income persons.

(ii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled" will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under paragraph (a)(1) of this section;

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under paragraph (a)(1) or (4) of this section; or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under paragraph (a)(3) of this section.

(iii) A microenterprise assistance activity carried out in accordance with the provisions of §570.201(o) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year who are low- and moderate-income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.

(iv) An activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low- and moderate-income persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstance:

(A) In such cases where such training or provision of supportive services assists business(es), the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and

(B) The proportion of the total cost of the project borne by CDBG funds is no greater than the proportion of the

total number of persons assisted who are low or moderate income.

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the recipient, a sub-recipient, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. Where housing activities being assisted meet the requirements of paragraph § 570.208 (d)(5)(ii) or (d)(6)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

(i) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:

(A) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project;

(B) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and

(C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will

be occupied by low and moderate income households.

(ii) When CDBG funds are used to assist rehabilitation eligible under § 570.202(b)(9) or (10) in direct support of the recipient's Rental Rehabilitation program authorized under 24 CFR part 511, such funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the recipient's Rental Rehabilitation program overall are for low and moderate income persons.

(iii) When CDBG funds are used for housing services eligible under § 570.201(k), such funds shall be considered to benefit low- and moderate-income persons if the housing units for which the services are provided are HOME-assisted and the requirements at 24 CFR 92.252 or 92.254 are met.

(4) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low- and moderate-income persons. To qualify under this paragraph, the activity must meet the following criteria:

(i) For an activity that creates jobs, the recipient must document that at least 51 percent of the jobs will be held by, or will be available to, low- and moderate-income persons.

(ii) For an activity that retains jobs, the recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided:

(A) The job is known to be held by a low- or moderate-income person; or

(B) The job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low- or moderate-income person upon turnover.

(iii) Jobs that are not held or filled by a low- or moderate-income person may be considered to be available to low- and moderate-income persons for these purposes only if:

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(A) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(B) The recipient and the assisted business take actions to ensure that low- and moderate-income persons receive first consideration for filling such jobs.

(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:

(A) He/she resides within a census tract (or block numbering area) that either:

(1) Meets the requirements of paragraph (a)(4)(v) of this section; or

(2) Has at least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (a)(4)(v) of this section and the job under consideration is to be located within that census tract.

(v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (a)(4)(iv)(A)(1) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:

(A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;

(B) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

(1) All block groups in the census tract have poverty rates of at least 20 percent;

(2) The specific activity being undertaken is located in a block group that

has a poverty rate of at least 20 percent; or

(3) Upon the written request of the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

(vi) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during each program year.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during each program year.

(D) Where CDBG funds are used for activities meeting the criteria listed at § 570.209(b)(2)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities

during the program year, except as provided at paragraph (d)(7) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(1) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than \$10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(2) In any case where the cost per job to be created or retained (as determined under paragraph (a)(4)(vi)(F)(1) of this section) is \$10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the facility/improvement between the date the recipient identifies the activity in its action plan under part 91 of this title and the date one year after the physical completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.209(b).

(b) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or

elimination of slums or blight in an area if:

(i) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;

(ii) Throughout the area there is a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration;

(iii) Documentation is maintained by the recipient on the boundaries of the area and the condition which qualified the area at the time of its designation; and

(iv) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is undertaken. At a minimum, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the housing quality standards for the Section 8 Housing Assistance Payments Program-Existing Housing (24 CFR 882.109).

(2) *Activities to address slums or blight on a spot basis.* Acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

(3) *Activities to address slums or blight in an urban renewal area.* An activity will be considered to address prevention or elimination of slums or blight in an urban renewal area if the activity is:

(i) Located within an urban renewal project area or Neighborhood Development Program (NDP) action area; i.e., an area in which funded activities were

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authorized under an urban renewal Loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to title I of the Housing Act of 1949; and

(ii) Necessary to complete the urban renewal plan, as then in effect, including *initial* land redevelopment permitted by the plan.

NOTE: Despite the restrictions in (b) (1) and (2) of this section, any rehabilitation activity which benefits low and moderate income persons pursuant to paragraph (a)(3) of this section can be undertaken without regard to the area in which it is located or the extent or nature of rehabilitation assisted.

(c) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the certification by the recipient.

(d) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a “change of use” under § 570.505.

(2) Where the assisted activity is relocation assistance that the recipient is required to provide, such relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is vol-

untary on the part of the grantee the recipient may qualify the assistance either on the basis of the national objective addressed by the displacing activity or on the basis that the recipients of the relocation assistance are low and moderate income persons.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a)(1) of this section as well as those of paragraph (a)(4) of this section in order to qualify as benefiting low and moderate income persons.

(4) CDBG funds expended for planning and administrative costs under § 570.205 and § 570.206 will be considered to address the national objectives.

(5) Where the grantee has elected to prepare an area revitalization strategy pursuant to the authority of § 91.215(e) of this title and HUD has approved the strategy, the grantee may also elect the following options:

(i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(vii) of this section in lieu of the criteria at paragraph (a)(4) of this section; and

(ii) All housing activities in the area for which, pursuant to the strategy, CDBG assistance is obligated during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(6) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the grantee may also elect the following options:

(i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(vii) of this section in lieu of the criteria at paragraph (a)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(7) Where an activity meeting the criteria at § 570.209(b)(2)(v) may also meet the requirements of either paragraph (d)(5)(i) or (d)(6)(i) of this section, the grantee may elect to qualify the activity under either the area benefit criteria at paragraph (a)(1)(vii) of this section or the job aggregation criteria at paragraph (a)(4)(vi)(D) of this section, but not both. Where an activity may meet the job aggregation criteria at both paragraphs (a)(4)(vi)(D) and (E) of this section, the grantee may elect to qualify the activity under either criterion, but not both.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1945, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56912, Nov. 9, 1995; 61 FR 18674, Apr. 29, 1996]

§ 570.209 Guidelines for evaluating and selecting economic development projects.

The following guidelines are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable to activities that are eligible for CDBG assistance under § 570.203. These guidelines also apply to activities carried out under the authority of § 570.204 that would otherwise be eligible under § 570.203, were it not for the involvement of a Community-Based Development Organization (CBDO). (This would include activities where a CBDO makes loans to for-profit businesses.) These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are *mandatory*, but the guidelines for evaluating projects costs and financial requirements are not.

(a) *Guidelines and objectives for evaluating project costs and financial requirements.* HUD has developed guidelines that are designed to provide the recipient with a framework for financially

underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. These guidelines, also referred to as the underwriting guidelines, are published as appendix A to this part. The use of the underwriting guidelines published by HUD is not mandatory. However, grantees electing not to use these guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. The objectives of the underwriting guidelines are to ensure:

- (1) That project costs are reasonable;
- (2) That all sources of project financing are committed;
- (3) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;
- (4) That the project is financially feasible;
- (5) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and
- (6) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(b) *Standards for evaluating public benefit.* The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these guidelines. The standards set forth below identify the types of public benefit that will be recognized for this purpose and the minimum level of each that must be obtained for the amount

of CDBG funds used. Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory. Certain public facilities and improvements eligible under § 570.201(c) of the regulations, which are undertaken for economic development purposes, are also subject to these standards, as specified in § 570.208(a)(4)(vi)(F)(2).

(1) *Standards for activities in the aggregate.* Activities covered by these guidelines must, in the aggregate, either:

(i) Create or retain at least one full-time equivalent, permanent job per \$35,000 of CDBG funds used; or

(ii) Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per \$350 of CDBG funds used.

(2) *Applying the aggregate standards.*

(i) A metropolitan city or an urban county shall apply the aggregate standards under paragraph (b)(1) of this section to all applicable activities for which CDBG funds are first obligated within each single CDBG program year, without regard to the source year of the funds used for the activities. A grantee under the HUD-Administered Small Cities or Insular Areas CDBG programs shall apply the aggregate standards under paragraph (b)(1) of this section to all funds obligated for applicable activities from a given grant; program income obligated for applicable activities will, for these purposes, be aggregated with the most recent open grant. For any time period in which a community has no open HUD-Administered or Insular Areas grants, the aggregate standards shall be applied to all applicable activities for which program income is obligated during that period.

(ii) The grantee shall apply the aggregate standards to the number of jobs to be created/retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where an activity is expected both to create or retain jobs and to provide goods or services to residents

of an area, the grantee may elect to count the activity under either the jobs standard or the area residents standard, but not both.

(iv) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the aggregate standards.

(v) Any activity subject to these guidelines which meets one or more of the following criteria may, at the grantee's option, be excluded from the aggregate standards described in paragraph (b)(1) of this section:

(A) Provides jobs exclusively for unemployed persons or participants in one or more of the following programs:

(1) Jobs Training Partnership Act (JTPA);

(2) Jobs Opportunities for Basic Skills (JOBS); or

(3) Aid to Families with Dependent Children (AFDC);

(B) Provides jobs predominantly for residents of Public and Indian Housing units;

(C) Provides jobs predominantly for homeless persons;

(D) Provides jobs predominantly for low-skilled, low- and moderate-income persons, where the business agrees to provide clear opportunities for promotion and economic advancement, such as through the provision of training;

(E) Provides jobs predominantly for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(F) Provides assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(G) Stabilizes or revitalizes a neighborhood that has at least 70 percent of its residents who are low- and moderate-income;

(H) Provides assistance to a Community Development Financial Institution that serve an area that is predominantly low- and moderate-income persons;

(I) Provides assistance to a Community-Based Development Organization serving a neighborhood that has at least 70 percent of its residents who are low- and moderate-income;

(J) Provides employment opportunities that are an integral component of a project designed to promote spatial deconcentration of low- and moderate-income and minority persons;

(K) With prior HUD approval, provides substantial benefit to low-income persons through other innovative approaches;

(L) Provides services to the residents of an area pursuant to a strategy approved by HUD under the provisions of §91.215(e) of this title;

(M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by HUD under the provisions of §91.215(e) of this title.

(3) *Standards for individual activities.* Any activity subject to these guidelines which falls into one or more of the following categories will be considered by HUD to provide insufficient public benefit, and therefore may under no circumstances be assisted with CDBG funds:

(i) The amount of CDBG assistance exceeds either of the following, as applicable:

(A) \$50,000 per full-time equivalent, permanent job created or retained; or

(B) \$1,000 per low- and moderate-income person to which goods or services are provided by the activity.

(ii) The activity consists of or includes any of the following:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which the specific proposed use has not yet been identified; and

(E) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved

findings of noncompliance relating to previous CDBG assistance provided by the recipient.

(4) *Applying the individual activity standards.* (i) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, it will be disqualified only if the amount of CDBG assistance exceeds both of the amounts in paragraph (b)(3)(i) of this section.

(ii) The individual activity standards in paragraph (b)(3)(i) of this section shall be applied to the number of jobs to be created or retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the individual activity standards in paragraph (b)(3)(i) of this section.

(c) *Amendments to economic development projects after review determinations.* If, after the grantee enters into a contract to provide assistance to a project, the scope or financial elements of the project change to the extent that a significant contract amendment is appropriate, the project should be reevaluated under these and the recipient's guidelines. (This would include, for example, situations where the business requests a change in the amount or terms of assistance being provided, or an extension to the loan payment period required in the contract.) If a reevaluation of the project indicates that the financial elements and public benefit to be derived have also substantially changed, then the recipient should make appropriate adjustments in the amount, type, terms or conditions of CDBG assistance which has been offered, to reflect the impact of the substantial change. (For example, if a change in the project elements results in a substantial reduction of the total project costs, it may be appropriate for the recipient to reduce the amount of total CDBG assistance.) If the amount of CDBG assistance provided to the project is increased, the

amended project must still comply with the public benefit standards under paragraph (b) of this section.

(d) *Documentation.* The grantee must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit anticipated when the CDBG assistance was obligated. If the grantee's actual results show a pattern of substantial variation from anticipated results, the grantee is expected to take all actions reasonably within its control to improve the accuracy of its projections. If the actual results demonstrate that the recipient has failed the public benefit standards, HUD may require the recipient to meet more stringent standards in future years as appropriate.

[60 FR 1947, Jan. 5, 1995, as amended at 60 FR 17445, Apr. 6, 1995]

Subpart D—Entitlement Grants

SOURCE: 53 FR 34449, Sept. 6, 1988, unless otherwise noted.

§ 570.300 General.

This subpart describes the policies and procedures governing the making of community development block grants to entitlement communities. The policies and procedures set forth in subparts A, C, J, K, and O of this part also apply to entitlement grantees.

§ 570.301 Activity locations and float-funding.

The consolidated plan, action plan, and amendment submission requirements referred to in this section are those in 24 CFR part 91.

(a) For activities for which the grantee has not yet decided on a specific location, such as when the grantee is allocating an amount of funds to be used for making loans or grants to businesses or for residential rehabilitation, the description in the action plan or any amendment shall identify who may apply for the assistance, the process by which the grantee expects to select who will receive the assistance (includ-

ing selection criteria), and how much and under what terms the assistance will be provided, or in the case of a planned public facility or improvement, how it expects to determine its location.

(b) *Float-funded activities and guarantees.* A recipient may use undisbursed funds in the line of credit and its CDBG program account that are budgeted in statements or action plans for one or more other activities that do not need the funds immediately, subject to the limitations described below. Such funds shall be referred to as the "float" for purposes of this section and the action plan. Each activity carried out using the float must meet all of the same requirements that apply to CDBG-assisted activities generally, and must be expected to produce program income in an amount at least equal to the amount of the float so used. Whenever the recipient proposes to fund an activity with the float, it must include the activity in its action plan or amend the action plan for the current program year. For purposes of this section, an activity that uses such funds will be called a "float-funded activity."

(1) Each float-funded activity must be individually listed and described as such in the action plan.

(2)(i) The expected time period between obligation of assistance for a float-funded activity and receipt of program income in an amount at least equal to the full amount drawn from the float to fund the activity may not exceed 2.5 years. An activity from which program income sufficient to recover the full amount of the float assistance is expected to be generated more than 2.5 years after obligation may not be funded from the float, but may be included in an action plan if it is funded from CDBG funds other than the float (e.g., grant funds or proceeds from an approved Section 108 loan guarantee).

(ii) Any extension of the repayment period for a float-funded activity shall be considered to be a new float-funded activity for these purposes and may be implemented by the grantee only if the extension is made subject to the same limitations and requirements as apply to a new float-funded activity.

(3) Unlike other projected program income, the full amount of income expected to be generated by a float-funded activity must be shown as a source of program income in the action plan containing the activity, whether or not some or all of the income is expected to be received in a future program year (in accordance with 24 CFR 91.220(g)(1)(ii)(D)).

(4) The recipient must also clearly declare in the action plan that identifies the float-funded activity the recipient's commitment to undertake one of the following options:

(i) Amend or delete activities in an amount equal to any default or failure to produce sufficient income in a timely manner. If the recipient makes this choice, it must include a description of the process it will use to select the activities to be amended or deleted and how it will involve citizens in that process; and it must amend the applicable statement(s) or action plan(s) showing those amendments or deletions promptly upon determining that the float-funded activity will not generate sufficient or timely program income;

(ii) Obtain an irrevocable line of credit from a commercial lender for the full amount of the float-funded activity and describe the lender and terms of such line of credit in the action plan that identifies the float-funded activity. To qualify for this purpose, such line of credit must be unconditionally available to the recipient in the amount of any shortfall within 30 days of the date that the float-funded activity fails to generate the projected amount of program income on schedule;

(iii) Transfer general local government funds in the full amount of any default or shortfall to the CDBG line of credit within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule; or

(iv) A method approved in writing by HUD for securing timely return of the amount of the float funding. Such method must ensure that funds are available to meet any default or shortfall within 30 days of the float-funded activity's failure to generate the pro-

jected amount of the program income on schedule.

(5) When preparing an action plan for a year in which program income is expected to be received from a float-funded activity, and such program income has been shown in a prior statement or action plan, the current action plan shall identify the expected income and explain that the planned use of the income has already been described in prior statements or action plans, and shall identify the statements or action plans in which such descriptions may be found.

[60 FR 56913, Nov. 9, 1995]

§ 570.302 Submission requirements.

In order to receive its annual CDBG entitlement grant, a grantee must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the consolidated plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(Approved by the Office of Management and Budget under control number 2506-0117)

[60 FR 1915, Jan. 5, 1995]

§ 570.303 Certifications.

The jurisdiction must make the certifications that are set forth in 24 CFR part 91 as part of the consolidated plan.

(Approved by the Office of Management and Budget under control number 2506-0117)

[60 FR 1915, Jan. 5, 1995]

§ 570.304 Making of grants.

(a) *Approval of grant.* HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91, and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part, has failed to carry out its consolidated plan as provided under § 570.903, or has determined that there is evidence, not directly involving the grantee's past performance

under this program, that tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(b) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(c) *Grant amount.* The Secretary will make a grant in the full entitlement amount, generally within the last 30 days of the grantee's current program year, unless:

(1) Either the consolidated plan is not received by August 16 of the federal fiscal year for which funds are appropriated or the consolidated plan is not approved under 24 CFR part 91, subpart F—in which case, the grantee will forfeit the entire entitlement amount; or

(2) The grantee's performance does not meet the performance requirements or criteria prescribed in subpart O and the grant amount is reduced.

[53 FR 34449, Sept. 6, 1988, as amended at 60 FR 1915, Jan. 5, 1995; 60 FR 16379, Mar. 30, 1995; 60 FR 56913, Nov. 9, 1995]

§ 570.307 Urban counties.

(a) *Determination of qualification.* The Secretary will determine the qualifications of counties to receive entitlements as urban counties upon receipt of qualification documentation from counties at such time, and in such manner and form as prescribed by HUD. The Secretary shall determine eligibility and applicable portions of each eligible county for purposes of fund allocation under section 106 of the Act on the basis of information available from the U.S. Bureau of the Census with respect to population and other pertinent demographic characteristics, and based on information provided by the county and its included units of general local government.

(b) *Qualification as an urban county.* (1) A county will qualify as an urban county if such county meets the definition at § 570.3(3). As necessitated by this definition, the Secretary shall determine which counties have authority to carry out essential community de-

velopment and housing assistance activities in their included units of general local government without the consent of the local governing body and which counties must execute cooperation agreements with such units to include them in the urban county for qualification and grant calculation purposes.

(2) At the time of urban county qualification, HUD may refuse to recognize the cooperation agreement of a unit of general local government in an urban county where, based on past performance and other available information, there is substantial evidence that such unit does not cooperate in the implementation of the essential community development or housing assistance activities or where legal impediments to such implementation exist, or where participation by a unit of general local government in noncompliance with the applicable law in subpart K would constitute noncompliance by the urban county. In such a case, the unit of general local government will not be permitted to participate in the urban county, and its population or other needs characteristics will not be considered in the determination of whether the county qualifies as an urban county or in determining the amount of funds to which the urban county may be entitled. HUD will not take this action unless the unit of general local government and the county have been given an opportunity to challenge HUD's determination and to informally consult with HUD concerning the proposed action.

(c) *Essential activities.* For purposes of this section, the term "essential community development and housing assistance activities" means community renewal and lower income housing activities, specifically urban renewal and publicly assisted housing. In determining whether a county has the required powers, the Secretary will consider both its authority and, where applicable, the authority of its designated agency or agencies.

(d) *Period of qualification.* (1) The qualification by HUD of an urban county shall remain effective for three successive Federal fiscal years regardless of changes in its population during that period, except as provided under

paragraph (f) of this section and except as provided under §570.3(3) where the period of qualification shall be two successive Federal fiscal years.

(2) During the period of qualification, no included unit of general local government may withdraw from nor be removed from the urban county for HUD's grant computation purposes.

(3) If some portion of an urban county's unincorporated area becomes incorporated during the urban county qualification period, the newly incorporated unit of general local government shall not be excluded from the urban county nor shall it be eligible for a separate grant under subpart D, F, or I until the end of the urban county's current qualification period, unless the urban county fails to receive a grant for any year during that qualification period.

(e) *Grant ineligibility of included units of general local government.* (1) An included unit of general local government cannot become eligible for an entitlement grant as a metropolitan city during the period of qualification of the urban county (even if it becomes a central city of a metropolitan area or its population surpasses 50,000 during that period). Rather, such a unit of general local government shall continue to be included as part of the urban county for the remainder of the urban county's qualification period, and no separate grant amount shall be calculated for the included unit.

(2) An included unit of general local government which is part of an urban county shall be ineligible to apply for grants under subpart F, or to be a recipient of assistance under subpart I, during the entire period of urban county qualification.

(f) *Failure of an urban county to receive a grant.* Failure of an urban county to receive a grant during any year shall terminate the existing qualification of that urban county, and that county shall requalify as an urban county before receiving an entitlement grant in any successive Federal fiscal year. Such termination shall release units of general local government included in the urban county, in subsequent years, from the prohibition to receive grants under paragraphs (d)(3), (e)(1) and (e)(2) of this section. For this

purpose an urban county shall be deemed to have received a grant upon having satisfied the requirements of sections 104 (a), (b), (c), and (d) of the Act, without regard to adjustments which may be made to this grant amount under section 104(e) or 111 of the Act.

(g) *Notifications of the opportunity to be excluded.* Any county seeking to qualify for an entitlement grant as an urban county for any Federal fiscal year shall notify each unit of general local government which is located, in whole or in part, within the county and which would otherwise be included in the urban county, but which is eligible to elect to have its population excluded from that of the urban county, that it has the opportunity to make such an election, and that such an election, or the failure to make such an election, shall be effective for the period for which the county qualifies as an urban county. These notifications shall be made by a date specified by HUD. A unit of general local government which elects to be excluded from participation as a part of the urban county shall notify the county and HUD in writing by a date specified by HUD. Such a unit of government may subsequently elect to participate in the urban county for the remaining one or two year period by notifying HUD and the county, in writing, of such election by a date specified by HUD.

[53 FR 34449, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991]

§ 570.308 Joint requests.

(a) *Joint requests and cooperation agreements.* (1) Any urban county and any metropolitan city located, in whole or in part, within that county may submit a joint request to HUD to approve the inclusion of the metropolitan city as a part of the urban county for purposes of planning and implementing a joint community development and housing program. Such a joint request shall only be considered if submitted at the time the county is seeking a three year qualification or requalification as an urban county. Such a joint request shall, upon approval by HUD, remain effective for the period for which the county is qualified as an urban county. An urban county

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may be joined by more than one metropolitan city, but a metropolitan city located in more than one urban county may only be included in one urban county for any program year. A joint request shall be deemed approved by HUD unless HUD notifies the city and the county of its disapproval and the reasons therefore within 30 days of receipt of the request by HUD.

(2) Each metropolitan city and urban county submitting a joint request shall submit an executed cooperation agreement to undertake or to assist in the undertaking of essential community development and housing assistance activities, as defined in § 570.307(c).

(b) *Joint grant amount.* The grant amount for a joint recipient shall be the sum of the amounts authorized for the individual entitlement grantees, as described in section 106 of the Act. The urban county shall be the grant recipient.

(c) *Effect of inclusion.* Upon urban county qualification and HUD approval of the joint request and cooperation agreement, the metropolitan city shall be considered a part of the urban county for purposes of program planning and implementation for the period of the urban county qualification, and shall be treated the same as any other unit of general local government which is part of the urban county.

(d) *Submission requirements.* In requesting a grant under this part, the urban county shall make a single submission which meets the submission requirements of 24 CFR part 91 and covers all members of the joint recipient.

[53 FR 34449, Sept. 6, 1988, as amended at 60 FR 1915, Jan. 5, 1995]

§ 570.309 Restriction on location of activities.

CDBG funds may assist an activity outside the jurisdiction of the grantee only if the grantee determines that such an activity is necessary to further the purposes of the Act and the recipient's community development objectives, and that reasonable benefits from the activity will accrue to residents within the jurisdiction of the grantee. The grantee shall document the basis for such determination prior

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to providing CDBG funds for the activity.

[60 FR 56914, Nov. 9, 1995]

Subpart E—Special Purpose Grants

§ 570.400 General.

(a) *Applicability.* The policies and procedures set forth in subparts A, C, J, K, and O of this part shall apply to this subpart, except to the extent that they are specifically modified or augmented by the contents of this subpart, including specified exemptions described herein. The HUD Environmental Review Procedures contained in 24 CFR part 58 also apply to this subpart, unless otherwise specifically provided herein.

(b) *Data.* Wherever data are used in this subpart for selecting applicants for assistance or for determining grant amounts, the source of such data shall be the most recent information available from the U.S. Bureau of the Census which is referable to the same point or period of time.

(c) *Review of applications for discretionary assistance—(1) Review components.* An application for assistance under this subpart shall be reviewed by HUD to ensure that:

(i) The application is postmarked or received on or before any final date established by HUD;

(ii) The application is complete;

(iii) Required certifications have been included in the application; and

(iv) The application meets the specific program requirements listed in the FEDERAL REGISTER Notice published in connection with a competition for funding, and any other specific requirements listed under this subpart for each of the programs.

(2) *Timing and review.* HUD is not required by the Act to review and approve an application for assistance or a contract proposal within any specified time period. However, HUD will attempt to complete its review of any application/proposal within 75 days.

(3) *Notification to applicant/proposer.* HUD will notify the applicant/proposer in writing that the applicant/proposal has been approved, partially approved,

or disapproved. If an application/proposal is partially approved or disapproved, the applicant/proposer will be informed of the basis for HUD's decision. HUD may make conditional approvals under § 570.304(d).

(d) *Program amendments.* (1) Recipients shall request prior written HUD approval for all program amendments involving changes in the scope or the location of approved activities.

(2) Any program amendments, whether or not they require HUD approval, must be fully documented in the recipient's records.

(e) *Performance reports.* Any performance report required of a discretionary assistance recipient shall be submitted in the form specified in this subpart, in the award document, or (if the report relates to a specific competition for an assistance award) in a form specified in a Notice published in the FEDERAL REGISTER.

(f) *Performance reviews and findings.* HUD may review the recipient's performance in carrying out the activities for which assistance is provided in a timely manner and in accordance with its approved application, all applicable requirements of this part and the terms of the assistance agreement. Findings of performance deficiencies may be cause for appropriate corrective and remedial actions under § 570.910.

(g) *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 § 570.910 fail to remedy a recipient's performance deficiencies, and the deficiencies are sufficiently substantial, in the judgment of HUD, to warrant sanctions.

(h) *Publication of availability of funds.* HUD will publish by Notice in the FEDERAL REGISTER each year the amount of funds available for the special purpose grants authorized by each section under this subpart.

[50 FR 37525, Sept. 16, 1985, as amended at 56 FR 18968, Apr. 24, 1991]

§ 570.401 Community adjustment and economic diversification planning assistance.

(a) *General*—(1) *Purpose.* The purpose of this program is to assist units of general local government in non-entitlement areas to undertake the planning of community adjustments and economic diversification activities, in response to physical, social, economic or governmental impacts on the communities generated by the actions of the Department of Defense (DoD) defined in paragraph (a)(2) of this section.

(2) *Impacts.* Funding under this section is available only to communities affected by one or more of the following DoD-related impacts:

(i) The proposed or actual establishment, realignment, or closure of a military installation;

(ii) The cancellation or termination of a DoD contract or the failure to proceed with an approved major weapon system program;

(iii) A publicly announced planned major reduction in DoD spending that would directly and adversely affect a unit of general local government and result in the loss of 1,000 or more full-time DoD and contractor employee positions over a five-year period in the unit of general local government and the surrounding area; or

(iv) The Secretary of HUD (in consultation with the Secretary of DoD) determines that an action described in paragraphs (a)(2)(i)–(iii) of this section is likely to have a direct and significant adverse consequence on the unit of general local government.

(3) *Form of awards.* Planning assistance will be awarded in the form of grants.

(4) *Program administration.* HUD will publish in the FEDERAL REGISTER early in each fiscal year the amount of funds to be available for that fiscal year for awards under this section. HUD will accept applications throughout the fiscal year, and will review and consider for funding each application according to the threshold and qualifying factors in paragraphs (f) and (g) of this section.

(b) *Definitions.* In addition to the definitions in § 570.3 of this part, the following definitions apply to this section:

(1) *Adjustment planning.* Generally, developing plans and proposals in direct response to contraction or expansion of the local economy, or changes in the physical development or the social conditions of the community, resulting from a DoD-generated impact. Typically, this planning includes one or more of the following tasks: Collecting, updating, and analyzing data; identifying problems; formulating solutions; proposing long- and short-term policies; recommending public- and private-sector actions to implement community adjustments and economic diversification activities; securing citizen involvement; and coordinating with Federal, State, and local entities with respect to the DoD-related impacts.

(2) *Community adjustment.* Any proposed action to change the physical, economic, or social infrastructure within the jurisdiction or surrounding area, directly and appropriately in response to the DoD-generated impact.

(3) *Contract.* (i) Any defense contract in an amount not less than \$5 million (without regard to the date on which the contract was awarded); and

(ii) Any subcontract that is entered into in connection with a contract (without regard to the effective date of the subcontract) and involves not less than \$500,000.

(4) *Defense facility.* Any private facility producing goods or services pursuant to a defense contract.

(5) *DoD.* The Department of Defense.

(6) *Economic diversification activities.* Any public or private sector actions to change the local mix of industrial, commercial, and service sectors, or the mix of business ventures within a sector, that are intended to mitigate decline in the local economy resulting from DoD-generated impacts or, in the case of expansion of a military installation or a defense facility, that are intended to respond to new economic growth spawned by that expansion.

(7) *Military installation.* Any camp, post, station, base, yard, or other jurisdiction of a military department that is located within any of the several

States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.

(8) *Realignment.* Any action that both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

(9) *Section 107* means section 107 of the Housing and Community Development Act of 1974, 42 U.S.C. 5307. Section 107(b)(6) was added by section 801 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

(10) *Section 2391(b).* The Department of Defense adjustment planning program as set out in 10 U.S.C. 2391(b).

(11) *Small Cities CDBG Program.* The Community Development Block Grant program for nonentitlement areas in which the States have elected not to administer available program funds. The regulations governing this program are set out in subpart F of this part.

(12) *Surrounding area.* The labor market area as defined by the Bureau of Labor Statistics that:

(i) Includes all or part of the applicant’s jurisdictions; and

(ii) Includes additional areas outside the jurisdiction.

(c) *Eligible applicants.* Any unit of general local government, excluding units of general government that are entitlement cities or are included in an urban county, and which does not include Indian Tribes.

(d) *Eligible activities.* Activities eligible for adjustment planning assistance include, generally:

(1) Initial assessments and quick studies of physical, social, economic, and fiscal impacts on the community;

(2) Preliminary identification of potential public and private sector actions needed for the community to initiate its response;

(3) If timely, modification of the applicant’s current comprehensive plan or any functional plan, such as for housing, including shelter for the homeless, or for transportation or other physical infrastructure;

(4) If timely, modification of the applicant’s current economic plans and

programs, such as for business development, job training, or industrial or commercial development;

(5) Preparation for and conduct of initial community outreach activities to begin involving local citizens and the private sector in planning for adjustment and diversification;

(6) Environmental reviews related to DoD-related impacts;

(7) Initial identification of and coordination with Federal, State and local entities that may be expected to assist in the community's adjustment and economic development; and with State-designated enterprise zones, and Federal empowerment zones and enterprise communities when selected and announced.

(8) Any other planning activity that may enable the community to organize itself, establish a start-up capacity to plan, propose specific plans and programs, coordinate with appropriate public or private entities, or qualify more quickly for the more substantial planning assistance available from DoD.

(e) *Ineligible activities.* Activities ineligible for adjustment planning assistance are:

(1) Base re-use planning.

(2) Site planning, architectural and engineering studies, feasibility and cost analyses and similar planning for specific projects to implement community adjustment or economic diversification, unless as last resort funding for those applicants which are unable to obtain planning assistance from other sources.

(3) Planning by communities which are encroaching on military installations.

(4) Demonstration planning activities intended to evolve new planning techniques for impacted communities.

(5) Any planning activity proposed to supplement or replace planning that has been or is being assisted by the DoD Sec. 2391(b) adjustment planning program.

(6) Any other planning activity the purpose of which is not demonstrably in direct response to a DOD-related impact triggered by one or more of the four criteria specified in paragraph (a)(2) of this section.

(f) *Threshold requirements.* No application will qualify for funding unless it meets the following requirements:

(1) Verification by HUD that the applicant is a unit of general government in a nonentitlement area.

(2) Verification by HUD and DoD that a triggering event described in paragraph (a)(2) of this section has occurred or will occur.

(3) With respect to communities affected by the 49 base closings and 28 realignments listed by the 1991 Base Closure and Realignment Commission, verification by DoD that it has provided no prior funding and that the applicant may benefit from start-up planning assistance from HUD.

(4) Determination by HUD that the proposed planning activities are eligible.

(5) Determination by HUD that the submission requirements in paragraph (h) of this section have been satisfied.

(g) *Qualifying factors.* HUD will make funding decisions on qualified applications on the basis of the factors listed below, in the order of such applications received, while program funds remain available. HUD will also request and consider advice from DoD's Office of Economic Assistance concerning the relative merits of each application.

(1) The adequacy of the applicant's initial assessment of actual or probable impacts on the community and the surrounding area;

(2) The adequacy and appropriateness of the start-up planning envisioned by the applicant in response to the impacts;

(3) The type, extent, and adequacy of coordination that the applicant has achieved, or plans to achieve, in order to undertake planning for community adjustment and economic diversification.

(4) The cost-effectiveness of the proposed budget to carry out the planning work envisioned by the applicant;

(5) The capability of the organization the applicant proposes to do the planning;

(6) The credentials and experience of the key staff the applicant proposes to do the planning;

(7) The presence of significant private sector impact, as measured by the