AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(e) *Appropriateness of dwelling unit to family size.* This part may not be construed to require a PHA to offer a dwelling in a designated project to any family who is not of appropriate family size for the dwelling unit. The temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size.

(f) *Prohibition of evictions.* Any tenant who is lawfully residing in a dwelling unit in a public housing project may not be evicted or otherwise required to vacate the unit because of the designation of the project, or because of any action taken by HUD or the PHA in accordance with this part.

(g) *Prohibition of coercion to accept supportive services.* As with other HUD-assisted housing, no disabled family or elderly family residing in designated housing may be required to accept supportive services made available by the PHA under this part.

(h) *Availability of grievance procedures in 24 CFR part 966.* The grievance procedures in 24 CFR part 966, subpart B, which applies to public housing tenants, is applicable to this part.

PART 954—INDIAN HOME PROGRAM

Subpart A—General Provisions

Sec.
954.1 Overview.
954.2 Definitions.
954.3 Waivers.
954.4 Other Federal requirements.

Subpart B—Applying for Assistance

954.100 General.
954.101 Allocation of funds.
954.102 Eligible applicants.
954.103 Housing strategy.
954.104 Performance thresholds.
954.105 Criteria for selection.
954.106 Announcement of competition.
954.107 Grant conditions.
954.108 Project amendment.

Subpart C—Eligible Activities and Affordability

954.300 Eligible activities.
954.301 Religious organizations.
954.302 Income determinations.
954.303 Eligible project costs.
954.304 Eligible administrative costs.
954.305 Tenant-based rental assistance.
954.306 Rental housing: qualification as affordable housing and income targeting.
954.307 Homeownership: qualification as affordable housing.
954.308 Prohibited activities.

Subpart D—Project Requirements

954.400 Maximum per-unit subsidy amount.
954.401 Property standards.
954.402 Tenant and participant protections.

Subpart E—Program Administration

954.500 Repayment of investment.
954.501 Grantee responsibilities; written agreements; monitoring.
954.502 Applicability of uniform administrative requirements.
954.503 Audit.
954.504 Closeout.
954.505 Recordkeeping.
954.506 Performance reports.
954.507 Submission of project completion reports.

Subpart F—Performance Reviews and Sanctions

954.600 Performance reviews.
954.601 Corrective and remedial actions.
954.602 Notice and opportunity for hearing; sanctions.

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

SOURCE: 61 FR 32223, June 21, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 954.1 Overview.

This part implements the Indian HOME Investment Partnerships Program. In general, under the Indian HOME Investment Partnerships Program, HUD awards funds competitively to eligible applicants to provide more affordable housing. Grantees may use HOME funds to carry out projects through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Grantees are able to provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

§ 954.2 Definitions.

Adjusted income. See 24 CFR part 950.

Annual income. See 24 CFR part 950.

Area Office of Native American Programs (ONAP). See 24 CFR part 950.

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

Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate program under §882.106(a)(3) of this title for a designated municipality, county, or similar locality, which apply to the whole IHA jurisdiction.

Family. See 24 CFR part 950.

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

Homeownership means ownership in fee simple title or a leasehold interest of not less than 50 years (including 25 years, automatically renewable for an additional term of 25 years) in a one-to-four unit dwelling or in a condominium unit, ownership or membership in a cooperative, or equivalent form of ownership approved by HUD. The ownership interest may be subject only to the restrictions on resale required under §954.307(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the tribe; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

Household means one or more persons occupying a housing unit.

Housing includes site constructed, modular, manufactured housing and housing lots.

HUD. See 24 CFR part 950.

Indian housing authority (IHA). See 24 CFR part 950.

Low-income family See 24 CFR part 950.

Monthly adjusted income. See 24 CFR part 950.

Monthly income. See 24 CFR part 950.

NOFA means notice of funding availability.

Project means housing developed, acquired, or assisted with HOME funds, and the improvement of this housing. It includes the site on which the housing is located and all of the HOME-assisted activities associated with the building and the site.

Project completion means that all necessary title transfer requirements and construction work have been performed and the project complies with the requirements of this part (including the property standards adopted under §954.401); the final drawdown has been disbursed for the project; a Project Completion Report has been submitted and a final accounting of project expenses is provided by the grantee as prescribed by HUD. For tenant-based rental assistance, it also means the final drawdown has been disbursed for the project and the final payment certification has been submitted and processed as prescribed by HUD.

Secretary means the Secretary of Housing and Urban Development.

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 may contain either food preparation facilities or sanitary facilities, or both. Alternatively, sanitary facilities may be located outside the unit and be shared by tenants in the project. SRO does not include facilities for students.

Subgrantee means a public agency or nonprofit organization retained by the grantee under a written agreement to administer all or a portion of the grantee's program for its HOME grant. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subgrantee. The grantee's selection of a subgrantee 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.

Transitional housing means housing that—

(1) Is designed to provide housing and 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 grantee before occupancy.

Very low-income family. See 24 CFR part 950.

§ 954.3 Waivers.

Upon determination of good cause, HUD may waive any provision of this part not required by statute. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

§ 954.4 Other Federal requirements.

(a) *Equal opportunity*. (1) *Section 282*. Pursuant to the requirements of Section 282 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12832), no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds. In addition, HOME funds must be made available in accordance with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(2) *Civil Rights Act*. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex, or national origin in the sale or rental of housing, and Executive Order 11063 (27 FR 11527, 3 CFR 1959–1963 Comp., p. 652), which provides for equal opportunity in housing, do not apply to grantees exercising recognized powers of self-government. Indian tribes and tribal organizations applying on behalf of Indian tribes that do not exercise recognized powers of self-government must make HOME funds available in accordance with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Executive Order 11063.

(b) *Indian Civil Rights Act*. The Indian Civil Rights Act (title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that ''no Indian tribe in exercising powers of self-government shall. . . deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.'' The Indian Civil Rights Act (ICRA) applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government.

(c) *Indian preference requirements*. (1) *Applicability*. HUD has determined that grants under this part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(i) Preference and opportunities for training and employment shall be given to Indians; and

(ii) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(2) *Definitions*. (i) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) defines ''Indian'' to mean a person who is a member of an Indian tribe and defines ''Indian tribe'' to mean any Indian tribe, band, nation, or other organized group or community including any Alaska native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(ii) In section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452) ''economic enterprise'' is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines ''Indian organization'' to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(3) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

(4) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(i) Each grantee shall:

(A) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(B) Use a two-stage preference procedure, as follows:

(*1*) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid or proposal announcement limited to Indian-owned firms.

(*2*) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(C) Develop, subject to area ONAP one-time approval, the grantee's own method of providing preference.

(ii) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(A) Re-bid the contract, using any of the methods described in paragraph (d)(1) of this section; or

(B) Re-bid the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(C) If one approvable bid is received, request area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(iii) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(iv) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation and the bidding or proposal documents.

(v) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(A) Evidence showing fully the extent of Indian ownership and interest;

(B) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(C) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(vi) The grantee shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(A) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance

Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible preferences and opportunities for training and employment shall be given to Indians, and preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(B) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.

(C) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(D) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(5) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods enacted and approved in a manner described in this section.

(i) Each complaint shall be in writing, signed, and filed with the grantee.

(ii) A complaint must be filed with the grantee no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(iii) Upon receipt of a complaint, the grantee shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(iv) Within 20 calendar days of receipt of a complaint, the grantee shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The grantee shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the grantee. The decision of the grantee shall constitute final administrative action on the complaint.

(d) *Environmental review.* The Indian tribe 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. The grantee shall also be responsible for compliance with flood insurance, coastal barrier resource and airport clear zone requirements under 24 CFR 58.6.

(e) *Displacement, relocation, and acquisition.* (1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the grantee 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.

(2) *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:

(i) 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.

(ii) Appropriate advisory services, including reasonable advance written notice of—

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) 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

(D) The provisions of paragraph (e)(2)(i) of this section.

(3) *Relocation assistance for displaced persons.* (i) *General.* A displaced person (defined in paragraph (e)(3)(ii) 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.

(ii) *Displaced Person.* (A) For purposes of paragraph (c) of this section, the term *displaced person* means a person (family individual, business, private 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:

(*1*) After notice by the owner to move permanently from the property, if the move occurs on or after:

(*i*) The date of the submission of an application to the grantee or HUD, if the applicant has site control and the application is later approved; or

(*ii*) The date the grantee approves the applicable site, if the applicant does not have site control at the time of the application; or

(*2*) Before the date described in paragraph (e)(3)(ii)(A)(*1*) of this section, if the grantee or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(*3*) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*i*) 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: the tenant's monthly rent before such agreement and estimated average monthly utility costs; or the total tenant payment, as determined under 24 CFR part 5, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(*ii*) The tenant is required to relocate temporarily, does not return to the building/complex, and either: the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or other conditions of the temporary relocation are not reasonable; or

(*iii*) 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.

(B) Notwithstanding paragraph (e)(3)(ii)(A) of this section, a person does not qualify as a *displaced person* if:

(*1*) 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 or tribal law (or state law, which may apply if the grantee is not exercising recognized powers of self-government), or other good cause, and the grantee 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.

(*2*) 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;

(*3*) The person is ineligible under 49 CFR 24.2(g)(2); or

(*4*) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(C) The grantee may, at any time, ask HUD to determine whether a displacement is or would be covered by this part.

(iii) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (e)(3) 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.

(4) *Optional relocation assistance.* The grantee 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 (e)(3) of this section. The grantee may also provide relocation assistance to persons covered under paragraph (e)(3) of this section beyond that required. For any such assistance that is not required by tribal law (or state law, which may apply if the grantee is not exercising recognized powers of self-government), the grantee 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.

(5) *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.

(6) *Appeals.* A person who disagrees with the grantee'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 grantee.

(7) *Responsibility of grantee.* (i) The grantee must certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply.

(ii) The cost of required relocation assistance is an eligible project cost. This cost also may be paid from tribal funds, or funds available from other sources.

(f) *Labor.* (1) *General.* (i) 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 (42 CFR 327–332).

(ii) The contract for construction must contain these wage provisions if HOME funds are used for any project costs (as defined in subpart C of this part), including construction or non-construction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project phase 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.

(iii) Grantees, 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. Grantees must require certification as to compliance with the provisions of this section before making any payment under such contract.

(2) *Volunteers.* The prevailing wage provisions of paragraph (f)(1) 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.

(3) *Sweat equity.* The prevailing wage provisions of paragraph (f)(1) 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.

(4) *Force account.* (i) The grantee is responsible for compliance with regulatory requirements in the use of grantee work forces for construction or renovation activities performed as part of the activities funded under this part. The grantee must provide for its files the following:

(A) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(B) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be used;

(C) Information showing that the workers to be used are, or will be, listed on the grantee payroll and are employed directly by the grantee.

(ii) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part or returned to HUD promptly.

(iii) Insurance coverage for force account workers and activities shall, where applicable, include worker's compensation, public liability, property damage, builder's risk, and vehicular liability.

(iv) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(v) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section.

(vi) In force account there is no contract. If the grantee which has received the HOME grant to construct the housing units performs the construction work using force account, i.e., with its own employees, the work is not covered by Davis-Bacon and related Acts. If the grantee contracts out the work or part of the work, that work is covered.

(g) *Lead-based paint.* Housing assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Grantees are responsible for testing and abatement activities.

(h) *Conflict of interest.* (1) *Applicability.* (i) The conflict of interest provisions in 24 CFR part 84 and 24 CFR 85.36 apply to the procurement of supplies, equipment, construction, and services by grantees and their subgrantees.

(ii) The provisions of this section apply to all cases not governed by 24 CFR part 84 and 24 CFR 85.36. These cases include the acquisition and disposition of real property and the provision of assistance by the grantee, by subgrantees, or to individuals, housing developers, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation of housing).

(2) *Conflicts prohibited.* The general rule is that no persons described in paragraph (h)(3) of this section who have or had any functions or responsibilities with respect to activities assisted under this part, or who are in a position to participate in a decision, or

gain inside information about such activities, may obtain a financial interest or benefit from these activities. Further, these persons may not have an interest in any contract, subcontract, or agreement concerning such activities; and these persons may not, during their employment or tenure in office and for one year thereafter, have an interest in the proceeds from these activities, either for themselves or for those with whom they have family or business ties. This paragraph does not apply to approved eligible administrative or personnel costs.

(3) *Persons covered.* The conflict of interest provisions of paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or subgrantee receiving HOME funds.

(4) *Exceptions requiring HUD approval.* (i) *Threshold requirements.* Upon the written request of a grantee, HUD may grant an exception to the provisions of paragraph (h)(2) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the HOME program and the effective and efficient administration of the grantee's project. An exception may be considered only after the grantee has provided the following:

(A) A disclosure of the nature of the possible 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

(B) An opinion of the grantee's attorney that the interest for which the exception is sought would not violate tribal laws on conflict of interest (or State law on conflict of interest, which may apply if the grantee is not exercising recognized powers of self-government).

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the grantee has satisfactorily met the requirements of paragraph (h)(4)(i) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(A) Whether the exception would provide a significant cost benefit or essential expert knowledge to the project which would otherwise not be available;

(B) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(C) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(2) of this section;

(D) Whether undue hardship will result, either to the grantee or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and

(E) Any other relevant considerations.

(5) *Circumstances under which the conflict prohibition does not apply.* (i) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of tribal (or State) laws on conflict of interest would result, the prohibition does apply.

(ii) A public disclosure of the nature of the grant assistance to be provided and the specific basis for the selection of the proposed beneficiaries must be made prior to the submission of an application to HUD. Evidence of this disclosure must be provided as a component of the application.

(i) *Debarment and suspension.* As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., sub-contractors) to include the certification in appendix B of 24 CFR part 24 (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction) in any proposal submitted in connection with the lower tier transactions. A grantee may rely on the certification, unless it knows the certification is erroneous.

Subpart B—Applying for Assistance

§ 954.100 General.

For each fiscal year, HUD will provide funds for the Indian HOME program, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. The funds will be awarded competitively and will be made available pursuant to a NOFA published in the FEDERAL REGISTER, in accordance with the requirements of this part.

§ 954.101 Allocation of funds.

Unless HUD determines for administrative convenience based on the amount of HOME funds available to hold a nationwide competition, HOME funds will be allocated to the HUD Area ONAPs responsible for the Indian HOME program competition based upon relative need for housing as measured by the most recent and reliable data available.

§ 954.102 Eligible applicants.

(a) Eligible applicants for HOME funds for Indian tribes are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaska native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450). Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply for funds on behalf of any Indian Tribe, band, group, nation, or Alaska native village eligible under that Act when one or more of these entities have authorized the tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs or Indian Health Service, as appropriate.

(c) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities.

(d) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaska native village, as provided in paragraph (a) of this section, or as a tribal organization, as provided in paragraph (b) of this section, by the application submission date.

§ 954.103 Housing strategy.

Grantees are not required to submit a housing strategy to receive HOME funds. However, the application must demonstrate how the proposed project(s) will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.

§ 954.104 Performance thresholds.

Applicants must have the administrative capacity to undertake the project proposed, including systems of internal control necessary to administer these projects effectively. In addition, an applicant that has participated in the HOME program must have performed adequately. In cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance prior to submitting a HOME application to HUD. The Area ONAP will determine whether or not a grantee is eligible to participate in a particular funding round. Examples of deficient performance may include unresolved serious audit findings and failure to initiate a previous grant.

§ 954.105 Criteria for selection.

There are four categories of projects that may be funded under the HOME Indian program: housing rehabilitation; acquisition of housing; new housing construction; and tenant-based rental assistance. Each project must be evaluated using the following three criteria:

(a) *Project need and design.* The degree to which the proposed project addresses the housing need(s) of the grantee as identified in the application, and the degree to which the proposed project is feasible while maximizing benefits to low-income families.

(b) *Planning and implementation.* The degree to which the financial, administrative, and legal actions necessary to undertake the proposed project have been considered and addressed in the application, and the degree to which the grantee has the administrative staff to carry out the project successfully.

(c) *Leveraging.* The degree to which other sources of assistance, including mortgage insurance, State funds, other Federal grants, and private contributions, are used in conjunction with HOME funds to carry out the proposed project.

§ 954.106 Announcement of competition.

A NOFA will describe the maximum points for each of the selection criteria and any special factors to be evaluated in awarding points under the selection factors. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition and any maximum amount of individual awards.

[Approved by the Office of Management and Budget under OMB control number 2577–0191]

§ 954.107 Grant conditions.

HUD may impose reasonable conditions on grant awards.

§ 954.108 Project amendment.

(a) Grantees shall request prior HUD approval for all project amendments.

(b) HUD can approve an amendment to a project if:

(1) The amendment is due to factors beyond the control of the grantee; and

(2) The request for approval for a project amendment which involves $100,000 or more includes all application components required by the NOFA published for the last application cycle (not necessarily the year in which the project was rated and ranked) and the modified project scores high enough to have been funded in the competition for the last application cycle. A rating equal to or greater than the lowest rating received by a funded project during the last rating cycle must be attained by the modified project. The request for approval of an amendment for a project which involves less than $100,000 does not have to include the components which address the selection criteria. It does require a description of and the reason for the modification.

(c) Approval of an amendment request is subject to the following:

(1) Demonstration by the grantee of the capacity to promptly complete the modified or new project.

(2) The preparation of an amended or new environmental review in accordance with Part 58 of this title, if there is a significant change in the scope or location of approved project.

(d) If a project amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for amendment shall be deobligated by HUD and recaptured.

Subpart C—Eligible Activities and Affordability

§ 954.300 Eligible activities.

(a) *Eligible activities.* (1) *General.* HOME funds may be used by a grantee to provide incentives to develop and support affordable *rental* housing and *homeownership* affordability and to provide payment of reasonable administrative and planning costs. The housing must be permanent or transitional housing, and includes permanent housing for disabled homeless persons, and single-room occupancy housing. The specific eligible costs for these activities are set forth in § 954.303 and § 954.304.

(2) Acquisition of vacant land or demolition must be undertaken only as an integral part of a particular HOME new construction project.

(3) Manufactured housing. Purchase and/or rehabilitation of a manufactured housing unit qualifies as affordable housing only if, at the time of project completion, the unit:

(i) Is situated on a permanent foundation (except—for rehabilitation not involving purchase—when assisting existing unit owners who rent the lot on which their unit sits);

(ii) Is connected to permanent utility hook-ups;

(iii) Is located on land that is held in fee-simple title, land-trust, or long-term ground lease with a term at least equal to that of the appropriate affordability period;

(iv) Meets the construction standards established under 24 CFR part 3280 if produced after June 15, 1976. If the unit was produced prior to June 16, 1976, it must comply with applicable tribal, State or local codes; and

(v) In cases where the owner of a manufactured housing unit does not hold fee-simple title to the land on which the unit is located, the owner may be assisted in purchasing the land under provisions governing rehabilitation not involving purchase.

(b) *Forms of assistance.* A grantee may invest HOME funds as equity investments, interest-bearing loans or advances, noninterest-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 grantee has the right to establish the terms of assistance, subject to the requirements of this part.

§ 954.301 Religious organizations.

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

§ 954.302 Income determinations.

Whenever a grantee makes a determination under this part based on family income or adjusted family income, it must use the definitions of annual income, adjusted income, monthly income, and monthly adjusted income, as those terms are defined in 24 CFR part 950, except when determining the income of a homeowner for an owner-occupied rehabilitation project, the equity in the homeowner's principal residence is excluded from ''Net Family Assets.''

§ 954.303 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 grantee and the Model Energy Code referred to in § 954.401;

(2) For rehabilitation, costs:

(i) To meet the applicable rehabilitation standards of the grantee or correcting substandard conditions (minimally, the housing quality standards at § 882.109 of this title), to make essential improvements including energy-related repairs or improvements, improvements necessary to permit the use by handicapped persons, and the abatement of lead-based paint hazards, as required by § 954.4, and to repair or replace major housing systems in danger of failure; and

(ii) To refinance existing debt secured by a single-family owner-occupied unit when loaning HOME funds to rehabilitate the unit, if the overall housing costs of the borrower will be reduced and made more affordable.

(3) For both new construction and rehabilitation, costs to demolish existing structures and for improvements to the project site that are in keeping with improvements of surrounding, standard projects, and costs to make utility connections. The ''site'' of the improvements may include property adjacent to or near the immediate site of the

housing if this property and the housing are owned by the same entity (e.g., the housing is owned—at least until sold to homebuyers—by the grantee and the housing and the improvements are located on a reservation). If the site improvements will benefit other housing (existing or future) in addition to housing assisted with the particular Indian HOME grant, only a pro-rated share of the site improvements may be charged against the HOME grant. Site improvements include roads, streets, sidewalks, curbs, gutters, and connections to utilities, such as storm and sanitary sewers, water supply, gas, and electricity, and the pro rata development cost of facilities for water supply and sewerage collection utilities.

(4) For new construction or substantial rehabilitation (an expenditure of $25,000 or more per home) 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 operating expenses, reserve for replacement payments, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended when the reserve terminates must be returned to the grantee's account and shall be reprogrammed for other activities eligible under this part or returned to HUD promptly.

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

(c) *Related soft costs.* Other reasonable and necessary costs incurred by the owner 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, builder and developer fees;

(3) Costs of a project audit that the grantee may require with respect to the development of a specific project; and

(4) Costs to pay impact fees that are charged to all housing.

(d) *Relocation costs.* Costs of relocation payments and other relocation assistance for permanently and temporarily relocated individuals, families, businesses, private nonprofit organizations, and farm operations where assistance is required under § 954.4 or determined by the grantee to be appropriate under § 954.4.

(e) *Costs related to tenant-based rental assistance.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family.

§ 954.304 Eligible administrative costs.

Eligible administrative costs means reasonable and necessary costs, as described in OMB Circular A–87, (available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G–2200, Washington, DC 20503; Telephone, (202) 395–7332)) incurred by the grantee and related to the planning and execution of HOME activities assisted in whole or in part with funds provided under this part. The grantee may use up to 15 percent of the HOME funds for the payment of eligible administrative costs.

§ 954.305 Tenant-based rental assistance.

(a) *General.* A grantee may use HOME funds for tenant-based rental assistance only if the grantee selects families in accordance with written tenant selection policies and criteria that are consistent with the purpose of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d). The grantee may select eligible families currently residing in units that are designated for rehabilitation or acquisition under the grantee's HOME program without requiring that the family meet the written tenant selection policies and written criteria. Families so

selected may use the tenant-based assistance in the rehabilitated or acquired unit or in other qualified housing.

(b) *Program operation.* The grantee may operate the program, or may contract with another 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.

(c) *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 grantee and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a grantee 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.

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

(e) *Lease requirements.* The lease must comply with the requirements in § 954.402 of this part.

(f) *Maximum subsidy.* (1) The amount of the monthly assistance that a grantee 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 grantee and 30 percent of the family's monthly adjusted income.

(2) The grantee must establish a minimum dollar amount tenant contribution to rent.

(3) The grantee's rent standard for a 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) for the unit size, nor more than the section 8 fair market rent or HUD-approved community-wide exception rent (in effect when the grantee adopts its rent standard amount) for the unit size. Alternatively, the grantee's rent standard for a unit size may be based on local market conditions. Further, a grantee may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable section 8 fair market rent by up to 10 percent for 20 percent of units assisted.

(g) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the performance requirements and acceptability criteria set forth in § 882.109 of this title.

(h) *Use of section 8 assistance.* In any case where assistance under section 8 of the United States Housing Act of 1937 becomes available to a grantee, 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.

(i) *Security deposits.* (1) A grantee 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 grantee provides any other tenant-based rental assistance under this section.

(2) The relevant tribe, 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 grantee may pay the funds directly to the tenant or to the landlord.

(4) The lease between a tenant and an owner of rental housing for which HOME security deposit assistance is provided must comply with the requirements of § 954.402.

(5) HOME funds for security deposits may be provided as a grant or a loan. If they are provided as a loan, the provisions at § 954.501 for repayment of HOME investments apply.

§ 954.306 Rental housing: qualification as affordable housing and income targeting.

(a) *Rent limitation.* A rental housing project (including the non-owner-occupied units in housing purchased with HOME funds in accordance with § 954.306) qualifies as affordable housing under this part only if the project:

(1) Bears rents not greater than the lesser of—

(i) The section 8 fair market rent for existing housing for comparable units in the area as established by HUD under § 888.111 of this title, less the monthly allowance for the utilities and services (excluding telephone and cable TV) to be paid by the tenant; or

(ii) A rent that does not exceed 30 percent of the adjusted income of a family whose gross income equals 65 percent of the median income for the area, as determined by HUD, with adjustment for number of bedrooms in the unit, except that HUD may establish income ceilings higher or lower than 65 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 costs or section 8 fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or grantee must subtract a monthly allowance for any utilities and services (excluding telephone and cable TV) to be paid by the tenant. HUD will provide average occupancy costs per unit and adjusted income assumptions to be used in calculating the maximum rent allowed under this paragraph (a)(1)(ii) of this section;

(2) Has, in the case of projects with three or more rental units, not less than 20 percent of the units—

(i) Occupied by very low-income families who pay as a contribution toward rent (excluding any Federal, State, or tribal rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by HUD. To obtain the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or grantee multiplies the annual adjusted income of the tenant family by 30 percent and divides by 12 and, if applicable, subtracts a monthly allowance for the utilities and services (excluding telephone and cable TV) to be paid by the tenant; or

(ii) Occupied by very low-income families and bearing rents not greater than 30 percent of the gross income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustment 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's findings that such variations are necessary because of prevailing levels of construction costs or section 8 fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or grantee must subtract a monthly allowance for any utilities and services (excluding telephone and cable TV) to be paid by the tenant. HUD will provide average occupancy per unit assumptions to be used in calculating the maximum rent allowed under paragraph (a)(2)(ii) of this section;

(3) Is occupied only by households that qualify as low-income families;

(4) Is not refused for leasing to a holder of a certificate of family participation under 24 CFR part 882 (rental certificate program) or a rental voucher under 24 CFR part 887 (rental voucher program) or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable HOME tenant-based assistance document; and

(5) Will remain affordable without regard to the term of any mortgage or the transfer of ownership, pursuant to deed restrictions, covenants running with the land, or other mechanisms approved by HUD, for not less than the appropriate period, beginning after project completion, as specified in the following table, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of

foreclosure. The tribe 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 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 of business ties, obtains an ownership interest in the project or property.

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	15
New construction or acquisition of newly constructed housing	20

(b) *Rent schedule and utility allowances.* The grantee must review and approve rents proposed by the owner for units with ''flat rents,'' i.e., units subject to the maximum rent limitations in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(2)(ii) of this section, and, if applicable, must review and approve, for all units subject to the maximum rent limitations paragraph (a) of this section, the monthly allowances, proposed by the owner, for utilities and services to be paid by the tenant. The owner must reexamine the income of each tenant household living in lower income units at least annually. The maximum monthly rent must be recalculated by the owner and reviewed and approved by the grantee annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for low-income units is subject to the provisions of outstanding leases; 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.

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraphs (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and 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. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under tribal, State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this part for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986 (26 U.S.C. 7805).

(d) *Adjustment of qualifying rent.* HUD may adjust the qualifying rent established for a project under paragraph (a)(1) of this section, 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. Adjustments in section 8 fair market rents and in median income over time should help maintain the financial viability of a project within the qualifying rent standard in paragraph (a)(1) of this section. Regardless of changes in fair market rents and in median income over time, the qualifying rents are not required to be lower than the HOME rent for the project in effect at the time of project commitment.

§ 954.307 Homeownership: qualification as affordable housing.

(a) *Purchase with or without rehabilitation.* Housing that is for purchase by a family qualifies as affordable housing

only if the housing: (1)(i) Has an initial purchase price that does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

(ii) Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards in § 954.401, that does not exceed the limit described in paragraph (a)(1)(i) of this section.

(2) Is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase; and

(3) Is subject—for minimum periods of: 5 years where the per unit amount of HOME funds provided is less than $15,000; 10 years where the per unit amount of HOME funds provided is $15,000 to $40,000; and 15 years where the per unit amount of HOME funds provided is greater than $40,000—to resale restrictions, as described in paragraph (a)(3)(i) of this section, or recapture provisions, as described in paragraph (a)(3)(ii) of this section, that are established by the grantee and determined by HUD to be appropriate.

(i) Resale restrictions must make the housing available for subsequent purchase only to a low income family that will use the property as its principal residence; and

(A) Provide the owner with a fair return on investment, including any improvements; and

(B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must 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 grantee 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 reacquires title to the property.

(ii) A grantee's recapture provisions must provide for the recapture of the full HOME investment out of net proceeds, except as provided in paragraph (a)(3)(ii)(B) of this section.

(A) Net proceeds means the sales price minus loan repayment and closing costs.

(B) If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment, principal payments, and any capital improvement investment, the grantee's recapture provisions may allow the HOME investment amount that must be recaptured to be reduced. The HOME investment amount may be reduced pro rata based on the time the homeowner has owned and occupied the unit measured against the required affordability period; except that the grantee's recapture provisions may not allow the homeowner to recover more than the amount of the homeowner's downpayment, principal payments, and any capital improvement investment.

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the first homebuyer to buy the dwelling unit. This includes any HOME assistance, whether a direct subsidy to the homebuyer or a construction or development subsidy, that reduced the purchase price from fair market value to an affordable price. The recaptured funds must be used to carry out HOME-eligible activities. If no HOME funds will be subject to recapture, the provisions at § 954.306(a)(3)(i) apply.

(D) Upon recapture of the HOME funds used in a single-family, homebuyer project with two to four units, the affordability period on rental units may be terminated at the discretion of the tribe.

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

(1) The value of the property, after rehabilitation, does not exceed 95% of

the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; 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.

§ 954.308 Prohibited activities.

(a) HOME funds may not be used to—

(1) Provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies; except as authorized under § 954.302; (2) Provide nonfederal matching contributions required under any other Federal program;

(3) Provide assistance in connection with programs authorized under part 950 (Indian Housing Programs) of this title;

(4) Provide assistance to eligible low-income housing under part 248 (Prepayment of Low Income Housing Mortgages) of this title; or

(5) 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 grantee under § 954.306 or § 954.307. However, additional HOME funds may be committed to a project up to one year after project completion (see § 954.500), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 954.400.

(b) Grantees may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, grantees may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications.

Subpart D—Project Requirements

§ 954.400 Maximum per-unit subsidy amount.

The amount of HOME funds that a grantee may invest on a per-unit basis in affordable housing may not exceed the total development cost standard for the area, as issued by HUD under 24 CFR 950.220. These total development cost standards are available from HUD Area ONAPs.

§ 954.401 Property standards.

(a) Housing that is assisted with HOME funds, at a minimum, must meet the housing quality standards in § 882.109 of this title. In addition, housing that is newly constructed or substantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The grantee must have written standards for rehabilitation. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(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 ownership interest, the grantee 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 for completion of the transitional housing tenancy period.

(3) The housing must meet the applicable property standards (at a minimum, the housing quality standards in § 882.109 of this title) not later than 2 years after transfer of the ownership interest.

§ 954.402 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 tribal law (or State law, which may apply if the Indian tribe is not exercising recognized powers of self-government);

(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, or tribal law (or State law, which may apply if the grantee is not exercising recognized powers of self-government); or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

(d) *Maintenance and replacement.* An owner of rental housing assisted with HOME funds must maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(e) *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 applicant's ability to perform the obligations of the lease;

(3) Give reasonable consideration to the housing needs of families that would have a preference under section 6(c)(4)(A) of the U.S. Housing Act of 1937 (Federal selection preferences for admission to public housing); and

(4) Provide for—

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

(ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

Subpart E—Program Administration

§ 954.500 Repayment of investment.

(a) HOME 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. The amount of HOME funds expended on housing assisted with HOME funds that does not meet the affordability requirements for the period specified in § 954.306 or § 954.307, as applicable, must be repaid in accordance with paragraph (b) of this section.

(b) Any repayment of HOME funds (including repayment required if the housing no longer qualifies as affordable housing), and any payment of interest or other return on the investment of HOME funds, that is made before grant close out must be deposited in the grantee's account and used in accordance with the requirements of this part. A grantee may retain repayments, interest, and other return on investment of HOME funds that are made after grant closeout if the grantee agrees to use the funds for eligible activities.

(c) HUD will recapture HOME funds that are not expended within five years after the last day of the month in which it obligated the funds.

(d) *Termination before completion.* If a project is terminated before its completion, whether voluntarily by the grantee or otherwise, an amount equal to the HOME funds disbursed for the project must be paid by the grantee to its HOME account. If the HOME funds were disbursed by HUD, the amount must be paid to HUD; if the HOME funds were disbursed from the grantee's account, the amount must be paid to the grantee's account. If the amount is not repaid, the grantee will be subject to actions under § 954.600 *Performance reviews,* § 954.601 *Corrective and remedial actions,* and § 954.602 *Notice and opportunity for hearing; sanctions.*

§ 954.501 Grantee responsibilities; written agreements; monitoring.

(a) *Responsibilities.* The grantee is responsible for ensuring that HOME funds are used in accordance with all program requirements. The use of subgrantees and contractors does not relieve the grantee of this responsibility.

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity (e.g., for-profit housing developer, nonprofit organization, homeowner, or IHA) the grantee must enter into a written agreement with the entity ensuring compliance with the requirements of this part. A subgrantee and a contractor must also enter into a written agreement before it disburses funds to any entity. The agreement remains in effect during the period for affordability under § 954.306 or § 954.307, as applicable, or if the entity is a subgrantee, during any period that the entity has control over HOME funds.

(c) *Provisions in written agreement.* At a minimum, the written agreement must include applicable provisions concerning the following items:

(1) *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 grantee effectively to monitor performance under the agreement.

(2) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 954.306 or § 954.307, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

(3) *Repayments.* If the entity is a subgrantee, the agreement must state if repayment, interest, and other return on the investment of HOME funds are to be remitted to the grantee or are to be retained for additional eligible activities by the entity.

(4) *Uniform administrative requirements.* If the entity is a subgrantee, the agreement must require the entity to comply with applicable uniform administrative requirements, as described in § 954.502.

(5) *Project requirements.* The agreement must require compliance with project requirements in § 954.400 through § 954.402 of this part, as applicable in accordance with the type of project assisted.

(6) *Housing quality standard.* The agreement must require owners of rental housing assisted with HOME funds to maintain the housing in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of the agreement.

(7) *Other program requirements.* The agreement must require the entity to carry out each activity in compliance with all Federal laws and regulations described in § 954.4.

(8) *Conditions for religious organizations.* Where applicable, the agreement must include the conditions prescribed in § 954.301 for the use of HOME funds by religious organizations.

(9) *Requests for disbursements of funds.* The agreement must specify that the entity 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.

(10) *Reversion of assets.* If the entity is a subgrantee, the agreement must specify that upon expiration of the agreement, the entity must transfer to the grantee any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(11) *Records and reports.* The agreement must specify the particular records that must be maintained and any information or reports that must be submitted in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(12) *Enforcement of the agreement.* The agreement must provide for a means of enforcement by the grantee or the intended beneficiaries. In addition, the agreement must specify remedies for breach of the provisions of the agreement. If the entity is a subgrantee, the agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the entity materially fails to comply with any term of the agreement, and that the agreement may be terminated for convenience in accordance with 24 CFR 85.44.

(13) *Duration of the agreement.* The agreement must specify that the agreement is in effect for the period of affordability required by the grantee under § 954.306 or § 954.307.

(d) *Monitoring.* The grantee is responsible for managing the day-to-day operations of its HOME program, for monitoring the performance of all entities receiving HOME funds from the grantee to assure compliance with the requirements of this part, and for taking appropriate action when performance problems arise.

(1) Not less than annually, the grantee must review the activities of owners of rental housing assisted with HOME funds to assess compliance with the requirement of this part, as set forth in the written agreement under paragraphs (b) and (c) of this section. For multifamily housing, each review must include on-site inspection to determine compliance with housing codes and the requirements of this part. For rental housing containing one- to four-dwelling units, an on-site review must be made once within each two-year period. The results of each review must be included in the grantee's performance report.

(2) Not less than annually, the grantee must review the performance of each contractor and subgrantee.

§ 954.502 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 grantee and any governmental subgrantee receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.21, 85.22, 85.26, 85.32, 85.33, 85.35, 85.36, 85.43, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–122 (available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G–2200, Washington, DC 20503; Telephone, (202) 395–7332)) and the following requirements of 24 CFR part 84 apply to subgrantees receiving HOME funds that are private nonprofit organizations: §§ 84.12, 84.22, 84.23, 84.25, 84.51, 84.52, and 84.71.

(c) *Alternatives to bonding.* For construction contracts that exceed the amount for small purchase under 24 CFR 85.36, each contractor shall be required to provide bid guarantees and adequate assurance of performance and payment acceptable to HUD in accordance with 24 CFR 85.36(h). Performance and payment bonds for 100 percent of the total contract price are acceptable to HUD. There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the

grantee. Alternative methods to provide performance and payment assurance may include:

(1) Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(2) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.

§ 954.503 Audit.

Audits of the grantee and subgrantees must be conducted in accordance with 24 CFR parts 44 and 45, as applicable.

§ 954.504 Closeout.

(a) A grant will be closed out when all the following criteria have been met:

(1) All funds to be closed out have been drawn down and expended for completed project costs, or funds not drawn down and expended have been deobligated by HUD;

(2) Project Completion Reports for all projects using funds to be closed out have been submitted. HUD will use data contained in the project completion reports in the preparation of the Closeout Reports;

(3) The grantee has been reviewed and audited and HUD has determined that all requirements, including affordability (for which also see paragraph (b)(2) of this section), are met or all monitoring and audit findings have been resolved.

(i) A signed copy of the grantee's most recent audit report—covering all funds to be closed out—must be received by HUD. If the audit review by the Department of Interior (DOI) results in significant delays, the Area ONAP may request a signed copy of the audit prior to DOI review and use it as the document needed prior to closeout. If the audit does not cover all funds to be closed out, the closeout may proceed, provided the grantee agrees in the Closeout Report that any costs paid with the funds that were not audited must be subject to the grantee's next single audit and that the grantee may be required to repay to HUD any disallowed costs based on the results of the audit.

(ii) The on-site monitoring of the grantee by the Area ONAP must include verification of data reflected in the Closeout Report and reconciliation of any discrepancies which may exist between HUD data and grantee records.

(b) The Closeout Report contains the final data on the funds and must be signed by the grantee and HUD. In addition, the report must contain:

(1) A provision regarding unaudited funds (''closeout subject to audit''), required by paragraph (a)(3)(i) of this section; and

(2) A provision requiring the grantee to continue to meet the requirements applicable to housing projects for the period of affordability specified in § 954.306 or § 954.307, to keep records demonstrating that the requirements have been met and to repay the HOME funds, as required by § 954.500, if the housing fails to remain affordable for the required period.

§ 954.505 Recordkeeping.

(a) *General.* Each grantee must establish and maintain sufficient records to enable HUD to determine whether the grantee has met the requirements of this part. Records must be kept in a manner that identifies the source and use of funds for each project.

(b) *Period of record retention.* (1) Except as provided in paragraphs (b)(2), (b)(3), or (b)(4) of this section, records must be retained for three years after closeout of the funds.

(2) If any litigation, claim, negotiation, audit, or other action has been started before the expiration of the regular period specified in paragraph (b)(1) of this section, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

(3) Records regarding project requirements (§ 954.400 to § 954.402) and other federal requirements (§ 954.4) that apply for the duration of the period of affordability, as well as the written agreement and inspection and monitoring reports must be retained for three

years after the required period of affordability specified in § 954.306 or § 954.307, as applicable.

(4) Records covering displacements and acquisition must be retained for at least three 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 § 954.4(e).

(c) *Access to records.* (1) The grantee must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable tribal laws (or State law, which may apply if the Indian tribe is not exercising recognized powers of self-government) regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, or any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the grantees and subgrantees, in order to make audits, examinations, excerpts, and transcripts.

[Approved by the Office of Management and Budget under OMB control number 2577–0191]

§ 954.506 Performance reports.

(a) *Management reports.* Each grantee must submit management reports on its HOME program in such format and at such time as HUD may prescribe. Each grantee must submit a ''Financial Status Report,'' SF–269A, short form, at the same time it submits the Semi-Annual Performance Report, described below. A separate ''Financial Status Report'' is to be submitted for each Indian HOME program grant that the grantee has received.

(b) *Semi-Annual performance report.* (1) *Submission.* A grantee must submit a semi-annual performance report on its HOME activities to the responsible Area ONAP at such time as HUD may prescribe. Single copies of the report must be provided to the public upon request at no charge.

(2) *Elements of the semi-annual performance report.* The report must contain such information and be in such form as HUD may prescribe, and must include at least the following:

(i) A report on the proposed use of HOME funds from the grant application, consisting of the number of additional housing opportunities to be created for low-income and very low-income families, by project category (housing rehabilitation, acquisition of housing, new housing construction, and tenant-based rental assistance);

(ii) A report on the actual use of HOME funds, consisting of the number of additional housing opportunities created for low-income and very low-income families, by project category (housing rehabilitation, acquisition of housing, new housing construction, and tenant-based rental assistance). This includes a report on project income and includes data on the amount of repayments, interest, and other return on investment of HOME funds and the use of the funds for projects, including number of projects assisted, and characteristics of tenants and owners;

(iii) An assessment of the effectiveness of the efforts in providing the preferences and opportunities under section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); and

(iv) Data on the total number of households (families and individuals) and business and nonprofit organizations displaced as a result of investments of HOME funds, including the cost of relocation payments (moving expenses and replacement housing), and the number and cost of real property acquisitions.

[Approved by the Office of Management and Budget under OMB control number 2577–0191]

§ 954.507 Submission of project completion reports.

A Project Completion Report must be submitted to HUD within 120 days of the final drawdown request for the project. If a satisfactory Project Completion Report is not submitted by the due date, HUD will suspend further HOME disbursements and grant approvals for the grantee. Disbursements and grant approvals will remain suspended until a satisfactory Project Completion Report is received.

[Approved by the Office of Management and Budget under OMB control number 2577–0191]

Subpart F—Performance Reviews and Sanctions

§ 954.600 Performance reviews.

(a) *General.* HUD will review the performance of each grantee 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 grantee's records and reports, findings from on-site monitoring, audit reports, and information generated from fund requisition systems. Where applicable, HUD may also consider relevant information pertaining to a grantee'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 grantee. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the grantee.

(b) *Standards for comprehensive performance review.* A grantee's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine whether the grantee:

(1) Has committed the HOME funds in the HUD account as required and expended the funds as required; and

(2) Has met the requirements of the grant agreement and this part, particularly eligible activities and affordability.

§ 954.601 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 954.600 and in taking corrective and remedial actions. However, HUD may temporarily suspend payments based upon HUD's preliminary determination that the grantee has failed to comply with the requirements of the Act, regulations, or grant agreement if suspension is necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Performance review.* (1) If HUD determines preliminarily that the grantee has not met a requirement of this part, the grantee 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 grantee 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 § 954.602.

(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 request the grantee 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) Cancelling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;

(iv) Reprogramming HOME funds in the HUD account that have not yet been expended from affected activities to other eligible activities;

(v) Reimbursing the HUD account in any amount not used in accordance with the requirements of this part; and

(vi) Suspending disbursement of funds in the HUD account for affected activities.

(2) HUD may also—

(i) Change the method of payment from an advance to reimbursement basis; and

(ii) Take other remedies that may be legally available.

§ 954.602 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a

grantee 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 HUD account by the amount of any expenditures that were not in accordance with the requirements of this part; and

(2) HUD may—

(i) Prevent withdrawals from the HUD account for activities affected by the failure to comply; or

(ii) Prohibit the grantee from competing for HOME funds under § 954.104; *Provided, however,* that HUD may on due notice suspend payments from the HUD account 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 grantee.

(1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent by first class mail. The notice shall specify:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this part;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Chief Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Chief Docket Clerk;

(iv) The action HUD proposes to take and that the authority for this action is § 954.602; and

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify the Chief Docket Clerk, Office of Administrative Law Judges, of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery before the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) *Ex parte communications.* An *ex parte* communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. *Ex parte* communications are prohibited except where the purpose and content

of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an *ex parte* communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized *ex parte* communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.