

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

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

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

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

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

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

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

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

(ii) The participating jurisdiction or its instrumentality must execute, with the owner of the housing (or, if the participating jurisdiction is the owner, with the manager or developer), a written agreement that imposes and enumerates all of the affordability requirements from § 92.252 and § 92.253(a) and (b) (Tenant protections), or § 92.254, whichever are applicable; the property standards requirements of § 92.251; and income determinations made in accordance with § 92.203. This written agreement must be executed before any match contributions may be made.

(iii) A participating jurisdiction must establish a procedure to monitor HOME match-eligible housing to ensure continued compliance with the re-

quirements of §§ 92.203 (Income determinations), 92.252 (Qualification as affordable housing: Rental housing), 92.253(a) and (b) (Tenant protections) and 92.254 (Qualification as affordable housing: Homeownership). No other HOME requirements apply.

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

(v) Match contributions to mixed-use or mixed-income projects that contain affordable housing units will be recognized only if the contribution is made to the project's affordable housing units.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28929, May 28, 1997]

#### **§ 92.220 Form of matching contribution.**

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

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

(i) A cash contribution may be made by the participating jurisdiction, non-

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

(ii) A cash contribution may be made from program income (as defined by 24 CFR 85.25(b)) from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G) and the Housing Development Grant Program (24 CFR part 850), and from the Rental Rehabilitation Grant Program (24 CFR part 511) after all fiscal year Rental Rehabilitation grants have been closed out.

(iii) The grant equivalent of a below-market interest rate loan to the project that is not repayable to the participating jurisdiction's HOME Investment Trust Fund may be counted as a cash contribution, as follows:

(A) If the loan is made from funds borrowed by a jurisdiction or public agency or corporation the contribution is the present discounted cash value of the difference between the payments to be made on the borrowed funds and payments to be received from the loan to the project based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than funds borrowed by a jurisdiction or public agency or corporation, the contribution is the present discounted cash value of the yield foregone. In determining the yield foregone, the participating jurisdiction must use as a measure of a market rate yield one of the following, as appropriate:

(1) With respect to one- to four-unit housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points;

(2) With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points;

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

(4) With respect to housing receiving financing for rehabilitation, a rate equal to the 10-year Treasury note rate plus 400 basis points.

(iv) Proceeds of bonds that are not repaid with revenue from an affordable housing project (e.g., general obligation bonds) and that are loaned to a HOME-assisted or other qualified affordable housing project constitute a cash contribution under this paragraph.

(v) A cash contribution may be counted as a matching contribution only if it is used for costs eligible under §§ 92.206 or 92.209, or for the following (which are not HOME eligible costs): the cost of removing and relocating an ECHO housing unit during the period of affordability in accordance with § 92.258(d)(3)(ii), payments to a project reserve account beyond payments permitted by § 92.206(d)(5), operating subsidies, or costs relating to the portion of a mixed-income or mixed-use HOME-assisted project not related to the affordable housing units.

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

(ii) *Other charges or fees.* The value of fees or charges associated with the transfer or development of real estate

that are normally and customarily imposed or charged by public or private entities, which are waived or foregone, in whole or in part, in a manner that achieves affordability of HOME-assisted projects, may be counted as match. Fees and charges under this paragraph do not include fees or charges for legal or other professional services; professional services which are donated, in whole or in part, are an eligible matching contribution in accordance with paragraph (a)(7) of this section.

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

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

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

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

exceed the amount of the Federal assistance used to acquire the property.

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

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

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

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

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

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

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

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

(8) The value of donated or voluntary labor or professional services (see §92.354(b)) in connection with the provision of affordable housing. A single

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rate established by HUD shall be applicable for determining the value of unskilled labor. The value of skilled labor or professional services shall be determined by the rate that the individual or entity performing the labor or service normally charges.

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

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

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

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

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

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

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

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

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28929, May 28, 1997; 62 FR 44840, Aug. 22, 1997]

### § 92.221 Match credit.

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

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

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

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

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

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

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