

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****Office of the Secretary****24 CFR Part 92**

[Docket No. FR-3840-I-01]

RIN 2501-AB95

**HOME Investment Partnerships
Program**

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the existing interim rule for the HOME Investment Partnerships Program by making a number of clarifying and conforming changes that include: extending the interim rule expiration date; permitting loan guarantees as an eligible form of HOME assistance; allowing fees waived by private entities to qualify for match credit; increasing the flexibility of HOME rents when HOME funds and project-based rental assistance are used to assist the same units; clarifying the match status of CHDO project-specific, pre-development loans for which repayment is waived; allowing the use of tenant-based rental assistance (TBRA) for special needs populations; and replacing references to OMB Circular A-110 with references to the HUD rule at 24 CFR part 84 that adopted the revised OMB Circular.

DATES: Effective Date: August 11, 1995. Comments due date: September 11, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act Statement**

The information collection requirements for the HOME Investment Partnerships Program have been approved by the Office of Management

and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2501-0013. This interim rule does not contain additional information collection requirements.

II. Background

The HOME Investment Partnerships Program (HOME) was enacted under Title II (42 U.S.C. 12701-12839) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, approved November 28, 1990). Implementing regulations for the HOME Program are at 24 CFR part 92.

The original statute has been amended three times since enactment. The Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992) included a substantial number of amendments to the HOME Program. These amendments were implemented in rules published on December 22, 1992 (57 FR 60960), June 23, 1993 (58 FR 34130), and April 19, 1994 (59 FR 18626). The HUD Demonstration Act (Pub. L. 103-120, approved October 27, 1993) provided additional authorization for HOME Program technical assistance. The Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 103-233, approved April 11, 1994) included an additional number of amendments to the HOME Program. These amendments were implemented in a rule published on August 26, 1994 (59 FR 44258).

The purpose of this publication is twofold: (1) an interim rule which implements clarifying and conforming changes in several areas of the rule, including loan guarantees as an eligible activity, increased flexibility with regard to HOME rents when HOME funds and project-based rental assistance are used to assist the same units, replacing references to OMB Circular A-110 with references to the HUD rule at 24 CFR part 84 that adopted the revised OMB Circular, and the amount of HOME subsidy subject to recapture in the sale of a homebuyer unit when net proceeds are insufficient to repay the full subsidy amount; and (2) a preamble which solicits comments on various policy issues in anticipation of preparing a final rule. The preamble will discuss the interim rule changes first before soliciting comments on a wide variety of issues by section of the rule. While comments are being solicited on specific sections of the rule, the Department welcomes comments on any part.

Interim Rule Changes

A change at § 92.2, Definitions, would revise the definition of single room occupancy (SRO) to clarify neither food preparation nor sanitary facilities are required in the unit for an existing residential structure or hotel. This change clarifies that the Department does not consider a hotel a conversion of nonresidential space, which requires one or both facilities in the unit.

Section 92.5 was added to implement a Department-wide policy for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. The rule provides that the expiration period may be extended by notice published in the **Federal Register**. Because the expiration date for the HOME interim rule is currently June 30, 1995, and a final rule is not expected before that date, such a notice has been published extending the expiration date for an additional year. This rule makes the conforming change to § 92.5.

The Department, based on a number of comments it has already received in revising § 92.205, Eligible activities: general, has added a new paragraph (b)(2) to specify that loan guarantees are included within the phrase "other forms of assistance" in § 92.205(b) (the existing paragraph (b) is now designated (b)(1)). The addition of a loan guarantee feature was prompted by both HUD and participating jurisdictions' interest in effectively leveraging additional private funds to finance HOME projects. By expanding eligible activities to permit loan guarantees, it is the participating jurisdiction's choice and responsibility to properly underwrite and manage loans made under the guarantee. There is no implied Federal guarantee when a jurisdiction chooses to undertake this activity. The Department has considered how a loan guarantee could be structured and how to relate the expense involved to a specific HOME project. This will be done as follows: A PJ or its subrecipient would estimate the number of loans it potentially wants to guarantee and then establish the loan guarantee as a project in the HOME Cash and Management Information System (C/MIS). The amount of funding from HOME or other resources required for the loan guarantee would be based on the PJ's current default experience with its portfolio or, in the absence of empirical data, a reasonable estimate of the default rate. In general, the Department expects that the specific terms of the loan guarantee fund would be established by the PJ or subrecipient based on negotiations with local lenders and/or secondary market entities. The

rule provides that the amount of HOME funds in the loan guarantee account may not exceed 20 percent of the total outstanding principal amount guaranteed, except that a minimum account balance may be maintained. A minimum balance is permitted to initiate the loan guarantee program and to meet varying local and secondary market requirements for loan guarantees. When a PJ has determined (1) the percentage of outstanding loan principal to be set aside in the loan guarantee account from HOME or other resources (referred to as the "fixed percentage"), and (2) a minimum balance needed to initiate the guarantee and ensure private sector financing (referred to as the "minimum balance"), PJ would draw down funds equal to the amounts guaranteed, at the time each loan is guaranteed, until the minimum balance is reached in the loan guarantee account, and additional funds would be drawn down when necessary to maintain the account at the fixed percentage of the outstanding amount guaranteed.

For example, in establishing a loan guarantee amount for a pool totaling 200 loans (estimated principal value of \$4.0 million), a PJ may determine that local and/or secondary market lenders require the project account to be maintained at a level of 10 percent of the outstanding balance of loans guaranteed, with a minimum balance amount of \$100,000. The PJ would draw down funds into its loan guarantee account at the time the loan is guaranteed equal to the amount of each guaranteed loan until the minimum balance amount of \$100,000 is deposited in the account (e.g., if five \$20,000 loans are guaranteed, the loan guarantee account would be funded to the minimum balance amount of \$100,000). Additional amounts of HOME funds could be added when the amount deposited is less than 10 percent of the loans outstanding. The number of loans initially planned for a loan guarantee project may not be increased. Housing projects financed with HOME guaranteed loans must meet HOME requirements. Once the planned number of loan guarantees is made, or if the loan guarantee activity ends before that number is reached, information must be reported in the C/MIS on the units financed under the loan guarantee project. If a participating jurisdiction wishes to continue with loan guarantee activity, it would set up another loan guarantee project.

Based on numerous requests to use tenant-based rental assistance for the special needs populations, the Department in this rule is making substantial alterations to § 92.211,

Tenant-based rental assistance, outlining under what circumstances that might be done. Conforming changes are made to § 92.210, Tenant-based rental assistance: security deposits.

With regard to match requirements, the Department is clarifying in this rule, at § 92.218(f), that CHDO project specific pre-development loans for which repayment is waived are not required to be matched.

Another change amends paragraph (a)(2) in § 92.220, Forms of match, to recognize as a matching contribution fees and charges, normally and customarily associated with real estate transactions or development, that are charged by private institutions or businesses but are being waived or reduced. Some examples of such fees or charges include lender origination or servicing fees; title examination, insurance or recordation fees; or private mortgage insurance fees.

To permit Federal and State project-based assistance programs to work more effectively with the HOME Program, § 92.252, Qualification as affordable housing and income targeting: Rental housing, now explicitly states that when HOME funds are combined with Federal or State project-based assistance, the rents may be set at the maximum rent allowable under the Federal or State programs. The Department is allowing this flexibility for those units occupied by families below 50 percent of median income and paying not more than 30 percent of their adjusted income as a contribution toward rent, which are the provisions reflected in the "low HOME rent" provision of the rule at § 92.252(a)(2). The Department is aware of State or local programs which provide ongoing "shelter allowances" or other rental subsidies to meet the needs of special populations. The Department invites commenters to describe these situations, whether HOME rents are an obstacle to overall project feasibility and possible solutions.

A rule change at § 92.254, Qualification as affordable housing: homeownership, offers participating jurisdictions additional flexibility to structure recapture provisions to meet local program design and market conditions. With this change, the Department is publishing three examples of recapture guidelines that it would find acceptable.

The first example would authorize a PJ to forgive a portion of the HOME investment prorated over the time the homeowner has owned and occupied the unit measured against the required affordability period. For example: A homebuyer provides a \$3,000 downpayment, and a participating

jurisdiction provides a \$10,000 second mortgage loan to defray the cost of acquisition and rehabilitation of the homebuyer unit, which triggers a five-year period of affordability when the property is subject to the resale or recapture provisions. Currently, the HOME regulation would require that the full \$10,000 be subject to recapture and only if the net proceeds do not allow full recapture of the HOME subsidy plus the homeowner's investment, may the amount to be recaptured (\$10,000) be reduced based on the period of occupancy by the homebuyer. With this change in the regulation, the PJ could allow the amount subject to recapture to be reduced *during* the period of occupancy. If the homebuyer had to sell after living in the property for two-years of the five-year affordability period, two fifths of the HOME subsidy (\$4,000) could be written off. The amount subject to recapture would be \$6,000 even when the net proceeds are sufficient to both recapture the full HOME investment and enable the homeowner to recover his/her investment. Examples two and three assume that net proceeds (sales price minus loan repayment and closing costs) are insufficient to both recapture the HOME investment and enable the homeowner to recover his/her investment. Example two shows how the PJ can share the proceeds with the homeowner based on their relative investment in the property. Example three authorizes the PJ to permit homebuyers to recapture all of their investment including downpayment and capital improvements first before any return to the jurisdiction.

Alternatively, when net proceeds are insufficient, the participating jurisdiction could also permit homebuyers to recapture all their investment including downpayment and capital improvements first before any return to the jurisdiction.

In this same section of the rule, a clarifying change is being made at § 92.254(a)(4)(ii)(C) which describes the amounts of HOME funds provided per unit which trigger the periods that the property is subject to the recapture provision. The change being made would clarify that the amount in question is the per unit amount of HOME funds provided to the homebuyer. Many participating jurisdictions were counting both the direct subsidy to the homebuyer as well as the development subsidy when determining the affordability period. It should be noted that when resale provisions are used, the period of affordability is based on the total investment of HOME funds.

Finally, on September 13, 1994 (59 FR 47010), the Department published a final rule that adopted OMB's revised Circular A-110 at 24 CFR part 84. This rule makes conforming changes to replace references to Circular A-110 with references to 24 CFR part 84 at §§ 92.2 (in the definition of *Community housing development organization*), 92.356 (a)(1) and (a)(2), and 92.505(b).

Solicitation of Comments for the Final Rule

The Department is also taking this opportunity to solicit comments on the current interim rule in anticipation of preparing a final rule for the HOME Program. The current interim rule consists of all six interim rules which have been published for the program since its inception. The Department has received valuable public input on all those rules and has made many changes based on public comment. As the Department prepares the final HOME rule, it requests that commenters distinguish between issues that can be changed by regulation and those that would require legislative action.

To facilitate public review, the Department has made available the HOME statute and consolidated interim rule through the *American Communities Information Center at 1-800-998-9999*. Commenters may obtain copies of both the statute and rule by calling the information center.

The Department also presents a discussion of particular sections of the rule and raises specific questions which it requests that comments address, below:

Section 92.2 Definitions

Community housing development organization (CHDO)—The Department has received numerous comments on the definition of CHDO, with regard to purpose, composition, experience, and history. The Department invites further comment from State and local officials based on the experience of qualifying CHDOs and from nonprofits who have participated in the qualification process and have competed for CHDO setaside funds.

Homeownership—While ownership or membership in a cooperative has been included in the definition of homeownership, the Department is considering allowing participating jurisdictions to classify limited equity cooperative and/or mutual housing either as homeownership or rental housing based on State law. Comment is requested.

Project—The Department is considering changes to include in the definition of project: (1) new

construction subdivisions that cover more than a four block area, and (2) loan guarantee programs funded by the participating jurisdiction which by their nature cover loans to a number of units at diverse sites.

Sections 92.60-92.66 Insular Areas

The Department invites comments from insular area participants, who now have three years of program experience, as to whether changes are needed in the provisions that guide insular applications and operations.

Section 92.202 Site and Neighborhood Standards

The Department invites comment on the application of site and neighborhood standards and their effect on the siting of new construction projects.

Section 92.203 Income Determinations

Because continued affordability and eligibility were contemplated in HOME-assisted rental housing, the Department adopted the Section 8 definitions of income in 24 CFR part 813 for use in the HOME program. Recently, in an August 10, 1994 proposed rule in the **Federal Register**, the Department invited comment on income definitions in the Community Development Block Grant Program. The Department will consider those comments for the final HOME rule, but also invites additional comments on this subject.

Section 92.205 Eligible Activities: General

The Department has permitted the refinancing of single family properties under certain conditions but has not allowed refinancing of multifamily properties. Refinancing of multifamily projects has not generally been viewed as a net increase in the number of affordable housing units, a primary goal of the program. The Department would welcome comments regarding when and under what conditions multifamily refinancing might be permitted.

Sections 92.218-92.222 Match Requirements

The Department in this interim rule recognizes the waiver of fees or charges by private or public institutions as a source of match. The Department is open to additional public comment about other possible sources of match which meet the statutory tests of not being derived from Federal funds and being a true contribution to affordable housing. Should the Department control State and local contributions to social services provided in HOME-assisted or HOME-eligible housing as a source of match? Another issue on which the

Department requests comment is whether donated professional services should be valued at a higher rate than other volunteer labor currently valued at \$10 per hour. Comment on these and other possible sources of match are invited.

Section 92.251 Property Standards

The Department in implementing the HOME Program took note of the program's purpose to expand the supply of decent, safe, and sanitary housing, and adopted the Section 8 Housing Quality Standards as a minimum standard. The Department is open to suggestions as to whether a different standard might be more suitable, particularly as it relates to new construction. Should the Department adopt the Minimum Property Standards? Allow the PJ to adopt a written 'decent, safe and sanitary' standard? Keep the Section 8 HQS for tenant based rental assistance units only? Continue to require the Cost Effective Energy Standards for units with over \$25,000 in rehabilitation? Authorize emergency repairs to structures that may not meet housing quality standards? Comment is invited on the housing standards issue.

Section 92.254 Qualification as Affordable Housing: Homeownership

The Department in this interim rule takes further steps to make the recapture provisions of the rule more flexible. In recognizing an owner's investment in the property, the rule permits a greater return from net proceeds to the homeowner.

The Department also invites comment on the appraisal requirement to determine eligibility i.e. the property has an initial purchase price that does not exceed 95 percent of the median purchase price for the area. Alternative approaches to assure that HOME funds are invested only in modest housing are requested.

The Department also wishes comment on the permanent foundation requirement for manufactured housing when the owner owns both the unit and the land on which it is situated.

Section 92.257 Religious Organizations

In the August 26, 1994 interim rule, the Department modified this section to be more permissive with regard to control of a secular entity established by a religious organization. The Department invites further comment on this section of the rule.

Section 92.258 Limitation on the Use of HOME Funds With FHA Mortgage Insurance

When HOME funds are used in combination with FHA insurance, the period of affordability is extended to the term of the mortgage. The Department invites comments on this policy.

Subpart G, Sections 92.300-92.303 Community Housing Development Organizations

The Department has tried to implement the CHDO setaside with a view of these funds as an entitlement for CHDOs who "own, sponsor or develop" HOME projects. The Department invites comments on the "own, sponsor or develop" provisions set out in the rule and discussed in CPD Notice 94-01.

Subpart H, Other Federal Requirements

Over time the rule has been amended to reflect statutory changes with regard to environmental reviews and revised to reflect clarifications on other requirements. The Department invites comments on additional changes which might provide clarification or simplification of the requirements for PJs.

Subpart K, Program Administration

In preparing a final rule, the Department will be reviewing this subpart paying special attention to the sections on the cash and management information system, written agreements and monitoring. Comments on these and other sections are welcome.

III. Findings and Certifications

Justification for Interim Rulemaking

The Department has determined that this interim rule should be adopted without the delay occasioned by requiring prior notice and comment. This interim rule only makes a number of clarifying changes to existing provisions. As such, prior notice and comment are unnecessary under 24 CFR part 10. This rule is being published as an interim rule and not as a final rule because the HOME program regulation at 24 CFR part 92 has not yet been issued as a final rule.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m.

weekdays in the Office of the Rules Docket Clerk.

Regulatory Planning and Review

This interim rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the interim rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Regulatory Agenda

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23379) under Executive Order 12866 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that this interim rule does not have federalism implications concerning the division of local, State, and federal responsibilities. While the HOME Program interim rule amended by this interim rule was determined to be a rule with federalism implications and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this amending rule only makes limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this interim rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under this interim rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live

independently in mainstream American society. This interim rule would not, however, affect the institution of the family, which is requisite to coverage by the Order.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

List of Subjects in 24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, part 92 of title 24 of the Code of Federal Regulations, is amended as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701-12839.

2. Section 92.2 is amended by revising paragraph (6) of the definition of "Community housing development organization", and by revising the definition of "Single room occupancy (SRO) housing", to read as follows:

§ 92.2 Definitions.

* * * * *

Community housing development organization * * *

(6) Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems."

* * * * *

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

* * * * *

3. Section 92.5 is revised to read as follows:

§ 92.5 Expiration of interim rule.

This part shall expire and shall not be in effect after June 30, 1996, unless it is published as a final rule or the Department publishes a notice in the **Federal Register** to extend the effective date.

4. In § 92.205, paragraph (b) is revised to read as follows:

§ 92.205 Eligible activities: general.

* * * * *

(b) *Forms of assistance.* (1) A participating jurisdiction 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 participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

(2) A participating jurisdiction may invest HOME funds to guarantee loans made by lenders and, if required, the participating jurisdiction may establish a loan guarantee account with HOME funds. The amount of the loan guarantee account must be based on a reasonable estimate of the default rate on the guaranteed loans, but under no circumstances may the amount on deposit exceed 20 percent of the total outstanding principal amount guaranteed; except that the account may include a reasonable minimum balance. While loan funds guaranteed with HOME funds are subject to all HOME requirements, funds which are used to repay the guaranteed loans are not.

* * * * *

5. In § 92.210, paragraph (f) is revised to read as follows:

§ 92.210 Tenant-based rental assistance: security deposits

* * * * *

(f) The provisions at § 92.211 (a), (b), (c), (d), (f), (g) and (i), applicable to tenant-based rental assistance, are applicable to HOME security deposit assistance.

6. Section 92.211 is revised to read as follows:

§ 92.211 Tenant-based rental assistance.

(a) *General.* A participating jurisdiction may use HOME funds for tenant-based rental assistance only if the participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with §§ 91.225(d)(1), 91.325(d)(1), or 91.425(a)(2)(i) of this title, and specifies local market

conditions that lead to the choice of this option.

(b) *Tenant selection.* A participating jurisdiction may use HOME funds for tenant-based rental assistance in the following manner:

(1) *Federal preferences.* The participating jurisdiction selects families in accordance with written tenant selection policies and criteria that are consistent with the purposes 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 Housing Act of 1937 (42 U.S.C. 1437 et seq.). Selection policies and criteria meet the "reasonably related" requirement if at least 50 percent of the families assisted qualify, or would qualify in the near future without tenant-based rental assistance, for one of the three Federal preferences under section 6(c)(4)(A) of the Housing Act of 1937. These are families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families); families that are paying more than 50 percent of (gross) family income for rent; or families that are involuntarily displaced. [For FY 1995 only, a Federal preference is also given to families that include one or more adult members who are employed.]

(2) *Local Preferences for Individuals with Special Needs.* (i) The participating jurisdiction may establish a preference for individuals with special needs. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of services that may be most appropriate for persons with a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with disabilities who can benefit from such services.

(ii) The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's housing strategy or consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

(iii) Preferences cannot be administered in a manner that limits the opportunities of persons in a protected class. For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance.

(iv) To the extent that a participating jurisdiction is operating a tenant-based rental assistance program targeted exclusively to individuals with disabilities or to a specific category of individuals with disabilities, at least 50% of the individuals must qualify or would qualify in the near future for one of the three Federal preferences as described in paragraph (b)(1) of this section.

(3) *Existing tenants in the HOME-assisted projects.* A participating jurisdiction may select low-income families currently residing in the units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program without requiring that the family meet the written tenant selection policies and criteria. Families so selected may use the tenant-based assistance in the rehabilitated or acquired unit or in other qualified housing.

(c) *Portability of assistance.* A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.

(d) *Program operation.* A tenant-based rental assistance program must be operated consistently with the requirements of this section and § 92.210, if applicable. The participating jurisdiction may operate the program itself, or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family.

(e) *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a participating jurisdiction and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a participating jurisdiction and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

(f) *Rent reasonableness.* The participating jurisdiction must disapprove a lease if the rent is not reasonable, based on rents that are

charged for comparable unassisted rental units.

(g) *Lease requirements.* The lease must comply with the requirements in § 92.253 (a) and (b).

(h) *Maximum subsidy.* (1) The amount of the monthly assistance that a participating jurisdiction may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the participating jurisdiction and 30 percent of the family's monthly adjusted income.

(2) The participating jurisdiction must establish a minimum tenant contribution to rent.

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

(i) Local market conditions; or
 (ii) May not be less, for each unit size, than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the participating jurisdiction adopts its rent standard amount). (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under § 882.106(a)(3) of this title for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.) A participating jurisdiction may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

(i) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the performance requirements set forth in § 882.109 of this title. In addition, the housing must meet the acceptability criteria set forth in § 882.109 of this title, except for such variations as are proposed by the participating jurisdiction and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(j) *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 participating jurisdiction, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

7. In § 92.218, a new paragraph (f) is added to read as follows:

§ 92.218 Amount of matching contribution.

* * * * *

(f) HOME funds made available as project-specific assistance to community housing development organizations pursuant to § 92.301 are subject to matching requirements. HOME funds used for such assistance for which repayment is waived under the provisions of § 92.301(a)(3) or § 92.301(b)(3) are not required to be matched.

8. In § 92.220, paragraphs (a)(1)(ii)(A), (a)(2), and (a)(5) introductory text, are revised to read as follows:

§ 92.220 Form of matching contribution.

(a) * * *

(1) * * *

(ii) * * *

(A) If the loan is made from funds borrowed by a jurisdiction or public agency or corporation (including proceeds from general obligation debt), 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.

* * * * *

(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 State or local government operations but are waived, foregone, or deferred (including State low-income housing tax credits) in a manner that achieves affordability of housing assisted with HOME funds. 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. The amount of any real estate taxes may be based on post-improvement property value, using customary and reasonable means of establishing value. For taxes, fees, or charges that are given 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.* Amount of fees or charges normally and customarily imposed or charged by public or private institutions associated with the transfer or development of real estate but are waived or foregone, in

whole or in part, in a manner that achieves affordability of housing assisted with HOME funds. 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.

* * * * *

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

* * * * *

9. In § 92.252, paragraph (a)(2) is revised to read as follows:

§ 92.252 Qualification as affordable housing and income targeting: Rental housing.

(a) * * *

(2) * * *

(i)(A) Occupied by very low-income families whose rent does not exceed 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 (in a project that does not receive Federal or State project-based rental subsidy) that is subject to this limitation, the owner or participating jurisdiction multiplies the annual adjusted income of the tenant family by 30 percent and divides by 12 and, if applicable, subtracts a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant; or

(B) Occupied by very low-income families who pay as a contribution toward rent not more than 30 percent of the family's monthly adjusted income as determined by HUD if the units receive Federal or State project-based rental subsidy. The maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program; 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 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 participating jurisdiction must subtract a monthly allowance for any utilities and services (excluding telephone) 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;

(iii) If the rent determined under this paragraph (a)(2) is higher than the applicable rent under paragraph (a)(1) of this section, then the applicable maximum rent for units under this paragraph would be that calculated under paragraph (a)(1) of this section

except for units that receive Federal or state project-based rental assistance.

* * * * *

10. In § 92.254, paragraph (a)(4)(ii) is revised to read as follows:

§ 92.254 Qualification as affordable housing: homeownership.

(a) * * *

(4) * * *

(ii) A participating jurisdiction may structure the recapture provisions, subject to HUD approval, based on its program design and market conditions.

(A) The following methods of recapture would be acceptable to the Department:

(1) Recapture the entire amount of the HOME investment, except that the HOME investment amount may be

reduced prorata based on the time the homeowner has owned and occupied the unit measured against the required affordability period.

(2) If the net proceeds (i.e., the sales price minus loan repayment, other than HOME funds, and closing costs) are not sufficient to recapture the full (or a reduced amount as provided for in paragraph (a)(4)(ii)(A)(1) of this section) HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment, the participating jurisdiction's recapture provisions may share the net proceeds. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

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

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

(3) Alternatively, the PJ may also allow the homebuyer to recover all the homebuyer's investment (downpayment and capital improvements) first before recapturing the HOME investment.

(B) The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This is also the amount upon which the affordability period is based. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The recaptured funds must be used to carry out HOME-eligible activities. If no HOME funds will be subject to recapture, the provisions at § 92.254(a)(4)(i) apply.

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

discretion of the participating jurisdiction.

* * * * *

11. In § 92.356, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 92.356 Conflict of interest.

(a) * * *

(1) In the procurement of property and services by participating jurisdictions, state recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply.

(2) In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply. These cases include the acquisition and disposition of real property and the provision of assistance by the participating jurisdiction, by the state recipient, by subrecipients, or to individuals, housing developers, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation of housing).⁴

* * * * *

12. Section 92.505, is revised to read as follows:

§ 92.505 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, state recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32-85.34, 85.36, 85.44, 85.51, and 85.52, of this title.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A-122 and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are private nonprofit organizations: §§ 84.2, 84.5, 84.13-84.16, 84.21, 84.22, 84.26-84.28, 84.30, 84.31, 84.34-84.37, 84.40-84.48, 84.51, 84.60-84.62, 84.72, and 84.73, of this title.

Dated: May 16, 1995.

Henry G. Cisneros,
Secretary.

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⁴ See § 92.505 concerning the availability of OMB Circulars.