Attachment A
HOME Program Regulation Subpart A--General
92.2 Definitions
Subpart A--General

92.2 Definitions.

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

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

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

*Adjusted income* means see §92.203.

*Annual income* means see §92.203.

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

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

*Commitment* means:

1. The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with a State recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance; and has met the requirements to commit to a specific local project, as defined in paragraph (2) of this definition. (See §92.504(c) for minimum requirements for a written agreement.) An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (e.g., an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment. An agreement between the representative unit and a member unit of general local government of a consortium does not constitute a commitment.

2. *Commit to a specific local project* means:

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

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

(B) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is providing HOME funds to a family to acquire single family housing for homeownership or to a purchaser to acquire rental housing, the participating jurisdiction (or State recipient or subrecipient) and the family or purchaser have executed a written agreement under which HOME assistance will be provided for the purchase of the single family housing or rental housing and the property title will be transferred to the family or purchaser within six months of the agreement date.
If the project consists of tenant-based rental assistance, the participating jurisdiction (or State recipient, or subrecipient) has entered into a rental assistance contract with the owner or the tenant in accordance with the provisions of §92.209.

Community housing development organization means a private nonprofit organization that:

1. Is organized under State or local laws;
2. Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
3. Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:
   i. The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.
   ii. The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members;
   iii. The community housing development organization must be free to contract for goods and services from vendors of its own choosing; and
   iv. The officers and employees of the for-profit entity may not be officers or employees of the community housing development organization.

4. Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1 or 1.501(c)(4)-1), is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986, or if the private nonprofit organization is an wholly owned entity that is disregarded as an entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly owned by an organization that qualifies as tax-exempt), the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and meets the definition of “community housing development organization”;

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


7. Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

8. Maintains accountability to low-income community residents by:
   i. Maintaining at least one-third of its governing board’s membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, “community” may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and
   ii. Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

9. Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience who will work on projects assisted with HOME funds. For its first year of funding as a community housing development organization, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization. An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of §92.300(a)(2).
A nonprofit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization; and

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

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

**Displaced homemaker** means an individual who:

(1) Is an adult;

(2) Has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(3) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

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

**First-time homebuyer** means an individual and his or her spouse who have not owned a home during the three-year period prior to purchase of a home with assistance under the American Dream Downpayment Initiative (ADDI) described in subpart M of this part. The term first-time homebuyer also includes an individual who is a displaced homemaker or single parent, as those terms are defined in this section. An individual shall not be excluded from consideration as a first-time homebuyer on the basis that the individual owns or owned, as a principal residence during the three-year period, a dwelling unit whose structure is not permanently affixed to a permanent foundation in accordance with local or other applicable regulations or is not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with the codes for less than the cost of constructing a permanent structure.

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

**Homeownership** means ownership in fee simple title in a 1- to 4-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD.

(1) The land may be owned in fee simple or the homeowner may have a 99-year ground lease.

(i) For housing located in the insular areas, the ground lease must be 40 years or more.

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

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

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

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

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

**Household** means one or more persons occupying a housing unit.

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

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

Jurisdiction means a State or unit of general local government.

Low-income families means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.

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

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

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

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

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

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

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

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

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

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

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

(iii) Is likely to continue indefinitely;

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

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

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

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(1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;

(2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income (Program income does not include gross income from the use, rental or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, subrecipient or State recipient);

(3) Payments of principal and interest on loans made using HOME funds or matching contributions;

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

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

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

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

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

**Project completion** means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under §92.251); the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of §92.502(d) of this part, project completion occurs upon completion of construction and before occupancy. For tenant-based rental assistance, project completion means the final drawdown has been disbursed for the project.

**Reconstruction** means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment, except that housing that was destroyed may be rebuilt on the same lot if HOME funds are committed within 12 months of the date of destruction. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is rehabilitation for purposes of this part.

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

**Single parent** means an individual who:

(1) Is unmarried or legally separated from a spouse; and

(2) Has one or more minor children of whom the individual has custody or joint custody, or is pregnant.

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

**State** means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the state with regard to the provisions of this part; however, for purposes of the American Dream Downpayment Initiative (ADDI) described in subpart M of this part, the term “state” does not include the Commonwealth of Puerto Rico (except for FY2003 ADDI funds).
State recipient. See §92.201(b)(2).

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

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

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

Uniform Physical Condition Standards (UPCS) means uniform national standards established by HUD pursuant to 24 CFR 5.703 for housing that is decent, safe, sanitary, and in good repair. Standards are established for inspectable items for each of the following areas: site, building exterior, building systems, dwelling units, and common areas.

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

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

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

Subpart E—Program Requirements

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§92.20 Distribution of assistance.
§92.202 Site and neighborhood standards.
§92.203 Income determinations.
§92.204 Applicability of requirements to entities that receive a reallocation of HOME funds, other than participating jurisdictions.

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§92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs. (included in last section)
§92.209 Tenant-based rental assistance: Eligible costs and requirements.
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MATCHING CONTRIBUTION REQUIREMENT
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Note: Sections in bold included
Sections in regular print excluded.
Subpart E—Program Requirements
§92.202 Site and neighborhood standards.
(a) General. A participating jurisdiction must administer its HOME program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d-4), the Fair Housing Act (42 U.S.C. 3601 et seq., E.O. 11063 (3 CFR, 1959-1963 Comp., p. 652), and HUD regulations issued pursuant thereto; and promotes greater choice of housing opportunities.
(b) New rental housing. In carrying out the site and neighborhood requirements with respect to new construction of rental housing, a participating jurisdiction is responsible for making the determination that proposed sites for new construction meet the requirements in 24 CFR 983.57(e)(2) and (3).

§92.203 Income determinations.
(a) The HOME program has income targeting requirements for the HOME program and for HOME projects. Therefore, the participating jurisdiction must determine each family is income eligible by determining the family's annual income.

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

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

(ii) Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The statement must state that the family will provide source documents upon request.

(iii) Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

(2) For all other families (i.e., homeowners receiving rehabilitation assistance, homebuyers, and recipients of HOME tenant-based rental assistance), the participating jurisdiction must determine annual income by examining at least 2 months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(b) When determining whether a family is income eligible, the participating jurisdiction must use one of the following two definitions of “annual income”:

(1) Annual income as defined at 24 CFR 5.609 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR 5.603); or

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

(c) Although the participating jurisdiction may use either of the definitions of “annual income” permitted in paragraph (b) of this section to calculate adjusted income, it must apply exclusions from income established at 24 CFR 5.611. The HOME rents for very low-income families established under §92.252(b)(2) are based on adjusted income. In addition, the participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family. The participating jurisdiction may use only one definition for each HOME-assisted program (e.g., downpayment assistance program) that it administers and for each rental housing project.

(d) The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income shall include income from all persons in the household. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

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The participating jurisdiction is not required to re-examine the family's income at the time the HOME assistance is provided, unless more than six months has elapsed since the participating jurisdiction determined that the family qualified as income eligible.

The participating jurisdiction must follow the requirements in §5.617 when making subsequent income determinations of persons with disabilities who are tenants in HOME-assisted rental housing or who receive tenant-based rental assistance. [61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997; 66 FR 6224, Jan. 19, 2001; 78 FR 44665, July 24, 2013]

**ELIGIBLE AND PROHIBITED ACTIVITIES**

92.205 Eligible activities: General.

(a) **Eligible activities.**

(1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing. The specific eligible costs for these activities are set forth in §§92.206 through 92.209. The activities and costs are eligible only if the housing meets the property standards in §92.251 upon project completion.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing within the time frames established in paragraph (2) of the definition of “commitment” in §92.2.

(3) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding one or more units beyond the existing walls, in which case, the project is new construction for purposes of this part.

(4) **Manufactured housing.** HOME funds may be used to purchase and/or rehabilitate a manufactured housing unit, or purchase the land upon which a manufactured housing unit is located. Except for existing, owner-occupied manufactured housing that is rehabilitated with HOME funds, the manufactured housing unit must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

(b) **Forms of assistance.**

(1) A participating jurisdiction may invest HOME funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part and specifically approves in writing. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

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

(c) **Minimum amount of assistance.** The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is $1,000 times the number of HOME-assisted units in the project.

(d) **Multi-unit projects.** HOME funds may be used to assist one or more housing units in a multi-unit project.
Only the actual HOME eligible development costs of the assisted units may be charged to the HOME program. If the assisted and nonassisted units are not comparable, the actual costs may be determined based on a method of cost allocation. If the assisted and non-assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the HOME-assisted units can be determined by prorating the total HOME eligible development costs of the project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME-assisted units in the project.

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

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

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

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

92.206 Eligible project costs.
HOME funds may be used to pay the following eligible costs:
(a) Development hard costs. The actual cost of constructing or rehabilitating housing. These costs include the following:
(1) For new construction projects, costs to meet the new construction standards in §92.251;
(2) For rehabilitation, costs to meet the property standards for rehabilitation projects in §92.251;
(3) For both new construction and rehabilitation projects, costs:
(i) To demolish existing structures;
(ii) To make utility connections including off-site connections from the property line to the adjacent street; and
(iii) To make improvements to the project site that are in keeping with improvements of the surrounding, standard projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.
(4) For both new construction and rehabilitation of multifamily rental housing projects, costs to construct or rehabilitate laundry and community facilities that are located within the same building as the housing and which are for the use of the project residents and their guests.
(5) Costs to make utility connections or to make improvements to the project site, in accordance with the provisions of §92.206(a)(3)(ii) and (iii) are also eligible in connection with acquisition of standard housing.
(b) Refinancing costs. The cost to refinance existing debt secured by a housing project that is being rehabilitated with HOME funds. These costs include the following:
(1) For single-family (one- to four-family) owner-occupied housing, when loaning HOME funds to rehabilitate the housing, if the refinancing is necessary to reduce the overall housing costs to the borrower and make the housing more affordable and if the rehabilitation cost is greater than the amount of debt that is refinanced.
(2) For single family or multifamily projects, when loaning HOME funds to rehabilitate the units if refinancing is necessary to permit or continue affordability under §92.252. The participating jurisdiction must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. Regardless of the amount of HOME funds invested, the minimum affordability period shall be 15 years. The guidelines shall describe the conditions under which the participating jurisdictions will refinance existing debt. At minimum, the guidelines must:

(i) Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing;

(ii) Require a review of management practices to demonstrate that disinvestment in the property has not occurred, that the long-term needs of the project can be met and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated;

(iii) State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both;

(iv) Specify the required period of affordability, whether it is the minimum 15 years or longer;

(v) Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR 91.215(e)(2) or a Federally designated Empowerment Zone or Enterprise Community; and

(vi) State that HOME funds cannot be used to refinance single family or multifamily housing loans made or insured by any Federal program, including CDBG.

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

(d) Related soft costs. Other reasonable and necessary costs incurred by the owner or participating jurisdiction and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:

(1) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups. The costs may be paid if they were incurred not more than 24 months before the date that HOME funds are committed to the project and the participating jurisdiction expressly permits HOME funds to be used to pay the costs in the written agreement committing the funds.

(2) 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, attorney’s fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees.

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

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

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

(6) Staff and overhead costs of the participating jurisdiction directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers, e.g., housing counseling, may be charged to project costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project. For multi-unit projects, such costs must be allocated among HOME-assisted units in a reasonable manner and documented. Although these costs may be charged as project costs, these costs (except housing counseling) cannot be charged to or paid by low-income families.
(7) For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.

(8) Costs of environmental review and release of funds in accordance with 24 CFR part 58 which are directly related to the project.

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

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

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

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

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

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

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

§92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs. *(This Section is included in Attachment E.)*

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

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

(b) **General requirement**. A participating jurisdiction may use HOME funds for tenant-based rental assistance only if the participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with 24 CFR 91.225(d)(1), 91.325(d)(1), or 91.425(a)(2)(i), and specifies local market conditions that lead to the choice of this option.

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

1. **Low-income families**. Tenant-based rental assistance may only be provided to very low- and low-income families. The participating jurisdiction must determine that the family is very low- or low-income before the assistance is provided. During the period of assistance, the participating jurisdiction must annually determine that the family continues to be low-income.

2. **Targeted assistance**.
   
   (i) The participating jurisdiction may establish a preference for individuals with special needs (e.g., homeless persons or elderly persons) or persons with disabilities. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of nonmandatory services that may be most appropriate for persons with a special need or a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with special needs or disabilities who can benefit from such services. Participation may be limited to persons with a specific disability if necessary to provide as effective housing, aid, benefit, or services as those provided to others in accordance with 24 CFR 8.4(b)(1)(iv).

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

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

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

(v) Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a). For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance. Persons who are eligible for a preference must have the opportunity to participate in all programs of the participating jurisdiction, including programs that are not separate or different.

(3) **Existing tenants in the HOME-assisted projects.** A participating jurisdiction may select low-income families currently residing in housing units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program. Participating jurisdictions using HOME funds for tenant-based rental assistance programs may establish local preferences for the provision of this assistance. Families so selected may use the tenant-based assistance in the rehabilitated or acquired housing unit or in other qualified housing.

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

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

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

(g) **Tenant protections.** The tenant must have a lease that complies 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) The Section 8 Housing Choice Voucher Program (24 CFR Part 982).
(i) **Housing quality standards.** Housing occupied by a family receiving tenant-based assistance under this section must meet the requirements set forth in 24 CFR 982.401. The participating jurisdiction must inspect the housing initially and re-inspect it annually.

(j) **Security deposits.**

1. A participating jurisdiction may use HOME funds provided for tenant-based rental assistance to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units whether or not the participating jurisdiction provides any other tenant-based rental assistance under this section.

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

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

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

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

(k) **Program operation.** A tenant-based rental assistance program must be operated consistent with the requirements of this section. The participating jurisdiction may operate the program itself, or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family. In either case, the participating jurisdiction (or entity operating the program) must approve the lease.

(l) **Use of Section 8 assistance.** In any case where assistance under section 8 of the 1937 Act becomes available, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the HOME tenant-based rental assistance under this part. [61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997; 67 FR 61756, Oct. 1, 2002; 78 FR 44668, July 24, 2013]

§92.210 Troubled HOME-assisted rental housing projects.

(a) The provisions of this section apply only to an existing HOME-assisted rental project that, within the HOME period of affordability, is no longer financially viable. For purposes of this section, a HOME-assisted rental project is no longer financially viable if its operating costs significantly exceed its operating revenue. HUD may approve one or both of the actions described in paragraphs (b) and (c) of this section to strategically preserve a rental project after consideration of market needs, available resources, and the likelihood of long-term viability of the project.

(b) Notwithstanding §92.214, a participating jurisdiction may request and HUD may permit, pursuant to a written memorandum of agreement, a participating jurisdiction to invest additional HOME funds in the existing HOME-assisted rental project. The total HOME funding for the project (original investment plus additional investment) must not exceed the per-unit subsidy limit in §92.250(a). The use of HOME funds may include, but is not limited to, rehabilitation of the HOME units and recapitalization of project reserves for the HOME units (to fund capital costs). If additional HOME funds are invested, HUD may require the period of affordability to be extended, based on such considerations as the amount of additional HOME funds or additional units.

(c) HUD Headquarters may, through written approval, permit the participating jurisdiction to reduce the number of HOME-assisted units, if the project contains more than the minimum number of units required to be designated as HOME-assisted under §92.205(d). In determining whether to permit a reduction in the number of HOME-assisted units, HUD will take into account the required period of affordability and the amount of HOME assistance provided to the project. [78 FR 44668, July 24, 2013]
§92.212 Pre-award costs.
(a) General. Before the effective date of the HOME Investment Partnership Agreement, the participating jurisdiction may incur costs which may be charged to the HOME allocation after the award of the HOME allocation, provided the costs are in compliance with the requirements of this part (including environmental review requirements) and with the statutory and regulatory requirements in effect at the time the costs are charged to the HOME allocation.

(b) Administrative and planning costs. Eligible administrative and planning costs may be incurred as of the beginning of the participating jurisdiction's consolidated program year (see 24 CFR 91.10) or the date the consolidated plan describing the HOME allocation to which the costs will be charged is received by HUD, whichever is later.

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

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

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

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

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

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

(d) The HOME funds must be used in accordance with the requirements of this part and the project must meet the requirements of this part, including rent requirements in §92.252. [78 FR 44669, July 24, 2013]

§92.214 Prohibited activities and fees.
(a) HOME funds may not be used to:
(1) Provide project reserve accounts, except as provided in §92.206(d)(5), or operating subsidies;
(2) Provide tenant-based rental assistance for the special purposes of the existing section 8 program, in accordance with section 212(d) of the Act;
(3) Provide non-federal matching contributions required under any other Federal program;
(4) Provide assistance for uses authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds);
(5) Provide assistance to eligible low-income housing under 24 CFR part 248 (Prepayment of Low Income Housing Mortgages), except that assistance may be provided to priority purchasers as defined in 24 CFR 248.101;
(6) Provide assistance (other than tenant-based rental assistance, assistance to a homebuyer to acquire housing previously assisted with HOME funds, or assistance to preserve affordability of homeownership housing in accordance with §92.254(a)(9)) to a project previously assisted with HOME funds during the period of affordability established by the particular jurisdiction in the written agreement under §92.504. However, additional HOME funds may be committed to a project for up to one year after project completion (see §92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under §92.250.

(7) Pay for the acquisition of property owned by the participating jurisdiction, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project; or

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

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

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

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

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

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

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

(3) The participating jurisdiction must prohibit project owners from charging fees that are not customarily charged in rental housing (e.g., laundry room access fees), except that rental project owners may charge:

(i) Reasonable application fees to prospective tenants;

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

(iii) Fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided. [61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28929, May 28, 1997; 67 FR 61756, Oct. 1, 2002; 72 FR 16685, Apr. 4, 2007; 78 FR 44669, July 24, 2013; 80 FR 785935, Dec 7, 2015]

§92.215 Limitation on jurisdictions under court order.
Limitations on the use of HOME funds in connection with litigation involving discrimination or fair housing are set forth in section 224 of the Act.

INCOME TARGETING
§92.216 Income targeting: Tenant-based rental assistance and rental units.
Each participating jurisdiction must invest HOME funds made available during a fiscal year so that, with respect to tenant-based rental assistance and rental units:

(a) Not less than 90 percent of:

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

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

§92.217 Income targeting: Homeownership.
Each participating jurisdiction must invest HOME funds made available during a fiscal year so that with respect to homeownership assistance, 100 percent of these funds are invested in dwelling units that are occupied by households that qualify as low-income families. [67 FR 61756, Oct. 1, 2002]

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

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

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

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

§92.219 Recognition of matching contribution.
(a) Match contribution to HOME-assisted housing. A contribution is recognized as a matching contribution if it is made with respect to:
(1) A tenant who is assisted with HOME funds;
(2) A HOME-assisted unit;
(3) The portion of a project that is not HOME-assisted provided that at least 50 percent of the housing units in the project are HOME-assisted. If the match contribution to the portion of the project that is not HOME-assisted meets the affordable housing requirements of §92.219(b)(2), the percentage requirement for HOME-assisted units does not apply; or
(4) The commercial space in a mixed-use project in which at least 51 percent of the floor space is residential provided that at least 50 percent of the dwelling units are HOME-assisted.

(b) Match contribution to affordable housing that is not HOME-assisted. The following requirements apply for recognition of matching contributions made to affordable housing that is not HOME-assisted:
(1) For tenant-based rental assistance that is not HOME-assisted:
   (i) The contribution must be made with respect to a tenant who is assisted with tenant-based rental assistance that meets the requirements of §92.203 (Income determinations) and paragraphs (a), (c), (f), and (i) of §92.209 (Tenant-based rental assistance); and
   (ii) The participating jurisdiction must demonstrate in writing that such assistance meets the provisions of §§92.203 and 92.209 (except §92.209(e)).
(2) For affordable housing that is not HOME-assisted:
The contribution must be made with respect to housing that qualifies as affordable housing under §92.252 or §92.254.

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.

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

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).

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

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

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

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

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

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

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

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

B-13
§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 the loan closing.

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

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

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

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

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

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

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

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

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

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

(c) Credit for match contributions shall be assigned as follows:

(1) For HOME-assisted projects involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution may decide to retain the match credit or permit the other participating jurisdiction to claim the credit.

(2) For HOME match contributions to affordable housing that is not HOME-assisted (match pursuant to §92.219(b)) involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution receives the match credit.

(3) A State that provides non-Federal funds to a local participating jurisdiction to be used for a contribution to affordable housing, whether or not HOME-assisted, may take the match credit for itself or may permit the local participating jurisdiction to receive the match credit.

(d) Match credit for the development of affordable homeownership housing for sale to homebuyers. Contributions to the development of homeownership housing may be credited as a match only to the extent that the sales price of the housing is reduced by the amount of the contribution or, if the development costs exceed the fair market value of the housing, the contribution may be credited to the extent that the contributions enable the housing to be sold for less than the cost of development. [61 FR 48759, Sept. 16, 1996, as amended at 78 FR 44670, July 24, 2013]
## Attachment C

**HOME Program Regulation Subpart F—Project Requirements**

### Subpart F—Project Requirements

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### Note:
- Sections in bold included
- Sections in regular print excluded.
Subpart F—Project Requirements
§92.250 Maximum per-unit subsidy amount, underwriting, and subsidy layering.
(a) Maximum per-unit subsidy amount. The total amount of HOME funds and ADDI funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limitations established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C.1715l(d)(3)(ii)) for elevator-type projects that apply to the area in which the housing is located. HUD will allow the per-unit subsidy amount to be increased on a program-wide basis to an amount, up to 240 percent of the original per unit limits, to the extent that the costs of multifamily housing construction exceed the section 221(d)(3)(ii) limit.

(b) Underwriting and subsidy layering. Before committing funds to a project, the participating jurisdiction must evaluate the project in accordance with guidelines that it has adopted for determining a reasonable level of profit or return on owner's or developer's investment in a project and must not invest any more HOME funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at minimum, the period of affordability in §92.252 or §92.254) and that will not provide a profit or return on the owner's or developer's investment that exceeds the participating jurisdiction's established standards for the size, type, and complexity of the project. The participating jurisdiction's guidelines must require the participating jurisdiction to undertake:

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

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

3. For projects involving rehabilitation of owner-occupied housing pursuant to §92.254(b):
   (i) An underwriting analysis is required only if the HOME-funded rehabilitation loan is an amortizing loan; and
   (ii) A market analysis or evaluation of developer capacity is not required.

4. For projects involving HOME-funded downpayment assistance pursuant to §92.254(a) and which do not include HOME-funded development activity, a market analysis or evaluation of developer capacity is not required. [78 FR 44670, July 24, 2013]

§92.251 Property standards.
(a) New construction projects.

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

2. HUD requirements. All new construction projects must also meet the requirements described in paragraph:
   (i) Accessibility. The housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).
   (ii) [Reserved]
   (iii) Disaster mitigation. Where relevant, the housing must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.
   (iv) Written cost estimates, construction contracts and construction documents. The participating jurisdiction must ensure the construction contract(s) and construction documents describe the work to be undertaken in adequate detail so that inspections can...
be conducted. The participating jurisdiction must review and approve written cost estimates for construction and determining that costs are reasonable.

(v) **Construction progress inspections.** The participating jurisdiction must conduct progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.

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

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

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

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

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

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

(ii) **Major systems.** Major systems are: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For rental housing, the participating jurisdiction's standards must require the participating jurisdiction to estimate (based on age and condition) the remaining useful life of these systems, upon project completion of each major system. For multifamily housing projects of 26 units or more, the participating jurisdiction's standards must require the participating jurisdiction to determine the useful life of major systems through a capital needs assessment of the project. For rental housing, if the remaining useful life of one or more major system is less than the applicable period of affordability, the participating jurisdiction's standards must require the participating jurisdiction to ensure that a replacement reserve is established and monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. For homeownership housing, the participating jurisdiction's standards must require, upon project completion, each of the major systems to have a remaining useful life for a minimum of 5 years or for such longer period specified by the participating jurisdiction, or the major systems must be rehabilitated or replaced as part of the rehabilitation work.

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

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

(v) **[Reserved]**

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

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

(viii) **Uniform Physical Condition Standards.** The standards of the participating jurisdiction must be such that, upon completion, the HOME-assisted project and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703. HUD will establish the minimum deficiencies that must be corrected under the participating jurisdiction's rehabilitation standards based on inspectable items and inspected areas from HUD-prescribed physical inspection procedures (Uniform Physical Conditions Standards) pursuant to 24 CFR 5.705.

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

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

(A) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;  
(B) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or  
(C) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

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

(3) **Frequency of inspections.** The participating jurisdiction must conduct an initial property inspection to identify the deficiencies that must be addressed. The participating jurisdiction must conduct progress and final inspections to determine that work was done in accordance with work write-ups.

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

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

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

(3) Existing housing that is acquired for homeownership (e.g., downpayment assistance) must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to
determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the specific deficiencies prescribed by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (Uniform Physical Condition Standards) issued pursuant to 24 CFR 5.705. The participating jurisdiction must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) or it cannot be acquired with HOME funds.

(e) Occupied housing by tenants receiving HOME tenant-based rental assistance. All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards in 24 CFR 982.401, or the successor requirements as established by HUD.

(f) Manufactured housing. Construction of all manufactured housing including manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes which are not identical to the federal standards for the new construction of manufactured housing. Participating jurisdictions providing HOME funds to assist manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.431(e)(i). All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability. In HOME-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or state codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285. Manufactured housing that is rehabilitated using HOME funds must meet the property standards requirements in paragraph (b) of this section, as applicable. The participating jurisdiction must document this compliance in accordance with inspection procedures that the participating jurisdiction has established pursuant to §92.251, as applicable.

(f) Ongoing property condition standards:

Rental housing.

(i) Ongoing property standards. The participating jurisdiction must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period. The standards must ensure that owners maintain the housing as decent, safe, and sanitary housing in good repair. The participating jurisdiction's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HOME rental projects. The participating jurisdiction's ongoing property standards must address each of the following:

(i) Compliance with State and local codes, ordinances, and requirements. The participating jurisdiction's standards must require the housing to meet all applicable State and local code requirements and ordinances. In the absence of existing applicable State or local code requirements and ordinances, at a minimum, the participating jurisdiction's ongoing property standards must include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (Uniform Physical Condition Standards (UPCS)) prescribed by HUD pursuant to 24 CFR 5.705. The participating jurisdiction's property standards are not required to use any scoring, item weight, or level of criticality used in UPCS.

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

(iii) Lead-based paint. The participating jurisdiction's standards must require the housing to meet the lead-based paint requirements in 24 CFR part 35.
Projects to which HOME funds were committed before January 24, 2015 must meet all applicable State or local housing quality standards or code requirements, and if there are no such standard or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(3) **Inspections.** The participating jurisdiction must undertake ongoing property inspections, in accordance with §92.504(d).

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

(5) **Inspection procedures.** The participating jurisdiction must establish written inspection procedures inspections. The procedures must include detailed inspection checklists, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors. The procedures must also describe how frequently the property will be inspected, consistent with this section, §92.209, and §92.504(d). [78 FR 44670, July 24, 2013, as amended at 81 FR 92635, Dec. 20, 2016]

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

(a) **Rent limitation.** HUD provides the following maximum HOME rent limits. The rent limits apply to the rent plus the utilities or the utility allowance. The maximum HOME rents (High HOME Rents) are the lesser of:

1. The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or
2. A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

(b) **Additional rent limitations (Low HOME Rents).** The participating jurisdiction may designate (in its written agreement with the project owner) more than the minimum HOME units in a rental housing project, regardless of project size, to have Low HOME Rents that meet the requirements of this paragraph (b). In rental projects with five or more HOME-assisted rental units, at least 20 percent of the HOME-assisted units must be occupied by very low-income families and meet one of the following rent requirements:

1. The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits which include average occupancy per unit and adjusted income assumptions. However, if the rent determined under this paragraph is higher than the applicable rent under paragraph (a) of this section, then the maximum rent for units under this paragraph is that calculated under paragraph (a) of this section.

2. The rent does not exceed 30 percent of the family’s adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family’s adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

(c) **Additional rent limitations for SRO projects.**

1. For SRO units that have both sanitary and food preparation facilities, the maximum HOME rent is based on the zero-bedroom fair market rent. The project must meet the requirements of paragraphs (a) and (b) of this section.

2. For SRO units that have no sanitary or food preparation facilities or only one of the two, the maximum HOME rent is based on 75 percent of the zero-bedroom fair market rent. The project is not required to have low HOME rents in accordance with paragraph (b)(1) or (2) of this section, but must meet the occupancy requirements of paragraph (b) of this section.
(d) **Initial rent schedule and utility allowances.**

1. The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. The participating jurisdiction must use the HUD Utility Schedule Model or otherwise determine the utility allowance for the project based on the type of utilities used at the project.

2. The participating jurisdiction must review and approve rents proposed by the owner for units, subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.

(e) **Periods of affordability.** The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion.

1. The affordability requirements:
   
   a. **Apply without regard to the term of any loan or mortgage, repayment of the HOME investment, or the transfer of ownership;**
   
   b. **Must be imposed by a deed restriction, a covenant running with the land, an agreement restricting the use of the property, or other mechanisms approved by HUD and must give the participating jurisdiction the right to require specific performance (except that the participating jurisdiction may provide that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure); and**
   
   c. **Must be recorded in accordance with State recordation laws.**

2. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure in order to preserve affordability.

3. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

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

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<td>Over $40,000 or rehabilitation involving refinancing</td>
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</table>

(f) **Subsequent rents during the affordability period.**

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

2. The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (d)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner. Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section. The participating jurisdiction must review rents for compliance and approve or disapprove them every year.

3. Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.
(g) Adjustment of HOME rent limits for an existing project.
   (1) Changes in fair market rents and in median income over time should be sufficient to maintain the
       financial viability of a project within the HOME rent limits in this section.
   (2) HUD may adjust the HOME rent limits for a project, only if HUD finds that an adjustment is
       necessary to support the continued financial viability of the project and only by an amount that
       HUD determines is necessary to maintain continued financial viability of the project. HUD
       expects that this authority will be used sparingly.

(h) Tenant income. The income of each tenant must be determined initially in accordance with
    §92.203(a)(1)(i). In addition, each year during the period of affordability the project owner must
    re-examine each tenant's annual income in accordance with one of the options in §92.203 selected by the
    participating jurisdiction. An owner of a multifamily project with an affordability period of 10 years or
    more who re-examines tenant's annual income through a statement and certification in accordance with
    §92.203(a)(1)(ii), must examine the income of each tenant, in accordance with §92.203(a)(1)(i), every sixth
    year of the affordability period. Otherwise, an owner who accepts the tenant's statement and certification in
    accordance with §92.203(a)(1)(ii) is not required to examine the income of tenants in multifamily or single-
    family projects unless there is evidence that the tenant's written statement failed to completely and
    accurately state information about the family's size or income.

(i) Over-income tenants.
   (1) HOME-assisted units continue to qualify as affordable housing despite a temporary
       noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to
       HUD are being taken to ensure that all vacancies are filled in accordance with this section until the
       noncompliance is corrected.
   (2) Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount
       payable by the tenant under State or local law or 30 percent of the family's adjusted income,
       except that tenants of HOME-assisted units that have been allocated low-income housing tax
       credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986
       (26 U.S.C. 42) must pay rent governed by section 42. In addition, in projects in which the Home
       units are designated as floating pursuant to paragraph (j) of this section, tenants who no longer
       qualify as low-income are not required to pay as rent an amount that exceeds the market rent for
       comparable, unassisted units in the neighborhood.

(j) Fixed and floating HOME units. In a project containing HOME-assisted and other units, the participating
    jurisdiction may designate fixed or floating HOME units. This designation must be made at the time of
    project commitment in the written agreement between the participating jurisdiction and the owner, and the
    HOME units must be identified not later than the time of initial unit occupancy. Fixed units remain the
    same throughout the period of affordability. Floating units are changed to maintain conformity with the
    requirements of this section during the period of affordability so that the total number of housing units
    meeting the requirements of this section remains the same, and each substituted unit is comparable in terms
    of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

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

(l) Ongoing responsibilities. The participating jurisdiction's responsibilities for on-site inspections and
    financial oversight of rental projects are set forth in §92.504(d). [61 FR 48759, Sept. 16, 1996, as amended at 62 FR
    28929, May 28, 1997; 63 FR 44840, Aug. 22, 1997; 78 FR 44672, July 24, 2013]

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

(b) Prohibited lease terms. The lease may not contain any of the following provisions:
   (1) Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in
       favor of the owner in a lawsuit brought in connection with the lease;
   (2) Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal
       property of household members without notice to the tenant and a court decision on the rights of
       the parties. This prohibition, however, does not apply to an agreement by the tenant concerning
       disposition of personal property remaining in the housing unit after the tenant has moved out of
       the unit. The owner may dispose of this personal property in accordance with State law;
(3) **Excusing owner from responsibility.** Agreement by the tenant not to hold the owner or the owner’s agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) **Waiver of notice.** Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) **Waiver of legal proceedings.** Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) **Waiver of jury trial.** Agreement by the tenant to waive any right to a trial by jury;

(7) **Waiver of right to appeal court decision.** Agreement by the tenant to waive the tenant’s right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;

(8) **Tenant chargeable with cost of legal actions regardless of outcome.** Agreement by the tenant to pay attorney’s fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses; and

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

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

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

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

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

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

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

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

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

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

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

(a) Acquisition with or without rehabilitation. Housing that is for acquisition by a family must meet the affordability requirements of this paragraph (a).

(1) The housing must be single family housing.

(2) The housing must be modest housing as follows:

(i) In the case of acquisition of newly constructed housing or standard housing, the housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area, as described in paragraph (a)(2)(iii) of this section.

(ii) In the case of acquisition with rehabilitation, the housing has an estimated value after rehabilitation that does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section.

(iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for the rehabilitation of owner-occupied single-family properties, the participating jurisdiction must use the HOME affordable homeownership limits provided by HUD for newly constructed housing and for existing housing. HUD will provide limits for affordable newly constructed housing based on 95 percent of the median purchase price for the area using Federal Housing Administration (FHA) single family mortgage program data for newly constructed housing, with a minimum limit based on 95 percent of the U.S. median purchase price for new construction for nonmetropolitan areas. HUD will provide limits for affordable existing housing based on 95 percent of the median purchase price for the area using Federal FHA single family mortgage program data for existing housing data and other appropriate data that are available nation-wide for sales of existing housing, with a minimum limit based on 95 percent of the state-wide nonmetropolitan area median purchase price using this data. In lieu of the limits provided by HUD, the participating jurisdiction may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows. The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. The participating jurisdiction may determine separate limits for existing housing and newly constructed housing. For housing located outside of metropolitan areas, a State may aggregate sales data from more than one county, if the counties are contiguous and similarly situated. The following information must be included in the annual action plan of the Consolidated Plan submitted to HUD for review and updated in each action plan.

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

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

(C) The address of the listed properties must include the location within the participating jurisdiction. Lot, square, and subdivision data may be substituted for the street address.
(D) The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire participating jurisdiction.

(E) To determine the median, take the middle sale on the list if an odd number of sales, and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by 0.95 to determine the 95 percent of the median area purchase price.

(3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family, and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section. If there is no ratified sales contract with an eligible homebuyer for the housing within 9 months of the date of completion of construction or rehabilitation, the housing must be rented to an eligible tenant in accordance with §92.252. In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing. The homebuyer must receive housing counseling.

(4) Periods of affordability. The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The per unit amount of HOME funds and the affordability period that they trigger are described more fully in paragraphs (a)(5)(i) (resale) and (ii) (recapture) of this section.

<table>
<thead>
<tr>
<th>Homeownership assistance HOME amount per-unit</th>
<th>Minimum period of affordability in years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $15,000</td>
<td>5</td>
</tr>
<tr>
<td>$15,000 to $40,000</td>
<td>10</td>
</tr>
<tr>
<td>Over $40,000</td>
<td>15</td>
</tr>
</tbody>
</table>

(5) Resale and recapture. The participating jurisdiction must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate and must specifically approve them in writing.

(i) Resale. Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as the family's principal residence. The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers. The participating jurisdiction must specifically define "fair return on investment" and "affordability to a reasonable range of low-income homebuyers," and specifically address how it will make the housing affordable to a low-income homebuyer in the event that the resale price necessary to provide fair return is not affordable to the subsequent buyer. The period of affordability is based on the total amount of HOME funds invested in the housing.

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

(B) Certain housing may be presumed to meet the resale restrictions (i.e., the housing will be available and affordable to a reasonable range of low-income
homebuyers; a low-income homebuyer will occupy the housing as the family's principal residence; and the original owner will be afforded a fair return on investment) during the period of affordability without the imposition of enforcement mechanisms by the participating jurisdiction. The presumption must be based upon a market analysis of the neighborhood in which the housing is located. The market analysis must include an evaluation of the location and characteristics of the housing and residents in the neighborhood (e.g., sale prices, age and amenities of the housing stock, incomes of residents, percentage of owner-occupants) in relation to housing and incomes in the housing market area. An analysis of the current and projected incomes of neighborhood residents for an average period of affordability for homebuyers in the neighborhood must support the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing. For example, an analysis shows that the housing is modestly priced within the housing market area and that families with incomes of 65% to 80% of area median can afford monthly payments under average FHA terms without other government assistance and housing will remain affordable at least during the next five to seven years compared to other housing in the market area; the size and amenities of the housing are modest and substantial rehabilitation will not significantly increase the market value; the neighborhood has housing that is not currently owned by the occupants, but the participating jurisdiction is encouraging homeownership in the neighborhood by providing homeownership assistance and by making improvements to the streets, sidewalks, and other public facilities and services. If a participating jurisdiction in preparing a neighborhood revitalization strategy under §91.215(e)(2) of its consolidated plan or Empowerment Zone or Enterprise Community application under 24 CFR part 597 has incorporated the type of market data described above, that submission may serve as the required analysis under this section. If the participating jurisdiction continues to provide homeownership assistance for housing in the neighborhood, it must periodically update the market analysis to verify the original presumption of continued affordability.

(ii) Recapture. Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. The period of affordability is based upon the total amount of HOME funds subject to recapture described in paragraph (a)(5)(ii)(A)(5) of this section. Recapture provisions may permit the subsequent homebuyer to assume the HOME assistance (subject to the HOME requirements for the remainder of the period of affordability) if the subsequent homebuyer is low-income, and no additional HOME assistance is provided.

(A) The following options for recapture requirements are acceptable to HUD. The participating jurisdiction may adopt, modify or develop its own recapture requirements for HUD approval. In establishing its recapture requirements, the participating jurisdiction is subject to the limitation that when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

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

(2) Reduction during affordability period. The participating jurisdiction may reduce the HOME investment amount to be recaptured on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.
(3) **Shared net proceeds.** If the net proceeds are not sufficient to recapture the full HOME investment (or a reduced amount as provided for in paragraph (a)(5)(ii)(A)(2) of this section) plus enable the homeowner to recover the amount of the homeowner’s downpayment and any capital improvement investment made by the owner since purchase, the participating jurisdiction may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

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

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

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

(5) **Amount subject to recapture.** The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The recaptured funds must be used to carry out HOME-eligible activities in accordance with the requirements of this part. If the HOME assistance is only used for the development subsidy and therefore not subject to recapture, the resale option must be used.

(6) **Special considerations for single-family properties with more than one unit.** If the HOME funds are only used to assist a low-income homebuyer to acquire one unit in single-family housing containing more than one unit and the assisted unit will be the principal residence of the homeowner, the affordability requirements of this section apply only to the assisted unit. If HOME funds are also used to assist the low-income homebuyer to acquire one or more of the rental units in the single-family housing, the affordability requirements of §92.252 apply to assisted rental units, except that the participating jurisdiction may impose resale or recapture restrictions on all assisted units (owner-occupied and rental units) in the single family housing. If resale restrictions are used, the affordability requirements on all assisted units continue for the period of affordability. If recapture restrictions are used, the affordability requirements on the assisted rental units may be terminated, at the discretion of the participating jurisdiction, upon recapture of the HOME investment. (If HOME funds are used to assist only the rental units in such a property then the requirements of §92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of §92.254.)

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

(8) Contract to purchase. If HOME funds are used to assist a homebuyer who has entered into a contract to purchase housing to be constructed, the homebuyer must qualify as a low-income family at the time the contract is signed.

(9) Preserving affordability of housing that was previously assisted with HOME funds.

(i) To preserve the affordability of HOME-assisted housing a participating jurisdiction may use additional HOME funds for the following costs:

(A) The cost to acquire the housing through a purchase option, right of first refusal, or other preemptive right before foreclosure, or at the foreclosure sale. (The foreclosure costs to acquire housing with a HOME loan in default are eligible. However, HOME funds may not be used to repay a loan made with HOME funds.)

(B) The cost to undertake any necessary rehabilitation for the housing acquired.

(C) The cost of owning/holding the housing pending resale to another homebuyer.

(D) The cost to assist another homebuyer in purchasing the housing.

(ii) When a participating jurisdiction uses HOME funds to preserve the affordability of such housing, the additional investment must be treated as an amendment to the original project. The housing must be sold to a new eligible homebuyer in accordance with the requirements of §92.254(a) within a reasonable period of time.

(iii) The total amount of the original and additional HOME assistance may not exceed the maximum per unit subsidy amount established under §92.250. Alternatively to charging the cost to the HOME program under §92.206, the participating jurisdiction may charge the cost to the HOME program under §92.207 as a reasonable administrative cost of its HOME program, so that the additional HOME funds for the housing are not subject to the maximum per-unit subsidy amount. To the extent administrative funds are used, they may be reimbursed, in whole or in part, when the housing is sold to a new eligible homebuyer.

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

(1) The estimated value of the property, after rehabilitation, does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(ii) of this section; and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing. In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing.

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

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

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

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

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

(d) New construction without acquisition. Newly constructed housing that is built on property currently owned by a family which will occupy the housing upon completion, qualifies as affordable housing if it meets the requirements under paragraph (a) of this section.

(e) Providing homeownership assistance through lenders. Subject to the requirements of this paragraph (e), the participating jurisdiction may provide homeownership assistance through for-profit or nonprofit lending institutions that provide the first mortgage loan to a low-income family.

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

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

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

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

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

1. Underwriting standards for homeownership assistance that evaluate housing debt and overall debt of the family, the appropriateness of the amount of assistance, monthly expenses of the family, assets available to acquire the housing, and financial resources to sustain homeownership;

2. Responsible lending, and
(3) Refinancing loans to which HOME loans are subordinated to ensure that the terms of the new loan are reasonable. [61 FR 48750, Sept. 16, 1996, as amended at 67 FR 61756, Oct. 1, 2002; 68 FR 10161, Mar. 4, 2003; 69 FR 16766, Mar. 30, 2004; 69 FR 68052, Nov. 22, 2004; 72 FR 16685, Apr. 4, 2007; 78 FR 44674, July 24, 2013]

§92.255 Converting rental units to homeownership units for existing tenants.
(a) The participating jurisdiction may permit the owner of HOME-assisted rental units to convert the rental units to homeownership units by selling, donating, or otherwise conveying the units to the existing tenants to enable the tenants to become homeowners in accordance with the requirements of §92.254. However, refusal by the tenant to purchase the housing does not constitute grounds for eviction or for failure to renew the lease.
(b) If no additional HOME funds are used to enable the tenants to become homeowners, the homeownership units are subject to a minimum period of affordability equal to the remaining affordable period if the units continued as rental units. If additional HOME funds are used to directly assist the tenants to become homeowners, the minimum period of affordability is the affordability period under §92.254(a)(4), based on the amount of direct homeownership assistance provided. [78 FR 44678, July 24, 2013]

§92.256 [Reserved]

§92.257 Equal participation of faith-based organizations.
The HUD program requirements in §5.109 apply to the HOME program, including the requirements regarding disposition and change in use of real property by a faith-based organization. [81 FR 19418, Apr. 4, 2016]

§92.258 Elder cottage housing opportunity (ECHO) units.
(a) General. HOME funds may be used for the initial purchase and initial placement costs of elder cottage housing opportunity (ECHO) units that meet the requirements of this section, and that are small, freestanding, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings.
(b) Eligible owners. The owner of a HOME-assisted ECHO unit may be:
(1) The owner-occupant of the single-family host property on which the ECHO unit will be located;
(2) A participating jurisdiction; or
(3) A non-profit organization.
(c) Eligible tenants. During the affordability period, the tenant of a HOME-assisted ECHO unit must be an elderly or disabled family as defined in 24 CFR 5.403 and must also be a low-income family.
(d) Applicable requirements. The requirements of §92.252 apply to HOME-assisted ECHO units, with the following modifications:
(1) Only one ECHO unit may be provided per host property.
(2) The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit rent, but if a rent is charged, it must meet the requirements of §92.252.
(3) The ECHO housing must remain affordable for the period specified in §92.252(e). If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:
(i) Rent the unit to another eligible occupant on site;
(ii) Move the ECHO unit to another site for occupancy by an eligible occupant; or
(iii) If the owner of the ECHO unit is the host property owner-occupant, the owner may repay the HOME funds in accordance with the recapture provisions imposed by the participating jurisdiction consistent with §92.254(a)(5)(ii). The participating jurisdiction must use the recaptured HOME funds for additional HOME activities.
(4) The participating jurisdiction has the responsibility to enforce the project requirements applicable to ECHO units

C-15
Attachment D
HOME Program Regulation Subpart H—Other Federal Requirements

Subpart H—Other Federal Requirements

§92.350 Other Federal requirements and nondiscrimination. D-1
§92.351 Affirmative marketing; minority outreach program. D-1
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Subpart H—Other Federal Requirements
§92.350 Other Federal requirements and nondiscrimination.
(a) The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; drug-free work; and housing counseling.

§92.351 Affirmative marketing: minority outreach program.
(a) Affirmative marketing
(1) Each participating jurisdiction must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME-funded programs, including, but not limited to, tenant-based rental assistance and downpayment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If participating jurisdiction's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with §92.253(d)(3), the participating jurisdiction must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.
(2) The affirmative marketing requirements and procedures adopted must include:
   (i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction’s affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);
   (ii) Requirements and practices each subrecipient and owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
   (iii) Procedures to be used by subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);
   (iv) Records that will be kept describing actions taken by the participating jurisdiction and by subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions; and
   (v) A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.
(3) A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.
(b) Minority outreach. A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 200.321 of title 2 Code of Federal Regulations describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the

§92.352 Environmental review.
(a) General. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. The applicability of the provisions of 24 CFR part 50 or part 58 is based on the HOME project (new construction, rehabilitation, acquisition) or activity (tenant-based rental assistance) as a whole, not on the type of the cost paid with HOME funds.

(b) Responsibility for review.
(1) The jurisdiction (e.g., the participating jurisdiction or State recipient) or insular area must assume responsibility for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR part 58.

(2) A State participating jurisdiction must also assume responsibility for approval of requests for release of HOME funds submitted by State recipients.

(3) HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction. [51 FR 48750, Sept. 16, 1996, as amended at 78 FR 44678, July 24, 2013]

§92.353 Displacement, relocation, and acquisition.
(a) Minimizing displacement. Consistent with the other goals and objectives of this part, the participating jurisdiction must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(b) Temporary relocation. The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

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

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

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) Relocation assistance for displaced persons—

(1) General. A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR part 24. A "displaced person" must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(2) Displaced Person.

(i) For purposes of paragraph (c) of this section, the term displaced person means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or
demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

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

(1) The date of the submission of an application to the participating jurisdiction or HUD, if the applicant has site control and the application is later approved; or

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

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the jurisdiction or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

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

(1) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(i) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or

(ii) The total tenant payment, as determined under 24 CFR 5.628, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;

(2) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(ii) Other conditions of the temporary relocation are not reasonable; or

(3) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the participating jurisdiction determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.

(B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or
(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The jurisdiction may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.

(3) **Initiation of negotiations.** For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term **initiation of negotiations** means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(d) **Optional relocation assistance.** The participating jurisdiction may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section.

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

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

(f) **Real property acquisition requirements.** The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(g) **Appeals.** A person who disagrees with the participating jurisdiction's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the jurisdiction. A low-income person who is dissatisfied with the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office. [61 FR 48750, Sept. 16, 1996, as amended at 61 FR 51760, Oct. 3, 1996; 62 FR 28930, May 28, 1997; 67 FR 61756, Oct. 1, 2002; 78 FR 44678, July 24, 2013]

§92.354 Labor.

(a) **General.**

(1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

The contracts for construction must contain these wage provisions if HOME funds are used for any project costs in §92.206, including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contracts 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.

(2) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards, as applicable. Participating jurisdictions shall be responsible for ensuring compliance by contractors and subcontractors with labor standards described in this section. In accordance with procedures specified by HUD, participating jurisdictions shall:
(i) Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations;
(ii) Conduct on-site inspections and employee interviews;
(iii) Collect and review certified weekly payroll reports;
(iv) Correct all labor standards violations promptly;
(v) Maintain documentation of administrative and enforcement activities; and
(vi) Require certification as to compliance with the provisions of this section before making any payment under such contracts.

(b) **Volunteers.** The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

(c) **Sweat equity.** The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments. [61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44678, July 24, 2013]

§92.355 Lead-based paint.
Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title. [64 FR 50224, Sept. 15, 1999]

§92.356 Conflict of interest.

(a) **Applicability.** In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) **Conflicts prohibited.** No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

(c) **Persons covered.** The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) **Exceptions: Threshold requirements.** Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
2. An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) **Factors to be considered for exceptions.** In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

2. Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

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

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

(6) Any other relevant considerations.

Owners and developers.

(1) No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required period of affordability specified in §92.252(e) or §92.254(a)(4). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) Exceptions. Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of §92.253 are being observed;

(iv) Whether the affirmative marketing requirements of §92.351 are being observed and followed; and

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

§92.357 Executive Order 12372.

(a) General. Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and HUD's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) Applicability. Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

§92.358 Consultant activities.

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. 104-204 (September 26, 1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.
Attachment E
HOME Program Regulation Subpart E—Program Requirements
HOME Program Regulation Subpart G—Community Housing Development Organizations
Fort Bend County CHDO Checklist

Subpart E—Program Requirements

§92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs.

Subpart G—Community Housing Development Organizations

§92.300 Set-aside for community housing development organizations (CHDOs).
§92.301 Project-specific assistance to community housing development organizations.
§92.302 Housing education and organizational support.
§92.303 Tenant participation plan.

Fort Bend County CHDO Checklist

Note: Sections in bold included
Sections in regular print excluded.
Subpart E—Program Requirements
§92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs.
(a) Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). This amount is in addition to amounts set aside for housing projects that are owned, developed, or sponsored by CHDOs as described in §92.300(a). These funds may not be used to pay operating expenses incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials; and supplies. The requirements and limitations on the receipt of these funds by CHDOs are set forth in §92.300(e) and (f).
(b) HOME funds may be used for capacity building costs under §92.300(b). [61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44668, July 24, 2013]

Subpart G—Community Housing Development Organizations
§92.300 Set-aside for community housing development organizations (CHDOs).
(a) Within 24 months after the date that HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be owned, developed or sponsored by community housing development organizations. For a State, the HOME allocation includes funds reallocated under §92.451(c)(2)(i) and, for a unit of general local government, includes funds transferred from a State under §92.102(b). The participating jurisdiction must certify the organization as meeting the definition of "community housing development organization" and must document that the organization has capacity to own, develop, or sponsor housing each time it commits funds to the organization. For purposes of this paragraph:

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

(2) Rental housing is "owned" by the community housing development organization if the community housing development organization is the owner in fee simple absolute of multifamily or single family housing (or has a long term ground lease) for rental to low-income families in accordance with §92.252. If the housing is to be rehabilitated or constructed, the community housing development organization hires and oversees the developer that rehabilitates or constructs the housing. At minimum, the community housing development organization must hire or contract with an experienced project manager to oversee all aspects of the development, including obtaining zoning, securing non-HOME financing, selecting a developer or general contractor, overseeing the progress of the work and determining the reasonableness of costs. The community housing development organization must own the rental housing during development and for a period at least equal to the period of affordability in §92.252. If the CHDO acquires housing that meets the property standards in §92.251, the CHDO must own the rental housing for a period at least equal to the period of affordability in §92.252.

(3) Rental housing is "developed" by the community development housing organization if the community housing development organization is the owner of multifamily or single family housing in fee simple absolute (or has a long term ground lease) and the developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for rent to low-income families in accordance with §92.252. To be the "developer," the community development housing organization must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME financing, selecting architects, engineers and general contractors, overseeing the progress of the work and determining the reasonableness of costs. At a minimum, the community housing development organization must own the housing during development and for a period at least equal to the period of affordability in §92.252.

(4) Rental housing is "sponsored" by the community development housing organization if it is rental housing "owned" or "developed" by a subsidiary of a community housing development organization, a limited partnership of which the community housing development organization or
its subsidiary is the sole general partner, or a limited liability company of which the community housing development organization or its subsidiary is the sole managing member.

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

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

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

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

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

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

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

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

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

(i) To be the “developer” the community development housing organization must arrange financing of the project and be in sole charge of construction. The community housing development organization may provide direct homeownership assistance (e.g., downpayment assistance) when it sells the housing to low-income families and the community housing development organization will not be considered a subrecipient. The HOME funds for downpayment assistance shall not be greater than 10 percent of the amount of HOME funds for development of the housing.

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

(A) While proceeds that the participating jurisdiction permits the community housing development organization to retain are not subject to the requirements of this part, the participating jurisdiction must specify in the written agreement with the community housing development organization whether the proceeds are to be used for HOME-eligible activities or other housing activities to benefit low-income families.

(B) Funds that are recaptured because the housing no longer meets the affordability requirements under §92.254(a)(5)(ii) are subject to the requirements of this part in accordance with §92.503.

(7) The participating jurisdiction determines the form of assistance (e.g., grant or loan) that it will provide to the community housing development organization receives or, for rental housing projects under paragraph (a)(4) of this section, to the entity that owns the project.

(b) Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements
of the jurisdiction's approved consolidated plan and to encourage such community housing development organizations to do so. If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable community housing development organizations, up to 20 percent of the minimum community housing development organization setaside of 15 percent specified in paragraph (a) of this section, above, (but not more than $150,000 during the 24 month period) may be committed to develop the capacity of community housing development organizations in the jurisdiction.

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

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

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

(f) The participating jurisdiction must ensure that a community housing development organization does not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or $50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under §92.208. [61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28930, May 28, 1997; 78 FR 44677, July 24, 2013]

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

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

(1) General. Within the percentage specified in §92.300(c), HOME funds may be used by a participating jurisdiction to provide technical assistance and site control loans to community housing development organizations in the early stages of site development for an eligible project. These loans may not exceed amounts that the participating jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (a)(2) of this section. All costs must be related to a specific eligible project or projects.

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

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

(b) Project-specific seed money loans—

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

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

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

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

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

The information contained in this checklist refers to the definition of Community Housing Development Organizations (CHDOs) in Subpart A, 92.2 of the HOME Program Rule. The checklist is a tool for participating jurisdictions concerning the documents they must receive from a nonprofit before it may be certified or recertified as a CHDO on an annual basis. For monitoring purposes, PJs must maintain the completed checklist on file to document compliance with the regulations. Please submit the completed CHDO checklist and attach the required support documentation in the order listed in the checklist and highlight information that refers to each checklist item.

A CHDO is a specific type of private nonprofit entity. To qualify as a CHDO, an organization must meet certain requirements pertaining to each of the following:
- Legal Structure;
- Independence;
- Accountability to the low-income community; and
- Capacity and experience.

I. LEGAL STATUS

A. The nonprofit organization is organized under State or local laws, as evidenced by:
   
   _____ a Charter, or
   
   _____ Articles of Incorporation.

B. No part of its net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by:
   
   _____ a Charter, or
   
   _____ Articles of Incorporation.

C. Has a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3), (4), or Section 905 of the Internal Revenue Code of 1986, as evidenced by:
   
   _____ a 501(c)(3) or (4) Certificate from the IRS. or
   Is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue code, as evidenced by:
   
   _____ a group exemption letter from the IRS that includes the CHDO.
D. Has among its purposes the provision of decent housing that is affordable to low- and moderate-income persons. This commitment must be evidenced in the CHDO’s

   Charter,
   Articles of Incorporation,
   By-laws, or
   Resolutions of the CHDO’s Board of Directors.

E. Has a clearly defined service area. Nonprofits serving special populations also must define the geographic boundaries of their service area. This commitment must be evidenced in the CHDO’s

   Charter,
   Articles of Incorporation,
   By-laws, or
   Resolutions of the CHDO’s Board of Directors.

Note: For urban areas, a CHDO may include in its service area a neighborhood or neighborhoods, city, county, or metropolitan area. For rural areas, a CHDO may include in its service area a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State).

II. **CAPACITY** Demonstrate that nonprofit has the capacity to carry out its proposed role as an owner, developer, or sponsor of a project. The CHDO must continue to be a CHDO throughout the development of the project and during the affordability period for rental housing projects that it owns.

A. Conforms to the financial accountability standards of 24 CFR 84.21, "Standards for Financial Management Systems", as evidenced by:

   notarized statement by the president or chief financial officer of the organization;
   a certification from a Certified Public Accountant, or
   a HUD approved audit summary.

B. Has a demonstrated capacity (as owner, developer, or sponsor) for carrying out proposed activities assisted with HOME funds, as evidenced by:

   resumes, w-2’s, and employment contracts that describe the experience of key paid staff members who have successfully completed projects similar in size, scope, and complexity to those being proposed to be assisted with HOME funds.

Note: CHDOs must have their own professional staff. This means that key staff required to demonstrate CHDO capacity cannot be: Officers (including elected or appointed public officials) or employees of a
governmental agency; Consultants (paid or volunteer), unless it is the first year after the CHDO’s first year of certification; Employees of a for-profit entity that created the potential CHDO; and Individuals who contracted donated by, contracted through, or cost allocated another entity, including another nonprofit that created the potential CHDO.

For its first year of funding as a CHDO, an organization may satisfy this requirement through a contract with a consultant who has housing development experience and will advise and train appropriate key staff of the organization.

C. Has a history of serving the community within which housing to be assisted with HOME funds is to be located, as evidenced by:

- a statement that documents at least one year of experience in serving the community where it intends to develop the HOME-assisted housing, or

Note: Please document experience with resume for the organization, past project or program lists, etc... The year of service does not have to be directly related to housing.

- newly created organizations wishing to become CHDOs can meet this requirement if the parent (or sponsoring) organization is a nonprofit that has provided services to the community for at least one year. The statement must be signed by the president or other official of the organization.

Note: Prior service to the community cannot consist of a for-profit organization’s work in that community. The year of service does not have to be directly related to housing.

III. ORGANIZATIONAL STRUCTURE

A. Maintains at least one-third of its governing board’s membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations as evidenced by the organization’s

- By-Laws,

- Charter, or

- Articles of Incorporation. Under the HOME program, for urban areas, the term "community" is defined as one or several neighborhoods, a city, county, or metropolitan area. For rural areas, "community" is defined as one or several neighborhoods, a town, village, county, or multi-county area (but not the whole state).

Note: The CHDO is intended to respond to a particular low-income community’s affordable housing needs. The structure of the board of directors of a CHDO should reflect some degree of low-income community’s involvement in the CHDO. There are three ways to meet low income representation requirement; 1. Residents of low-income neighborhoods in the community; 2. Low-income residents of the community; and 3. Elected representatives of low-income neighborhood organizations.

B. Provides a formal written process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects, as evidenced by:

- the organization’s By-laws, or

CHDO-3
Board resolutions.

Note: Input from the low-income community is not met solely by having low-income representation on the board. This requirement is especially important for CHDOs serving a large geographic area, where it may not be possible for a CHDO to have low-income board representation from every neighborhood in which the CHDO will develop, own, or sponsor housing. CHDOs should establish systems for community involvement in neighborhoods of their service areas where housing will be developed, but which are not represented on their boards. Such systems might include special committees of neighbors of a proposed development site, neighborhood advisory councils, or open town meetings.

C. A CHDO may be chartered by a State or local government, but the following restrictions apply: (1) the State or local government may not appoint more than one-third of the membership of the organization's governing body; (2) the board members appointed by the State or local government may not, in turn, appoint the remaining two-thirds of the board members; and (3) no more than one-third of the governing board members are public officials (including any employees of the PJ), as evidenced by the organization's:

_____ By-laws,

_____ Charter, or

_____ Articles of Incorporation.

Note: A maximum of one-third of the governing board may consist of representatives of the public sector/represent a governmental entity. This limitation is intended to ensure that separation exists between PJs and CHDOs, and the CHDOs are indeed community-based and community-controlled organizations. A member of the governing board of a CHDO would be considered a representative of the public sector if they are: an elected official of a governmental entity; appointed public official of a governmental entity; employee of a governmental entity; or appointed by a public official of a governmental entity. Low income public officials/employees count against the one-third maximum limit of public sector representatives and do not count toward the one-third minimum low-income representation requirement. In addition, there are other conflict of interest restrictions on the participation of public officials on the boards of nonprofit organizations seeking public funds.

D. If the CHDO is sponsored or created by a for-profit entity, the for-profit entity may not appoint more than one-third of the membership of the CHDO's governing body, and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members, as evidenced by the CHDO's:

_____ By-laws,

_____ Charter, or

_____ Articles of Incorporation.

Note: A CHDO may be created by a for-profit if: The primary purpose of the for-profit is not the development or management of housing. The officers and employees of the for-profit entity are not officers or employees of the CHDO.

IV. RELATIONSHIP WITH FOR-PROFIT ENTITIES

A. The CHDO is not controlled, nor receives direction from any individuals, or entities seeking to derive profit or gain from the organization, as evidenced by:

CHDO-4
_____ the organization's By-laws, or

_____ a Memorandum of Understanding (MOU).

B. A Community Housing Development Organization may be sponsored or created by a for-profit entity, however:

(1) the for-profit entity's primary purpose does not include the development or management of housing, as evidenced:

_____ in the for-profit organization's By-laws and;

(2) the CHDO is free to contract for goods and services from any vendor(s) it selects as evidenced in the CHDO's:

_____ By-laws,

_____ Charter, or

_____ Articles of Incorporation.

Project Underwriting: For all projects, (PJs), Fort Bend County, cannot commit CHDO set-aside funds to a project until all necessary financing is secured, a budget and schedule is established, underwriting and subsidy layering is completed, and construction is scheduled to begin with 12 months.
CHDO BOARD MEMBER INFORMATION SHEET

Please provide all the following information for each member of the board of directors of the proposed Community Housing Development Organization (CHDO):

Name of Organization: ____________________________________________

Name of Board Member: __________________________________________

Home Address: __________________________________________________

City and Zip Code: ________________________________________________

Telephone: (Home) ______________________ (Work) __________________

Employer/Occupation: ____________________________________________

Employer Address: _______________________________________________

________________________________________________________________

PLEASE CHECK ALL THAT APPLY:

_____ 1. I am a resident of a low-income neighborhood. (This does not mean you must be a low-income person, only that your residence is in a low-income neighborhood).

_____ 2. I am a low-income resident of Fort Bend County. (Complete income information sheet on back of this form.)

_____ 3. I am an elected representative of a low-income neighborhood organization. (A low-income neighborhood organization is an organization composed primarily of residents of low-income neighborhood. Examples of such organizations are: block groups, town watch organizations, civic associations, neighborhood church groups, etc. Please attach copy of board resolution authorizing participation.)

_____ 4. I am a representative of the public sector. (A public sector representative is any elected public official, any appointed public official, any public/government employee of a public agency or department, or any individual who is appointed by a public official to serve on a CHDO board.)

I certify that the information is correct as of the date below.

_________________________  ______________________
Signature                        Date

NOTE: Information submitted as part of this information sheet is deemed to be a public record and will be disclosed accordingly. The County will process requests for this information pursuant to the provisions of the Open Records Act.
LOW-INCOME RESIDENT INFORMATION SHEET

Applicant Name: ________________________________________________________________

Home Street Address: __________________________________________________________

City, Zip Code: ________________________________________________________________

Please check the income level that applies to your household. Household includes all persons who live in your home and their income including social security, retirement, pensions, and child support.

____  1 Person household with maximum income below $49,600 annually.

____  2 Person household with maximum income below $56,700 annually.

____  3 Person household with maximum income below $63,800 annually.

____  4 Person household with maximum income below $70,850 annually.

____  5 Person household with maximum income below $76,550 annually.

____  6 Person household with maximum income below $82,200 annually.

____  7 Person household with maximum income below $87,900 annually.

____  8+Person household with maximum income below $93,550 annually.

I certify that the above information is true and complete to the best of my knowledge. I further certify that all information furnished in support of this application is true and complete to best of my knowledge. False statements will result in your application being rejected.

______________________________  ______________________________
Applicant                                      Date

chdo checklist 2023