

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 92

[Docket No. FR-4111-F-03]

RIN 2501-AC30

HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes several streamlining and clarifying amendments to the regulations for the HOME Investment Partnerships Program (HOME Program). The final rule incorporates a number of statutory changes to the HOME Program. The final rule also updates the regulations to reflect the provision of housing assistance to Indian tribes under the Native American Housing Assistance and Self-Determination Act of 1996. Further, the rule clarifies the consortia requalification requirements by codifying the streamlined approach adopted beginning with the Fiscal Year (FY) 1999 grant cycle. The final rule also adjusts the HOME allocation formula to reflect the use of 2000 Census data, and requests public comment on this amendment. Further, the final rule increases the flexibility of participating jurisdictions in using program income to pay administrative costs. Additionally, the final rule makes several other non-substantive corrections and clarifications to the regulations.

DATES: *Effective Date:* October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7164, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708-2470. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

I. Background

The HOME Investment Partnerships Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (NAHA). Through the HOME Program, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing, with primary

attention to rental housing, for very low-income and low-income families. Generally, HOME funds must be matched by nonfederal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multiyear housing strategies through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions may provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies, and other forms of investment that HUD approves. HUD's regulations for the HOME Program are located in 24 CFR part 92 (consisting of §§ 92.1 through 92.552).

This final rule makes a number of amendments to the HOME Program regulations to:

1. Incorporate a number of statutory changes to the program made by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105-65, approved October 27, 1997) (the FY 1998 HUD Appropriations Act) and the Quality Housing and Work Responsibility Act of 1998 (Public Law 105-276, approved October 21, 1998) (QHWRA);
2. Update the regulations to reflect the provision of block grant housing assistance to Indian tribes under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) and HUD's implementing regulations at 24 CFR part 1000;
3. Clarify the consortia requalification requirements by codifying the streamlined approach adopted beginning with the Fiscal Year 1999 grant cycle;
4. Make an adjustment to the HOME allocation formula to reflect the use of 2000 Census data and request public comment on this amendment;
5. Increase the flexibility of participating jurisdictions in using a portion of program income to pay administrative costs; and
6. Make several other non-substantive corrections and clarifications to the regulations.

The following sections of this preamble describe the changes made by this final rule in greater detail.

II. Incorporation of Statutory Changes to the HOME Program (§§ 92.50, 92.209, 92.214, 92.217, and 92.254)

A. Section 214 of the FY 1998 HUD Appropriations Act—Revision to Minimum Participation Threshold (§ 92.50(d)(3) and (d)(4))

Section 214 of the FY 1998 HUD Appropriations Act amended Title II of NAHA to permit participating jurisdictions whose annual HOME allocation falls below the \$500,000 minimum participation threshold (\$335,000 in years in which the HOME appropriation is less than \$1.5 billion) to continue to receive HOME allocations (except for consortia that fail to renew the membership of all member jurisdictions). This statutory change eliminated the problem of participating jurisdictions with small allocations losing their allocations from such causes as a decrease in the HOME appropriation, an increase in the total amount of set-asides from the HOME appropriation, or an increase in the number of participating jurisdictions. Sections 92.50(d)(3) and (4) are amended to reflect this statutory change.

B. Section 514 of QHWRA—Elimination of Federal Preferences (§ 92.209(c)(2) and (d)(3))

Section 514 of QHWRA amended section 6(c)(4)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) to eliminate Federal preferences for selecting public housing residents and establish a system of local selection preferences. The HOME Program regulations reference this section of the 1937 Act with respect to eligibility for HOME tenant-based rental assistance and written tenant selection criteria for HOME-assisted rental housing. Accordingly, this final rule removes § 92.209(c)(2), which requires that at least 50 percent of families assisted with HOME tenant-based rental assistance qualify or would qualify in the near future for a Federal preference. The final rule also removes § 92.209(d)(3), which requires that written tenant selection criteria for HOME-assisted rental housing give reasonable consideration to the housing needs of families that qualify for a Federal preference. The final rule also makes conforming changes to §§ 92.209(c)(3)(iv), 92.209(c)(4), and 92.253(d)(3), which reference the Federal preference requirements currently contained in § 902.209(c)(2) and (d)(3). Participating jurisdictions using HOME funds for tenant-based rental assistance programs may establish local preferences for the provision of this assistance.

C. Section 522 of QHWR—Prohibition on Use of HOME Funds for Public Housing Activities (§ 92.214)

Section 522 of QHWR amended section 9 of the 1937 Act, which had the effect of extending the prohibition in NAHA against the use of HOME funds for public housing modernization and operating subsidy to cover new construction of public housing as well. Accordingly, this final rule updates the HOME regulations at § 92.214, which lists those activities for which the expenditure of HOME funds is prohibited, to reflect this statutory amendment.

D. Section 599B of QHWR—Income Eligibility (§ 92.217; § 92.254(a)(7) and (a)(8))

Section 599B of QHWR eliminated the requirement that HOME-assisted homebuyers qualify as income eligible at the time of occupancy or when the HOME funds are invested, whichever is later. Section 599B requires the homebuyer to qualify as low-income: (1) In the case of a contract to purchase existing housing, at the time of purchase; (2) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; or (3) in the case of a contract to purchase housing to be constructed, at the time the contract is signed. This final rule amends § 92.254(a)(7), which establishes the income eligibility requirements for lease-purchase agreements, to reflect the changes made by section 599B of QHWR. The final rule also creates a new § 92.254(a)(8) to address income eligibility requirements for contracts for purchase. Further, the final rule makes a conforming change to § 92.217, which regards income targeting for homeownership. In addition, the final rule corrects the designations of current §§ 92.254(a)(5)(ii)(A)(6) and (7), which should be properly designated as §§ 92.254(a)(6) and (7).

III. Changes Regarding the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (§§ 92.2 and 92.50(b))

NAHASDA established a new Indian housing block grant program for Indian tribes and terminated grants by HUD to Indian tribes and Indian housing authorities under existing HUD housing programs, including the Indian HOME program. However, NAHASDA does not affect § 92.201(b)(5) of the HOME regulation, which provides that States may fund housing projects on Indian

reservations. Accordingly, this final rule makes the following changes:

A. Definition of “Homeownership” (§ 92.2)

This final rule amends the definition of the term “homeownership” in § 92.2 to eliminate an inconsistency between the definition and a provision of NAHASDA. The definition of “homeownership” currently includes 99-year leasehold interests. This is inconsistent with section 702 of NAHASDA, which only authorizes leases with terms not exceeding 50 years. This inconsistency effectively precludes the use of HOME funds to provide homeownership opportunities on any trust or restricted Indian lands unless a waiver is obtained. Consequently, the HOME regulation is being amended so that, on trust or restricted Indian lands, a 50-year leasehold interest will constitute homeownership.

B. Set-Aside of HOME Funds for Indian Tribes (§ 92.50(b))

Section 92.50(b) is amended to eliminate the reference to reserving a portion of each annual appropriation of HOME funds for Indian tribes. Section 217(a) of NAHA required that 1 percent of the annual HOME appropriation be set aside for use in a competitive program for Indian tribes (the Indian HOME Program). NAHASDA eliminated the Indian HOME Program. Accordingly, Indian tribes no longer receive HOME grants from HUD. This final rule removes the outdated reference to the set-aside for Indian tribes.

IV. Clarification of Consortia Qualification Requirements (§ 92.101)

Several years ago, HUD convened an internal working group to examine the consortia qualification and requalification process and make recommendations to simplify and streamline the process. The primary recommendation of the working group was to eliminate the practice of having each member jurisdiction sign a new consortium agreement at each requalification. This practice was imposing a significant burden on consortia, particularly geographically large, rural consortia comprised of many small jurisdictions. The working group recommended that the HOME consortium qualification guidance be revised to permit an “opt out” policy similar to that permitted for urban counties in the Community Development Block Grant (CDBG) Program.

Beginning with the Fiscal Year 1999 consortium qualification cycle, HUD permitted consortia to adopt an automatic renewal process similar to the CDBG urban county process. If this option is exercised, the consortium’s lead agency must notify each member jurisdiction of the requalification and of the right to elect not to continue to participate in the consortium for the ensuing three-year period. No action is required of member jurisdictions that wish to continue participation in a consortium, resulting in a significant reduction in burden. This streamlined approach is consistent with the requirements outlined in the HOME regulations at § 92.101 and no amendment to the rule was required for its implementation. However, for purposes of greater clarity, HUD is amending the HOME regulations to reference this streamlined procedure.

V. Change to Allocation Formula (§ 92.50(c)(3))

This final rule makes a minor revision to HOME allocation formula at § 92.50(c) to reflect the use of data from the 2000 Census beginning with the FY 2003 HOME allocation. The HOME formula allocates funds based on six variables that all require use of data from the Census Bureau. Currently, HOME formula allocations are based on data from the 1990 Census. The lack of updated data during the decade has been a detriment to participating jurisdictions that have relative increases in affordable housing problems as reflected by the formula factors. Changes in local conditions such as poverty, inadequate rental housing and tight rental markets all affect the distribution of affordable housing problems over a decade.

To better reflect these changes in local conditions, HUD intends to acquire and apply 2000 Census data for HOME formula allocations beginning with the FY 2003 allocation. The 2000 Census provides data for the HOME formula variables consistent with the current definitions of those variables, except for the pre-1950 renters-in-poverty variable described in § 92.50(c)(3). The 1990 Census provides data concerning pre-1950 renter-family-households-in-poverty. Accordingly, § 92.50(c)(3) refers to “[r]ental units built before 1950 occupied by poor families” (emphasis added). Under the 2000 Census, the only publicly available data concerns pre-1950 renter-households-in-poverty. Consequently, the switch to 2000 census data requires that § 92.50(c)(3) be updated to refer to “poor households” rather than “poor families.”

HUD's analysis of 1990 Census data shows that this regulatory change will have a relatively minor effect on HOME formula allocations. If pre-1950 renter-households (rather than renter families) had been used for the formula allocations based upon 1990 Census data, about 85 percent of participating jurisdictions would have received allocations within 5 percent of the allocations that they did receive.

HUD would need to procure a special tabulation of 2000 Census data from the Census Bureau in order to continue using the "renter-families in poverty" measure in future HOME formula allocations. However, a special tabulation of this data would not be available until late 2003, thereby further delaying the use of updated census data in HOME formula allocations. Further, using a special tabulation not only would deprive all participating jurisdictions from using the updated data, but also would preclude participating jurisdictions and other interested parties from independently accessing these data through public sources. The change will also be beneficial in that this formula factor will reflect pre-1950 households occupied by poor renters who are single and not living in a family household. However, like other poverty measures that focus on households rather than families, the revision will have the drawback of including non-family households composed entirely of college students among the poor.

Although HUD has determined that the impact of this change on HOME formula allocations will be minimal, and that prior notice and comment is unnecessary, HUD invites interested members of the public to submit comments on the change. Comments should be submitted to the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this preamble, above. HUD will consider whether further changes should be made to this section as a result of the issues raised by the commenters.

VI. Use of Program Income To Pay Administrative Costs (§ 92.207)

This final rule amends § 92.207 to provide participating jurisdictions with greater flexibility in the use of program income to pay administrative costs. The current HOME Program regulations state that a participating jurisdiction is permitted to use up to 10 percent of program income deposited in its local account during the program year for administrative and planning costs. This provision prohibits a participating jurisdiction from counting toward its administrative allowance a portion of

any program income that it permitted State recipients or subrecipients to retain pursuant to a HOME written agreement. To count 10 percent of program income received by State recipients and subrecipients toward the participating jurisdiction's administrative allowance, the funds have to be returned to the participating jurisdiction's local HOME account. HUD did not intend to place such restrictions on the use of program income for administrative and planning costs. Consequently, § 92.207 is amended to permit participating jurisdictions to use 10 percent of both program income deposited in the local HOME account and program income earned and reported by State recipients and subrecipients for eligible administrative and planning costs. Participating jurisdictions may permit State recipients and subrecipients to use this additional authority for administrative and planning costs or may use it for administrative costs of the participating jurisdiction, provided that the overall 10 percent limitation is not exceeded.

VII. Miscellaneous Corrections and Clarifications (§§ 92.214, 92.353, 92.504, 92.506, and 92.508)

A. Prohibited Activities (§ 92.214(a))

This final rule clarifies § 92.214(a) by adding an item to the list of activities for which expenditure of HOME funds is prohibited. Specifically, the final rule adds a new § 92.214(a)(9), which specifies that delinquent taxes, fees, or charges levied on a property to receive HOME assistance may not be paid with HOME funds. HUD has interpreted the HOME statute to prohibit the use of HOME funds for these purposes since the inception of the program. HUD continues to receive questions, however, regarding the use of HOME funds to pay delinquent taxes, fees, and charges so frequently that they are being added to the list of prohibited activities in order to eliminate further confusion.

HOME funds can be used to pay for reasonable acquisition costs. Back property taxes, construction liens, and similar encumbrances, however, are obligations incurred by the seller prior to the date of the purchase of the property with HOME funds rather than the costs of acquisition. There is no prohibition against the seller using the proceeds of a HOME-assisted purchase to satisfy these liens and deliver clear title to the purchaser.

B. Incorrect Subpart Reference (§ 92.353(e))

This final rule amends § 92.353(e) to correct a typographical error. The

current regulation erroneously refers to 24 CFR part 42, subpart B. The correct reference is subpart C.

C. Written Agreements (§ 92.504)

The HOME regulations at § 92.504 provide details about the requirements that must be included in each type of HOME written agreement. Several applicable requirements of subpart H, however, are inadvertently omitted from § 92.504(c)(3), which covers written agreements between participating jurisdictions and the owners, developers, and sponsors of HOME-assisted housing. Consequently, this final rule amends § 92.504(c)(3)(v), which currently addresses only affirmative marketing requirements, to outline all subpart H requirements that must be included in these agreements.

D. Audit requirements (§ 92.506)

Section 92.506 of the rule, which requires participating jurisdictions, State recipients, and subrecipients to obtain independent audits, is amended to reflect a change in citation. The regulations currently contain outdated cites to 24 CFR parts 44 and 45. The correct citations are now 24 CFR 84.26 and 24 CFR 85.26, respectively, for nonprofit organizations and for States and units of general local government.

E. Recordkeeping requirements (§ 92.508(a)(3)(xiii))

This final rule adds a new § 92.508(a)(3)(xiii) to correct a drafting oversight and makes explicit the requirement that participating jurisdictions maintain records documenting the results of the site and neighborhood standards review that they are required to undertake for rental of new construction projects. While HUD has included this information collection requirement in its submissions to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the requirement has not been made explicit in the recordkeeping section of the HOME regulations.

VIII. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public

interest" (see 24 CFR 10.1). For the following reasons, HUD finds that it is unnecessary and contrary to the public interest to delay the effectiveness of these regulatory amendments in order to solicit prior public comment. As described below, the amendments do not impose new substantive requirements, but update the HOME regulations to reflect existing program procedures, streamline existing requirements to minimize administrative burden on participating jurisdictions, and clarify the regulations by correcting typographical errors.

First, the statutory changes made by the FY 1998 HUD Appropriations Act and QHWA that are being incorporated by this final rule were determined by HUD to be immediately effective upon enactment of the legislation and HUD is not exercising any discretionary authority with respect to these changes. The changes regarding NAHASDA do not impose new regulatory requirements, but update the HOME regulations to reflect the establishment of the Indian Housing Block Grant program and the elimination of the separate Indian HOME Program. The regulatory amendment streamlining the consortium requalification process updates the HOME regulations to reflect existing practice, and provides a substantial benefit in the form of reduced administrative burden to HOME consortium without harming the interests of any other concerned party. The revision to the formula allocation requirements updates the HOME regulations to provide for the use of the most recent census data and better reflect changes in the demographics of poverty and the inadequacy of rental housing. The amendment regarding the use of program income corrects a drafting error that placed an undue restriction on the use of program income for administrative and planning costs. Finally, the final rule makes several miscellaneous corrections and clarifications that do not impose new substantive requirements, but merely correct typographical errors and clarify existing HUD procedures.

IX. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in

the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive HOME formula allocations are relatively larger cities, counties or states.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

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

List of Subjects in 24 CFR Part 92

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

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 92 as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for 24 CFR part 92 continues to read as follows:

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

2. In § 92.2, revise the definition of the term "*homeownership*" by adding a new penultimate sentence to read as follows:

§ 92.2 Definitions.

* * * * *

Homeownership * * * For purposes of housing located on trust or restricted Indian lands, homeownership includes leases of 50 years. * * *

* * * * *

3. In § 92.50, revise paragraphs (b), (c)(3), (d)(3), and the second sentence of paragraph (d)(4) to read as follows:

§ 92.50 Formula allocation.

* * * * *

(b) *Amounts available for allocation; State and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving amounts for insular areas, housing education and organizational support, other support for State and local housing strategies, and other purposes authorized by Congress, in accordance with the Act and appropriations.

* * * * *

(c) * * *

(3) Rental units built before 1950 occupied by poor households.

* * * * *

(d) * * *

(3) To determine the maximum number of units of general local government that receive a formula allocation, only one jurisdiction (the unit of general local government with the smallest allocation of HOME funds) is dropped from the pool of eligible

jurisdictions on each successive recalculation, except that jurisdictions that are participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) are not dropped. Then the amount of funds available for units of general local government is redistributed to all others. This recalculation/redistribution continues until all remaining units of general local government receive an allocation of \$500,000 or more or are participating jurisdictions. Only units of general local government which receive an allocation of \$500,000 or more under the formula or which are participating jurisdictions will be awarded an allocation. In fiscal years in which Congress appropriates less than \$1.5 billion of HOME funds, \$335,000 is substituted for \$500,000.

(4) * * * These reductions are made on a *pro rata* basis, except that no unit of general local government allocation is reduced below \$500,000 (or \$335,000 in fiscal years in which Congress appropriates less than \$1.5 billion of HOME funds) and no participating jurisdiction allocation which is below this amount is reduced.

* * * * *

4. In § 922.101, revise paragraphs (a)(1) and (a)(3) and add paragraph (f), to read as follows:

§ 92.101 Consortia.

(a) * * *

(1) One or more members of a proposed consortium or an existing consortium whose consortium qualification terminates at the end of the fiscal year, must provide written notification to the HUD Field Office of its intent to participate as a consortium in the HOME Program for the following fiscal year. HUD shall establish the deadline for this submission.

* * * * *

(3) Before the end of the fiscal year in which the notice of intent and documentation are submitted, HUD must determine that a proposed consortium has sufficient authority and administrative capability to carry out the purposes of this part on behalf of its member jurisdictions. HUD will endeavor to make its determination as quickly as practicable after receiving the consortium's documentation in order to provide the consortium an opportunity to correct its submission, if necessary. If the submission is deficient, HUD will work with the consortium to resolve the issue, but will not delay the formula allocations. HUD, at its discretion, may review the performance of an existing consortium that wishes to requalify to determine whether it continues to have

sufficient authority and administrative capacity to successfully administer the program.

* * * * *

(f) The consortium agreement may, at the option of its member units of general local government, contain a provision that authorizes automatic renewals for the successive qualification period of three Federal fiscal years. The provision authorizing automatic renewal must require the lead consortium member to give the consortium members written notice of their right to elect not to continue participation for the new qualification period.

5. In § 92.207, revise the third sentence of the introductory paragraph to read as follows:

§ 92.207 Eligible administrative and planning costs.

* * * A participating jurisdiction may also expend, for payment of reasonable administrative and planning costs, a sum up to ten percent of the program income deposited into its local account or received and reported by its State recipients or subrecipients during the program year. A participating jurisdiction may expend such funds directly or may authorize its State recipients or subrecipients, if any, to expend all or a portion of such funds, provided total expenditures for planning and administrative costs do not exceed the maximum allowable amount. Reasonable administrative and planning costs include:

* * * * *

6. In § 92.209, remove paragraph (c)(2) and redesignate paragraphs (c)(3) and (c)(4) as (c)(2) and (c)(3), respectively; remove redesignated paragraph (c)(2)(iv); and revise the first sentence of redesignated paragraph (c)(3), to read as follows:

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

* * * * *

(c) * * *

(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. * * *

* * * * *

7. In § 92.214, revise paragraph (a)(4), remove paragraph (a)(5), redesignate paragraphs (a)(6) through (a)(8) as

paragraphs (a)(5) through (a)(7), respectively, and add new paragraph (a)(8) to read as follows:

§ 92.214 Prohibited activities.

(a) * * *

(4) Provide assistance authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds);

* * * * *

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

* * * * *

8. Revise § 92.217 to read as follows:

§ 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.

§ 92.253 [Redesignated]

9. In § 92.253, remove paragraph (d)(3) and redesignate paragraphs (d)(4) and (d)(5) as (d)(3) and (d)(4), respectively.

10. In § 92.254, redesignate paragraphs (a)(5)(ii)(A)(6) and (7) as (a)(6) and (a)(7), respectively; revise redesignated paragraph (a)(7); and add paragraph (a)(8), to read as follows:

§ 92.254 Qualification as affordable housing: Homeownership.

(a) * * *

(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 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.

* * * * *

11. Revise § 92.353(e) to read as follows:

§ 92.353 Displacement, relocation, and acquisition.

* * * * *

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

* * * * *

12. Revise § 92.504(c)(3)(v) to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspections.

* * * * *

(c) * * *

(v) *Other program requirements.* The agreement must require the owner, developer or sponsor to carry out each project in compliance with the following requirements of subpart H of this part:

(A) If the project contains 5 or more HOME-assisted units, the agreement

must specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.

(B) The federal requirements and nondiscrimination established in § 92.350.

(C) Any displacement, relocation, and acquisition requirements imposed by the participating jurisdiction consistent with § 92.353.

(D) The labor requirements in § 92.354.

(E) The conflict of interest provisions prescribed in § 92.356(f).

* * * * *

13. Revise § 92.506 to read as follows:

§ 92.506 Audit.

Audits of the participating jurisdiction, State recipients, and subrecipients must be conducted in

accordance with 24 CFR 84.26 and 85.26.

14. Add § 92.508(a)(3)(xiii) to read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(3) * * *

(xiii) Records demonstrating that a site and neighborhood standards review was conducted for each project which includes new construction of rental housing assisted under this part to determine that the site meets the requirements of 24 CFR 983.6(b), in accordance with § 92.202.

* * * * *

Dated: September 23, 2002.

Donna M. Abbenante,

*General Deputy Assistant Secretary for
Community Planning and Development.*

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