

rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a grantee and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a grantee and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

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

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

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

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

(3) The grantee's rent standard for a unit size may not be less than 80 percent of the published section 8 existing housing fair market rent (in effect when the payment standard amount is adopted) for the unit size, nor more than the section 8 fair market rent or HUD-approved community-wide exception rent (in effect when the grantee adopts its rent standard amount) for the unit size. Alternatively, the grantee's rent standard for a unit size may be based on local market conditions. Further, a grantee may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable section 8 fair market rent by up to 10 percent for 20 percent of units assisted.

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

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

ipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

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

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

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

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

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

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

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

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

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

(ii) A rent that does not exceed 30 percent of the adjusted income of a

family whose gross income equals 65 percent of the median income for the area, as determined by HUD, with adjustment for number of bedrooms in the unit, except that HUD may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or section 8 fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or grantee must subtract a monthly allowance for any utilities and services (excluding telephone and cable TV) to be paid by the tenant. HUD will provide average occupancy costs per unit and adjusted income assumptions to be used in calculating the maximum rent allowed under this paragraph (a)(1)(ii) of this section;

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

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

(ii) Occupied by very low-income families and bearing rents not greater than 30 percent of the gross income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing lev-

els of construction costs or section 8 fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or grantee must subtract a monthly allowance for any utilities and services (excluding telephone and cable TV) to be paid by the tenant. HUD will provide average occupancy per unit assumptions to be used in calculating the maximum rent allowed under paragraph (a)(2)(ii) of this section;

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

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

(5) Will remain affordable without regard to the term of any mortgage or the transfer of ownership, pursuant to deed restrictions, covenants running with the land, or other mechanisms approved by HUD, for not less than the appropriate period, beginning after project completion, as specified in the following table, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The tribe may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

Activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15
New construction or acquisition of newly constructed housing	20

(b) *Rent schedule and utility allowances.* The grantee must review and approve rents proposed by the owner for units with “flat rents,” i.e., units subject to the maximum rent limitations in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(2)(ii) of this section, and, if applicable, must review and approve, for all units subject to the maximum rent limitations paragraph (a) of this section, the monthly allowances, proposed by the owner, for utilities and services to be paid by the tenant. The owner must reexamine the income of each tenant household living in lower income units at least annually. The maximum monthly rent must be recalculated by the owner and reviewed and approved by the grantee annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for low-income units is subject to the provisions of outstanding leases; in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraphs (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under tribal, State or local law or 30 percent of the family’s adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this part for units that have been allocated a low-

income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986 (26 U.S.C. 7805).

(d) *Adjustment of qualifying rent.* HUD may adjust the qualifying rent established for a project under paragraph (a)(1) of this section, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly. Adjustments in section 8 fair market rents and in median income over time should help maintain the financial viability of a project within the qualifying rent standard in paragraph (a)(1) of this section. Regardless of changes in fair market rents and in median income over time, the qualifying rents are not required to be lower than the HOME rent for the project in effect at the time of project commitment.

§ 954.307 Homeownership: qualification as affordable housing.

(a) *Purchase with or without rehabilitation.* Housing that is for purchase by a family qualifies as affordable housing only if the housing: (1)(i) Has an initial purchase price that does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

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