

§ 92.205

funds must be used for approved activities. A local account must be established for program income. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds that are not expended within five years after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Program disbursement and information system) applies, except that references to the HOME Investment Trust Fund mean HOME account and the reference to 24 CFR part 58 does not apply. In addition, § 92.502(c) does not apply, and instead, compliance with Treasury Circular No. 1075 (31 CFR part 205) and 24 CFR 85.21 is required.

(iii) Section 92.503 (Program income, repayments, and recaptured funds) applies, except that program income may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; on-site inspections) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

(b) The requirements in subpart H (Other Federal Requirements) of this part apply as written, except that jurisdictions and community housing development organizations receiving reallocations from HUD must comply with affirmative marketing requirements, labor requirements, and lead-based paint requirements, applicable to participating jurisdictions.

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(c) Subpart B (Allocation Formula), subpart C (Consortia; Designation and Revocation of Designation as a Participating Jurisdiction), and subpart G (Community Housing Development Organizations) of this part do not apply.

(d) Subpart A (General) applies, except that for the definitions of *commitment*, *program income*, and *subrecipient*, "participating jurisdiction" means jurisdiction or community housing development organization receiving the competitive reallocation.

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 non-luxury 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.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing.

(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. 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 non-assisted 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 pro-rating 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.

(e) *Terminated projects.* A HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and any HOME funds invested in the project must be repaid 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 § 92.301(b)(3)).

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997]

§ 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, costs to meet the applicable new construction standards of the participating jurisdiction and the Model Energy Code referred to in § 92.251;

(2) For rehabilitation, costs:

(i) To meet the property standards in § 92.251;

(ii) To make essential improvements, including energy-related repairs or improvements, improvements necessary to permit use by persons with disabilities, and lead-based paint activities, as required by part 35 of this title.

(3) For both new construction and rehabilitation, costs:

(i) To demolish existing structures;

(ii) To make utility connections including off-site connections from the