

businesses, private nonprofit organizations, and farm operations where assistance is required under §954.4 or determined by the grantee to be appropriate under §954.4.

(e) *Costs related to tenant-based rental assistance.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family.

§ 954.304 Eligible administrative costs.

Eligible administrative costs means reasonable and necessary costs, as described in OMB Circular A-87, (available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G-2200, Washington, DC 20503; Telephone, (202) 395-7332) incurred by the grantee and related to the planning and execution of HOME activities assisted in whole or in part with funds provided under this part. The grantee may use up to 15 percent of the HOME funds for the payment of eligible administrative costs.

§ 954.305 Tenant-based rental assistance.

(a) *General.* A grantee may use HOME funds for tenant-based rental assistance only if the grantee selects families in accordance with written tenant selection policies and criteria that are consistent with the purpose of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d). The grantee may select eligible families currently residing in units that are designated for rehabilitation or acquisition under the grantee's HOME program without requiring that the family meet the written tenant selection policies and written criteria. Families so selected may use the tenant-based assistance in the rehabilitated or acquired unit or in other qualified housing.

(b) *Program operation.* The grantee may operate the program, or may contract with another 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.

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

(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,