

(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 [Reserved]

#### § 92.214 Prohibited activities.

(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 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 or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction in the written agreement under § 92.504. However, additional HOME funds may be committed to a project 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 monitoring, servicing and origination fees in HOME-assisted projects. However, participating jurisdictions may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. Such fees are applicable credits under OMB Circular A-87.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28929, May 28, 1997; 67 FR 61756, Oct. 1, 2002]

#### § 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:

**§92.217**

(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 organiza-

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tions (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: