

**AGREEMENT FOR THE USE OF 2013-2014
HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS
TENANT-BASED RENTAL ASSISTANCE PROGRAM**

The Housing Authority of the City of Riverside

THIS AGREEMENT is entered into this _____ day of _____, 2015 (“Effective Date”), by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as “CITY”, and THE HOUSING AUTHORITY OF THE CITY OF RIVERSIDE, a public body, corporate and politic, “AUTHORITY”.

RECITALS

WHEREAS, the CITY has been awarded by the United States Department of Housing and Urban Development (“HUD”) an allocation of funds pursuant to the HOME Investment Partnerships Act (the “Act”), 42 U.S.C. § 12701, et seq., and the implementing regulations thereto (the “HOME Regulations”) set forth in 24 C.F.R. § 92.1, et seq., (collectively, the “HOME Program”) for the purposes of strengthening public-private partnerships to provide decent, safe, sanitary, and affordable housing for very low income and low income households; and

WHEREAS, Section Part 92.209 of the HOME Regulations expressly allows HOME Program Funds to be utilized to provide up to twelve (12) months of tenant-based rental assistance or security and utility deposits for eligible individuals and families; and

WHEREAS, CITY desires to utilize the HOME Program funds and enter into an agreement with AUTHORITY whereby AUTHORITY will implement and operate a tenant-based rental assistance program for the CITY which will provide one-time rental assistance and security and utility deposit to households classified as very low income and low income by HUD income guidelines or experiencing a financial crisis; and are at risk of homelessness or are currently homeless; and

WHEREAS, CITY has been allocated Six Hundred Thousand Dollars (\$600,000) in HUD funding for years 2013-2014; and

WHEREAS, CITY desires to disburse a certain amount of HUD funding to AUTHORITY on the condition that AUTHORITY implements and operates a tenant-based rental assistance program for the CITY consistent with the terms of this Agreement.

NOW, THEREFORE, the parties mutually agree to the following:

I. SCOPE OF SERVICES & BUDGET

A. AUTHORITY OBLIGATIONS

1. AUTHORITY agrees to implement and operate a tenant-based rental assistance program for the CITY which will provide one time rental assistance and security and utility deposits to households classified as very low income and low income by HUD income guidelines or experiencing a financial crisis; and are at risk of homelessness or are currently homeless, as more specifically set forth in the Scope of Services, attached hereto as Exhibit "A" and incorporated herein by this reference.

2. AUTHORITY hereby certifies and agrees that all grant funds received shall be used exclusively as described in the Budget, attached hereto as Exhibit "B" and incorporated herein by this reference. AUTHORITY shall not make expenditures that deviate from the approved budget without prior written approval of the City's Community & Economic Development Director or his/her Designee. CITY may approve Budget modifications to this Agreement for the movement of funds within the budget categories when such modifications:

- a. Do not exceed Ten Thousand Dollars (\$10,000) per budget cost category;
- b. Are specifically requested by CITY;
- c. Do not alter the amount of compensation subject to or under this Agreement;
- d. Will not change the Program goals or Scope of Services;
- e. Are in the best interests of CITY and AUTHORITY in performing the Scope of Services under this Agreement; and
- f. As related to salaries, are in accordance with applicable salary ordinances or law.

3. AUTHORITY shall establish and maintain a separate account for all HOME Program funds received under this Agreement and deposit such HOME Program funds in said account.

B. CITY OBLIGATIONS

1. City shall pay AUTHORITY the sum of Six Hundred Thousand Dollars (\$600,000) of 2013-2014 HOME Program funds for the operation of the Program. CITY shall provide payments to AUTHORITY as provided in Section IV, infra.

II. TERM

The term of this Agreement shall be for a period commencing on the Effective Date, and shall terminate on June 30, 2017, unless sooner terminated as provided in paragraph 4 herein.

III. TERMINATION

A. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. Said notice shall include the reason for termination and the effective date thereof.

B. Notwithstanding the provisions of this Section III, CITY may suspend or terminate this Agreement forthwith for cause upon written notice to AUTHORITY of the action being taken. Cause shall be established:

1. In the event AUTHORITY fails to perform the covenants herein contained at such times and in such manner as provided in this Agreement; or
2. In the event there is a conflict with any federal, state or local law, ordinance, regulation or rule rendering any of the provisions of this Agreement invalid or untenable; or
3. In the event the funding from HUD, referred to in the recitals therein, is reduced, terminated or otherwise becomes unavailable, CITY shall provide written notice to AUTHORITY within five (5) days from the date HUD reduces, suspends or terminates the HOME Program funding. This Agreement shall be either terminated or amended to reflect said reduction in funds; or
4. Upon termination of this Agreement, AUTHORITY agrees to return any unencumbered funds that it has been provided by CITY. In accepting said funds, CITY does not waive any claim or cause of action it may have against AUTHORITY for breach of this Agreement; or

5. Upon termination of this Agreement, AUTHORITY shall not incur any obligations after the effective date of such termination, unless expressly authorized in writing by CITY in the notice of termination.

IV. PAYMENT OF FUNDS

A. The City Council of the City of Riverside shall determine the final disposition and distribution of all funds received by CITY under the Act. CITY, through its Community & Economic Development Department, shall make payments to AUTHORITY and shall monitor the expenditure of funds and activities of AUTHORITY to ensure compliance with applicable federal regulations and the terms of this Agreement.

B. All disbursements of HOME Program funds, by CITY, will be made as follows:

1. CITY shall pay AUTHORITY payments not to exceed the total sum of Six Hundred Thousand Dollars (\$600,000). All payments will be made on a reimbursement basis. Said payments will be made within thirty (30) days after the AUTHORITY has submitted to the CITY written invoices requesting reimbursement. Payments shall be based on actual approved and documented expenses by AUTHORITY, all claimed expenses must be within the scope of this Agreement.

2. Payments may be withheld if, on a determination by CITY, AUTHORITY has not complied with the applicable federal regulations and/or the terms provided in this Agreement.

3. No later than thirty (30) days prior to the termination of this Agreement, AUTHORITY shall provide CITY with its estimate of the amount of the HOME Program funds that will remain unexpended upon such termination. Notwithstanding any provision contained in this Section IV, once City provides written notice to AUTHORITY, CITY shall have the right to:

- a. reduce or terminate the payment of HOME Program funds hereunder,
or
- b. renegotiate the actual levels of expenditures in the event AUTHORITY's rate of expenditures will result in unexpended funds at the expiration of this Agreement.

V. DOCUMENTATION AND REPORTING REQUIREMENTS

A. Documentation of Expenditures. All documentation including, but not limited to, executed payrolls, time records, invoices, contracts, vouchers, orders and any other accounting documents pertaining in whole or in part to this Agreement, shall be clearly identified and readily accessible for review by CITY. AUTHORITY shall maintain and keep available all such documents for a period of not less than three (3) years from the termination of this Agreement if a CITY, AUTHORITY, State and/or Federal audit has occurred and for a period of not less than five (5) years from said date if such audit has not occurred. In the event of audit exception, such documents shall be maintained until every exception has been cleared to the satisfaction of CITY.

B. Reports. AUTHORITY, on such forms as CITY may require, shall furnish CITY on a regular monthly basis a report, including a narrative, data, records and any other information as CITY may request pertaining to its performance of services hereunder and other matters covered by this Agreement. AUTHORITY shall establish and maintain records in accordance with Office of Management and Budget (OMB) Circular Nos. A-110 as applicable to the acceptance and use of the HOME Program funds. Each monthly report shall be submitted by the fifteenth day of each month for the preceding month of services.

C. Inspections. AUTHORITY shall make available to CITY, State and/or Federal officials its records and data with respect to all matters covered by this Agreement.

D. Performance Evaluation. AUTHORITY shall permit CITY, State and/or Federal officials to monitor, assess or evaluate AUTHORITY's performance under this Agreement on at least a monthly basis, said monitoring, assessment or evaluation to include, but not be limited to, audits, inspections within the program area and interviews with AUTHORITY's employees, agents, independent contractors and subcontractors providing the services under this Agreement and recipients thereof.

E. External Audit. AUTHORITY shall obtain an external audit in accordance with the U. S. Department of Housing and Urban Development single audit regulations (24 C.F.R. § 85.26 and OMB Circular No. A-133). The audit report shall be submitted to the City on or before March 31, 2017. Audit expenses are eligible as HOME operating expenses.

VI. MARKETING MATERIALS FOR PROGRAM

All marketing materials regarding the tenant-based rental assistance program shall contain the following language:

“A program administered by the City of Riverside Housing Authority and funded by the City of Riverside.”

VII. INDEPENDENT CONTRACTOR

AUTHORITY shall at all times during its performance of this Agreement retain its status as independent contractor. AUTHORITY’s employees and agents shall under no circumstances be considered or held to be employees or agents of CITY, and CITY shall have no obligation to pay or withhold state or federal taxes or provide workers’ compensation or unemployment insurance for or on behalf of them or AUTHORITY.

VIII. INDEMNIFICATION & INSURANCE

City and Authority are Self-Insured.

IX. COMPLIANCE WITH LAW

A. AUTHORITY shall comply with the provisions of the Act and any amendments thereto and the federal regulations and guidelines now or hereafter enacted pursuant to the Act. More particularly, AUTHORITY is to comply with those regulations found in 24 CFR Subtitle A Part 42 of Title 24 of the Code of Federal Regulations and OMB Circular Nos. A-110 and A-122 and appropriate attachments for nonprofit organization contractors. Selected provisions of the implementing regulations of the Act are attached hereto as Exhibit “C.”

B. AUTHORITY shall comply with all federal, state and local laws and regulations pertinent to its operation and services to be performed hereunder, and shall keep in effect any and all licenses, permits, notices and certificates as are required thereby. AUTHORITY shall further comply with all laws applicable to wages and hours of employment, occupational safety, fire, safety, health and sanitation.

C. AUTHORITY shall determine and utilize landlords who agree to maintain and operate the units and related facilities (“Subject Units”), that will house grant recipients, and provide decent, safe and sanitary housing in accordance with 24 C.F.R. § 882.109, including all of the services, maintenance and utilities agreed in the lease.

1. AUTHORITY shall obtain an agreement with participating landlords which provides that: (a) AUTHORITY shall have the right to inspect the Subject Unit(s) and related facilities at least annually, and at such other times as may be necessary to assure that the units is in decent, safe and sanitary condition, and that required maintenance, services and utilities are provided; and (b) if AUTHORITY determines that the participating landlord is not

meeting the obligations described by subsection (a), AUTHORITY shall have the right, even if the Tenant continues in occupancy, to terminate the payment of the AUTHORITY's share of the rent and/or terminate the Contract regarding the Subject Unit(s).

2. AUTHORITY should use the sample Home Rental Assistance Contract attached hereto as Exhibit "D" as a model draft agreement for the tenant-based rental assistance program.

D. AUTHORITY shall ensure that tenant selection is in accordance with 24 C.F.R. § 92.209 with written tenant selection policies and criteria that are consistent with the following:

1. Very Low Income and Low Income Families. Tenant-based rental assistance may only be provided to very low income and low income families. AUTHORITY must determine that the family is very low income or low income before the assistance is provided. During the period of assistance, AUTHORITY must annually determine that the family continues to be low income.

2. Preferences for Individuals with Special Needs.

a. AUTHORITY may establish a preference for individuals with special needs. AUTHORITY may offer, in conjunction with a tenant-based rental assistance program, particular types of non-mandatory services that may be most appropriate for persons with a special need or a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with special needs or disabilities who can benefit from such services.

b. Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a).

X. NONDISCRIMINATION & EQUAL OPPORTUNITY COMPLIANCE

A. AUTHORITY hereby certifies compliance with the following:

1. Executive Order 11246, as amended, and the regulations issued thereunder at 41 C.F.R. § 60;

2. Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2001d, et seq.), as amended by the Equal Opportunity Act of March 24, 1972 (Public Law No. 92-261);

3. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601-3619) and implementing regulations issued pursuant thereto (24 C.F.R. § 1);

4. Executive Order 11063 and implementing regulations issued pursuant thereto (24 C.F.R. § 107);
5. Age Discrimination Act of 1975 (42 U.S.C. § 6101-6107);
6. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794);
7. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); and
8. Pursuant to the Americans with Disabilities Act and specifically 42 U.S.C. § 12132, AUTHORITY acknowledges and agrees that in the performance of this Agreement, no qualified individual shall, by reason of a disability, be excluded from participation in or be denied the benefits of the services, programs or activities of the CITY or AUTHORITY or be subjected to discrimination by the CITY or AUTHORITY.

B. AUTHORITY shall establish and maintain a procedure through which homeless individuals will be informed that the Program is available for eligible individuals on a nondiscriminatory basis.

C. AUTHORITY agrees to abide by and include in any subcontract to perform work under this Agreement, the following clause:

“During the performance of this Agreement AUTHORITY and its subcontractor shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation. AUTHORITY and subcontractor shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. AUTHORITY and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Cal Gov’t. Code § 12900, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this Agreement by reference and made a part hereof as if set forth in full. AUTHORITY and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.”

D. The equal opportunity clause contained in Section 202 of Executive Order 11246, as amended, is hereby incorporated into this Agreement by this reference. AUTHORITY shall include the nondiscrimination and compliance provisions of the equal opportunity clause in all subcontracts, if any.

E. During the performance of this Agreement, AUTHORITY and its subcontractor, if any, shall not deny the benefits rendered hereunder to any person on the basis of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, genetic information, gender, gender identity, gender expression, sex or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code.

F. AUTHORITY shall furnish all information and reports as required by Executive Order 11246, as amended.

XI. AFFIRMATIVE ACTION COMPLIANCE

Each AUTHORITY or subcontractor with less than fifty (50) employees shall comply with Section 202 of Part II of Executive Order 11246, as amended. AUTHORITY shall insure that subcontractors, if any, falling within the scope of this provision shall comply in full with the requirements thereof.

XII. PROCUREMENTS

AUTHORITY will comply with all regulations contained in 24 C.F.R. § 85 as it relates to purchases of services from contractors and vendors.

XIII. CONFLICT OF INTEREST

No person (1) who is an employee, agent, consultant, officer or elected or appointed official of the CITY, AUTHORITY, or State that receives HOME Program funds and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or (2) who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

XIV. ELIGIBILITY OF CONTRACTORS AND SUBCONTRACTORS

No grant funds allocated to AUTHORITY through this Agreement may be used, directly or indirectly, to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provision of 24 C.F.R. § 4.

XV. LEAD-BASED PAINT

AUTHORITY and all subcontractors, if any, shall comply with the requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4821-4846) and implementing regulations issued pursuant thereto (24 C.F.R. § 35).

XVI. NOTICES

Any notices required or desired to be served by either party upon the other shall be addressed to respective parties as set out below:

CITY

Community & Economic Development Department
Attn: Community & Economic Development Director
3900 Main Street, 3rd Floor
Riverside, CA 92522

AUTHORITY

Executive Director
3900 Main Street, 3rd Floor
Riverside, CA 92522

or to such other addresses as from time to time shall be designated by the respective parties.

XVII. ASSIGNMENT

Due to the unique services to be provided pursuant to this Agreement, this Agreement shall not be assigned without the express prior written consent of the CITY. Should CITY agree to any such assignment, AUTHORITY, its assigns and successors in interest shall be bound by all the provisions contained in this Agreement, and all of the parties thereto shall be jointly and severally liable hereunder.

XVIII. AUTHORITY

The individuals executing this Agreement and the instruments referenced herein on behalf of AUTHORITY each represent and warrant that they have the legal power, right and actual authority to bind the AUTHORITY to the terms and conditions hereof and thereof.

XIX. VENUE

Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

XX. SEVERABILITY

Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such or part thereof shall be severed from this agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement shall continue in full force and effect.

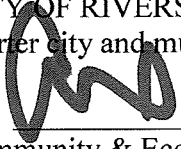
XXI. ENTIRE AGREEMENT

This Agreement is intended by the parties hereto as the final and exclusive expression of the provisions contained in this Agreement and it supersedes and replaces any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be modified or changed only upon the written consent of the parties hereto. The City Manager of the CITY or his designee are hereby granted the authority to modify, amend or alter this Agreement, provided such changes do not result in any monetary increase to the AUTHORITY or in any material change to the terms of this Agreement.

Signatures on following page.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.


CITY OF RIVERSIDE, a California
charter city and municipal corporation

By: 
Community & Economic Development Director

Date: _____

Attest: _____
City Clerk

APPROVED AS TO FORM:

By: 
Deputy City Attorney

THE HOUSING AUTHORITY
OF THE CITY OF RIVERSIDE, a
public body corporate and politic

By: _____
Executive Director

Date: _____

Attest: _____
Housing Authority Secretary

APPROVED AS TO FORM:

By: 
Housing Authority General Counsel

EXHIBIT “A”

SCOPE OF SERVICES & PERSONNEL

- A. Provide up to 12 months of rental assistance or a one-time security and utility deposits to eligible individuals or families who are at risk of or are currently homeless. Program participants can only receive rental assistance for up to 12 months or a security deposit, not both;
- B. Provide intake of applicants to assure program eligibility and enter them into the Coordinated Assessment system (HomeLink);
- C. Provide case management (12 months) , monitoring, and counseling and education classes (clients must attend for a 6-month period);
- D. Inspect apartment units to ensure that they meet HUD’s Housing Quality Standards or contact the City of Riverside County regarding any past or current Housing Quality Standard Inspections;
- E. Collaborate with the Homeless Access Center, Emergency Shelter (2840 Hulen Place, Riverside, CA) and any other agencies handling homeless programs and homeless issues;
- F. Create and continue partnerships with housing providers;
- G. Report to the City on a monthly basis on service activities and outcomes.

EXHIBIT “B”

BUDGET

Activity	Budget
Rental Assistance	\$545,000
Security Deposits	\$ 50,000
Utility Deposits	\$ 5,000
Total	\$600,000

EXHIBIT “C”

SELECTED CFR SECTIONS

24 CFR Subtitle A Part 42 of Title 24 of the Code of Federal Regulations §92.1 Overview.

This part implements the HOME Investment Partnerships Act (the HOME Investment Partnerships Program). In general, under the HOME Investment Partnerships 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 multi-year 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.

[78 FR 44666, Aug. 22, 2013]

§92.203 Income determinations.

(a) The HOME program has income targeting requirements for the HOME program and for HOME projects. Therefore, the participating jurisdiction must determine each family is income eligible by determining the family's annual income.

(1) For families who are tenants in HOME-assisted housing and not receiving HOME tenant-based rental assistance, the participating jurisdiction must initially determine annual income using the method in paragraph (a)(1)(i) of this section. For subsequent income determinations during the period of affordability, the participating jurisdiction may use any one of the following methods in accordance with §92.252(h):

(i) Examine at least 2 months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(ii) Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

(iii) Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

(2) For all other families (i.e., homeowners receiving rehabilitation assistance, homebuyers, and recipients of HOME tenant-based rental assistance), the participating jurisdiction must determine annual

income by examining at least 2 months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(b) When determining whether a family is income eligible, the participating jurisdiction must use one of the following two definitions of "annual income":

(1) Annual income as defined at 24 CFR 5.609 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR 5.603); or

(2) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual Federal annual income tax purposes.

(c) Although the participating jurisdiction may use either of the definitions of "annual income" permitted in paragraph (b) of this section to calculate adjusted income, it must apply exclusions from income established at 24 CFR 5.611. The HOME rents for very low-income families established under §92.252(b)(2) are based on adjusted income. In addition, the participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family. The participating jurisdiction may use only one definition for each HOME-assisted program (e.g., downpayment assistance program) that it administers and for each rental housing project.

(d)(1) The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income shall include income from all persons in the household. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

(2) The participating jurisdiction is not required to re-examine the family's income at the time the HOME assistance is provided, unless more than six months has elapsed since the participating jurisdiction determined that the family qualified as income eligible.

(3) The participating jurisdiction must follow the requirements in §5.617 when making subsequent income determinations of persons with disabilities who are tenants in HOME-assisted rental housing or who receive tenant-based rental assistance.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997; 66 FR 6224, Jan. 19, 2001; 78 FR 44666, July 24, 2013]

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 nonluxury 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. The activities and costs are eligible only if the housing meets the property standards in §92.251 upon project completion.

(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 and specifically approves in writing. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

(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.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997; 78 FR 44667, July 24, 2013]

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

(a) *Eligible costs.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family pursuant to this section. Eligible costs also include utility deposit assistance, but only if this assistance is provided with tenant-based rental assistance or security deposit payment. Administration of tenant-based rental assistance is eligible only under general management oversight and coordination at §92.207(a), except that the costs of inspecting the housing and determining the income eligibility of the family are eligible as costs of the tenant-based rental assistance.

(b) *General requirement.* A participating jurisdiction may use HOME funds for tenant-based rental assistance only if the participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with 24 CFR 91.225(d)(1), 91.325(d)(1), or 91.425(a)(2)(i), and specifies local market conditions that lead to the choice of this option.

(c) *Tenant selection.* The participating jurisdiction must select low-income families in accordance with written tenant selection policies and criteria that are based on local housing needs and priorities established in the participating jurisdiction's consolidated plan.

(1) *Low-income families.* Tenant-based rental assistance may only be provided to very low- and low-income families. The participating jurisdiction must determine that the family is very low- or low-income before the assistance is provided. During the period of assistance, the participating jurisdiction must annually determine that the family continues to be low-income.

(2) *Targeted assistance.* (i) The participating jurisdiction may establish a preference for individuals with special needs (e.g., homeless persons or elderly persons) or persons with disabilities. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of nonmandatory services that may be most appropriate for persons with a special need or a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with special needs or disabilities who can benefit from such services. Participation may be limited to persons with a specific disability if necessary to provide as effective housing, aid, benefit, or services as those provided to others in accordance with 24 CFR 8.4(b)(1)(iv).

(ii) The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

(iii) *Self-sufficiency program.* The participating jurisdiction may require the family to participate in a self-sufficiency program as a condition of selection for assistance. The family's failure to continue

participation in the self-sufficiency program is not a basis for terminating the assistance; however, renewal of the assistance may be conditioned on participation in the program. Tenants living in a HOME-assisted rental project who receive tenant-based rental assistance as relocation assistance must not be required to participate in a self-sufficiency program as a condition of receiving assistance.

(iv) *Homebuyer program.* HOME tenant-based rental assistance may assist a tenant who has been identified as a potential low-income homebuyer through a lease-purchase agreement, with monthly rental payments for a period up to 36 months (i.e., 24 months, with a 12-month renewal in accordance with paragraph (e) of this section). The HOME tenant-based rental assistance payment may not be used to accumulate a downpayment or closing costs for the purchase; however, all or a portion of the homebuyer-tenant's monthly contribution toward rent may be set aside for this purpose. If a participating jurisdiction determines that the tenant has met the lease-purchase criteria and is ready to assume ownership, HOME funds may be provided for downpayment assistance in accordance with the requirements of this part.

(v) Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a). For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance. Persons who are eligible for a preference must have the opportunity to participate in all programs of the participating jurisdiction, including programs that are not separate or different.

(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. Families so selected may use the tenant-based assistance in the rehabilitated or acquired housing unit or in other qualified housing.

(d) *Portability of assistance.* A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.

(e) *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 participating jurisdiction and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a participating jurisdiction 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.

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

(g) *Tenant protections.* The tenant must have a lease that complies with the requirements in §92.253 (a) and (b).

(h) *Maximum subsidy.* (1) The amount of the monthly assistance that a participating jurisdiction 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 participating jurisdiction and 30 percent of the family's monthly adjusted income.

(2) The participating jurisdiction must establish a minimum tenant contribution to rent.

(3) The participating jurisdiction's rent standard for a unit size must be based on:

(i) Local market conditions; or

(ii) The Section 8 Housing Choice Voucher Program (24 CFR part 982).

(i) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the requirements set forth in 24 CFR 982.401. The participating jurisdiction must inspect the housing initially and re-inspect it annually.

(j) *Security deposits.* (1) A participating jurisdiction 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 participating jurisdiction provides any other tenant-based rental assistance under this section.

(2) The relevant 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 participating jurisdiction may pay the funds directly to the tenant or to the landlord.

(4) HOME funds for security deposits may be provided as a grant or as a loan. If they are provided as a loan, the loan repayments are program income to be used in accordance with §92.503.

(5) Paragraphs (b), (c), (d), (f), (g), and (i) of this section are applicable to HOME security deposit assistance, except that income determinations pursuant to paragraph (c)(1) of this section and Housing Quality Standard inspections pursuant to paragraph (i) of this section are required only at the time the security deposit assistance is provided.

(k) *Program operation.* A tenant-based rental assistance program must be operated consistent with the requirements of this section. The participating jurisdiction may operate the program itself, or may contract with a PHA or other 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. In either case, the participating jurisdiction (or entity operating the program) must approve the lease.

(l) *Use of Section 8 assistance.* In any case where assistance under section 8 of the 1937 Act becomes available, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the HOME tenant-based rental assistance under this part.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28928, May 28, 1997; 67 FR 61756, Oct. 1, 2002; 78 FR 44668, July 24, 2013]

§92.213 HOME Funds and Public Housing.

(a) *General rule.* HOME funds may not be used for public housing units. HOME-assisted housing units may not receive Operating Fund or Capital Fund assistance under section 9 of the 1937 Act during the HOME period of affordability.

(b) *Exception.* HOME funds may be used for the development of public housing units, if the units are developed under section 24 of the 1937 Act (HOPE VI) and no Capital Fund assistance under section 9(d) of the Act is used for the development of the unit. Units developed with both HOME and HOPE VI

may receive operating assistance under section 9 of the 1937 Act. Units developed with HOME and HOPE VI funds under this paragraph may subsequently receive Capital Funds for rehabilitation or modernization.

(c) *Using HOME funds in public housing projects.* Consistent with §92.205(d), HOME funds may be used for affordable housing units in a project that also contains public housing units, provided that the HOME funds are not used for the public housing units (except as provided in paragraph (b) of this section) and HOME funds are used only for eligible costs in accordance with this part.

(d) The HOME funds must be used in accordance with the requirements of this part and the project must meet the requirements of this part, including rent requirements in §92.252.

[78 FR 44669, July 24, 2013]

§92.214 Prohibited activities and fees.

(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 for uses 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, assistance to a homebuyer to acquire housing previously assisted with HOME funds, or assistance to preserve affordability of homeownership housing in accordance with §92.254(a)(9)) to a project previously assisted with HOME funds during the period of affordability established by the particular jurisdiction in the written agreement under §92.504. However, additional HOME funds may be committed to a project for 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)(1) Participating jurisdictions may not charge (and must prohibit State recipients, subrecipients, and community housing development organizations from charging) servicing, origination, or other fees for the purpose of covering costs of administering the HOME program (e.g., fees on low-income families for

construction management or for inspections for compliance with property standards) (see §92.206(d)(6) and §92.207), except that:

(i) Participating jurisdictions and State recipients may charge owners of rental projects reasonable annual fees for compliance monitoring during the period of affordability. The fees must be based upon the average actual cost of performing the monitoring of HOME-assisted rental projects. The basis for determining the amount of the fee amount must be documented and the fee must be included in the costs of the project as part of the project underwriting;

(ii) Participating jurisdictions, subrecipients and State recipients may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. The amount of application fees must be appropriate to the type of application and may not create an undue impediment to a low-income family's, subrecipient's, State recipient's, or other entity's participation in the participating jurisdiction's program; and

(iii) Participating jurisdictions, subrecipients and State recipients may charge homebuyers a fee for housing counseling.

(2) All fees charged under paragraph (b)(1) of this section are applicable credits under 2 CFR part 225 (OMB Circular A-87, entitled "Cost Principles for State, Local, and Indian Tribal Governments").

(3) The participating jurisdiction must prohibit project owners from charging fees that are not customarily charged in rental housing (e.g., laundry room access fees), except that rental project owners may charge:

(i) Reasonable application fees to prospective tenants;

(ii) Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and

(iii) Fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28929, May 28, 1997; 67 FR 61756, Oct. 1, 2002; 72 FR 16685, Apr. 4, 2007; 78 FR 44669, July 24, 2013]

§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:

(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.

§92.251 Property standards.

(d) *Occupied housing by tenants receiving HOME tenant-based rental assistance.* All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards in 24 CFR 982.401, or the successor requirements as established by HUD.

[78 FR 44670, July 24, 2013]

§92.253 Tenant protections and selection.

(a) *Lease.* There must be a written lease between the tenant and the owner of rental housing assisted with HOME funds that is for a period of not less than one year, unless by mutual agreement between the tenant and the owner a shorter period is specified.

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses; and

(9) *Mandatory supportive services.* Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

(d) *Tenant selection.* An owner of rental housing assisted with HOME funds must comply with the affirmative marketing requirements established by the participating jurisdiction pursuant to §92.351(a). The owner must adopt and follow written tenant selection policies and criteria that:

(1) Limit the housing to very low- income and low-income families;

(2) Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants);

(3) Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the participating jurisdiction (and only if the limitation or preference is described in the participating jurisdiction's consolidated plan).

(i) Any limitation or preference must not violate nondiscrimination requirements in §92.350. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., the Housing Opportunity for Persons with AIDS program under 24 CFR part 574, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, supportive housing for the elderly or persons with disabilities under 24 CFR part 891), and the limit or preference is tailored to serve that segment of the population.

(ii) If a project does not receive funding from a Federal program that limits eligibility to a particular segment of the population, the project may have a limitation or preference for persons with disabilities who need services offered at a project only if:

(A) The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;

(B) Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and

(C) Such services cannot be provided in a nonsegregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

(4) Do not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher Program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

(5) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(6) Give prompt written notification to any rejected applicant of the grounds for any rejection.

[61 FR 48750, Sept. 16, 1996, as amended at 67 FR 61756, Oct. 1, 2002; 78 FR 44674, July 24, 2013]

Subpart H—Other Federal Requirements

§92.350 Other Federal requirements and nondiscrimination.

(a) The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.

(b) The nondiscrimination requirements at section 282 of the Act are applicable. These requirements are waived in connection with the use of HOME funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

[62 FR 28930, May 28, 1997]

§92.351 Affirmative marketing; minority outreach program.

(a) *Affirmative marketing.* (1) Each participating jurisdiction must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME-funded programs, including, but not limited to, tenant-based rental assistance and downpayment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If participating jurisdiction's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with §92.253(d)(3), the participating jurisdiction must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

(2) The affirmative marketing requirements and procedures adopted must include:

(i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(ii) Requirements and practices each subrecipient and owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the participating jurisdiction and by subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions; and

(v) A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(3) A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.

(b) *Minority outreach.* A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

[61 FR 48750, Sept. 16, 1996, as amended at 78 FR 44678, July 24, 2013]

§92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

[64 FR 50224, Sept. 15, 1999]

§92.356 Conflict of interest.

(a) *Applicability.* In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or

immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

(f) *Owners and developers.* (1) No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required period of affordability specified in §92.252(e) or §92.254(a)(4). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an

employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) *Exceptions.* Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of §92.253 are being observed;

(iv) Whether the affirmative marketing requirements of §92.351 are being observed and followed; and

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28930, May 28, 1997; 78 FR 44679, July 24, 2013]

§92.358 Consultant activities.

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. 104-204 (September 26, 1996). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

[62 FR 28930, May 28, 1997]

§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.

[67 FR 61757, Oct. 1, 2002]

§92.507 Closeout.

Home funds will be closed out in accordance with procedures established by HUD.

[62 FR 44840, Aug. 22, 1997]

EXHIBIT "D"

MODEL RENTAL AGREEMENT

[Attached behind this page.]