#39 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Toyota Camry not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1989 Toyota Camry originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 17, 1993

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–14719 Filed 6–22–93; 8:45 am]

BILLING CODE 4910-59-M

Denial of Motor Vehicle Noncompliance Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Mr. Frederick E. Grim, P.E., petitioned the agency to determine that the 1990 Dodge Shadow vehicle and other makes and model years of Chrysler vehicles equipped with a tilt steering column, fail to comply with Federal Motor Vehicle Safety Standards (FMVSS) No. 203, "Impact protection for the driver from the steering control system," No. 204, "Steering control rearward displacement," and No. 208, "Occupant crash protection." Mr. Grim included with his petition information and photographs of two vehicles involved in real-world crashes, characterized by Mr. Grim as low speed collisions, in which the steering wheel separated from the tilt steering column. The petitioner believes that the steering wheel separation is caused by the rearward displacement of the steering shaft in a crash, causing the tilt mechanism to fracture prior to proper air bag deployment and operation.

Specifically, this petition requests NHTSA to commence a proceeding to determine whether to issue an order requiring owner notification and remedy of a failure of the subject vehicles to comply with the aforementioned FMVSS. To address the merits of the petition, the agency wrote to Chrysler Corporation (Chrysler), requesting information and data from all tests used by Chrysler in the assessment of vehicle performance relative to the requirements of FMVSS Nos. 203, 204, and 208. Separately, the agency procured a Dodge Shadow vehicle with the subject tilt steering column and tested the vehicle to the requirements of the applicable standards. Based on NHTSA's review of all available information, as discussed below, there are no data to suggest the subject vehicles did not comply with the applicable standards. Thus, the petition for the commencement of a proceeding to determine whether to issue an order regarding failure of the subject vehicles to comply with the applicable standards is denied. However, the information obtained during the course of the analysis pertaining to the subject petition indicated that it would be appropriate to consider whether the subject vehicles contain a safety-related defect related to the design and performance of the steering column. Accordingly, a defect investigation has been initiated.

Concerning the petitioner's request regarding compliance to the safety standards, it is noted that FMVSS No. 203 does not apply to vehicles which use a driver position air bag to meet the frontal crash protection requirements of FMVSS No. 208. All Dodge Shadow and Plymouth Sundance vehicles, beginning with model year 1990, were equipped with a driver's air bag. Therefore, no basis exists for conducting a determination of compliance with respect to FMVSS No. 203.

Review of all information and data available indicates that these vehicles meet the requirements of FMVSS Nos. 208 and 204. Chrysler submitted the results of 14 tests used to certify compliance to the requirements of FMVSS No. 208. In each of the tests, the vehicle met the injury criteria established in FMVSS No. 208. In addition, Chrysler submitted the results of nine non-certification tests on vehicles with the subject tilt column design. These developmental tests indicated that compliance with standards 204 and 208 was not affected by the tilt steering column design. NHTSA conducted a compliance test of a 1993 Dodge Shadow to assess its performance relative to FMVSS No. 208. FMVSS No. 208 requires that the Head Injury Criteria (HIC) not exceed 1,000, the chest acceleration not exceed 60 g's, the chest deflection not exceed 3 inches and the compression loads in the upper legs not exceed 2,250 lb. The driver dummy in the Dodge Shadow, restrained by an air bag measured a HIC of 188, a chest acceleration of 34 g's, a chest deflection of 1.1 inches and upper leg loads of less then 1,100 lb. These data indicate a large margin of compliance with the performance measures established in FMVSS No. 208. Based on the data submitted by Chrysler and the NHTSA compliance test, there are no data to suggest a noncompliance with the requirements of FMVSS No. 208.

Concerning FMVSS No. 204, the standard requires that the steering control may not have a horizontal rearward displacement of more than 5 inches when the vehicle is impacted into a barrier at 30 mph. Chrysler submitted data on two vehicle crash tests to support the compliance of the subject vehicles to the requirements of FMVSS No. 204. THe maximum displacement of the steering control was 3.9 inches. In NHTSA's FMVSS No. 208 compliance test mentioned above, photographic measurement indicated the rearward displacement complied with the requirements of FMVSS No. 204. Again, there are no data to suggest a noncompliance of the subject vehicles with the requirements of FMVSS No. 204.

Although the analysis of all available data indicate that the subject vehicles comply with the performance requirements of FMVSS No. 208 and FMVSS No. 204, the review indicated several instances of tilt column damage in laboratory crash tests. While this damage did not adversely affect compliance with the subject safety standards, NHTSA concluded that further review of tilt steering column safety performance was warranted. Accordingly, the agency has initiated a defect investigation to assess the safety performance of the steering column in these vehicles. This investigation, EA93–009, is ongoing and no conclusions have been reached.

In consideration of all available information, it was concluded that there was not a reasonable possibility that an order concerning noncompliance in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of resources to determine whether a noncompliance exists does not appear to be warranted. Therefore, the petition was denied.

Authority: Sec. 124, Public Law 93–492: 88 Stat. 1470 (15 U.S.C. 140a); delegations of authority at 49 CFR 1.5 and 501.8.

Dated: June 17, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93-14715 Filed 6-22-93; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 119
Wednesday, June 23, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 24, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the public.

1. Pride in Public Service

The Commission will present the Pride in Public Service Award to June's recipient.

2. Loperamide

The staff will brief the Commission on a final rule under the Poison Prevention Packaging Act to require child-resistant packaging for products containing more than 0.045 milligrams of loperamide in a single package.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, (301) 504–0800.

Dated: June 18, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–14926 Filed 6–21–93; 2:59 pm]

BILLING CODE 6355–01–M

Corrections

Federal Register
Vol. 58, No. 119
Wednesday, June 23, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[FRL-4543-5]

Acid Rain Program: General Provisions and Permits, Allowance System, Continuous Emissions Monitoring, Excess Emissions and Administrative Appeals

Correction

In rule document 93-1 beginning on page 3590 in the issue of Monday, January 11, 1993, make the following corrections:

§ 75.1 [Corrected]

1. On page 3702, in the first column, in § 75.1(b), in the last line, "appendix C" should read "appendix G".

§ 75.6 [Corrected]

2. On page 3703, in the second column, in § 75.6(a)(12), in the last line, "the part" should read "this part".

§ 75.12 [Corrected]

3. On page 3705, in the third column, in § 75.12(c)(1), in the third line, "fact or" should read "factor".

§ 75.14 [Corrected]

4. On page 3706, in the third column, in § 75.14(d), in the second line, "*engines*" should read "*engine*".

§ 75.15 [Corrected]

5. On page 3707, in the first column, in § 75.15(a)(3)(iii), in the third line, "the outlet" should read "and outlet".

5. On the same page, in the same column, in § 75.15(b), in the first line, "SO^2" should read "SO_2".

§ 75.16 [Corrected]

6. On page 3708, in the third column, in § 75.16(b)(2)(i), in the first line, after "from" insert "each".

§ 75.17 [Corrected]

7. On page 3709, in the second column, in § 75.17(b), in the second line, "*units(s)*" should read "*unit(s)*".

§ 75.20 [Corrected]

8. On page 3710, in the first column, in § 75.20(a)(1), in the first line, "*Notification*" was misspelled.

§ 75.33 [Corrected]

9. On page 3716, beginning in the first column, in § 75.33(c)(2)(ii)(B), remove the text beginning with subparagraph (2) at the bottom of the page and ending with subparagraph (B) in the second column at the top of the page.

§ 75.41 [Corrected]

10. On page 3718, in the second column, in § 75.41(b)(2)(i), under "(Eq. 13)":

a. "*X*" should be lowercased each time it appears in the next three lines.

b. In the first line, after "value at" insert "hour".

c. In the third line, before the equal sign, insert an end parenthesis.

11. On page 3720, in the first column, in § 75.41(c)(2)(ii), the phrase "(Eq. 27)" should be removed.

§ 75.48 [Corrected]

12. On the same page, in the third column, in § 75.48(a)(3)(vii), in the second line, "§ 7.6.4" should read "section 7.6.4".

§ 75.50 [Corrected]

13. On page 3721, in the third column, in § 75.50(c)(3)(ii), in the first line, "emission" should read "emissions".

Appendix A to Part 75 [Corrected]

14. On page 3727, in the third column, in **Appendix A to Part 75—Specifications and Test Procedures**, under the heading *1.2 Flow Monitors*, in the eighth line, "Text" should read "Test".

15. On the same page, in the third column, under the heading 1.2.2 Alternative Monitoring Location, in the first paragraph, in the second line, "grater" should read "greater".

16. On page 3730, in the 1st column, under the heading 2.1.4 Flow Monitors, in the 1st full paragraph, in the 13th line, "fmp" should read "fpm".

17. On the same page, in the third column, under the heading *3.2 Linearity Check*, in paragraph (2), in the last line, "restrictive" was misspelled.

18. On page 3736, in Figure 2., in footnote 3, "of" should read "or".

Appendix C to Part 75 [Corrected]

19. On page 3741, in the first column, in **Appendix C to Part 75—Missing Data Estimation Procedures**, in paragraph 1.2.4.6, delete the first through sixth lines.

20. On the same page, in the second column, in paragraph 2.2.1, in the heading to Table C—1, "Loan" should read "Load".

21. On page 3742, in paragraph 2.1.3, in the second column, in the seventh line, "§ 6.5.2" should read "section 6.5.2".

22. On the same page, in the third column, in paragraph 2.2.6, in the eighth line, "or" should read "of".

23. On page 3743, in the third column, in paragraph 2.1.2.2, in the sixth line, remove "fuel" after "dual-fuel".

24. On the same page, in the same column, in paragraph 2.1.2.3, in the third line, "Methods 7E of 3A" should read "Methods 7E and 3A".

Appendix F to Part 75 [Corrected]

25. On page 3747, in the third column, **Appendix F to Part 75—Conversion Procedures**, in paragraph 4.3, in the entry for H_R, in the first line, "emissions" was misspelled.

26. On page 3748, in the first column, in paragraph 5.2.2, in the second line, "concentrations" should read "concentration".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

Correction

In rule document 93-13852 beginning on page 32847 in the issue of Monday, June 14, 1993, make the following correction:

On page 32855, in the first column, amendatory instruction 3. should read:

"3. Section 916.16 is amended by revising paragraph (a); amending paragraph (b) by revising the introductory text, removing and reserving paragraphs (b)(1) through (7), (b)(9), (b)(11) through (16), (b)(18) through (23), (b)(25) through (29), (b)(31) through (42), and revising paragraphs (b)(8), (10), (17), (24), and (30); and by adding paragraph (c) as follows:"

BILLING CODE 1505-01-D

federal register

Wednesday
June 23, 1993

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 58 and 92
HOME Investment Partnerships Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 58 and 92

[Docket No. R-93-1658; FR-3410-I-01]

RIN 2501-AB49

HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This rule amends the existing interim rule for the HOME Investment Partnerships Program by making conforming changes required by the Housing and Community Development Act of 1992 and by implementing program changes, in response to public comment, that would facilitate the operation of the program. It also provides specifically for its applicability to the HOME program, and to broaden, where appropriate, current program-specific references to various activities, responsibilities and categorical exclusions so that they apply to activities and participants under the HOME program.

DATES: *Effective date:* July 23, 1993.

Comment due date: Comments on these amendments to the interim rule must be submitted on or before August 23, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXES will not be accepted.

FOR FURTHER INFORMATION CONTACT: Concerning 24 CFR part 92, subparts A–L: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These are not toll-free numbers.)

Concerning 24 CFR part 92, subpart M: Dominic Nessi, Director, Office of Indian Housing, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW. room 4140, Washington, DC 20410, telephone (202) 708–1015. A telecommunications device for speech and hearing impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

Concerning 24 CFR part 58: Richard H. Broun, Director, Office of Environment and Energy, room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2894, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements for the HOME Program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, and have been assigned OMB Control Number 2501–0013. This rule, through the elimination of certain provisions, reduces information collection requirements. Information on these requirements is provided as follows:

ANNUAL REPORTING AND RECORDKEEPING BURDEN

Regulation section	Number of respondents	Record-keeping hours	Reporting hours	Estimated annual burden hours
92.51 (deleted)	50	0	−5	−250
92.208 (deleted) 92.209 (deleted)	54	−4	0	−216
92.210 (revised) 92.222 (revised)	330	0	−5	−1,650
Total Annual Reporting and Recordkeeping Burden Reduction				−2,116

II. Background

The HOME Investment Partnerships Program (HOME) was enacted under title II (42 U.S.C. 12701–12839) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990). On March 19, 1991, the Department published a proposed rule (56 FR 11592) to implement the HOME Program. The Department received 119 public comments in response to the proposed rule. After reviewing and considering these comments, HUD published an interim rule on December 16, 1991 (56 FR 65313), inviting additional comments on the program.

The Department received 118 public comments on the interim rule. In partial response to these comments and HUD's experience in implementing the program, a rule to make necessary changes on an expedited basis to the December 16, 1991 interim rule was developed. In addition, the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) included a substantial number of amendments to the HOME program. A memorandum dated November 9, 1992 and signed by the Acting Assistant Secretary summarizing the HCDA 1992 amendments to the HOME program was mailed to all participating jurisdictions (PJs) soon after the passage of HCDA 1992. Most of the HCDA 1992 amendments to the HOME program were determined by the Department to be immediately effective, requiring only conforming amendments to the HOME rule to bring it into accord with the statutory changes. Other HCDA 1992 chances were determined to require the publication of a proposed rule (58 FR 26048, April 29, 1993) with an opportunity for public notice and comment before they could be implemented. Some of the HCDA 1992 amendments that were determined to be immediately effective were included in the "necessary changes" interim rule, which was published on December 22, 1992 (57 FR 60960). The Department has received 27 public comments on this rule. Since the publication of the interim rules, the Department has also conducted more than thirty HOME Program training sessions across the country which also served as forums for airing issues and comments concerning the rules.

The remaining changes to the HOME rule necessary to make it conform to the additional HCDA 1992 amendments determined to be immediately effective are being implemented in this interim rule. The Department is also using this interim rule to implement additional changes that are being made in response to comments on both the December 16, 1991 and December 22, 1992 interim rules, and that will improve the operation of the HOME program. Amendments applicable to subpart M, HOME funds for Indian tribes, are also being made in this rule.

A. HCDA 1992 Amendments

Currently, a jurisdiction must receive $750,000 through formula distribution to become a participating jurisdiction, or must receive at least $500,000 by formula and "make up the difference" to $750,000. These thresholds are amended by HCDA 1992 section 202 to provide that, in years where Congress appropriates less than $1.5 billion for title II of NAHA (e.g., Fiscal Year 1993), jurisdictions must receive at least $335,000 by formula and meet a threshold of $500,000 in order to participate. A new § 92.50(f) is being added to provide for the use of the alternate $335,000 formula threshold, and § 92.102 and § 92.103(b) are being amended to include references to the new alternate participation threshold amount of $500,000. In addition, because the redistribution calculations under the allocation formula begin at one-half the threshold amount, § 92.50(f) also provides for the use of $167,500 in redistribution calculations when the alternate formula threshold of $335,000 applies. These new thresholds were reflected in the FY 1993 Notice of Fund Availability (NOFA) for the HOME Program, published in the Federal Register on January 27, 1993 (58 FR 6289).

Section 202 of HCDA 1992 also creates new thresholds, applicable only in years when the HOME appropriation falls below $1.5 billion, under which a PJ's designation may be revoked. HUD may revoke a jurisdiction's designation as a PJ if its allocation drops below $500,000 for three consecutive years, $410,000 for two consecutive years and $335,000 for any one year. These new thresholds are being added to § 92.107(b).

The rental production set-aside and all restrictions for new construction activities, including the new construction list and the special justifications for new construction under neighborhood revitalization and special needs housing are eliminated by HCDA 1992 section 203. Site and neighborhood standards, 24 CFR 92.202, still apply to new construction. In addition, these statutory changes eliminate the 36 month commitment deadline for rental housing production set aside funds. Now, all HOME funds (including FY 1992 allocations) must be committed within 24 months. Accordingly, §§ 92.51 Establishing list of participating jurisdictions that may use funds for new construction and rental housing production set-aside, § 92.208 New construction: HUD authorized, and § 92.209 New construction: Neighborhood revitalization, are being removed and reserved; §§ 92.52, 92.102(b)(2), and 92.500(d)(2) are being revised to remove references to the rental production set-aside or new construction; and § 92.210, currently entitled New Construction: Special needs, is re-titled, Tenant-based rental assistance: Security deposits, and is being completely revised to reflect HCDA 1992 section 204(a), which permits HOME funds to be used for security deposits, whether or not HOME funds are provided for other forms of tenant-based rental assistance.

The revised § 92.210 enables the participating jurisdiction to define the term "security deposit" for purposes of the HOME program, with the additional requirements that the security deposit may not exceed the equivalent of two months' rent. Only tenants, not landlords, are permitted to apply for this form of assistance. Since the use of HOME funds for security deposits is a form of tenant-based rental assistance, the tenant lease protection provisions of § 92.253 (a) and (b) are applicable. Conforming changes are also being made to include security deposits in the definition of tenant-based rental assistance at § 92.2; as a part of program description at § 92.150(b)(6); in the listing of eligible activities at § 92.205(a)(1) and eligible costs at § 92.206(e); and as a component of § 92.211 Tenant-based rental assistance.

Section 205 of HCDA 1992 provides that permanent housing for disabled homeless persons, transitional housing and single-room occupancy housing (SRO) are included in the term "affordable housing." The only effect of this provision is to add transitional housing as an eligible HOME activity, since all permanent and SRO housing is currently eligible under the HOME interim rule. A definition of "transitional housing" is being added at § 92.2. Transitional housing is designed to provide housing and appropriate supportive services. Its purpose is to facilitate the movement of individuals to independent living within a period prescribed by the PJ or project owner. Because this specified time limitation is applicable to transitional housing, § 92.253(c) is revised to permit the termination of tenancy after the prescribed period. Section 92.205(a)(1) is being revised to specify HOME assisted housing must be permanent or transitional housing and includes housing for disabled homeless persons, and single-room occupancy housing. Emergency shelters are not transitional or permanent housing and are not eligible for the HOME program, and the definition of "housing" at § 92.2 is amended to clarify this point.

HCDA 1992 section 207 permits each PJ to use an amount equal to 10 percent of its HOME allocation for administrative and planning costs, including salaries of staff persons involved in the administration and management of HOME-assisted activities, incurred on or after October 28, 1992, the effective date of HCDA 1992. Section 92.206(f) is being amended to reflect this use of HOME funds. The Department will also allow PJs to use up to ten percent of any return on the investment of HOME funds, as defined in section 92.503, for administrative and planning costs.

Section 207 also provides that no administrative costs will be recognized as match, and eliminates the seven percent match credit for administrative costs paid with State, and local or CDBG funds. The conforming change to § 92.220(a)(5) to eliminate administrative costs as an eligible form of match is being implemented in the HOME proposed rule for HCDA 1992 amendments. The proposed rule would revise this section by replacing administrative costs with bond proceeds, newly eligible as a form of match in accordance with HCDA section 210(b).

In § 92.218 Amount of matching contribution, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to clarify that HOME funds used for administrative expenses and for operating expenses and capacity building of community housing development organizations do not have to be matched. Section 92.221 Match credit is also being revised by removing the text of paragraph (a) and moving up the texts of paragraphs (b) and (c), with conforming changes to delete references to administrative expenses. Section 92.221(a)(6) has been reserved to accommodate changes to be made by the proposed rule.

Section 207(g) of HCDA 1992 permits a participating jurisdiction in the HOME program to use up to five percent of its

HOME allocation for the payment of operating expenses for community housing development organizations (CHDOs). To implement this section, the Department has defined operating expenses at § 92.2. The definition seeks to be as inclusive as possible while still focusing on eligible operating expenses, as opposed to project costs. HOME funds for operating expenses may not be used to pay the administrative costs incurred by a CHDO acting as a subrecipient or contractor of a PJ to administer any or all of a PJ's HOME program activities. A PJ may use its administrative funds under the 10% cap for this purpose. Operating expenses for CHDOs are added to the list of eligible activities at § 92.206(g). To encourage the development of HOME-assisted projects by CHDOs, a new section is added at § 92.300(e) to explain that if funds for operating expenses are provided under § 92.206(g) and the CHDO is not also receiving CHDO set-aside funds to develop, own, or sponsor housing, the participating jurisdiction must enter into a written agreement with the community housing development organization. The written agreement must provide that the CHDO is expected to receive CHDO set-aside funds within 24 months of receiving the funds for operating expenses, and sets forth the terms and conditions upon which this expectation is based. In § 92.302(d)(1) "operating budget" is changed to read "operating expenses," and the text of this entire paragraph is being moved to a new paragraph established at § 92.300(f), and § 92.302(d) has been renumbered to accommodate this change. Moving this text, which deals with limitations on the assistance that may be provided to CHDOs, is necessary because the limitation applies to all operating expenses, and not just to housing education and organizational support under § 92.302. The new § 92.300(f) also reflects HCDA 1992 section 212(c), which limits the amount of HOME assistance for operating expenses to the greater of 50 percent or $50,000 of the organization's fiscal year total operating budget, without regard to other Federal assistance being provided.

The tiered match requirements have been amended by HCDA section 210(a). PJs must now provide the same 25 percent match (rather than 33 percent) for substantial rehabilitation as for rental assistance and rehabilitation; and a 30 percent match (rather than 50 percent) for new construction. These match requirements apply to any HOME funds drawn down on or after October 1, 1992, the beginning of FY 1993. The rule at § 92.218(a) is amended to substitute these new match requirements.

Section 92.220(a)(6) is added to the rule to include as an eligible match the value of site preparation and construction materials, and donated or voluntary labor, in connection with site preparation and construction or rehabilitation of affordable housing, as permitted by HCDA 1992 section 210(b). For the purpose of valuation, a single rate will be applicable for all donated or voluntary labor. The labor rate for FY 1993 is $10/hour. The labor rate will be reviewed each year, and be specified in the notice of funding availability announcing the formula allocation amounts as specified at 92.52, and the participating jurisdictions that receive a reduction of the matching contribution requirement. Donated materials are credited as match at the time they are used for the affordable housing, and donated or voluntary labor is credited at the time the work is performed, as specified in new § 92.221(a)(6).

HCDA 1992 section 210(c) amended the requirements for reduction of the match requirement. To implement these amendments, the current match reduction procedures at § 92.222(a), which permit a percentage reduction of the match over a three year period, are stricken and replaced by procedures described below. Section 210(c) requires the reduction of the match on the basis of the fiscal distress of the PJ, with some variation depending upon whether a State or local PJ is involved. A PJ other than a State is entitled to a 50 percent match reduction during any fiscal year that it is determined to be in fiscal distress, or a 100 percent match reduction during any fiscal year that it is determined to be in severe fiscal distress. The statute provides two distress criteria for local PJs, one based on the poverty rate of a PJ, the other based on a PJ's per capita income, each using data made available by the Bureau of the Census for the calendar year immediately preceding the PJ's match reduction fiscal year. The statute defines "fiscal distress" to mean that one of the distress criteria has been satisfied; "severe fiscal distress" means that both criteria have been satisfied. Because the statute does not establish distress criteria for States, and requires the Department to take into consideration a State's fiscal capacity and expenditure needs, a separate procedure for State PJs will be issued in a proposed rule for HCDA 1992 amendments to the HOME program. Section 92.222(a)(2) is reserved to this interim rule to accommodate the State procedure.

Although these fiscal distress criteria for local governments are specified in the statute, the information for these indicators is not updated by the U.S. Bureau of the Census any more frequently than every two years. The most current available data from this source will, therefore, be used. The Department will compute and publish distress determinations for PJs on an annual basis, even though new data may not be available each year, because additional jurisdictions may be eligible to participate in the program, or the configuration of existing PJs may change, which could result in different distress determinations. Because the Department will be making and publishing the distress determinations, it will not be necessary for a PJ to submit a certification of distress.

A PJ will meet the first criterion if its percent of families in poverty is 125 percent or more of the United States average; and a PJ will meet the second criterion of distress if its per capita income is less than 75 percent of the United States average. The Department has made available a list of local PJs that meet the distress criteria for FY 1993, and in the future will provide the list annually in the HOME Notice of Funding Availability (NOFA).

In order to permit the full benefit on the match reduction to be taken into account for planning purposes by participating jurisdictions, the reduction will be effective for the fiscal year in which the distress determination is published and for the next fiscal year. A 100 percent match reduction will, in every instance, be effective for this two year period. However, if in the second year of a 50 percent match reduction period the published distress determination indicates severe fiscal distress, a new two year 100 percent match reduction period is initiated and becomes immediately effective, superseding the second year of the 50 percent match reduction.

Section 210(c) of HCDA 1992 also permits the Department to reduce the match requirement by up to 100 percent for a PJ located in an area in which a declaration of major disaster is made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. If a participating jurisdiction is located in an area in which a declaration of major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act is made, HUD may reduce the matching requirement by up to 100 percent of the fiscal year in which the declaration of major disaster is made and the following fiscal year for a local participating jurisdiction, and for the State participating jurisdiction, by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year with respect to any HOME funds expanded in an area to which the declaration of a major disaster applies. Since the inclusion of the match reduction for disaster areas in HCDA was prompted by several disasters in 1992, the Department will allow these jurisdictions to apply for the match reduction, which would count for FY 1993 and FY 1994. To request a reduction, a participating jurisdiction must submit to the local HUD Field Office a copy of the disaster declaration. The provisions of this new match reduction replace the current text at § 92.222(b), which contained the procedures for implementing the match reduction provisions eliminated by HCDA 1992.

Section 210 of HCDA 1992 also amends the match requirements with respect to contribution made to affordable housing and contributions made from bond proceeds. These amendments have been determined to require notice and comment rulemaking, and will be separately published in a proposed rule.

Under HCDA 1992 section 212(a), the time period in which jurisdictions must reserve at least 15 percent of their HOME allocations for community housing development organizations (CHDOs) has been extended from 18 months to 24 months, and the conforming change is being made to § 92.300(a). This is the same time period in which funds must be committed to projects under 24 CFR 92.500(d)(2). This deadline for project commitments remains unchanged.

If during the first 24 months of its participation in the HOME Program a PJ cannot identify a sufficient number of capable CHDOs, HCDA 1992 section 212(b) provides that up to 20 percent of the minimum CHDO setaside of 15 percent (but not more than $150,000 during the 24 month period) may be made available to develop the capacity of CHDOs in the jurisdiction. These funds may be used for this purpose as soon as the PJ determines there are an insufficient number of capable CHDOs. These funds are not available for this purpose after the initial 24 months. This provision is being added to § 92.300(b) of the rule.

Section 213(a) of HCDA 1992 permits the use of technical assistance funds provided through intermediary organizations to support community land trusts (CLTs) and community groups establishing community land trusts, and to support groups involved in construction to support women in the homebuilding professions. A new § 92.302(c)(6), titled Community Land Trusts, is being added, to provide that intermediary technical assistance funds to support CLTs may be used for organizational support, technical assistance, education and training, and continuing support. A CLT must meet the definition of a CHDO (except the requirements in section 104(6) (C) and (D) of NAHA) in addition to several other statutory criteria, outlined in this section.

Section 213(b) provides that technical assistance may be made available through intermediaries to businesses, unions, and organizations involved in construction and rehabilitation of housing in low- and moderate-income areas to assist women residing in the area to obtain jobs involving such activities. This might include facilitating access by women to, and providing apprenticeship and other training programs regarding non-traditional skills, recruiting women to participate in such programs, providing support for women at job sites, counseling and educating businesses regarding suitable work environments for women, providing information to such women regarding opportunities for establishing small housing construction and rehabilitation businesses. Up to ten percent of these technical assistance funds devoted to this purpose may be used to provide materials and tools for training such women.

Assistance to facilitate access for women in the homebuilding professions may be made available to community-based organizations, as defined in the Job Training Partnership Act, or a public housing agency with demonstrated experience in this activity. New paragraphs 92.302 (a)(3), (b)(1)(v), and (c)(7) are being added to include the section 213(b) provisions in the rule.

The law in section 214 creates an additional purpose for which funds designated for capacity building may be used: to facilitate the establishment and efficient operation of programs, under which title to vacant and abandoned parcels of real estate located in or causing blighted neighborhoods is cleared for use consistent with the purposes of HOME. This, however, does not mean that HOME funds may be used for land banking. Acquisition of vacant land is predicated upon construction of affordable housing, which must commence within 12 months of committing HOME funds for acquisition. A new paragraph (a)(6) is being added for this purpose to § 92.400 Coordinated federal support for housing strategies.

Section 92.500(a) has been amended to implement HCDA 1992 section 218(a) to allow joint projects between contiguous jurisdictions.

The definition of "first-time homebuyer" is amended by HCDA 1992 section 219 to provide that "an individual shall not be excluded from consideration as a first-time homebuyer on the basis that the individual owns or owned, as a principal residence during such 3-year period, a dwelling unit whose structure is—

(i) Not permanently affixed to a permanent foundation in accordance with local or other applicable regulations, or

Not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure."

This second provision has wide application beyond owners of manufactured housing and applies to individuals living in units that do not meet applicable standards and cannot be rehabilitated cost-effectively, as described in paragraph (ii), above, in the documented judgment of the PJ. The definition of First-time homebuyer" at § 92.2 is being revised to include this amendment.

B. Amendments Made in Response to Comments on the December 16, 1991 and December 22, 1992 Interim Rules

As discussed, above, in addition to bringing the HOME rule into conformity with the remaining effective HCDA 1992 provisions, this interim rule is implementing certain changes in the HOME program in response to comments submitted on the December 16, 1991 and December 22, 1992 interim rules. Taking into account those comments, comments received at HOME Program training sessions and the Department's experience with the program, the Department has determined that these changes are appropriate to simplify and expedite the administration of the HOME program. They are being implemented here in this interim rule because the notice and comment requirements of 24 CFR part 10 have already been satisfied with the publication of the December 16, 1991 and December 22, 1992 interim rules. These changes would have been issued in final rule form, but for the fact that the complete text of the HOME rule is not yet ready for publication as a final rule.

The definition of "first-time homebuyer" at § 92.2 is revised to clarify that an individual, in addition to an individual and his or her spouse (as the definition currently reads), is included within its scope.

This rule amends one of the provisions relating to consortia at § 92.101(c). The HOME regulation had required that the consortium qualification period must be coterminous with that of urban county members. However, since some consortia have multiple urban counties which themselves have noncoterminous, three year, urban county qualification cycles, and since the CDBG statute precludes adjustments of the urban county cycles, the rule could not be complied with in these cases. Consequently, this interim rule deletes the coterminous requirement, but permits a consortium with one or more urban counties which have qualification cycles that are not coterminous with the consortium, to get in sync with an urban county by shortening a consortium qualification period to less than three fiscal years. The subsequent consortium qualification period will then revert to the usual three fiscal years cycle set forth in the rule. This interim rule also clarifies that the failure of an urban county consortium member to requalify under the CDBG program as an urban county for a fiscal year included in the consortium's qualification period terminates the period. This is consistent with the requirement that no included unit of general local government may withdraw from a consortium during a qualification period.

The Department received thirty comments requesting modification of the current provision in the rule that sets the maximum value of homeowner properties eligible for HOME assistance. Section 215(b)(1) of NAHA (42 U.S.C. 12745(b)(1)) provides that "Housing that is for homeownership shall qualify as affordable housing * * * only if the housing has an initial purchase price that does not exceed 95 percent of the median purchase price for the area * * *." By regulation, at 24 CFR 92.254, the Department imposes the section 203(b) FHA mortgage limits as a proxy for 95 percent of the median purchase price. These limits apply both to first-time homebuyers' purchases and to existing homeowners' rehabilitation.

The section 203(b) cap applies even for those PJs where 95 percent of the median area purchase price is actually much higher. HUD adopted this policy since it seemed inappropriate for a low-income HOME-assisted family to be able to purchase a home with a higher value than a non-subsidized middle-income family could purchase using FHA mortgage insurance under section 203(b). However, the effect of using these FHA limits has been to impede the full implementation of HOME activities in high-cost jurisdictions, as pointed out in eighteen comments received and as noted by the Department in its administration of the program.

In approximately 30 percent of the HOME PJs, the existing section 203(b) mortgage limits are capped well below 95 percent of the median purchase price. Commenters noted that in many of these areas, there are very few properties whose purchase price are under the section 203(b) limits. PJs in these areas are prevented from using HOME funds to assist first-time homebuyers. In addition, by applying the section 203(b) limits to properties owned by low-income homeowners, particularly elderly, most homes are ineligible for rehabilitation assistance because the market value of the property (even before rehabilitation) often exceeds the section 203(b) limits.

For these reasons, this rule is revising paragraphs (a)(1) (i), (a)(1) (ii), and (b) of § 92.254, "Qualification as affordable housing: Homeownership", to track the statute and delete any reference to section 203(b) mortgage limits. This permits housing to qualify as affordable housing even if the initial purchase price or after rehabilitation value exceeds the FHA mortgage limits, as long as the value remains within 95 percent of the area's median purchase price.

This 95 percent limit will be implemented in accordance with procedures already in place. At present, the Department determines the median purchase for every metropolitan statistical area (MSA) in the nation based on data from the Federal Housing Finance Board and the WEFA Group, a private national economic forecasting organization. Within the statutory dollar amount limit, the section 203(b) limits are set at a level of 95 percent of median purchase price for most communities in the nation, and these limits will be used in the HOME program. However, for communities whose section 203(b) limits are capped below 95 percent of median purchase price because of the overall statutory limit, the Department will use the actual 95 percent of median purchase price figure for determining value in the HOME program. At the time of distribution of the section 203(b) limits, the Department will notify the capped communities of the 95 percent of median purchase price limits that will be used for HOME program purposes.

Because information on the median purchase price is available only on the MSA level, it may not necessarily reflect an accurate median purchase price for each jurisdiction in a MSA. The Department accepts appeals of its section 203(b) determinations from cities if they can submit current data to demonstrate that the Department's median purchase price figure is inaccurate. This procedure will be followed in the HOME program for jurisdictions that claim their HUD-determined 95 percent level is inaccurate. The appeals process, and data required, is outlined at 24 CFR 203.18(b). The Department publishes all appeals granted and reviews and adjusts them annually.

Section 92.254(a)(4)(i)(B) was promulgated in the interim rule published in the **Federal Register** on December 22, 1992 to address the concern that the continuance of HOME long-term affordability requirements upon foreclosure would act as a significant disincentive to private lending institutions to make loans to HOME projects. This section, in general, provides for the suspension of the affordability requirements upon foreclosure by a lender or other transfer in lieu of foreclosure. To promote a consistent approach between the HOME program and a soon-to-be-published final rule on mortgage assumability and release requirements for the Single Family Mortgage Insurance Program, particularly regarding assignment of an FHA insured mortgage to HUD, § 92.254(a)(4)(i)(B) is being amended by this rule. The amendment provides that the affordability restrictions must terminate, rather than be suspended, upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. However, the affordability restrictions are revived according to the original terms if, during the original affordability period, the owner of record before the termination event reacquires title to the property.

Another change that relates to the definition of affordability is being implemented in this rule. Section 92.254(a)(4)(ii)(B) was also amended in the interim rule published on December 22, 1992. There, the first-time homebuyer resale affordability provisions were amended to increase the maximum monthly housing payment (principal, interest, taxes and insurance) allowable for subsequent purchasers with an income between 76 and 80 percent of median to 30 percent of adjusted gross income. However, this change merely made adjustments to the

30 percent of income limitation used for affordability purposes.

Upon further consideration of several comments and the actual operation of the program, the Department agrees that the 30 percent limitation does not permit adjustment of the affordability standard in response to changes in the factors that determine affordability, such as home prices, market interest rates, local economic conditions, and the individual buyer's credit and payment history. This rule amends § 92.254(a)(4)(ii)(B) to permit the individual PJ, based upon relevant local factors, to establish a reasonable affordability standard and adjust it as necessary in response to changing circumstances. The new provision eliminates the 30 percent limitation, and instead requires that each participating jurisdiction define affordability for purposes of homebuyer resale in its HOME Program.

Section 209 of HCDA 1992 enables participating jurisdictions administering a program for first-time homebuyers to recapture HOME assistance and reinvest those funds to assist other first-time homebuyers, in lieu of restricting resale of that property to another low-income buyer, except where there are no net proceeds or where the net proceeds are insufficient to recapture the full HOME investment. In its interim rule of December 22, 1992 the Department implemented this provision and further required PJs to recapture the full net proceeds, when they are insufficient to repay the full HOME subsidy. The interim rule, at § 92.254(a)(4)(ii), defined "net proceeds" as the sales price minus loan repayments and closing costs.

Three commenters noted that this provision in the December 22, 1992 interim rule does not allow a PJ to permit the homeowner to recover his or her investment in affordable housing. The Department agrees with these commenters that PJs should have the option to allow the homeowner to recover the amount of his/her investment (i.e., downpayment, principal payments and any capital improvements), or some portion of it. This option is particularly important in steady or depreciating real estate markets where recapture of the total HOME investment does not allow the homeowner to recover any of his/her investment from the sale of the property.

Therefore, this interim rule amends § 92.254(a)(4)(ii) to provide the PJ this option. When the net proceeds are less than the amount of the HOME investment plus the homeowner's investment, the PJ may reduce a proportion of the HOME investment to be recaptured that is equivalent to the proportion of the amount of time the homeowner occupied the unit to the affordability period. For example, if the homeowner occupies for five years a unit with a fifteen year period of affordability, the PJ may reduce by one-third the HOME investment that is recaptured.

Example

A PJ provides a second mortgage to a first-time homebuyer for the acquisition of a unit that requires no rehabilitation. The total cost of acquisition is $50,000, financed as follows:

$25,000	First mortgage, private lender.
21,000	HOME second mortgage.
4,000	Homeowner downpayment.
50,000	

The period of affordability for this unit is fifteen years, and the homebuyer must sell it in year five, due to a job change. During its tenancy, the family added a bath to the basement and constructed a deck, investing a total of $10,000 in improvements. The values in the neighborhood have been steady, but have not appreciated and the unit sells for $52,000. No payments have been made on the HOME loan and closing costs and principal payments by the homeowner are negligible.

The PJ has specified in its recapture guidelines approved by HUD, that where the net proceeds are less than the HOME investment plus the homeowner's investment it will reduce the share of the HOME investment that is proportional to the length of occupancy by the first-time homebuyer relative to the period of affordability.

Step one: Determine the net proceeds. For this transaction, the net proceeds are:

$52,000	Sale price.
−25,000	Repayment of first mortgage and closing costs.
27,000	Net proceeds.

Step two: Determine that the net proceeds are less than the HOME investment plus the homeowner's investment.

$21,000	HOME investment.
+14,000	Homeowner's investment ($4,000 down payment + $10,000 improvements).
35,000	Combined investment.

Since $27,000 net proceeds is less than $35,000 combined investment, the PJ may pro-rate the amount of the HOME subsidy that must be recaptured based on the family's occupancy. Since the first-time homebuyer occupied the unit for one-third of the affordability period (5 of the 15 years), the PJ may forgive up to one-third of the HOME subsidy amount, or $7,000. It must recapture at least $14,000 of the HOME investment.

Step three: Determine distribution of sales proceeds. The proceeds of sale would be distributed as follows:

$52,000	Sale price.
−25,000	First mortgage repayment.
−14,000	HOME investment that must be recaptured.
13,000	Balance to be retained by homeowner.

By retaining the balance of sale proceeds, the initial owner is able to recover most of his $14,000 investment. At the same time, this method ensures the recapture of $14,000 of the HOME investment to be used by another first-time homebuyer.

In addition, § 92.254(a)(4)(ii) clarifies that the HOME assistance subject to the recapture provision is the assistance provided to enable the homebuyer to purchase the unit. In most instances this will be the direct assistance to the homebuyer, such as soft second mortgages, downpayment and closing cost assistance. Generally, when HOME assistance is provided for development costs (new construction or rehabilitation) it need not be recaptured. In some cases, particularly in low-income neighborhoods where property values are deflated, development costs may well exceed the property's market value. The portion of HOME funds invested in costs of such "overdevelopment" are never required to be recaptured. However, when development subsidies are used to reduce the purchase price below market value, and therefore to make the unit affordable to the homebuyer, the difference between market value and the purchase price is subject to recapture.

Example

A PJ acquires and rehabilitates a property as part of a neighborhood preservation and revitalization program. Total development costs ($30,000 for acquisition and $30,000 for rehabilitation) are $60,000. The market value is $50,000, but to make the unit affordable, the PJ sells it to a low-income family for $42,000. The $10,000 difference between development cost and market value is not subject to recapture, but the $8,000 write-down of the purchase price below market value is subject to recapture.

Conforming amendments are being made to § 92.150(b)(5) and § 92.152 to include recapture guidelines in the contents of program descriptions and amendments to program descriptions.

Section 92.254(a)(4)(ii) is amended to permit recapture of the HOME investment, as described above.

Another area in which a program correction is being made is in the way assets are included in income calculations for eligibility purposes. The HOME regulation, at § 92.203, currently requires that participating jurisdictions make determinations of annual income, adjusted income, monthly income and monthly adjusted income, as those terms are defined in 24 CFR part 813 (i.e., in accordance with the U.S. Housing Act of 1937). The definition of "annual income" in part 813 includes "net family assets" which, in turn, includes the passbook value of the equity in a house as part of the calculation when determining annual income.

Twenty commenters expressed concern about the use of this definition of "annual income" for homeowner rehabilitation programs. They point out that including the passbook value of the equity in a house as part of annual income has a negative effect on house-rich but income-poor individuals and families, who are frequently elderly. In rapidly appreciating markets, including the value of land and a substandard structure in the determination of income prohibits many needy, otherwise eligible, owners from receiving rehabilitation assistance. PJs should be allowed to assist these owners to live in a safer, standard environment. The inability to rehabilitate the deteriorating homes of owners excluded by this provision also defeats many revitalization strategies where the aim is to treat a neighborhood and upgrade the housing units as well as the infrastructure. In particular, this provision tends to severely limit or exclude owner-occupied rehabilitation programs in many communities in New England, the Washington metropolitan area and California. Many public comments were received from these areas.

The Department agrees with these commenters. To remedy this situation, § 92.203 Income determinations, is being amended to exclude the value of equity in the homeowner's principal residence, as required under part 813, when determining the income of an existing homeowner for an owner-occupied rehabilitation program. The passbook value of the equity in a house will continue to be included when determining the income of an applicant for rental assistance.

A change is also being made to § 92.252(a)(5), which requires the HOME rental projects remain affordable for required periods "pursuant to deed restrictions or covenants running with the land," to allow participating jurisdictions to adopt other legal mechanisms for ensuring long-term affordability of HOME projects, with HUD approval. This change is made in response to several public comments.

This change will provide additional flexibility by allowing a PJ that developed an alternative mechanism to preserve affordability to implement it. However, the requirement for prior HUD approval enables HUD to review whether the PJ's alternative mechanism would meet the statutory requirement in section 215(a)(1)(E) of NAHA to preserve the affordability requirement without regard to the term of the mortgage or to transfer of ownership, thereby reducing the likelihood that a PJ would have to repay HOME funds because it was unable to enforce long-term affordability requirements.

This rule also amends the environmental procedures contained in 24 CFR part 58, which implements statutory provisions that provide for the assumption by program recipients of responsibilities for environmental review, decision making and action pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), and other related provisions of law specified by the Secretary of HUD. Section 288 of NAHA provides for the assumption of these responsibilities by PJs under the HOME program and § 92.352 requires PJs to comply with environmental requirements in part 58. Part 58, however, is currently written only to apply to the Community Development Block Grant, Rental Rehabilitation, and Housing Development Grant programs, and there has been some confusion concerning the applicability of part 58 to the HOME program. Accordingly, part 58 is being updated to clarify its applicability to the HOME program, and to broaden, where appropriate, current program-specific references to various activities, responsibilities and categorical exclusions so that they apply to activities and participants under the HOME program. Part 58 is also being amended to reflect specifically its applicability to homeless assistance programs under title IV of the Stewart B. McKinney Homeless Assistance Act, as amended. This amendment complies with section 443 of that Act, which provides for assumption of environmental review by recipients in accordance with regulations applicable under section 104(g) of the Housing and Community Development Act of 1974, as amended (*i.e.*, in accordance with part 58). The Department has consulted with the Council on Environmental Quality and the Environmental Protection Agency by providing them with advance review copies of this interim rule. When a final rule is issued, it will take into consideration the comments and recommendations of these agencies along with the other comments submitted on the interim rule.

Part 58 is also being amended to remove and relocate from § 58.5 certain statutory and regulatory provisions from the list of laws and authorities in § 58.5 for which recipients must assume environmental responsibilities in accordance with Section 288 of NAHA and similar statutory provisions. Three authorities including: (1) The Flood Disaster Protection Act (FDPA), (2) Coastal Barrier Resources Act (CBRA), and (3) the notice to purchasers of property in airport/airfield runway clear zones and clear zones required in 24 CFR part 51, would be retained, but relocated from § 58.5 to a new § 58.6. HUD has determined that, intrinsically, these three authorities are not like the other authorities listed in § 58.5 that trigger the environmental certification, public notice and release of funds procedures. FDPA pertains to mandatory purchase of flood insurance protection; CBRA pertains to the direct prohibition against use of any funds in designated coastal barriers; and the notice to purchasers of property in runway clear zones is a disclosure requirement. Accordingly, a new § 58.6 is being added to part 58 to provide for continued recipient responsibility for these requirements outside the statutory scheme in section 288 and similar provisions.

Part 58 is further amended to incorporate categorical exclusions from NEPA review and statements regarding the inapplicability of other environmental laws with respect to certain activities for which comparable provisions are already made in 24 CFR part 50. Part 50 applies to programs under which HUD itself is responsible for performing environmental reviews, and it would be anomalous to require a different standard of review for recipients where similar activities are carried out under programs covered by part 58. An additional categorical exclusion and statement regarding inapplicability of related laws is provided specifically for activities to assist homeownership of existing dwelling units, which is an important activity under the HOME program. This provision derives from the current categorical exclusion from NEPA review for most individual actions on one- to four-family properties in most cases under part 50, and from HUD's determination that related laws and authorities requiring environmental reviews do not apply to such homeownership assistance. The provision in part 58 regarding limitations on actions pending environmental clearance is also being revised to more closely reflect (1) the already applicable statutory prohibition against premature commitment of HUD funds, and (2) the already applicable provision in regulations of the Council on Environmental Quality (CEQ) (40 CFR 1506.1) prohibiting premature undertaking of activities that have adverse environmental impact or limit the choice of reasonable alternatives. Finally, other clarifying and editorial revisions are made to part 58.

This rule, in response to four public comments and a recognition of more appropriate and realistic time frames, amends the definition of commit to a specific local project or commitment to extend the period between the signing of the agreement and the start of new construction or rehabilitation from six months to twelve months. In addition, at 92.205(a)(2) the Department is deleting the provision that requires a construction commitment prior to property acquisition or demolition. Public comment strongly indicated that obtaining financing without site control is extremely difficult. However, the Department expects the construction to commence within twelve months of commitment of the HOME funds for acquisition or demolition.

The definition of single room occupancy is also being revised to clarify the applicability of its requirements for sanitary or kitchen facilities. Currently, the definition provides that the unit may contain either, or both, food preparation or sanitary facilities. As revised, the definition specifies that the unit must contain either food preparation or sanitary facilities if the project consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure, neither is required in the unit. However, the Department strongly encourages PJs to provide a higher level of amenities whenever possible, to contribute to the continued marketability of the standard housing stock in the future. The definition continues to exclude facilities for students. This change is made in response to public comment that installing plumbing when rehabilitating an existing residential structure is cost prohibitive. Nonetheless, the Department believes that for new construction, reconstruction and conversion, a higher level or amenities is appropriate and desirable.

An interim rule for HOME program requirements applicable to insular areas was published on December 11, 1992 (57 FR 58862). In the preamble to that rule, the Department stated it would continue to examine aspects of the rule in response to comments. HCDA of 1992 section 211 removed the requirement that insular areas receiving HOME funds prepare a housing strategy. Therefore, the requirement to submit an approved housing strategy certification is deleted in § 92.61(c)(5). Conforming changes are made to §§ 92.61(b)(2), 92.62, and 92.63.

Section 92.220(a)(3), which concerns the value of real property as a form of matching contribution, is being corrected to clarify that only the appraised value minus any debt burden, lien, or other encumbrance is recognized for match purposes.

Section 92.350, which addresses equal opportunity and fair housing issues, is revised to reflect the changes made to section 3 of the Housing and Urban Development Act of 1968 by section 915 of HCDA 1992. The section 3 statement of policy, as expressed in HCDA section 915, replaces all of the current text of § 92.350(a)(4).

The Department received comments concerning the status and requirements applicable to State housing finance agencies that are not part of the State government, but which the State would like to have administer all or a part of the State's HOME program. Under the statute and regulations, State housing finance agencies that are not a part of the State government are not the "State" and cannot be designated as the participating jurisdiction. However, the regulation permits the State to select the State housing finance agency as a subrecipient. One State housing finance agency commented that the written agreement required by § 92.504(b) presents obstacles to the use of State housing finance agencies due to the detailed requirements concerning the use of the HOME funds and the required budget. The Department agrees that the written agreement between a State and an instrumentality of the State that is a subrecipient need not contain the same detailed information as is required of other entities receiving HOME funds. Therefore, § 92.504 has been amended to simplify the written agreement for such subrecipients.

C. Amendments Applicable to Subpart M, HOME Funds for Indian Tribes

Conforming changes to subpart M of the HOME rule, which contains the requirements of the Indian HOME program, are also being made in this interim rule. A summary of the HCDA 1992 amendments that affected the Indian HOME program was included as appendix 2 in the NOFA for Indian applicants under the HOME program that was published on February 23, 1993 (58 FR 11102).

Section 204 of HCDA 1992 made the use of HOME funds for security deposits an eligible form of tenant-based rental assistance. A new paragraph (i) is being added to § 921.613 Tenant-based rental assistance that parallels the language of revised § 92.210 concerning security deposits. Conforming changes are made in the listing of eligible activities at § 92.611(a)(1) and eligible costs at § 92.612(e).

Conforming changes made necessary by HCDA 1992 section 205 that parallel those made to § 92.205(a)(1) (to specify HOME assisted housing must be permanent or transitional housing and includes housing for disabled homeless persons, and single-room occupancy housing) and § 92.253(c) (to permit the termination of tenancy in transitional housing after the period prescribed by the PJ or project owner) are being made to §§ 92.611(a)(1) and 92.622(c), respectively.

Conforming changes for HCDA 1992 section 208 made to the HOME regulation in the December 22, 1992 interim rule are being made here for subpart M. Under HCDA section 208, rental housing shall qualify as affordable if the rents are not greater than (i) the Fair Market Rent for comparable units or (ii) a rent that does not exceed 30 percent of the adjusted income of a family at 65 percent of median income for the area, *adjusted for the number of bedrooms in the unit.* This adjustment replaces the adjustment for smaller and larger families in § 92.614(a)(1)(ii). Section 208 also provides that tenants who occupy HOME-assisted housing, and who no longer qualify as low-income because of increases in their income shall pay as rent the lesser of 30 percent of the family's adjusted monthly income, as recertified annually, or *"the amount payable by the tenant under State or local law."*

[Note: Only italicized section is new.]

For rental housing with Low Income Housing Tax Credits and for units under local rent controls, when a tenant's income increases, the tenant's rent will not have to be adjusted to 30 percent of the family's income. Changes for these purposes are made in § 92.614(c). Finally, HCDA 1992 section 208 provides that rental housing must remain affordable except "upon foreclosure by a lender, (or upon other transfer in lieu of foreclosure), if such action recognizes the legal rights of public agencies, nonprofits, or others to take actions that would not avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and is not for the purpose of avoiding low-income affordability restrictions." Section 92.614(a)(5) incorporates this change.

HCDA 1992 section 209 permits an Indian tribe grantee to meet the resale restrictions created in the original law, "or recapture its HOME investment, provided it uses the recaptured funds to assist other persons in accordance with the requirements of this subsection [in other words, to assist first-time homebuyers], except where there are not net proceeds or where the net proceeds are insufficient to repay the full amount of the assistance." A conforming change is made to § 92.615(a)(4)(ii) for this purpose.

The definition of "first-time homebuyer" is amended by HCDA section 219, and as discussed above, the definition of "first-time homebuyer" in § 92.2 is amended accordingly. This provision has wider application beyond owners of manufactured housing and applies to individuals living in units not meeting applicable standards which can not be rehabilitated cost-effectively in the documented judgment of the Indian tribe. A new § 92.615(c) is added to the regulation for purposes of section 219 of HCDA 1992.

Section 92.610 is being amended to exclude the value of equity in the homeowner's principal residence, as required under part 913, when determining the income of an existing homeowner for an owner occupied rehabilitation program. The passbook value of the equity in a house will continue to be included when determining the income of an applicant for rental assistance. This change conforms to the change being made in § 92.203.

Several changes are being made to subpart M to conform with changes made in the December 22, 1992 interim rule. In response to comments, § 92.206(c)(5) was amended to make initial operating reserves for substantial rehabilitation projects a HOME-eligible soft cost, and a conforming change is made here to § 92.612(a)(4).

Section 92.211(a)(2) was amended to implement a HCDA 1992 amendment that replaces the use of the Section 8 waiting list as the selection criterion for families eligible to receive HOME-funded tenant-based rental assistance. This assistance is now provided in accordance with written tenant selection policies and criteria that are consistent with the purposes 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 Housing Act of 1937. Section 92.211(a)(2) was also amended to permit participating jurisdictions to provide HOME-funded tenant assistance to eligible families residing in housing acquired with HOME funds without requiring that the families meet the written tenant selection policies and criteria. The rule previously allowed this only in the case of housing to be rehabilitated with HOME funds. A conforming change for these purposes is being made to § 92.613(a).

Section 92.251 was amended to allow purchase of a property, but not occupancy, before health and safety violations are corrected, provided that certain procedures are followed. A conforming change is made here to § 92.622.

The December 22, 1992 interim rule added §§ 92.252(e) and 92.254(c) to explain the requirements that manufactured housing units must meet to qualify as affordable rental or homeownership housing under the HOME program. Conforming changes are made to subpart M by adding §§ 92.614(e) and 92.615(c).

The December 22, 1992 interim rule also clarified § 92.252(a)(2) by specifying that the requirement that a rental housing project must have not less than 20 percent of the units occupied by very low-income families in order to qualify as affordable housing applies only to projects consisting of three or more rental unit and to owners of multiple one or two unit projects with a total of three or more rental units. A conforming change is being made to § 92.614(a)(2).

As discussed above in relation to § 92.254, the references to the section 203(b) limits for purpose of qualifying as affordable housing under the HOME program are being deleted. Conforming changes are being made to § 92.615(a)(1)(i), (a)(1)(ii) and (b). The changes discussed with regard to § 92.254(a)(4)(i)(B), made to ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers (and that these affordability restrictions must terminate upon the occurrence of a termination event) are also being made to § 92.615(a)(4)(i)(B).

A number of conforming and clarifying corrections are implemented in this rule. Additional clarifying guidance as to the scope of subpart M is provided by adding a sentence to the end of § 92.600 to provide that, unless otherwise indicated, only subparts A and M of 24 CFR part 92 apply to grants to Indian tribes. A new § 92.616, which provides for a list of prohibited activities similar to § 92.214, is added. A technical correction is being made to § 92.642(b)(2), which erroneously refers to § 92.644. This reference is corrected to refer to § 92.640.

The Department specifically seeks comments, particularly from tribes, Indian housing authorities, and other Native American organizations, that evaluate the implementation of the HOME program for Indian tribes and make recommendations for its improvement.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on the Economy

Although the HOME Program interim rule published December 16, 1991 was found to be a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981, and a regulatory impact analysis (RIA) was prepared, this amending interim rule does not constitute a "major rule." Analysis of this rule, which only makes limited adjustments to the rule for which a RIA was prepared, indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certified that this rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Regulatory Agenda

This rule was listed as item number 1393 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24398) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this rule does not have federalism implications concerning the division of local, State, and federal responsibilities. While the HOME Program interim rule published December 16, 1991 and amended by this rule was determined to be a rule with federalism implications, and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this rule only makes limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under the rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. The rule would not, however, affect the institution of the family, which is requisite to coverage by the Order. Even if the rule had the necessary family impact, it would not be subject to further review under the Order, since the provision of assistance under the rule is required by statute, and is not subject to agency discretion.

List of Subjects

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

Accordingly, the Department amend's parts 58 and 92 of title 24 of the Code of Federal Regulations as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR RECIPIENTS ASSUMING HUD RESPONSIBILITIES

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 1437o(i)(1) and (2), 3535(d), 4332, and 5304(g).

2. Section 58.1 is revised to read as follows:

§ 58.1 Purpose, scope and applicability.

(a) *Purpose.* This part provides instructions and guidance to recipients of HUD assistance for conducting an environmental review for a particular project or activity and obtaining approval of a Request for Release of Funds, under statutes that authorize HUD to provide for assumption of environmental responsibilities by recipients.

(b) *Scope.* The environmental responsibilities of recipients of HUD assistance are described in this part pursuant to the National Environmental Policy Act of 1969 (NEPA); the NEPA regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508); Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991, May 24, 1977; and the related Federal authorities listed in § 58.5 of this part.

(c) *Applicability.* This part applies to activities and projects where specific statutory authority exists for recipients to assume environmental responsibilities. Programs subject to this part include:

(1) Community Development Block Grant programs authorized by title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) The Rental Rehabilitation program and Housing Development Grant program authorized by section 17 of the United States Housing Act of 1937, in accordance with section 17(i)(1) and 17(i)(2) (prior to the repeal of section 17 as of October 1, 1991) (42 U.S.C. 1437o(i)(1) and (2));

(3) The Emergency Shelter Grant program, Supportive Housing program (and its predecessors, the Supportive Housing Demonstration program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by title IV of the Stewart B. McKinney Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402); and

(4) The HOME Investment Partnerships Program authorized by title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838).

3. Section 58.2 is revised to read as follows:

§ 58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions shall supplement the uniform terminology provided in 40 CFR part 1508:

(1) *Activity* means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) *Certifying Officer* means the official that is authorized to execute the Request for Release of Funds and Certification and that has the legal capacity to carry out the responsibilities of § 58.13.

(3) *Project* means an activity, or a group of integrally related activities, designed by the grant recipient to accomplish, in whole or in part, a specific goal.

(4) *Recipient*—

(i) With respect to programs subject to this part other than the HOME program, *recipient* means:

(A) A State that does not distribute HUD assistance under the program to a unit of general local government;

(B) A Territory;

(C) A unit of general local government; or

(D) An Indian tribe.

(ii) With respect to the HOME program, *recipient* means a participating jurisdiction as defined in 24 CFR part 92.

(5) *Urban renewal project* means a project as defined in section 110(c) of the Housing Act of 1949, as amended, or a neighborhood development program as defined in section 131(b) of the Housing Act of 1949, as amended.

(b) The following abbreviations are used throughout this part:

HUD—Department of Housing and Urban Development
CDBG—Title I of the Housing and Community Development Act of 1974, as amended
NEPA—National Environment Policy Act of 1969, as amended
CEQ—Council on Environmental Quality
EA—Environmental Assessment
EIS—Environmental Impact Statement
FONSI—Finding of No Significant Impact
ERR—Environment Review Record
NOI/EIS—Notice of Intent to Prepare an EIS
ROD—Record of Decision
ROF—Release of Funds
RROF—Request for Release of Funds
NOI/RROF—Notice of Intent to Request Release of Funds
SOA—Statement of Activities
UDAG—Urban Development Action Grants
RRP—Rental Rehabilitation Program
HDG—Housing Development Grant
NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990
HOME—HOME Investment Partnerships Program

4. Section 58.4 is revised to read as follows:

§ 58.4 HUD legal authority.

(a) *Authority for regulations.* These regulations are issued under the statutory provisions cited in §§ 58.1(c) and 58.6 and under section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

(b) *Assumption authority for recipients: General.* Recipients shall assume the responsibility for environmental review, decisionmaking, or action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Recipients, other than units of general local government that receive assistance from a State, assume these responsibilities by execution of either a grant agreement with HUD or a legally binding document such as a Request for Release of Funds (HUD Form 7015.15), certifying to the assumption of environmental responsibilities. When a State distributes funds to recipients, the State must provide for appropriate procedures by which these recipients will evidence their assumption of environmental responsibilities.

(c) *Particular responsibilities of the States.* (1) States that are recipients for purposes of directly undertaking a State project must assume the environmental review responsibilities for the State's activities and those of any participants that may be related to the project. The State must submit the certification and RROF to HUD, except that under the HOME program the State shall prepare a certification and RROF and shall itself determine whether to approve the RROF

(2) In accordance with § 58.18 of this part, State program agencies are authorized to exercise HUD's responsibilities with respect to approval action on a local government recipient's environmental certification and RROF for a HUD assisted project funded through the State, except for projects assisted by Section 17 Rental Rehabilitation assistance and Housing Development Grants. Approval by the State of a local recipient's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5 of this part.

(3) For section 17 Rental Rehabilitation projects and Housing Development Grants, the State program agency shall meet the responsibilities set forth in § 58.18 of this part. However, for section 17 projects, the State lacks authority to approve RROFs and therefore must forward to the responsible HUD Field Office the local recipient's certification and RROF, any objections to the release of funds submitted by another party, and the State's recommendation as to whether HUD should approve the certification and the RROF.

5. In § 58.5, the heading, the introductory paragraph, and paragraph (i) are revised, paragraph (b)(1) is removed, paragraphs (b)(2) and (b)(3) are redesignated as (b)(1) and (b)(2), and paragraph (c) is revised to read as follows:

§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in § 58.1(c), the recipient must assume responsibilities for environmental review, decisionmaking and action that would apply to HUD under the following specified laws and authorities. The recipient must comply with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

* * * * *

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 *et seq.*); particularly section 2(a).

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 *et seq.*); particularly sections 2 and 5.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended; particularly sections 307 (c) and (d) (16 U.S.C. 1456 (c) and (d)).

* * * * *

(i) *HUD environmental standards.* Environmental Criteria and Standards (24 CFR part 51), other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303(a)(3).

6. A new § 58.6 is added, to read as follows:

§ 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in § 58.5 for assumption by recipients under the laws cited in § 58.1(c), recipients must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under § 58.34(a)(10) and (b). However, the recipient remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under § 58.34.

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(ii) Flood insurance is obtained as a condition of approval of the assistance.

(2) Recipients assisting acquisition and construction (including rehabilitation) located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(b) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), Federal financial assistance may not be used for activities undertaken in the Coastal Barrier Resources System.

(c) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone as defined in 24 CFR part 51, the recipient shall advise the buyer that the property is in a Runway Clear Zone or

Clear Zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

7. In § 58.10, the first sentence is revised to read as follows:

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(c), the recipient must assume the responsibility for carrying out all its projects under programs cited in § 58.1(c) in accordance with the procedural provisions of NEPA and the CEQ regulations (40 CFR parts 1500 through 1508), as well as the procedures set forth in this part. * * *

8. Section 58.13 is revised to read as follows:

§ 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by § 58.71 of this part, a recipient's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in § 58.1(c) of this part. The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA, those statutory provisions cited in § 58.1(c), and related sections in 40 CFR parts 1500 through 1508, and the related federal authorities listed in § 58.5 of this part. The Certifying Officer must also:

(a) Represent the recipient and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court. Reasonable defense costs, including the fees of attorneys and experts incurred in litigation relative to the recipient's compliance with this part, may be eligible administrative costs under some programs.

(b) Ensure that the recipient reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program; and

(c) Perform all the coordination functions required under this part and generally prescribed in 40 CFR parts 1500 through 1508 and the other provisions of law and authorities cited in § 58.5 of this part.

9. In § 58.14, the third sentence is revised to read as follows:

§ 58.14 Interaction with State, Federal and non-Federal entities.

* *The recipient must prepare its EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law.* * *

10. In § 58.15, paragraph (a) is revised to read as follows:

§ 58.15 Responsibilities for environmental review for activities related to urban renewal closeouts.

* * * * *

(a) Activities within an active urban renewal project are to be funded under a program listed in § 58.1(c).

* * * * *

11. The title of subpart C is revised to read as follows:

Subpart C—General Policy: States Assuming HUD Responsibilities.

12. Section 58.18 is revised to read as follows:

§ 58.18 Responsibilities.

(a) States that elect to administer the CDBG Small Cities program under section 106(d) of the Housing and Community Development Act of 1974, a homeless assistance program under title IV of the McKinney Act, or a HOME Program under NAHA shall ensure that the program complies with the provisions of NEPA and the related Federal laws and authorities in § 58.5 and § 58.6 of this part. The State must:

(1) Designate the State agency or agencies which will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart J of this part and which will:

(i) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(ii) Receive public notices, RROFs and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.

(2) Fulfill the State role in subpart J relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

(b) States administering section 17 programs shall assume the responsibilities set forth in this subpart C for overseeing the State recipient's performance and compliance with NEPA and related Federal authorities as set forth in this part, including receiving RROFs and environmental certifications for particular projects from State recipients and objections from government agencies and the public in accordance with the procedures contained in Subpart J. The State shall forward to the responsible HUD Field Office the environmental certification, the RROF and any objections received, and shall recommend whether to approve or disapprove the certification and RROF.

13. In § 58.22, the first three sentences are revised to read as follows:

§ 58.22 Limitations on activities pending clearance.

A recipient may not commit HUD assistance funds under a program listed in § 58.1(c) on an activity or project until HUD or the State has approved the recipient's RROF and related certification. In addition, except for payment for exempt activities and other activities that would not have an adverse environmental impact or limit the choice of reasonable alternatives, a recipient may not expend any funds before the approval of the RROF. If an activity is exempt under § 58.34, no RROF is required and a recipient may undertake the activity immediately after the award of the assistance. * * *

* * * * *

14. Section 58.23 is revised to read as follows:

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in § 58.5 and § 58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

15. Section 58.31 is revised to read as follows:

§ 58.31 Initiation of environmental review.

The environmental review process should begin as soon as a recipient determines the projected use of the HUD assistance and how the activities will be combined into projects for environmental review purposes.

16. In § 58.32, the third sentence of paragraph (a) is revised to read as follows:

§ 58.32 Project aggregation.

(a) * * * This applies even if some of the activities are to be funded by programs other than those listed in § 58.1(c) or carried out by someone else.

* * * * *

17. Section 58.35 is amended by revising the first sentence in paragraph (a)(1) introductory text, revising paragraph (a)(2), revising paragraph (a)(4) introductory text, adding new paragraphs (a)(7) and (a)(8), revising the first sentence in paragraph (b), revising paragraph (c), and adding a new paragraph (d), to read as follows:

§ 58.35 Categorically excluded activities.

(a) * * *

(1) The acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, including these activities carried out as part of an economic development project in conjunction with the special economic development activities eligible under 24 CFR 570.203(a). * * *

* * * * *

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons.

* * * * *

(4) Acquisition and/or rehabilitation of buildings and improvements (except renovation of closed school buildings), when the following conditions are met:

* * * * *

(7) An individual action on a one-to-four family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.

(8) Acquisition of an existing structure, provided that the property to be acquired is in place and will be retained in the same use.

(b) *Environmental requirements other than NEPA.* Even though a project is categorically excluded from NEPA requirements, a recipient must still comply with the requirements of the other related laws and authorities cited at § 58.5 (except in the case of activities listed in paragraph (c) of this section) and § 58.6 * * *

(c) *Categorically excluded activities not subject to § 58.5 of this part.* The Department has determined that the activities listed in this section would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. Since these activities are also categorically excluded from a NEPA review, the recipient does not have to publish a FONSI and a NOI/RROF or submit a certification and a RROF to HUD (or the State) except in the circumstances described in paragraph (d) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (d) applies. However, the recipient must document in writing in its ERR its determination that each activity meets the conditions specified for inclusion in this category of activity. The recipient also remains responsible for carrying out any applicable requirements under § 58.6. These activities include the following, when they do not have a physical impact on a structure or property:

(1) Information services;

(2) Resource identification and planning to establish and coordinate strategies, including feasibility studies, environmental studies and testing;

(3) Tenant-based rental assistance;

(4) Supportive services including, but not limited to, health care, housing services (such as housing counseling), permanent housing placement, inspections and tenant selection, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(5) Operating costs including maintenance, security, operation, insurance, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs;

(6) Administrative expenses; and

(7) Activities to assist homeownership of existing dwelling units, including closing costs and downpayment assistance to homebuyers, interest buydowns, and similar activities that result only in the transfer of title to a property.

(d) *Circumstances requiring NEPA review.* If a recipient determines that an activity or project identified in paragraph (a) or (c) of this section, because of specific circumstances and conditions at the location of the activity or project, may have a significant environmental effect, it shall comply with the NEPA requirements of this part.

18. In § 58.52, the second sentence is revised to read as follows:

§ 58.52 Adoption of other agencies' EISs.

* * * If the recipient adopts an EIS prepared by another recipient for a project subject to this part or by a Federal agency, the procedure in 40 CFR 1506.3 shall be followed. * * *

19. In § 58.66, the second sentence is revised to read as follows:

§ 58.66 Coordination Under Federal laws and authority.

* * * Pursuant to 40 CFR 1502.25, the environmental review documents for a project that is subject to this part will be used to document the recipient's compliance with the requirements of the related laws and authorities that apply to the project. * * *

20. Section 58.71 is revised to read as follows:

§ 58.71 Request for release of funds and certification.

The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable). This request shall be executed by the recipient's Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in § 58.1(c). The RROF and certification must be in a form specified by HUD.

21. In § 58.77, paragraph (a), and the last sentence in paragraph (b) are revised to read as follows:

§ 58.77 Effect of approval of certification.

(a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited in § 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in § 58.1(c).

(b) *Public and agency redress.* * * * Remedies for noncompliance are set forth in program regulations.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

22. In part 92, the authority citation continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

23. In § 92.2, the definitions of *commit to a specific local project* or *commitment paragraph (1)(c), first-time homebuyer, housing, single room occupancy,* and *tenant-based rental assistance* are revised, and the newly defined terms *operating expenses* and *transitional housing* are added in alphabetical order, to read as follows:

§ 92.2 Definitions.

* * * * *

Commit to a specific local project or *commitment* means:

(1) * * *

(i) If the project is for rehabilitation or new construction, a written legally binding agreement between the participating jurisdiction and the project owner under which the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or subrecipient) agrees to provide HOME assistance to the owner for an identifiable project as defined in this part that can reasonably be expected to start construction within twelve months of the agreement and in which the owner agrees to start construction within that period.

* * * * *

First-time homebuyer means an individual or an individual and his or her spouse who have not owned a home during the 3-year period before the purchase of a home with HOME assistance, except that—

(1) Any individual who is a displaced homemaker (as defined in this section) may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse;

(2) Any individual who is a single parent (as defined in this section) may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse; and

(3) An individual may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual owns or owned, as a principal residence during the 3-year period before the purchase of a home with HOME assistance, a dwelling unit whose structure is—

(i) Not permanently affixed to a permanent foundation in accordance with local or other applicable regulations; or

(ii) Not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

* * * * *

Housing includes manufactured housing and manufactured housing lots. Housing does not include emergency shelters.

* * * * *

Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials and supplies.

* * * * *

Single room occupancy (SRO) housing means housing consisting of single room dwelling units that is the primary residence of its occupant or occupants. The unit must contain either food preparation or sanitary facilities (and may contain both) if the project consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residual structure, neither food preparation or sanitary facilities is required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants. SRO does not include facilities for students.

* * * * *

Tenant-based rental assistance is a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance under this part also includes security deposits for rental of dwelling units.

Transitional housing means housing that—

(1) Is designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and

(2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the participating jurisdiction or project owner before occupancy.

* * * * *

24. In § 92.50, paragraph (f) is added to read as follows:

§ 92.50 Formula allocation.

* * * * *

(f) For the purpose of determining the formula allocation in fiscal years in which Congress appropriates less than $1.5 billion of HOME funds, $335,000 is substituted for $500,000 each time it appears in this section, and $167,500 is substituted for $250,000 each time it appears in this section.

§ 92.51 [Removed]

25. Section 92.51 is removed and reserved.

26. Section 92.52 is revised to read as follows:

§ 92.52 Publishing formula allocation.

Not later than 20 days after funds become available to HUD, HUD will allocate HOME funds and will then promptly publish a **Federal Register** notice listing all jurisdictions receiving a formula allocation and the amount of each jurisdiction's formula allocation.

27. In § 92.61, paragraphs (b)(2), (b)(4), (b)(5), (c)(2) and (c)(5) are revised to read as follows:

92.61 Program description and housing strategy.

* * * * *

(b) * * *

(2) The estimated use of HOME funds and a description of projects and eligible activities, including number of units to be assisted, estimated costs, and tenure type (rental or owner occupied) and, for tenant assistance, households assisted;

* * * * *

(4) If the insular area intends to use HOME funds for first-time homebuyers, the guidelines for resale or recapture as required in § 92.254(a)(4);

(5) If the insular area intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consisted with the minimum guidelines described in §§ 92.210 and/or 92.211.

* * * * *

(c) * * *

(2) If the insular area intends to provide tenant-based rental assistance, the certification required by § 92.210 or § 92.211.

* * * * *

(5) A certification that the insular area will use HOME funds in compliance with all requirements of this part;

* * * * *

28. In § 92.62, paragraphs (a) and (b) are revised to read as follows:

§ 92.62 Review of program description and certifications.

(a) *Review of program description.* The responsible HUD Field Office will review an insular area's program description and will approve the description unless the insular area has failed to submit information sufficient to allow HUD to make the necessary determinations required by § 92.61 (b)(4), (b)(6), and (b)(7), if applicable, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs. If the insular area has not submitted information on § 92.61 (b)(4), (b)(6), and (b)(7), if applicable, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory program description.

(b) *Review period.* The HUD Field Office will notify the insular area if determinations cannot be made under

§ 92.61 (b)(4), (b)(6), or (b)(7) with the supporting information submitted, or if the proposed projects or activities are beyond currently demonstrated capability, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information or to revise the proposed projects or activities in its program description.

* * * * *

29. Section 92.63 is revised to read as follows:

§ 92.63 Amendments to program description.

An insular area must submit to HUD for approval any substantial change in its HUD-approved program description that it makes during the fiscal year and must document any other changes in its file. A substantial change involves a change in the guidelines for resale (§ 92.61(b)(4)), other forms of investment (§ 92.61(b)(6)), minority and women business outreach program (§ 92.61(b)(7)), or a change in tenure type of the project or activities, or a funding increase to a project or activity of $100,000 or 50% (whichever is greater). The HUD Field Office will notify the insular area if its program description, as amended, does not permit determinations to be made under § 92.61 (b)(4), (b)(6), or (b)(7), or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to revise the proposed projects or activities in its program description.

30. In § 92.101, paragraph (c) is revised to read as follows:

§ 92.101 Consortia.

* * * * *

(c) The consortium's qualification as a unit of general local government continues for a period of three successive Federal fiscal years, or until HUD revokes its designation as a participating jurisdiction, or until an urban county member fails to requalify under the CDBG program as an urban county for a fiscal year included in the consortium's qualification period, whichever is shorter. However, if a member urban county's three year CDBG qualification cycle is not the same as the consortium, the consortium may elect a shorter qualification period than three years to get in sync with the urban county. During the period of qualification, additional units of general local government may join the consortium, but no included unit of general local government may withdraw from the consortium.

31. In § 92.102, paragraph (b)(2) is revised, and paragraph (c) is added to read as follows:

§ 92.102 Participation threshold amount.

* * * * *

(b) * * *

(2) The state has authorized HUD to transfer to the unit of general local government a portion of the state's allocation or the state, the unit of general local government, or both, has made available its own resources such that the sum of the amounts transferred or made available are equal to or greater than the difference between the unit of general local government's formula allocation and $750,000. A state, subject to the distribution of assistance requirements in § 92.201, may authorize such a transfer even if the state is not designated a participating jurisdiction. If the state is not designated a participating jurisdiction or does not receive an allocation, it may only make transfers to units of general local government in the amount necessary for the respective units of general local government to meet the $750,000 participation threshold.

(c) In fiscal years in which Congress appropriates less than $1.5 billion for this part, $500,000 is substituted for $750,000 each time it appears in this section.

32. In § 92.103, paragraph (b) introductory text is revised to read as follows:

§ 92.103 Notification of intent to participate.

* * * * *

(b) A unit of general local government that has a formula allocation of less than $750,000, or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part, must submit, with its notice, one or more of the following, as appropriate, as evidence that it has met the threshold allocation requirements in § 92.102(b):

* * * * *

33. In § 92.107, paragraph (b) is revised to read as follows:

§ 92.107 Revocation of designation as a participating jurisdiction.

* * * * *

(b) The jurisdiction's formula allocation, plus funds provided under § 91.102(b), falls below $750,000 (or below $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part) for three consecutive years, below $625,000 (or below $410,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part) for two consecutive years, or the jurisdiction does not receive a formula allocation in any one year.

* * * * *

34. In § 92.150, paragraphs (b)(5) and (6) are revised, paragraphs (c)(2) and (3) are removed, paragraphs (c)(4) through (9) are redesignated as paragraphs (c)(2) through (7), and redesignated (c)(2) is revised to read as follows:

§ 92.150 Submission of program description and certifications.

* * * * *

(b) * * *

(5) If the participating jurisdiction intends to use HOME funds for first-time homebuyers, the guidelines for resale or recapture must be described as required in § 92.254(a)(4);

(6) If the participating jurisdiction intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in § 92.211, or with the requirements of § 92.210 if the participating jurisdiction intends to use HOME funds for tenant-based rental assistance solely for security deposits.

* * * * *

(c) * * *

(2) If the participating jurisdiction intends to provide tenant-based rental assistance, the certification required by § 92.211, or, if the participating jurisdiction intends to provide tenant-based rental assistance solely in the form of security deposits, the certification required by § 92.210;

* * * * *

35. Section 92.152 is revised to read as follows:

§ 92.152 Amendments to program description.

In general, a participating jurisdiction is not required to submit to HUD amendments to its program description that it makes during the fiscal year. The participating jurisdiction must document amendments in its file, and if the amendments affect future allocations, must include these amendments in the program description for the following fiscal year. However, a participating jurisdiction must submit any amendments to the following for HUD approval: guidelines for resale or recapture (see § 92.150(b)(5)); other forms of investment (see § 92.150(b)(7); and minority and women business outreach program (§ 92.150(b)(8)).

36. Section 92.203 is revised to read as follows:

§92.203 Income determinations.

Whenever a participating jurisdiction makes a determination under this part based on family income or adjusted family income, it must use the definitions of annual income, adjusted income, monthly income, and monthly adjusted income, as those terms are defined in part 813 of this title, except when determining the income of a homeowner for an owner-occupied rehabilitation project, the equity in the homeowner's principal residence is excluded from "Net Family Assets."

37. In § 92.205, paragraphs (a)(1) and (2) are revised to read as follows:

§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 first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvement, 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, and includes permanent housing for disabled homeless persons, and single-room occupancy housing. The specific eligible costs for these activities are set forth in § 92.206.

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

* * * * *

38. In § 92.206, paragraphs (e) and (f) are revised and paragraph (g) is added to read as follows:

§92.206 Eligible costs.

* * * * *

(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.

(f) *Administrative and planning costs.* A participating jurisdiction may expend for its HOME administrative and planning costs an amount of HOME funds that is not more than ten percent of the fiscal year HOME basic formula allocation plus any funds received in accordance with § 92.102(b) to meet or exceed participation threshold requirements that fiscal year. A State that transfers any HOME funds in accordance with § 92.102(b) must exclude these funds in calculating the amount it may expend for administrative and planning costs. A participating jurisdiction may also use up to ten percent of any return of the HOME investment, as defined in § 92.503, calculated at the time of deposit in its local HOME account, for administrative and planning costs.

(g) *CHDO operating expenses.* Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). These funds may not be used to pay operating costs incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.301(e) and (f).

§92.208 [Removed]

39. Section 92.208 is removed and reserved.

§92.209 [Removed]

40. Section 92.209 is removed and reserved.

41. Section 92.210 is revised to read as follows:

§92.210 Tenant-based rental assistance: security deposits.

(a) 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 § 92.211.

(b) 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.

(c) 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.

(d) 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 § 92.253 (a) and (b).

(e) HOME funds for security deposits may be provided as a grant or as a loan. If they are provided as a loan, the provisions at § 92.503(b) on repayment of HOME investment apply.

(f) The provisions at § 92.211 (a), (b), (d), (e) and (g), applicable to tenant-based rental assistance, are applicable to HOME security deposit assistance.

42. In § 92.211, paragraph (b) is revised to read as follows:

§92.211 Tenant-based rental assistance.

* * * * *

(b) *Program operation.* A tenant-based rental assistance program must be operated consistently with the requirements of this section and § 92.210, if applicable. 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.

* * * * *

43. In § 92.218, paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added, to read as follows:

§92.218 Amount of matching contribution.

(a) Each participating jurisdiction must make contributions to affordable housing assisted with HOME funds, throughout a fiscal year. The contributions must total not less than:

(1) Thirty percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year for new construction projects; and

(2) Twenty-five percent of the total funds drawn from the jurisdiction's HOME investment Trust Fund Treasury account in that fiscal year for tenant-based rental assistance, housing rehabilitation projects, and acquisition projects of standard housing that does not constitute new construction.

* * * * *

(c) HOME funds used for administrative and planning costs (pursuant to § 92.206(f)), operating expenses (pursuant to § 92.206(g)) and capacity building (pursuant to § 92.300(b)) of community housing development organizations are not required to be matched.

* * * * *

44. In § 92.220, paragraph (a)(3) is revised, and a new paragraph (a)(6) is added to read as follows:

§92.220 Form of matching contribution.

(a) * * *

(3) The value, before the HOME assistance is provided and minus any debt burden, lien, or other encumbrance, of land or other real property, not acquired with federal resources, as appraised in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value must be based on the best available data properly analyzed and interpreted. The appraisal of land and structures must be performed by an independent, certified appraiser.

* * * * *

(6) The reasonable value of any site-preparation and construction materials, not acquired with federal resources, and any donated or voluntary labor (see § 92.354(b)) in connection with the site-preparation for, or construction or rehabilitation of, affordable housing.

(i) The value of site-preparation and construction materials is to be determined in accordance with the participating jurisdiction's cost estimate procedures.

(ii) A single rate will be applicable for determining the value of donated or voluntary labor. The rate will be published annually in the notice of funding availability (NOFA) for the HOME program.

* * * * *

45. Section 92.221 is revised to read as follows:

§ 92.221 Match credit.

(a) Contributions are credited on a fiscal year basis at the time the contribution is made, as follows:

(1) A cash contribution is credited when the funds are expended.

(2) The grant equivalent of a below-market interest rate loan is credited at the time of the loan closing.

(3) The value of state or local taxes, fees, or other charges that are normally and customarily imposed but are waived, forgone, or deferred is credited at the time the state or local government officially waives, foregoes, or defers the taxes, fees, or other charges and notifies the project owner.

(4) The value of land or other real property is credited at the time ownership of the property is transferred.

(5) The cost of investment in infrastructure directly required for affordable housing assisted with HOME funds is credited at the time funds are expended for the infrastructure or at the time the HOME funds are committed to the affordable housing if the infrastructure was completed before the commitment of HOME funds.

(6) Donated material is credited as match at the time it is used for affordable housing; donated or voluntary labor is credited at the time the work is performed.

(b) *Excess match.* Contributions made in a fiscal year that exceed the participating jurisdiction's match liability for the fiscal year in which they were made will be carried over and applied to future fiscal years match liability.

46. Section 92.222 is revised to read as follows:

§ 92.222 Reduction of matching contribution requirement.

(a) *Reduction for fiscal distress*—(1) *Distress criteria for local government participating jurisdictions.* As determined and published annually by HUD, if a local government participating jurisdiction satisfies both of the distress factors in paragraphs (a)(1) (i) and (ii) of this section, it is in severe fiscal distress and its match requirement will be reduced 100% for the period specified in paragraph (a)(3) of this section. If a local government participating jurisdiction satisfies either distress factor in paragraphs (a)(1) (i) or (ii) of this section, it is in fiscal distress and its match requirement will be reduced by 50 percent, for the period specified in paragraph (a)(4) of this section.

(i) *Poverty rate.* The average poverty rate in the participating jurisdiction was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information of the Bureau of the Census.

(ii) *Per capita income.* The average per capita income in the participating jurisdiction was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information of the Bureau of the Census.

(2) [Reserved.]

(3) *Period of match reduction for severe fiscal distress.* A 100% match reduction is effective for the fiscal year in which the severe fiscal distress determination is published and for the following fiscal year.

(4) *Period of match reduction for fiscal distress.* A 50% match reduction is effective for the fiscal year in which the fiscal distress determination is published and for the following fiscal year, except that if a severe fiscal distress determination is published in that following fiscal year, the participating jurisdiction starts a new two-year match reduction period in accordance with the provisions of paragraph (a)(3) of this section.

(b) *Reduction of match for participating jurisdictions in disaster areas.* If a participating jurisdiction is located in an area in which a declaration of major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act is made, HUD may reduce the matching requirement specified in § 92.218 by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year for a local participating jurisdiction, and for a State participating jurisdiction, by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year with respect to any HOME funds expended in an area to which the declaration of a major disaster applies. [Participating jurisdictions for which a declaration of major disaster was made in FY 1992 are permitted to request a match reduction for FY 1993 and FY 1994.] To request a reduction, a participating jurisdiction must submit to the local HUD Field Office a copy of the disaster declaration.

47. In § 92.252, the text of paragraph (a)(5) is revised (the table remains unchanged) to read as follows:

§ 92.252 Qualification as affordable housing and income targeting: rental housing.

(a) * * *

(5) Will remain affordable, pursuant to deed restrictions, covenants running with the land, or other mechanisms approved by HUD that will ensure that the property will remain affordable without regard to the term of any mortgage or the transfer of ownership, for not less than the appropriate period, beginning after project completion, as specified in the following table, without regard to the term of the mortgage or to transfer of ownership, except that, upon foreclosure by a lender or other transfer in lieu of foreclosure, the affordability period shall be terminated if the foreclosure or other transfer recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid the termination of low-income affordability. However, the affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property, the affordability period shall be revived according to its original terms. In addition, when HOME funds are used in connection with

multifamily housing in which acquisition, new construction, or rehabilitation is financed with a mortgage insured by HUD under chapter II of this title, the minimum period of affordability is the term of the HUD-insured mortgage. * * *

* * * * *

48. In § 92.253, paragraph (c) is revised to read as follows:

§ 92.253 Tenant and participant protections.

* * * * *

(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 transitional housing tenancy period; or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

49. In § 92.254, paragraphs (a)(1) (i) and (ii), (a)(4), (b) introductory text and (b)(1) are revised to read as follows:

§ 92.254 Qualification as affordable housing: homeownership.

(a) * * *

(1)(i) Has an initial puchase price that does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the jurisdiction as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18(b); and

(ii) Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards in § 92.251, that does not exceed the limit described in paragraph (a)(1)(i) of this section.

* * * * *

(4) Is subject, for a period of 20 years for newly constructed housing or otherwise for 15 years, to resale restrictions or recapture provisions that are established by the participating jurisdiction and determined by HUD to be appropriate to either:

(i) Make the housing available for subsequent purchase only to a low income family that will use the property as its principal residence; and

(A) Provide the owner with a fair return on investment, including any improvements, and

(B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must terminate upon occurrence of any of the following termination events: Foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property; or

(ii) Recapture the full HOME investment out of the net proceeds, except as provided in paragraph (a)(4)(ii)(B) of this section.

(A) Net proceeds means the sales price minus loan repayment and closing costs.

(B) If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment, principal payments, and any capital improvement investment, the participating jurisdiction's recapture provisions may allow the HOME investment amount that must be recaptured to be reduced. The HOME investment amount may be reduced prorata based on the time the homeowner has owned and occupied the unit measured against the required affordability period; except that the participating jurisdiction's recapture provisions may not allow the homeowner to recover more than the amount of homeowner's downpayment, principal payments, and any capital improvement investment.

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the first-time homebuyer to buy the dwelling unit. The recaptured funds must be used to assist other first-time homebuyers.

(b) *Rehabilitation not involving purchase*. Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property., after rehabilitation, does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the jurisdiction as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18(b); and

* * * * *

50. Section 92:300 is revised to read as follows:

§ 92.300 Set-aside for community housing development organizations (CHDOs).

(a) For a period of 24 months after the allocation (including, for a state, funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, an allocation transferred from a state under § 92.102(b)) is made available to a participating jurisdiction, the participating jurisdiction must reserve not less than 15 percent of these funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations. The funds must be provided to a community housing development organization and the funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization. If a community housing development organization's involvement in a project is as an owner it must have control of the project, as evidenced by legal title or a valid contract of sale. If it owns the project in partnership, it or its wholly owned for-profit subsidiary must be the managing general partner. In acting in any of the capacities specified, the community housing development organization must have effective management control.

(b) Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved housing strategy and to encourage such community housing development organizations to do so. If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable CHDOs, up to 20 percent of the minimum CHDO setaside of 15 percent specified in paragraph (a) of this section, above, (but not more than $150,000 during the 24 month period) may be expended to develop the capacity of CHDOs in the jurisdiction.

(c) Up to 10 percent of the HOME funds reserved under this section may be used for activities specified under § 92.301.

(d) HOME funds required to be reserved under this section are subject to reduction, as provided in § 92.500(d).

(e) If funds for operating expenses are provided under § 92.206(g) to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be developed, sponsored or owned by the community housing development organization, the participating jurisdiction must enter into a written agreement with the community housing development organization that provides that the community housing development organization is expected to receive funds under paragraph (a) of this section within 24 months of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

(f) *Limitation*. A community housing development organization may not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or $50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This includes organization support and housing education provided under § 92.302(c)(1), (c)(2), and (c)(6), as well as funds for operating expenses provided under § 92.206(g) and administrative funds provided under § 92.206(f) (if the community housing development organization is a subrecipient or contractor of the participating jurisdiction).

51. In § 92.302, paragraphs (a)(2), (b)(1)(iv), (d), (e), and (f) are revised, and paragraphs (a)(3), (b)(1)(v), (c)(6) and (c)(7) are added, to read as follows:

§ 92.302 Housing education and organizational support.

(a) * * *

(2) To promote the ability of community housing development organizations, including community land trusts, to maintain, rehabilitate and construct housing for low-income and moderate-income families in conformance with the requirements of this part; and

(3) To achieve the purposes under paragraphs (a)(1) and (2) of this section by helping women who reside in low- and moderate-income neighborhoods rehabilitate and construct housing in the neighborhoods.

(b) * * *

(1) * * *

(iv) Has described the uses to which such assistance will be put and the intended beneficiaries of the assistance;

(v) In the case of activities under paragraph (c)(7) of this section, is a community based organization as defined in section 4 of the Job Training Partnership Act or a public housing agency which has demonstrated experience in preparing women for apprenticeship training in construction or administering programs for training for construction or other nontraditional occupations (in which women constitute 25 percent or less of the total number of workers in the occupation); or

* * * * *

(c) * * *

(6) *Community Land Trusts (CLTs)*. HOME funds may be made available to CLTs for organizational support, technical assistance, education and training, and continuing support; and to community groups for the establishment of CLTs. A community land trust is a community housing development organization that:

(i) Is not sponsored by a for-profit organization;

(ii) Is established, and undertakes activities to:

(A) Acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

(B) Transfer ownership of any structural improvements located on such leased parcels to the lessees; and

(C) Retain a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity;

(iii) Has a corporate membership open to any adult resident of a particular geographic area specified in the bylaws of the organization;

(iv) Whose board of directors includes a majority of members who are elected by the corporate membership and is composed of equal numbers of lessees, corporate members who are not lessees, and any other category of persons described in the bylaws of the organization; and

(v) Is not required to have a demonstrated capacity for carrying out HOME activities or a history of serving the local community within which HOME-assisted housing is to be located.

(7) *Facilitating women in homebuilding professions*. Technical assistance may be made available to businesses, unions, and organizations involved in construction and rehabilitation of housing in low- and moderate-income areas to assist women residing in the area to obtain jobs involving such activities. This might include facilitating access by women to, and providing, apprenticeship and other training programs regarding non-traditional skills, recruiting women to participate in such programs, providing support for women at job sites, counseling and educating businesses regarding suitable work environments for women, providing information to such women regarding opportunities for establishing small housing construction and rehabilitation businesses. Up to ten percent of the funds made available for this activity may be used to provide materials and tools for training such women.

(d) *Limitations*. Contracts under this section with any one contractor for a fiscal year may not—

(1) Exceed 20 percent of the amount appropriated for this section for such fiscal year; or

(2) Provide more than 20 percent of the operating budget (which may not include funds that are passed through to community housing development organizations) of the contracting organization for any one year.

(e) *Single-state contractors*. Not less than 40 percent of the funds made available for this section in an appropriations Act in any fiscal year must be made available for eligible contractors that have worked primarily in one state. HUD shall provide assistance under this section, to the extent applications are submitted and approved, to contractors in each of the geographic regions having a HUD regional office.

(f) *Notice of funding*. HUD will publish a notice in the **Federal Register** announcing the availability of funding under this section, as appropriate. The notice need not include funding for each of the eligible activities, but may target funding from among the eligible activities.

52. In § 92.350, paragraph (a)(4) is revised to read as follows:

§ 92.350 Equal opportunity and fair housing.

(a) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) the purpose of which is to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very-low-income persons, particularly those who are recipients of government assistance for housing.

* * * * *

53. In § 92.400, paragraphs (a)(4) and (a)(5) are revised, and paragraph (a)(6) is added, to read as follows:

§ 92.400 Coordinated federal support for housing strategies.

(a) * * *

(4) Improve the ability of states and units of general local government,

community housing development organizations, private lenders, and for-profit developers of low-income housing to incorporate energy efficiency into the planning, design, financing, construction, and operation of affordable housing;

(5) Facilitate the establishment and efficient operation of employer-assisted housing programs through research, technical assistance, and demonstration projects; and

(6) Facilitate the establishment and efficient operation of land bank programs, under which title to vacant and abandoned parcels of real estate located in or causing blighted neighborhoods is cleared for use consistent with the purposes of the HOME program.

* * * * *

54. In § 92.500, the first sentence of paragraph (a) and paragraph (d)(2) are revised to read as follows:

§ 92.500 The HOME Investment Trust Fund.

(a) *General.* A HOME Investment Trust Fund consists of the accounts described in this section solely for investment in eligible activities within the participating jurisdiction's boundaries, or within the boundaries of contiguous local jurisdictions in joint projects which serve residents from both jurisdictions, in accordance with the provisions of this part. * * *

* * * * *

(d) * * *

(2) Any funds in the United States Treasury account that are not committed within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement);

* * * * *

55. In § 92.504, paragraph (c) introductory text is revised, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added, to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; monitoring.

* * * * *

(c) *Provisions in written agreement.* At a minimum, the written agreement (except for a written agreement under paragraph (d) of this section between a State and a State housing finance agency, or other State instrumentality, that is a subrecipient of the State) must include provisions concerning the following items:

* * * * *

(d) *Agreement between a State and a State housing finance agency, or other instrumentality of the State.* The written agreement between a State and a State housing finance agency, or other instrumentality of the State, which is a subrecipient of the State must include provisions concerning the following items:

(1) The total amount to be administered, i.e., the entire State allocation, a percentage of the allocation, or a dollar amount, and whether the amount covers repayment income;

(2) A statement that the subrecipient is subject to the same requirements as are applicable to the State in 24 CFR part 92;

(3) A listing of the reports and other information that the subrecipient must provide to the State;

(4) A statement that the agreement remains in effect during the period that the subrecipient has control over HOME funds;

(5) The conditions that constitute a breach of the agreement, and the remedies for a breach, including a statement that suspension or termination may occur if the subrecipient materially fails to comply with any term of the agreement, and that the agreement may be terminated for convenience in accordance with 24 CFR 85.44; and

(6) A statement that, upon expiration of the agreement, the subrecipient must transfer to the participating jurisdiction any HOME funds and any accounts receivable attributable to the use of HOME funds on hand at the time of expiration.

* * * * *

56. In § 92.508, paragraph (a)(1)(ii) is revised, paragraphs (a)(2)(iii) and (a)(2)(iv) are removed, paragraphs (a)(2)(v) through (a)(2)(vii) are redesignated as paragraphs (a)(2)(iii) through (a)(2)(v) respectively, and new paragraphs (a)(4) (iv) and (v) are added, to read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(1) * * *

(ii) Records for a unit of general local government receiving a formula allocation of less than $750,000 (or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part) that demonstrate that funds have been made available (either by the state or the unit of general local government, or both) equal to or greater than the difference between its formula allocation and $750,000 (or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion) for this part as required by § 92.102.

* * * * *

(2) * * *

(iii) Records supporting the participating jurisdiction's certification under §§ 92.210 and 92.211 (tenant-based rental assistance, including security deposits; the waiting list; determinations of rent reasonableness; calculations of HOME subsidy for each tenant assisted).

(iv) Records for income targeting required by § 92.216 and § 92.217.

(v) Records, including individual project records and a running log, demonstrating compliance with the matching requirements in § 92.218 through § 92.221 including the type and amount of contributions by project.

* * * * *

(4) * * *

(iv) Records regarding the use of community housing development organization setaside funds to develop the capacity of community housing development organizations pursuant to § 92.300(b) if the jurisdiction could not identify a sufficient number of capable community housing development organizations.

(v) Records of the written agreement the participating jurisdiction must enter into under § 92.300(e) with the community housing development organization if funds for operating expenses are provided under § 92.206(g) to the community housing development organization that is not also receiving funds under § 92.300(a).

* * * * *

57. Section 92.600 is revised to read as follows:

§ 92.600 General.

For each fiscal year, HUD will provide funds to Indian tribes, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. The funds will be awarded competitively by HUD Field Offices that have responsibility for the HOME Indian program and will be made available each fiscal year pursuant to a notice of funding availability (NOFA) published in the **Federal Register**, in accordance with the requirements of subpart M of this part. Except as otherwise stated in this part, only subparts A and M apply to grants to Indian tribes.

58. Section 92.610 is revised to read as follows:

§ 92.610 Income determinations.

Whenever an Indian tribe makes a determination under this part based on family income or adjusted family income, it must use the definitions of annual income, adjusted income, monthly income, and monthly adjusted income, as those terms are defined in part 913 of this title, except when determining the income of a homeowner for an owner-occupied rehabilitation project, the equity in the homeowner's principal residence is excluded from "Net Family Assets."

59. In § 92.611, paragraph (a)(1) is revised to read as follows:

§ 92.611 Eligible activities.

(a) *Eligible activities.* (1) HOME funds may be used by an Indian tribe to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvement, 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, and includes permanent housing for disabled homeless persons, and single-room occupancy housing. The specific eligible costs for these activities are set forth in § 92.612.

* * * * *

60. In § 92.612, paragraphs (a)(4) and (e) are revised to read as follows:

§ 92.612 Eligible costs.

* * * * *

(a) * * *

(4) For new construction or substantial rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay operating expenses, reserve for replacement payments, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended when the reserve terminates must be returned to the Indian tribe's local HOME account.

* * * * *

(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.

* * * * *

61. In § 92.613, paragraph (a) is revised, and a new paragraph (i) is added, to read as follows:

§ 92.613 Tenant-based rental assistance.

(a) *General.* An Indian tribe may use HOME funds for tenant-based rental assistance only if the Indian tribe 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 Housing Act of 1937. The Indian tribe may select eligible families currently residing in units that are designated for rehabilitation or acquisition under the tribe's HOME program without requiring that the family meet the written tenant selection policies and criteria. Families so selected may use the tenant-based assistance in the rehabilitated or acquired unit or in other qualified housing.

* * * * *

(i) *Security deposits.* (1) An Indian tribe 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 Indian tribe provides any other tenant-based rental assistance under this section.

(2) The relevant tribal, 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 Indian tribe 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 § 92.622 (a) and (b).

(5) HOME funds for security deposits may be provided as a grant or as a loan. If they are provided as a loan, the provisions at § 92.643(b) or repayment of HOME investment apply.

(6) The provisions of paragraphs (a), (b), (d), (e) and (g) of this section are applicable to HOME security deposit assistance.

62. In § 92.614, paragraph (a)(1)(ii), (a)(2) introductory text, the text of (a)(5) (the table remains unchanged), and (c) are revised, and a new paragraph (e) is added, to read as follows:

§ 92.614 Qualification as affordable housing and income targeting: rental housing.

(a) * * *

(1) * * *

(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 fundings that such variations are necessary because of prevailing levels of construction costs or 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 Indian tribe must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy 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, or in the case of an owner of multiple one or two unit projects with a total of three or more rental units, not less than 20 percent of the rental units—

* * * * *

(5) Will remain affordable, pursuant to binding commitments satisfactory to HUD that will ensure that the property will remain affordable without regard to the term of any mortgage or the transfer of ownership, for not less than the appropriate period, beginning after project completion, as specified in the following table, except that upon foreclosure by a lender or other transfer in lieu of foreclosure, the affordability period shall be suspended if the foreclosure by a lender or other transfer in lieu of foreclosure recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability. However, if at any time following transfer by foreclosure or transfer in lieu of foreclosure, but still during the term of the affordability period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or

property, the affordability period shall be revived according to its original terms. * * *

* * * * *

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraph (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under tribal, State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this part for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986.

* * * * *

(e) *Manufactured housing.* Purchase and/or rehabilitation of a manufactured housing unit qualifies as affordable housing only if, at the time of project completion, the unit—

(1) Is situated on a permanent foundation;

(2) Is connected to permanent utility hook-ups;

(3) Is located on land that is held in a fee-simple title, land-trust, or long-term ground lease with a term at least equal to that of the appropriate affordability period;

(4) Meets the construction standards established under 24 CFR 3280;

(5) Meets all requirements of this section.

63. In § 92.615, paragraphs (a)(1) (i) and (ii), (a)(4), (b) introductory text and (b)(1) are revised, and a new paragraph (c) is added, to read as follows:

§ 92.615 Qualification as affordable housing: homeownership.

(a) * * *

(1)(i) Has an initial purchase price that does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18(b); and

(ii) Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards in § 92.621, that does not exceed the limit described in paragraph (a)(1)(i) of this section.

* * * * *

(4) Is subject, for a period of 20 years for newly constructed housing or otherwise for 15 years, to resale restrictions or recapture provisions that are established by the Indian tribe and determined by HUD to be appropriate to either—

(i) Make the housing available for subsequent purchase only to a low income family that will use the property as its principal residence; and

(A) Provide the owner with a fair return on investment, including any improvements, and

(B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The Indian tribe may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event reacquires title to the property; or

(ii) Recapture the full HOME investment out of the net proceeds, except as provided in paragraph (a)(4)(ii)(B) of this section.

(A) Net proceeds means the sales price minus loan repayment and closing costs.

(B) If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment, principal payments, and any capital improvement investment, the Indian tribe's recapture provisions may allow the HOME investment amount that must be recaptured to be reduced. The HOME investment amount may be reduced pro rata based on the time the homeowner has owned and occupied the unit measured against the required affordability period; except that the Indian tribe's recapture provisions may not allow the homeowner to recover more than the amount of the homeowner's downpayment, principal payments, and any capital improvement investment.

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the first-time homebuyer to buy the dwelling unit. The recaptured funds must be used to assist other first-time homebuyers.

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18(b); and

* * * * *

(c) *Manufactured housing.* Purchase and/or rehabilitation of a manufactured housing unit qualifies as affordable housing only if, at the time of project completion, the unit—

(1) Is situated on a permanent foundation (except when assisting existing unit owners who rent the lot on which their unit sits);

(2) Is connected to permanent utility hook-ups;

(3) Is located on land that is held in a fee-simple title, land-trust, or long-term ground lease with a term at least equal to that of the appropriate affordability period;

(4) Meets the construction standards established under 24 CFR 3280 if produced after June 15, 1976. If the unit was produced prior to June 15, 1976, it must comply with applicable tribal, State or local codes;

(5) Meets all of the requirements of paragraphs (a) and (b) of this section, as applicable. In cases where the owner of a manufactured housing unit does not hold fee-simple title to the land on which the unit is located, the owner may be assisted to purchase the land under paragraph (b) of this section.

64. A new § 92.616 is added to read as follows:

§ 92.616 Prohibited activities.

(a) HOME funds may not be used to—

(1) Provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies;

(2) Provide nonfederal matching contributions required under any other federal program; or

(3) Provide assistance (other than tenant-based rental assistance or assistance to a first-time 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 Indian tribe under

§ 92.614 or § 92.615. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.642), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.620.

(4) Pay impact fees.

(b) Indian tribes may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, tribes may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications.

65. Section 92.620 is revised to read as follows:

§ 92.620 Maximum per-unit subsidy amount.

The amount of HOME funds that an Indian tribe may invest on a per-unit basis in affordable housing may not exceed the total development cost standard for the area, as issued by HUD under 24 CFR 905.213. These total development cost standards are available from HUD Indian Field Offices.

66. Section 92.621 is revised to read as follows:

§ 92.621 Property standards.

(a) Housing that is assisted with HOME funds, at a minimum, must meet the housing quality standards in § 882.109 of this title. In addition, housing that is newly constructed or substantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The Indian tribe must have written standards for rehabilitation. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. Substantially rehabilitated housing must meet the cost-effective energy conservation and effectiveness standards in 24 CFR part 39.

(b) The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:

(1) Before the transfer of the homeownership interest, the Indian tribe must:

(i) Inspect the housing for any defects that pose a danger to health; and

(ii) Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.

(2) The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer.

(3) The housing must meet the applicable property standards (at a minimum, the housing quality standards in § 882.109 of this title) not later than 2 years after transfer of the ownership interest.

67. In § 92.642, paragraph (b)(1) is revised to read as follows:

§ 92.642 Cash and Management Information System; disbursement of HOME funds.

* * * * *

(b) * * *

(1) After HUD completes any environmental review required by part 50 of this title and the Indian tribe executes HOME Investment Partnership Agreement and submits the appropriate banking and security documents, the Indian tribe may identify (set up) specific investments in the C/MI System. Investments that require the set-up of projects in the C/MI System are the acquisition, new construction, or moderate or substantial rehabilitation of real property, and investments of HOME funds to provide tenant-based rental assistance. Within 12 calendar days of project set-up, the Indian tribe is required to submit a Project Set-Up Report to HUD for each project set up in the C/MI System. Until an acceptable Project Set-Up Report is received and entered in the C/MI System, HOME funds for the project are not considered committed (as defined in § 92.2), and, therefore, are subject to recapture and reallocation to the extent authorized by § 92.640.

* * * * *

Dated: March 26, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–14382 Filed 6–22–93; 8:45 am]

BILLING CODE 4210–32–M