

§ 92.505

contract. Generally, the duration of a contract should not exceed two years.

(5) *Homebuyer, homeowner or tenant receiving tenant-based rental or security deposit assistance.* When a participating jurisdiction provides assistance to a homebuyer, homeowner or tenant the written agreement may take many forms depending upon the nature of assistance. As appropriate, it must include as a minimum:

(i) For homebuyers, the agreement must conform to the requirements in § 92.254(a), the value of the property, principal residence, lease-purchase, if applicable, and the resale or recapture provisions. The agreement must specify the amount of HOME funds, the form of assistance, e.g., grant, amortizing loan, deferred payment loan, the use of the funds (e.g., down-payment, closing costs, rehabilitation) and the time by which the housing must be acquired.

(ii) For homeowners, the agreement must conform to the requirements in § 92.254(b) and specify the amount and form of HOME assistance, rehabilitation work to be undertaken, date for completion, and property standards to be met.

(iii) For tenants, the rental assistance contract or the security deposit contract must conform to §§ 92.209 and 92.253.

(d) *On site inspections*—(1) *HOME assisted rental housing.* During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards of § 92.251 and to verify the information submitted by the owners in accordance with the requirements of § 92.252 no less than: every three years for projects containing 1 to 4 units; every two years for projects containing 5 to 25 units; and every year for projects containing 26 or more units. Inspections must be based on a sufficient sample of units.

(2) *Tenant-based rental assistance.* The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to deter-

24 CFR Subtitle A (4–1–11 Edition)

mine compliance with the property standards of § 92.251.

[61 FR 48750, Sept. 16, 1996, as amended at 64 FR 50224, Sept. 15, 1999; 67 FR 61757, Oct. 1, 2002; 68 FR 56404, Sept. 30, 2003]

§ 92.505 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A–87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, State recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32 through 85.34, 85.36, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–122 and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are nonprofit organizations that are not governmental subrecipients: §§ 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73.

(c) OMB Circulars referenced in this part may be obtained from: Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G–2200, Washington, DC 20503; telephone: (202) 395–7332.

[61 FR 84750, Sept. 16, 1996, as amended at 62 FR 28930, May 28, 1997]

§ 92.506 Audit.

Audits of the participating jurisdiction, State recipients, and subrecipients must be conducted in accordance with 24 CFR 84.26 and 85.26.

[67 FR 61757, Oct. 1, 2002]

§ 92.507 Closeout.

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

[62 FR 44840, Aug. 22, 1997]

§ 92.508 Recordkeeping.

(a) *General.* Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of

this part. At a minimum, the following records are needed:

(1) *Records concerning designation as a participating jurisdiction.* (i) For a consortium, the consortium agreement among the participating member units of general local government as required by §92.101.

(ii) 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), records demonstrating 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 \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion) as required by §92.102(b).

(2) *Program records.* (i) Records of the efforts to maximize participation by the private sector as required by §92.200.

(ii) The forms of HOME assistance used in the program, including any forms of investment described in the Consolidated Plan under 24 CFR part 91 which are not identified in §92.205(b).

(iii) The subsidy layering guidelines adopted in accordance with §92.250 which support the participating jurisdiction's Consolidated Plan certification.

(iv) If existing debt is refinanced for multi-family rehabilitation projects, the refinancing guidelines established in accordance with §92.206(b), described in the Consolidated Plan.

(v) If HOME funds are used for tenant-based rental assistance, records supporting the participating jurisdiction's Consolidated Plan certification in accordance with §92.209(b), including documentation of the local market conditions that led to the choice of this option; written selection policies and criteria; supporting documentation for preferences for specific categories of individuals with disabilities; and records supporting the rent standard and minimum tenant contribution established in accordance with §92.209(h).

(vi) If HOME funds are used for tenant-based rental assistance or rental housing, records evidencing that not less than 90 percent of the families re-

ceiving such rental assistance meet the income requirements of §92.216.

(vii) If HOME funds are used for homeownership housing, the procedures used for establishing 95 percent of the median purchase price for the area in accordance with §92.254(a)(2), in the Consolidated Plan.

(viii) If HOME funds are used for acquisition of housing for homeownership, the resale or recapture guidelines established in accordance with §92.254(a)(5), in the Consolidated Plan.

(ix) Records demonstrating compliance with the matching requirements of §92.218 through §92.222 including a running log and project records documenting the type and amount of match contributions by project.

(x) Records documenting compliance with the 24 month commitment deadline of §92.500(d).

(xi) Records demonstrating compliance with the fifteen percent CHDO set-aside requirement of §92.300(a).

(xii) Records documenting compliance with the ten percent limitation on administrative and planning costs in accordance with §92.207.

(3) *Project records.* (i) A full description of each project assisted with HOME funds, including the location, form of HOME assistance, and the units or tenants assisted with HOME funds.

(ii) The source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20.

(iii) Records demonstrating that each rental housing or homeownership project meets the minimum per-unit subsidy amount of §92.205(c), the maximum per-unit subsidy amount of §92.250(a) and the subsidy layering guidelines adopted in accordance with §92.250(b).

(iv) Records demonstrating that each project meets the property standards of §92.251 and the lead based paint requirements of §92.355.

(v) Records demonstrating that each family is income eligible in accordance with §92.203.

(vi) Records demonstrating that each tenant-based rental assistance project meets the written tenant selection

§ 92.508

policies and criteria of § 92.209(c), including the tenant preference requirements, the rent reasonableness requirements of § 92.209(f), the maximum subsidy provisions of § 92.209(h), HQS inspection reports, and calculation of the HOME subsidy.

(vii) Records demonstrating that each rental housing project meets the affordability and income targeting requirements of § 92.252 for the required period. Records must be kept for each family assisted.

(viii) Records demonstrating that each multifamily rental housing project involving rehabilitation with refinancing complies with the refinancing guidelines established in accordance with § 92.206(b).

(ix) Records demonstrating that each lease for a tenant receiving tenant-based rental assistance and for an assisted rental housing unit complies with the tenant and participant protections of § 92.253. Records must be kept for each family.

(x) Records demonstrating that the purchase price or estimated value after rehabilitation for each homeownership housing project does not exceed 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2). The records must demonstrate how the estimated value was determined.

(xi) Records demonstrating that each homeownership project meets the affordability requirements of § 92.254 for the required period.

(xii) Records demonstrating that any pre-award costs charged to the HOME allocation meet the requirements of § 92.212.

(xiii) Records demonstrating that a site and neighborhood standards review was conducted for each project which includes new construction of rental housing assisted under this part to determine that the site meets the requirements of 24 CFR 983.6(b), in accordance with § 92.202.

(4) *Community Housing Development Organizations (CHDOs) Records.* (i) Written agreements reserving HOME funds to CHDOs in accordance with § 92.300(a).

(ii) Records setting forth the efforts made to identify and encourage CHDOs, as required by § 92.300(b).

24 CFR Subtitle A (4–1–11 Edition)

(iii) The name and qualifications of each CHDO and amount of HOME CHDO set-aside funds reserved and committed.

(iv) Records demonstrating that each CHDO complies with the written agreements required by § 92.504.

(v) Records concerning the use of CHDO setaside funds, including funds used to develop CHDO capacity pursuant to § 92.300(b).

(vi) Records concerning the use of funds for CHDO operating expenses and demonstrating compliance with the requirements of § 92.208, § 92.300(e) and § 92.300(f).

(vii) Records concerning the tenant participation plan required by § 92.303.

(viii) Records concerning project-specific assistance to CHDOs pursuant to § 92.301, including the impediments to repayment, if repayment is waived.

(5) *Financial records.* (i) Records identifying the source and application of funds for each fiscal year, including the formula allocation, any reallocation (identified by federal fiscal year appropriation), and any State or local funds provided under § 92.102(b).

(ii) Records concerning the HOME Investment Trust Fund Treasury account and local account required to be established and maintained by § 92.500, including deposits, disbursements, balances, supporting documentation and any other information required by the program disbursement and information system established by HUD.

(iii) Records identifying the source and application of program income, repayments and recaptured funds.

(iv) Records demonstrating adequate budget control, in accordance with 24 CFR 85.20, including evidence of periodic account reconciliations.

(6) *Program administration records.* (i) Records demonstrating compliance with the written agreements required by § 92.504.

(ii) Records demonstrating compliance with the applicable uniform administrative requirements required by § 92.505.

(iii) Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

(7) *Records concerning other Federal requirements—(i) Equal opportunity and*

fair housing records. (A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.

(B) Documentation of actions undertaken to meet the requirements of 24 CFR part 135 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(C) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing.

(i) Affirmative marketing and MBE/WBE records.

(A) Records demonstrating compliance with the affirmative marketing procedures and requirements of §92.351.

(B) Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

(iii) Records demonstrating compliance with the environmental review requirements of §92.352 and 24 CFR part 58, including flood insurance requirements.

(iv) Records demonstrating compliance with the requirements of §92.353 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in §92.353(c)(2)(i)(A), moving into the property on or after the date described in §92.353(c)(2)(i)(A), and occupying the property upon completion of the project.

(v) Records demonstrating compliance with the labor requirements of §92.354, including contract provisions and payroll records.

(vi) Records demonstrating compliance with the lead-based paint requirements of part 35, subparts A, B, J, K, M and R of this title.

(vii) Records supporting exceptions to the conflict of interest prohibition pursuant to §92.356.

(viii) Records demonstrating compliance with debarment and suspension requirements in 2 CFR part 2424.

(ix) Records concerning intergovernmental review, as required by §92.357.

(b) *States with State Recipients.* A State that distributes HOME funds to State recipients must require State recipients to keep the records required by paragraphs (a)(2), (a)(3), (a)(5), (a)(6) and (a)(7) of this section, and such other records as the State determines to be necessary to enable the State to carry out its responsibilities under this part. The State need not duplicate the records kept by the State recipients. The State must keep records concerning its review of State recipients required under §92.201(b)(3).

(c) *Period of record retention.* All records pertaining to each fiscal year of HOME funds must be retained for the most recent five year period, except as provided below.

(1) For rental housing projects, records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five year period, until five years after the affordability period terminates.

(2) For homeownership housing projects, records may be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the affordability period terminates.

(3) For tenant-based rental assistance projects, records must be retained for five years after the period of rental assistance terminates.

(4) Written agreements must be retained for five years after the agreement terminates.

(5) Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property

§ 92.509

and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 92.353.

(6) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

(d) *Access to records.* (1) The participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the participating jurisdiction, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts.

[61 FR 48750, Sept. 16, 1996, as amended at 64 FR 50224, Sept. 15, 1999; 67 FR 61757, Oct. 1, 2002; 72 FR 73493, Dec. 27, 2007]

§ 92.509 Performance reports.

(a) *Management reports.* Each participating jurisdiction must submit management reports on its HOME Investment Partnerships Program in such format and at such time as HUD may prescribe.

(b) *Annual performance report.* For annual performance report requirements, see 24 CFR part 91.

Subpart L—Performance Reviews and Sanctions

§ 92.550 Performance reviews.

(a) *General.* HUD will review the performance of each participating jurisdiction in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the participating jurisdiction's and, as appropriate, the State recipient's records

24 CFR Subtitle A (4–1–11 Edition)

and reports, findings from on-site monitoring, audit reports, and information generated from the disbursement and information system established by HUD. Where applicable, HUD may also consider relevant information pertaining to a participating jurisdiction's or State recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the participating jurisdiction or State recipient. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the participating jurisdiction.

(b) *Standards for comprehensive performance review.* A participating jurisdiction's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine:

(1) For local participating jurisdictions and State participating jurisdictions administering their own HOME programs, whether the participating jurisdiction has committed the HOME funds in the United States Treasury account as required by § 92.500 and expended the funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching requirements; or

(2) For State participating jurisdictions distributing HOME funds to State recipients, whether the State has met the matching contribution and other requirements of this part; has distributed the funds in accordance with the requirements of this part; and has made such reviews and audits of its State recipients as may be appropriate to determine whether they have satisfied the requirements of paragraph (b)(1) of this section.

§ 92.551 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 92.550 and in taking corrective and remedial actions.