DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 92

[Docket No. FR–4111–F–02]

RIN 2501–AC30

Home Investment Partnerships Program—Additional Streamlining

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; request for comment.

SUMMARY: This rule implements the proposed rule published December 11, 1996 and amends the existing Home Program final rule by: replacing the hearing procedures of the current Home rule with the Department-wide streamlined hearing procedures; removing the closeout requirements and instead providing that Home funds will be closed out in accordance with procedures established by HUD; replacing the extensive requirements for the competitive reallocation of Home funds with a citation to the selection factors in the Home statute and a statement of the maximum number of points that may be awarded for each factor; and establishing separate market interest rate formula for rehabilitation loans. This rule also promulgates an amendment to, and requests public comment on, § 92.252(i)(2) to limit the rents charged to tenants of Home-assisted units whose income rises above 80 percent of area median income in Home projects in which the Home-assisted units ''float.''

DATES: Effective Date: September 22, 1997.

Comment Due Date: Comments on § 92.252(i)(2) are due on October 21, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding § 92.252(i)(2) to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 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. Faxed comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7162, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–2470 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Home Investment Partnerships Act (the HOME Act) (Title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625), and created the Home Investment Partnerships Program that provides funds to expand the supply of affordable housing for very low-income and low-income persons. Interim regulations for the Home Investment Partnerships Program were first published on December 16, 1991 (56 FR 65313) and are codified at 24 CFR part 92.

The original statute has been amended three times since enactment. 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. These amendments were implemented in rules published on December 22, 1992 (57 FR 60960), June 23, 1993 (58 FR 34130), and April 19, 1994 (59 FR 18626). The HUD Demonstration Act (Pub. L. 103–120, approved October 27, 1993) provided additional authorization for Home Program technical assistance. The Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 103–233, approved April 11, 1994) included an additional number of amendments to the Home Program. These amendments were implemented in a rule published on August 26, 1994 (59 FR 44258).

A proposed rule (60 FR 36012) to modify the Home allocation formula and an interim rule (60 FR 36020) with clarifying changes to the Home regulation and a request for additional comments before the issuance of a final rule were published on July 12, 1995. The proposed rule was issued as an interim rule on January 23, 1996 (61 FR 1824). On March 6, 1996 (61 FR 9036), an interim rule that made a number of streamlining amendments to the Home regulation was published. On September 16, 1996 (61 FR 48736), the Department published a final rule for the Home Investment Partnerships Program (the Home program). Finally, a proposed rule to make a number of additional streamlining changes was published on December 11, 1996 (61 FR 65298). This rule implements the changes proposed in the December 11, 1996 rule. This rule also implements, and solicits public comment on, an amendment to § 92.252(i)(2) that would provide relief, in circumstances explained below in this preamble, from the requirement that tenants who no longer qualify as low-income pay 30 percent of their adjusted income as rent.

The purpose of this rule is two-fold: (1) To respond to a memorandum that President Clinton issued to all Federal departments and agencies regarding regulatory reinvention; and (2) to provide additional flexibility to Home participating jurisdictions by more accurately measuring the match value of below-market interest rate rehabilitation loans.

In response to the President's memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which could be eliminated, consolidated, or otherwise improved. HUD determined that the regulations for the Home Investment Partnerships Program would be improved and streamlined by eliminating unnecessary provisions.

For the first streamlining change, HUD replaces the requirements for the competitive reallocation of Home funds in § 92.453, which largely repeat the Home statute at section 217(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)), with a citation to the selection criteria in the statute; the maximum number of points that may be awarded for each category of criteria (policies, actions, commitment), as was done in the regulation; and a statement that such requirements will be published in a Notice of Funding Availability (NOFA) in accordance with the requirements of the HUD Reform Act as funds become available.

Second, this rule removes the closeout requirements specified in § 92.507 and instead provides that, ''Home funds will be closed out in accordance with procedures established by HUD.''

Third and last of the streamlining changes, this rule replaces the hearing procedures in § 92.552 of the current HOME rule with the Department-wide, streamlined, hearing procedures of 24 CFR part 26 published as a final rule on September 24, 1996 (61 FR 50208).

The changes described above are consistent with the general reinvention goals of streamlining the requirements of HUD's funding programs and maximizing their administrative flexibility. For example, removing the current rigid and burdensome closeout requirements permits the Department to simplify the closeout process and administer it on the basis of the reports and other monitoring information it receives. In addition, every recipient of

HUD funding and the Department itself will benefit from the adoption of uniform hearings procedures that apply to all HUD programs.

This rule also establishes a separate formula for calculating the match value of below-market interest rate rehabilitation loans for both owner-occupied and rental housing. This change to the Home program responds to comments that this methodology, which involves calculating the yield foregone based upon the difference between the actual interest rate charged and the market interest rate established at § 92.220(a)(1)(iii)(B), understated the actual value of these contributions. Because the formula for determining the market interest rate for various types of projects was based on assumptions involving first mortgage financing, participating jurisdictions claimed that the methodology understated the match value of below-market interest rate rehabilitation loans, which typically carry higher market interest rates than first mortgage financing for comparable projects.

Finally, this rule amends § 92.252(i)(2) to address, to the extent permissible, an unintended inequity that may arise with respect to the rent for a Home-assisted unit. This section is amended to limit the rents charged to tenants of Home-assisted units whose income rises above 80 percent of area median income in Home projects in which the Home-assisted units ''float.'' The Home statute requires that the tenants of Home-assisted units who no longer qualify as low-income pay 30 percent of their adjusted income as rent, except that tenants of units assisted with both Home funds and Low-Income Housing Tax Credits (LIHTC) are subject to the rules of the LIHTC program. The Department has determined that there is legal precedent that enables it, in projects with floating Home units, to limit the rent charged to over-income tenants in Home-assisted units to the market rent for comparable units in the neighborhood. This precedent does not apply to rents in projects where Home units are fixed. Thus, extending this rent limitation provision to such units was not an option available to HUD.

In Home projects in which the Home-assisted units are fixed, the requirement that the over-income tenant pay 30 percent of adjusted income as rent may provide that tenant with an incentive to move because the Home rent might eventually exceed the market rent on an unassisted unit. In such instances, the Home project could be brought back into compliance with the requirements of § 92.252 (a) and (b) more quickly because the over-income tenant is likely to move from the Home-assisted unit. However, in projects where the Home units are designated as floating and a tenant's income rises above 80% of area median income, the next available, comparable unit can be designated as a Home-assisted unit. In these instances, the project can be brought back into compliance without the over-income tenant moving to avoid paying an excessive rent. Recognizing that individual tenants may have reasons for remaining in Home-assisted units even at a higher rent (e.g., proximity to work or schools, the cost of moving, or unavailability of unassisted units in the neighborhood), the Department is exercising the flexibility afforded by legal precedent to limit the rents for over-income tenants in floating Home units. In projects receiving both Home and LIHTC, the rent requirements of the tax credit program will continue to supersede Home rental requirements.

II. Summary of Comments and Responses

The Department received four comments on the proposed rule published December 11, 1996. Two comments were received from a State Home participating jurisdiction. Two comments were received from public interest groups representing public agencies administering the Home Program.

Streamlining Provisions

One commenter, a public interest group, supported the three proposed changes to streamline the program regulations. The commenter suggested that HUD seek the input of Home program administrators in developing requirements for Home grant closeouts.

Matching Requirements

All four commenters supported HUD's proposal to establish a separate market interest rate formula for determining the match value of below-market interest rate rehabilitation loans made to single-family and multifamily housing, whether owner-occupied or rental. One commenter recommended that each participating jurisdiction be permitted to establish the market rate for rehabilitation loans made in its jurisdiction by conducting weekly surveys of lenders in its area to determine the rates being offered for rehabilitation loans. Two commenters preferred that the Department use the same methodology for determining the match value of below-market interest rate rehabilitation loans as it did for acquisition loans, establishing a rate based on the interest rate for a 10-year Treasury note plus a specified number of basis points. One of the commenters recommended that the market rate be equal to the interest rate for a 10-year Treasury note plus 400 basis points. The other commenter recommended that 200 basis points be added to each of the three existing market interest rates for single-family fixed financing (200 basis points), single-family adjustable rate financing (250 basis points), and multifamily financing (300 basis points).

One commenter suggested that HUD establish separate market rates for single-family homeownership and multifamily rental loans made for rehabilitation. Another commenter recommended that the formula established by HUD be as simple as possible.

The Department agrees that the methodology for calculating the value of rehabilitation loans should be simple and has adopted the suggestion that the market interest rate for these loans be set at a rate equal to the interest rate on a 10-year note plus 400 basis points. In the interest of simplicity, this single rate shall apply to rehabilitation loans made to housing of all types and tenures. This standard should provide for a generous valuation of match contributions in most participating jurisdictions, is consistent with the methodology for other types of loans, is simple to calculate, and avoids the additional burden and recordkeeping that would be necessary if each participating jurisdiction were to conduct periodic surveys of lenders.

Findings and Certifications

Justification for Implementation of § 92.252(i)(2)

The Department has determined that the amendment made by this rule to § 92.252(i)(2) should be adopted without the delay occasioned by requiring prior notice and comment. The amendment only removes, to the extent permissible, a requirement that could result in an unintentionally inequitable result and provides more flexibility for administering the program. As such, prior notice and comment are unnecessary under 24 CFR Part 10. The Department, however, is soliciting comments on this change, and will consider whether changes should be made to this section as a result of the comments.

Paperwork Reduction Act

The information collection requirements for the Home Investment Partnerships Program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980

(44 U.S.C. 3501–3520), and assigned OMB control number 2501–0013. This rule does not contain additional information collection requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

At the time of publication of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial Finding of No Significant Impact remains applicable, and 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 Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will 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. The rule will have no adverse or disproportionate economic impact on small businesses.

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. This rule only streamlines the Home regulations by removing provisions determined to be unnecessary or overly restrictive.

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

List of Subjects in 24 CFR Part 92

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

Accordingly, part 92 of title 24 of the Code of Federal Regulations is amended to read as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 continues to read as follows:

Authority: Title II, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701–12839); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 92.220, paragraphs (a)(1)(iii)(B)(*2*) and (a)(1)(iii)(B)(*3*) are revised, and a new paragraph (a)(1)(iii)(B)(*4*) is added, to read as follows:

§ 92.220 Form of matching contribution.

(a) * * *

(1) * * *

(iii) * * *

(B) * * *

(*2*) With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points;

(*3*) With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points; or

(*4*) With respect to housing receiving financing for rehabilitation, a rate equal to the 10-year Treasury note rate plus 400 basis points.

* * * * *

3. In § 92.252, a new sentence is added to the end of paragraph (i)(2), to read as follows:

§ 92.252 Qualification as affordable housing: Rental housing.

* * * * *

(i) * * *

(2) * * * In addition, in projects in which the Home units are designated as floating pursuant to paragraph (j) of this section, tenants who no longer qualify as low-income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood.

* * * * *

4. Section 92.453 is revised to read as follows:

§ 92.453 Competitive reallocations.

(a) HUD will invite applications through **Federal Register** publication of a Notice of Funding Availability (NOFA), in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and the requirements of sec. 217(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)), for HOME funds that become available for competitive reallocation under § 92.451 or § 92.452, or both. The NOFA will describe the application requirements and procedures, including the total funding available for the competition and any maximum amount of individual awards. The NOFA will also describe the selection criteria and any special factors to be evaluated in awarding points under the selection criteria.

(b) The NOFA will include the selection criteria at sec. 217(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)), with the following maximum number of points awarded for each category of criteria:

(1) *Commitment.* Up to 25 points for the criteria at sec. 217(c)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(1));

(2) *Actions.* Up to 50 points for the criteria at sec. 217(c)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(2)); and

(3) *Policies.* Up to 25 points for the criteria at sec. 217(c)(3) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(3)).

5. Section 92.507 is revised to read as follows:

§ 92.507 Closeout.

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

6. In § 92.552, paragraph (b) is revised to read as follows:

§ 92.552 Notice and opportunity for hearing; sanctions.

* * * * *

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the participating jurisdiction or, at HUD's option, the State recipient. Proceedings will be conducted in accordance with 24 CFR part 26, subpart B.

Dated: July 23, 1997.

Andrew Cuomo,

Secretary.

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