

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Part 92**

[Docket No. FR-3836-P-01]

RIN 2501-AB94

HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the HOME Investment Partnerships Program regulation with respect to the operation of the HOME formula; the threshold for applicability of the 20% very low-income requirement for rental housing; and, conflict of interest provisions as they apply to developers. **DATES:** Comments due date: September 11, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule 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, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act Statement**

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 proposed rule does not contain additional information collection requirements.

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).

Implementing regulations for the HOME Program are 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). An interim rule with clarifying changes to the HOME rule and a request for additional comments before the issuance of a final rule is also published in this issue of the **Federal Register**.

One of the purposes of this rule is to propose a change in the operation of the HOME formula. Section 92.50(d)(3) would be revised to maximize the number of units of general local government which receive an initial allocation of HOME funds.

Formerly, units of general local government, after an initial distribution of funds available for allocation, were eliminated at \$250,000 and below. They were eliminated from the pool of eligible jurisdictions and their allocations were redistributed among other units of general local government. This redistribution technique continued until 95% of the funds had been distributed among units of general local government that received \$500,000 or more. The new method would drop only one jurisdiction on each recalculation, and redistribute funds to all others, thus assuring that the maximum number of units of general local government receive an allocation.

A further rule change is proposed to § 92.252, Qualification as affordable housing and income targeting: Rental housing, that would change the threshold for the 20% very-low income occupancy requirement from a project with three or more rental units to a project with five or more rental units.

Finally, this rule proposes to apply, as appropriate, the conflict of interest provisions at § 92.356 to housing developers, whether private, for profit, or non-profit, of projects assisted with HOME funds. The general conflicts

prohibition in § 92.356(c) cannot be specifically applicable to such developers (including their employees, agents, consultants, and officers), because they do obtain a financial interest or benefit from a HOME assisted activity, for example, developer's fees. The conflict with respect to developers arises when they receive an unfair advantage for the HOME-assisted affordable housing. The range of situations in which a conflict may arise includes, for example, an individual who creates a non-profit, serves as executive director, receives HOME funds to construct rental housing, and then becomes the first to occupy a rental unit; or an individual employed as a receptionist at a non-profit that develops and manages a HOME-assisted project who becomes homeless, and applies for a newly-vacated unit in the project. This rule proposes that no owner, employee, agent, consultant, or officer of a developer of a project assisted with HOME funds may occupy a HOME-assisted affordable housing unit in the project. As is the case with the present conflict of interest provision, the rule would permit requests for exceptions. However, rather than provide for HUD review, as is presently done for exception requests by participating jurisdictions, state recipients and subrecipients, this rule would permit participating jurisdictions to grant exceptions upon consideration of factors delineated in the rule.

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.

Regulatory Planning and Review

This proposed rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the proposed rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the