

Special Attention of:
All Secretary's Representatives
All State Coordinators
All CPD Division Directors
All HOME Participating Jurisdictions

Notice: CPD 01-5
Issued: April 24, 2001
Expires: April 24, 2002

Cross Reference:

SUBJECT: The Use of HOME Funds for Projects to be Occupied by Children in Foster Care

This Notice clarifies the Department's position concerning the use of HOME Investment Partnerships Program funds for projects to be occupied by children in foster care. In determining whether the project is eligible for HOME funds, the issue is not whether the children are legally committed to the custody of a state executive branch agency, i.e., "wards of the State." The issue is whether a particular project for foster children qualifies as "housing" under the HOME Program regulation at 24 C.F.R. 92.2.

Housing under the HOME program does not include facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities and student dormitories. The preamble to the final rule explained that HUD expanded the definition of housing to include all forms of assistance which are eligible for assistance under the HOME program. The regulation also clarified that certain types of facilities do not qualify as housing under the HOME program. Such facilities are generally classified as "public facilities" and may be funded under the Community Development Block Grant (CDBG) Program. [Preamble discussion in 61 Federal Register 48736, 48737 (Sept. 16, 1996)] The regulation draws the line between "housing" and "public facilities" by illustration rather than by articulating an all-encompassing general principle.

To be eligible for HOME funding, projects must meet all of the HOME statutory requirements, and must satisfy HOME regulations. All HOME-assisted housing must meet the affordable housing requirements of section 215 of the HOME Investment Partnerships Act (42 U.S.C. 12745) for either rental housing or homeownership housing. Clearly, housing for foster children is not homeownership housing; thus the housing must meet the requirements for affordable rental housing in 92.252, as well as the lease requirements in section 225 of the HOME Investment Partnerships Act (42 U.S.C. 12755) and §92.253. In addition, the HOME Investment Partnerships Act requires all HOME projects funded through Community Housing Development Organizations (CHDOS) to include "a program of tenant participation in management decisions" and to "adhere to a fair lease and grievance procedure approved by the participating jurisdiction." 42 U.S.C. §12774(a). This requirement means that residents of HOME-funded rental housing must have a status as tenants of the housing - a relationship to the owner of the housing -- that is, at least to some degree, independent of participation in a treatment program and independent of state placement decisions.

If a project for foster children does not meet the HOME requirements for housing, the project may be eligible to be funded through the CDBG program as a public facility. This part of the CDBG regulations is found at 24 C.F.R. §570.201 (c).

The use of HOME funds for housing for a family providing foster care qualifies for HOME assistance on the basis of income, in the same way as housing for any other family.