

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF COMMUNITY AFFAIRS
HOME Investment Partnerships Program**

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**HOME**

HOME Investment Partnerships Program

MANAGEMENT MEMORANDUM

Memorandum Number: 00-1

To: All HOME Contractors**DATE: February 14, 2000****FROM: Wayne Walker, HOME Section Chief****SUBJECT: Loan Processing Fees Are Prohibited**

It has come to our attention that some State Recipients or their administrative subcontractors are charging HOME first time home buyer clients or sellers a loan processing fee in order for the client to obtain a HOME loan. Our contractors are hereby reminded that this is a prohibited activity under federal regulations under 24 CFR Part 92, Section 92.214(b). Any State Recipient or its administrative subcontractor charging such fees is to cease and desist immediately.

Background

The regulation cited above says: "Participating jurisdictions may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, participating jurisdictions may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. Such fees are applicable credits under OMB Circular A-87."

As some HOME contractors may recall, at the inception of the HOME program, initial federal regulations prohibited the use of HOME funds for any administrative costs. Many States proposed the imposition of application fees, monitoring fees, servicing fees and origination fees on HOME project owners to cover their administrative costs. HUD, however, felt the imposition of such fees was inconsistent with statutory intent. HUD reasoned that such attempts by States to recoup their costs would inevitably lead developers and others to inflate project costs. Further, it would create the appearance that the HOME client was "paying" for the HOME funds that he/she had received. Thus, federal regulations were amended in 1992 to allow up to ten percent (10%) of a State's allocation to be used for administrative costs and to prohibit loan processing or loan origination fees from being charged to HOME-assisted projects.

As you know, the State allows its State Recipients and CHDOs to use an amount of up to 5% of their activity dollars for program administration. However, if administrative costs at the local or CHDO level exceed this allowance, programs are prohibited from recouping those costs from buyers or sellers in any way, including the imposition of loan processing fees.

Action Required

- Any contractors or subcontractors charging first time homebuyers or sellers loan processing or loan origination fees for HOME loans are to discontinue this practice immediately.
- Regarding the nominal application fees to discourage frivolous applications, we have not seen this widely used around the state and do not encourage them. If they are charged, HCD policy is that they should only be used to cover third party expenses, such as credit reports, and should never exceed twenty-five dollars (\$25).
- In order for us to monitor compliance with this requirement, beginning immediately, for each project funded with HOME funds, HOME contractors are to provide our office with a complete, certified copy of the HUD 1, settlement or escrow company closing statement, including the first page summary and supporting detail sheets. This should be provided at the earliest opportunity, either with the drawdown request or upon submission of the project completion report.
- Also, for each project, programs are to provide our office with the borrower's MACAW (Mortgage Credit Analysis Worksheet) completed by the mortgage lender or other underwriter. This should be provided at the earliest opportunity, either with the drawdown request or upon submission of the project completion report.
- State Recipients' written agreements with their administrative subcontractors must disclose all compensation the subcontractor will receive because of their participation in the HOME program, including any pass through of the 5% administrative allowance, fees collected from buyers or sellers, or payments received from third parties in relation to HOME activities, such as from lenders or realtors. Further, the contract should address the prevention of any conflict of interest as defined at 24 CFR Part 92, Section 92.356. Administrative subcontractors can only receive compensation for HOME activities from the employing city or county and not receive any income from interested third parties. If an administrative subcontractor administers your program, please review your contract with them for these disclosures and that it addresses preventing conflicts of interest. If you employ an administrative subcontractor, within 30 days of the date of this memorandum, please provide your HOME representative with a certification that your subcontract complies with these requirements or that, within 90 days of your certification, the subcontract will be renegotiated to include the appropriate language.
- Any references in program guidelines to loan processing or loan origination fees being charged to HOME buyers or sellers are to be removed. Further, if any loan application fees are being charged, they should be described in the guidelines. Please review your program guidelines in relation to these issues. If the above applies to your program guidelines, within 30 days of the date of this memorandum, please provide your HOME representative with a draft amendment to your guidelines eliminating any reference to such loan processing fees and/or describing any existing loan application fees.

Please be aware that failure to comply with these instructions may subject your program to appropriate administrative sanctions. If there are any questions, please contact your HOME representative.