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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 92

[Docket No. FR-5563-F-02]

RIN 2501-AC94

HOME Investment Partnerships Program: Improving Performance and Accountability; Updating Property Standards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: HUD's HOME Investment Partnerships Program (HOME program or HOME) provides formula grants to states and units of local government to fund a wide range of activities directed to producing or maintaining affordable housing, including homebuyer and homeowner housing and rental housing. This final rule amends the HOME regulations to address many of the operational challenges facing participating jurisdictions, particularly challenges related to recent housing market conditions and the alignment of federal housing programs. The final rule also clarifies certain existing regulatory requirements and establishes new requirements designed to enhance accountability by States and units of local government in the use of HOME funds, strengthen performance standards and require more timely housing production. The final rule also updates property standards applicable to housing assisted by HOME funds.

EFFECTIVE DATE: [Insert date that is 30 days after the date of publication in the Federal Register.]

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

Purpose of the Regulatory Action. The HOME program was authorized in 1990, and is the largest federal block grant to State and local governments designed exclusively to produce affordable housing for low-income households. The program provides formula grants for four primary purposes: production of new single or multifamily housing units, rehabilitation of single or multifamily housing, direct homeownership assistance, or time-limited tenant-based rental assistance (for up to two years with possibility of renewal). All HOME funds must be used to benefit families and individuals who qualify as low-income at or below 80 percent of area median income. The HOME program provides state and local governments with the discretion to determine the type of housing product in which they will invest, the location of these investments, and the segment of their population that will be housed through these investments.

Although the HOME program is the largest federal block grant program for affordable housing, the HOME program regulations have not been updated in 16 years. Since the promulgation of the final rule in 1996, many HOME participating jurisdictions

have adopted more complex program designs. They have encountered new challenges in administering their programs and in managing their growing portfolios of older HOME projects. These challenges include reduced availability of State or local funding sources, limited private lending, changes in housing property standards and energy codes, and reductions in State and local government workforces throughout the Nation. These challenges have been magnified by current housing and credit market conditions.

Over the years, HUD has invested significant time and resources in helping participating jurisdictions meet these challenges, as well as assisting them to correct financial and physical problems that threaten the viability of some HOME-assisted rental projects in their portfolios. HUD has determined that the most effective way to assist participating jurisdictions is to update the HOME program regulations to both provide participating jurisdictions with additional tools and flexibility to effectively address troubled projects, as well as increase accountability on the part of participating jurisdictions and oversight by HUD.

Summary of Major Provisions in the Final Rule. Through this final rule, which follows a proposed rule and takes into consideration the comments received on the proposed rule, HUD is establishing regulatory changes to address the operational challenges facing participating jurisdictions, improve understanding of HOME program requirements, update property standards to which housing funded by HOME funds must adhere, and strengthen participating jurisdictions' accountability for both compliance with program requirements and performance. Specifically, the final rule updates definitions and adds new terminology relevant to the housing market and real estate market, modifies the eligibility requirements of community housing development

organizations that seek to participate in the HOME program to help ensure that they have the capacity to undertake their responsibilities under the HOME Program; establishes deadlines for project completion in an effort to ensure that housing units needed by low-income households are constructed and made available timely, strengthens conflict of interest provisions, and clarifies language in several existing HOME regulatory provisions to remove any possible ambiguity as to what is expected of participating jurisdictions, community housing development organizations and other entities that participate in the HOME program.

HUD is also taking the opportunity afforded by this final rule to make several technical, non-substantive changes. Specifically, HUD is revising several incorrect or outdated citations in § 92.353(c)(1) and (2) related to displacement, relocation and acquisition. The existing reference to 24 CFR 5.613 is replaced with 24 CFR 5.628. HUD is also updating the provisions of § 92.257 (Faith-Based Activities) to reflect the amendments made by Executive Order 13559 (Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations) issued by President Obama on November 17, 2010, and published in the Federal Register on November 22, 2010 (75 FR 71319) to Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations) issued by President Bush on December 12, 2002, and published in the Federal Register on December 16, 2002 (67 FR 77141).

Costs and Benefits. The regulatory changes being established by this rule that are designed to improve program performance and oversight are expected to lead to a more efficient allocation of resources within the program and the provision of more

affordable housing. As discussed in more detail in the accompanying regulatory impact analysis for this rule, some elements of the rule have the potential to impose compliance costs on participants. However, these costs will either be absorbed by the HOME program or can be avoided through more efficient behavior on the part of participating jurisdictions and developers. For the most part, the changes in the rule do not establish new requirements; rather, they clarify or modify existing requirements, so they do not add costs to the participating jurisdictions or developers. Although the rule is expected to create some efficiencies within the HOME program, the rule is not expected to have a measurable impact beyond the grant program.

II. Background – The HOME Program

The HOME program was authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 et seq.), known as NAHA, and has been in operation for 20 years. The HOME program provides grants to States and local jurisdictions (collectively, participating jurisdictions), which are used, often in partnership with local nonprofit groups, to fund a wide range of activities that construct, acquire, and/or rehabilitate affordable housing for rent or homeownership, or to provide direct rental assistance to low-income people. HOME program funds are awarded annually as formula grants to participating jurisdictions. HUD establishes a HOME Investment Trust Fund for each participating jurisdiction, providing a line of credit that the jurisdiction may draw upon as needed. The participating jurisdictions are allowed to use their HOME funds as grants, direct loans, loan guarantees, or other forms of credit enhancement, or as rental assistance or security deposits.

The HOME program is the largest federal block grant to States and local governments that is designed exclusively to create affordable housing for low-income households. Each year, the program allocates approximately \$1.0 to \$1.5 billion among the States and hundreds of localities nationwide. The program was designed to reinforce several important values and principles of community development. First, the HOME program's flexibility is intended to empower people and communities to design and implement strategies tailored to their own needs and priorities. Second, the HOME program's emphasis on consolidated planning is intended to expand and strengthen partnerships among all levels of government and the private sector in the development of affordable housing. Third, the HOME program's technical assistance activities and set-aside for qualified community-based nonprofit housing groups is intended to help build the capacity of these partners. Fourth, the HOME program's requirement that participating jurisdictions match 25 cents of every dollar in program funds is intended to help mobilize community resources in support of affordable housing.

The regulations for the HOME program are codified in 24 CFR part 92 and were last substantively revised by the final rule issued on September 16, 1996 (61 FR 48750). In the 16 years since the promulgation of the 1996 final rule, many HOME participating jurisdictions have adopted more complex program designs. They have encountered new challenges in administering their programs and in managing their growing portfolios of older HOME projects. These challenges include reduced availability of States or local funding sources, reduced private lending, changes in housing property standards and energy codes, and reductions in State and local government workforces throughout the

Nation. These challenges have been magnified by current housing and credit market conditions.

Since the establishment of the HOME program, HUD has monitored participating jurisdictions' use of HOME funds and measured participating jurisdictions' performance. Through monitoring and audits, including those by HUD's Office of Inspector General (OIG), HUD has identified and corrected compliance problems and used this information to strengthen and clarify regulatory provisions to help avoid noncompliance and maximize effectiveness.

HUD has invested significant time and resources in helping participating jurisdictions correct financial and physical problems that threaten the viability of some HOME-assisted rental projects in their portfolios. HUD has determined that participating jurisdictions need additional tools and flexibility to effectively address troubled projects. Over the last several years, HUD has developed numerous publicly available reports that measure the performance and effectiveness of each participating jurisdiction.¹ HUD's review of these reports has identified performance and reporting problems among participating jurisdictions that cannot be addressed effectively under the current regulations.

Accordingly, through this rule, HUD makes regulatory changes to address many of the operational challenges facing participating jurisdictions, improve understanding of HOME program requirements, update property standards to which housing funded by

¹ See <http://www.hud.gov/offices/cpd/affordablehousing/reports/>.

HOME funds must adhere, and strengthen participating jurisdictions' accountability for both compliance with program requirements and performance.

III. Overview of Key Changes Made to HOME Program Regulations at Final Rule Stage

The final rule largely adopts the provisions in the proposed rule, but HUD did make certain changes to the proposed regulatory provisions in response to public comments and further consideration of issues. Additionally, HUD further clarified language in various regulatory provisions for which commenters continued to indicate misunderstanding about the intent or meaning of the provision. Key changes made at the final rule stage include the following:

- Amending the definition of “commitment” to reinforce that participating jurisdictions must not commit HOME funds to a project in the Integrated Disbursement and Information System (IDIS) or in a written agreement until all necessary financing has been secured, a budget and production schedule established, and underwriting and subsidy layering completed; and clarifying, within that definition, the meaning of commit to a specific local project;
- Adding missing regulatory text to the definition of community housing development organization, language discussed in the preamble to the proposed rule, but which was inadvertently omitted in the regulatory text;
- Adopting language that permits a private nonprofit organization to qualify as a community housing development organization if the organization is a wholly-owned entity that is regarded as an entity separate from its owner for tax purposes, the owner has a tax exemption ruling from the Internal Revenue under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and the

organization meets the definition of “community housing development organization.”

- Removing the prohibition imposed on community housing development organizations from occupying the office space owned by a government entity or a for-profit parent organization.
- Permitting community housing development organizations to use consultants to demonstrate their capacity, but only during the first year of the organization’s participation as a community housing development organization;
- Allowing community housing development organizations to become owners of rental housing that they do not develop;
- Revising the definition of “homeownership” to include manufactured housing which is on land owned by a not-for-profit cooperative if the homeowner is a member of the cooperative, by a not-for-profit resident corporation, or by a similar type not-for-profit resident control organization;
- Revising the definition of “homeownership” to explicitly permit ground leases of 50 years or more for community land trusts;
- Adopting a 12-month timeframe for committing HOME funds for reconstruction of a unit that was destroyed;
- Providing that designation of a HOME project as a single room occupancy unit must be consistent with local zoning and building code classifications;
- Establishing the timeframe for income source documentation as 2 months;
- Making the cost of conducting unit inspections and determining the income of tenant-based rental assistance applicants or recipients an eligible project-related

soft cost;

- Permitting participating jurisdictions to count as match the value of the contribution, if the contribution provides a direct financial benefit to the homebuyer, or the contribution, if the contribution to the development of the homebuyer unit reduces the sales price of the unit or enables the unit to be sold for less than the cost of development;
- Eliminating the requirement for separate written standards for methods and materials for new construction projects;
- Eliminating the requirement for a minimum 15-year useful life of major systems, and providing, in lieu of such requirement, that the participating jurisdiction must estimate the remaining useful life of major systems based on age and current condition of the systems and determine the necessary annual replacement reserve contributions to facilitate system replacement at the appropriate time;
- Providing that the requirement for a current inspection of a unit is no earlier than 90 days before the commitment of HOME assistance;
- Extending the timeframe for selling homebuyer units to 9 months from the completion of construction; and
- Revising the description of the cumulative methodology that HUD uses to determine compliance with the commitment, CHDO reservation, and expenditure deadlines to better present the method of calculation in use.

IV. December 2011 Proposed Rule

On December 16, 2011 (76 FR 78344), HUD published a proposed rule that would amend the HOME Investment Partnerships Program (HOME) program regulations

to address many of the operational challenges confronting participating jurisdictions in relation to recent housing market conditions and the alignment of federal housing programs. The proposed rule also sought to clarify certain existing regulatory requirements, establish new requirements to enhance accountability, and update property standards. In addition to proposed changes to the HOME program regulations, the December 16, 2011, rule also proposed changes to HUD's Consolidated Plan regulations that pertained to the HOME program.

In the proposed rule, HUD also sought public comment on the following issues or provisions proposed in the rule: (1) timeframes that would help ensure that initial occupancy of a HOME-assisted rental unit occurs timely following project completion and that HOME funds invested in rental units that have not been initially occupied within 18 months are repaid; and (2) use of the Bureau of the Census' median sales price for single family houses sold outside of Metropolitan Statistical Areas (MSAs) as the sale price limitation for newly constructed HOME units; (3) criteria used in and characteristics of an effective risk-based system for on-site monitoring by States; and (4) participating jurisdictions performing regular financial reviews, specifically, regarding the unit-threshold for triggering annual financial reviews and whether it would be appropriate to establish a regulatory requirement for less frequent financial reviews of smaller projects.

The public comment period on the proposed rule closed on February 14, 2012. HUD received 322 public comments in response to the December 16, 2011, proposed rule. Comments were submitted by various State and local participating jurisdictions, public housing authorities, individuals, trade associations, community housing

development organizations (CHDOs), housing finance agencies, county governments, community land trust organizations, council of governments, housing and community development organizations, and other stakeholders.

The following section sets out the key issues raised by the public commenters on the December 16, 2011, HOME Program proposed rule, and HUD's responses to these issues.

V. Discussion of Public Comments and HUD Responses

A. General Comments on the Proposed Rule

Increased Administrative Burden, Costs, and Reduced Flexibility

HUD received many comments on the general direction of the proposed rule. Overall, commenters acknowledged that the HOME regulations needed updating to reflect current market conditions and challenges in affordable housing production. However, several commenters stated that, taken as a whole, HUD's proposed changes were an overreaction to largely unfounded criticisms. These commenters stated that the proposed rule ran counter to the flexibility that has long been a hallmark of the HOME program as the nation's largest affordable housing block grant program. This flexibility, they submit, has led to States and local governments producing more than one million affordable housing units that meet their locally-determined needs and priorities over the program's 20-year history. The commenters stated that the proposed rule would add a very significant administrative burden and additional costs on States and local governments at a time when governments are facing layoffs, furloughs, and a significant diminution of other available affordable housing and administrative resources, as well as very significant cuts to their annual HOME allocations. In addition, some participating

jurisdictions commented that adoption of the proposed rule provisions would raise both development costs and administrative costs, in addition to increasing the administrative burden associated with developing and managing each HOME-assisted project, with the result being a reduction in the number of affordable housing units that participating jurisdictions could produce. Commenters from rural areas stated that they were particularly concerned with the feasibility of complying with the proposed HOME requirements. Other commenters expressed concern about the effect that proposed CHDO-related changes would have on these organizations.

HUD Response: Several provisions in the proposed rule that are being adopted by this final rule are best practices already in use by participating jurisdictions, and this final rule codifies those practices for purposes of uniformity and increasing accountability and performance under the HOME Program. HUD is aware that adoption of other provisions of the proposed rule at this final rule stage will result in some increase in the administrative burden and, in some cases, the cost of developing and monitoring HOME-assisted housing. However, HUD has determined that these changes are necessary to enhance accountability and oversight and help ensure that HOME program funds deliver their intended benefit as expeditiously and effectively as possible. As provided in the proposed rule and this final rule, some of the additional costs can be paid as project-related soft costs with HOME funds (e.g., underwriting, market analysis) or funded through the imposition of project monitoring fees.

Effective Date of Final Rule Changes

Comments: Commenters expressed concern regarding the effective date that HUD would establish for many of the proposed changes. Commenters asked if the

changes – particularly a new project-specific completion deadline, underwriting requirements, and changes applicable to CHDOs – would apply retroactively to projects that already have received commitments of HOME funds. Commenters stated that it would be infeasible for projects that already have a legally binding written agreement or are already underway to comply with many of the requirements of the proposed rule.

HUD Response: Most provisions of this rule are applicable only to projects to which HOME funds are committed on or after the effective date of this final rule. The effective date for certain provisions will be delayed to permit participating jurisdictions adequate time to comply. HUD has added a new § 92.3 that establishes the effective dates for various provisions. Unless an alternate effective date is established in this section for a specific provision, the provisions of this final rule apply only to projects to which funds are committed on or after the effective date of this final rule. The property standard provisions established at § 92.251 will apply to projects to which funds are committed 18 months after the publication date of this final rule. The new provision that participating jurisdictions develop written homebuyer program policies related to underwriting, responsible lending, and refinancing becomes effective 6 month after the publication date of this final rule. The new provision that participating jurisdictions develop and follow policies and procedures established at § 92.504(a) will become effective 12 months after the publication date of this final rule in the Federal Register. The change in the definition of *commitment* at § 92.2 eliminating non-specific reservations to CHDOs as a commitment becomes effective 90 days after the publication date of the final rule and will be implemented by HUD for CHDO deadlines that occur on or after January 1, 2015. The separate 5-year deadline for expenditure of CHDO set-

aside funds established at § 92.500(d)(1)(C) will become effective on January 1, 2015, and will be implemented by HUD for all deadlines that occur on or after that date. The requirement for participating jurisdictions to conduct financial oversight of HOME-assisted rental projects, will be effective 12 months after the publication date of the final rule.

B. Changes to HUD's Consolidated Plan Regulations

Approval Process

HUD proposed revising §§ 91.220(l)(i) and (ii) and 91.320(k)(i) and (ii) of the Consolidated Plan regulations, codified at 24 CFR part 91. Sections 92.205(b) and 92.254(a)(5) of the HOME program regulations proposed to clarify that participating jurisdictions must receive approval in writing from HUD, separate from the consolidated plan approval letter, for forms of investment of HOME funds other than those described in § 92.205(b) and resale and recapture guidelines.

Comments: A commenter supported this clarification. Another commenter stated that the requirement to obtain HUD approval of resale and recapture guidelines would create an administrative burden.

HUD Response: The proposed rule language attempted to clarify that the approval requirement for other forms of investment of HOME funds and resale and recapture guidelines already exist in 24 CFR 91.225(d)XX. HUD has always required the approval of these program components and the clarification in this section does not constitute a policy change. HUD is therefore adopting the proposed rule language without change.

Maximum Purchase Price for Single Family Housing

HUD proposed a revision to §§ 91.220 (l)(2)(iv) and 91.320(k)(2)(iv) to specifically require a participating jurisdiction that calculates its own 95 percent of median purchase price for HOME-assisted homebuyer or owner-occupied rehabilitation projects to submit its calculated limit and supporting documentation as part of its Consolidated Plan Annual Action Plan. The regulations currently codified do not specify the timing of the submission.

Comments: With respect to the timing of submission of the calculated limit and supporting documentation, a few commenters commenting on HUD's proposal supported the change.

HUD Response: HUD is adopting the proposed rule language without change.

Proposed Funding and Project Selection Procedures

HUD proposed amending §§ 91.220 (l)(2)(v) and 91.320(k)(2)(v) of the Consolidated Plan regulations to require participating jurisdictions to describe eligible applicants for HOME funds and describe their process for soliciting and funding applications or proposals as part of its Consolidated Plan annual action plan.

Comments: No opposition was expressed on this proposal but a few commenters sought clarification regarding the meaning of "eligible applicant" for the purposes of this provision.

HUD Response: The proposed provision would require participating jurisdictions to describe the types of individual or entities that are eligible to apply for and receive HOME funding (e.g., nonprofit or for-profit developers). HUD is largely adopting the proposed rule change, but has made minor changes to the wording of § 91.220(l)(2)(v) and § 91.320(k)(2) (v) to provide greater clarity.

Targeting of HOME Assistance to Subpopulations

HUD proposed adding a provision to § 91.220(l)(2)(vi) and § 91.320(k)(2)(v) of the Consolidated Plan regulations expressly permitting participating jurisdictions to limit HOME projects to specific populations, including to persons in a specific occupation (e.g., artists, police officers, or teachers) and requiring that participating jurisdictions include these uses in their Consolidated Plan Annual Action Plans.

Comments: While a few commenters expressed support for this provision, the majority of commenters commenting on this proposal opposed limiting program participation to beneficiaries in specific occupations (e.g., artists, police officers, or teachers), stating that program targeting should be based on populations with the greatest needs, as identified in the participating jurisdiction's consolidated plan.

HUD Response: Participating jurisdictions have broad authority to target their HOME funds to specific populations or special needs groups, as long as such targeting does not have the intent or effect of violating civil rights laws. Many participating jurisdictions have already undertaken HOME projects targeted to specific occupational groups. The purpose of this proposed provision was to require that participating jurisdictions make public their intention to target certain categories of persons for housing assistance through the Consolidated Plan citizen participation process. HUD is adopting the proposed rule language without change.

C. Changes to the HOME Program Regulations

1. Definitions (§ 92.2)

HUD received no comments on the proposed addition of the following definitions to the HOME regulations: *1937 Act*, *ALJ (Administrative Law Judge)*, *Fair Housing Act*,

Indian Housing Authority (IHA), Public Housing, Public Housing Agency (PHA), Secretary, CDBG program, Observed Deficiency (OD), and Consolidated Plan. Several comments were received regarding Uniform Physical Property Condition Standards (UPCS). However, these comments did not address the definition, but rather the applicability of those standards to HOME projects. Consequently, those comments are addressed under Property Standards at § 92.251.

Commitment. HUD proposed several changes to the definition of “commitment” at § 92.2, including: (1) specifically including an agreement with a state recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to provide downpayment assistance; (2) eliminating the reservation of funds to community housing development organizations (CHDOs) so that agreements that are not project-specific would no longer be considered a commitment; (3) adding a requirement that the signature of each party to the agreement be dated; (4) cross-referencing the written agreement requirements at § 92.504(c); and (5) excluding agreements between a participating jurisdiction and a subrecipient that the participating jurisdiction controls, and agreements between the representative unit (i.e., lead member) of a consortium and local government consortium member.

Comments: HUD received numerous comments in response to these proposed changes. Although a few commenters supported the proposed changes, the majority of the commenters commenting on this provision expressed concern regarding HUD’s proposal to remove references to CHDO reservations from the definition of commitment.

Commenters stated that requiring participating jurisdictions and CHDOs to enter into a project-specific commitment within 24 months of the obligation of the HOME grant would be burdensome.

Commenters requested that HUD include as a commitment conditional reservations of funds that would allow CHDOs to secure additional funding for HOME-assisted projects, including Low Income Housing Tax Credits (LIHTC).

A commenter requested clarification on whether the revised commitment definition excluded agreements between a participating jurisdiction and a subrecipient that the participating jurisdiction controls. The commenter appeared to not understand that HUD was proposing to revise the definition of commitment to exclude exactly such cases. When a participating jurisdiction controls a subrecipient, only a legally binding written agreement between the two parties for a specific HOME project would meet the proposed definition.

Other commenters expressed concern about the timing and implementation of the new commitment requirements and how adoption of the new definition would affect upcoming 24-month HOME commitment deadlines.

HUD Response: HUD's intent in revising the definition of commitment was to increase participating jurisdictions' accountability for the use of HOME funds. Requiring participating jurisdictions to execute a written agreement for a specific HOME project with a CHDO, certain subrecipients, or consortia members within 24 months of HUD's obligation of the HOME allocation is designed to help ensure that HOME funds are used as expeditiously as possible to develop affordable housing. Consequently, HUD is adopting the proposed rule language without change.

At this final rule stage, HUD is further amending the commitment definition to reinforce that participating jurisdictions must not commit HOME funds to a project until all necessary financing has been secured, a budget and schedule established, and underwriting and subsidy layering completed. Based upon many of the comments received in response to the 4-year deadline for project completion proposed in § 92.205(e), participating jurisdictions appeared to not fully understand the point at which a commitment of HOME funds may take place.

Community Housing Development Organization. HUD proposed several changes to or clarification of this definition and received many comments on the proposed changes.

New Provision Relating to 501(c)(4) Organizations

The preamble of the proposed rule stated that HUD proposed revising the definition of “community housing development organization” (CHDO) in § 92.2 to add a reference to the Internal Revenue Service (IRS) regulations that implement section 501(c)(4) of the Internal Revenue Code to permit wholly-owned subsidiaries of a private non-profit organization that meet the requirements for CHDO designation to also qualify as a CHDO. The regulatory language was inadvertently omitted from the definition of CHDO at § 92.2 and this final rule corrects that error by including the regulatory text.

Comments: A commenter opposed permitting organizations with a 501(c)(4) designation from the IRS to be qualified as CHDOs. The commenter stated that those organizations are not subject to the same public disclosure requirements as 501(c)(3) organizations and may participate in advocacy, including political advocacy. Another commenter recommended that PHAs that have 501(c)(3) designations be permitted to be

qualified as CHDOs. Other commenters recommended that HUD permit organizations that are subordinates of a central organization nonprofit under section 905 of the Internal Revenue Code to qualify as CHDOs.

HUD Response: HUD does not agree that PHAs that have 501(c)(3) designations should qualify as CHDOs because PHAs are publicly-established organizations and are not community-based organizations that are accountable to the low-income community. For many years, HUD's administrative guidance on CHDO qualifications permitted subordinates of a central organization under section 905 of the Internal Revenue Code to qualify as CHDOs. HUD agrees with commenters that codifying the eligibility of these organizations in the regulations is appropriate and this final rule explicitly permits such organizations to be designated as CHDOs.

At this final rule stage, HUD is also adopting language in the proposed rule that permits a private nonprofit organization to qualify as a CHDO if it is a wholly-owned entity that is regarded as an entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly-owned by an organization that qualifies as tax-exempt), the owner organization has a tax exemption ruling from the IRS under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and meets the definition of "community housing development organization."

CHDO Relationship with Parent Organizations

HUD proposed revising the CHDO definition to clarify the relationship between the CHDO and its parent organization by adding a new paragraph (3)(iv) clarifying that, if a for-profit entity creates or sponsors a nonprofit entity that seeks designation as a CHDO, the officers and employees of the for-profit entity would be prohibited from

serving as officers or employees of the CHDO, and the nonprofit entity would be prohibited from using the office space of the for-profit entity.

Comments: A few commenters supported this provision, citing the intent of the proposal to increase the separation between a CHDO and a for-profit parent organization. A commenter opposed the prohibition on CHDOs occupying the space of for-profit parent organizations because of the limited financial resources available to CHDOs, particularly rural CHDOs.

HUD Response: HUD understands that prohibiting CHDOs from occupying the office space of its for-profit parent organization may be financially difficult for some organizations. The prohibition was proposed to help avoid situations where for-profit entities could exert undue influences on their subsidiary organizations. However, HUD believes that other changes in this final rule provide sufficient oversight to avoid these undue influences. The prohibition on CHDOs occupying office space of for-profit entities has been removed from the rule.

Governmental Control of CHDOs

HUD proposed revising paragraph (5) of the definition to clarify that a governmental entity may create a CHDO, but is not permitted to control the CHDO by providing its employees to the CHDO as staff or officers. The revision to the rule would also prohibit CHDOs from occupying the office space of a governmental entity.

Comments: Several commenters objected to this provision because they stated it would preclude PHAs from forming CHDOs that would be controlled by a PHA-appointed board and staffed by PHA employees. Other commenters objected to the provision prohibiting a CHDO from occupying the office space of a governmental entity,

and other commenters expressed concern about the effect the prohibition would have on CHDOs in rural areas where office space is limited.

HUD Response: HUD understands that many PHAs have created subsidiary organizations to serve as a development arm of the PHA. Both PHAs and their development subsidiaries serve an important function in the HOME program. However, if these organizations are to qualify as CHDOs, they must not be controlled and staffed by the PHA. If a PHA does not seek to alter the existing arrangements that it has with its subsidiary organizations, then this organization can continue to participate in the HOME program, but as a non-profit developer rather than a CHDO. HUD agrees that prohibiting a CHDO from occupying the office space owned by a governmental entity may constitute an undue obstacle to CHDO operations and is therefore removing that portion of the provision. HUD is adopting, without change, the proposed rule language that prohibits a governmental entity that creates a CHDO from providing its employees as CHDO staff.

Demonstrated CHDO Capacity and Staffing

HUD proposed revising paragraph (9) of the existing definition of CHDO at § 92.2 to strengthen the requirement that an organization must have paid employee staff with housing development experience in order to be designated as a CHDO. The proposed rule specified that the demonstrated capacity requirement could not be met through the use of volunteers or staff donated by another organization. The rule also proposed to eliminate the provision that permitted a CHDO to meet the capacity requirement based upon the use of a consultant to undertake activities and train CHDO staff.

Comments: HUD received many comments on these proposed changes. Nearly all commenters opposed these provisions, stating that the proposed changes would eliminate some organizations from gaining or retaining CHDO status or make it more difficult for participating jurisdictions to meet their CHDO set-aside requirements. Some commenters stated that CHDOs often cannot afford to pay staff and must rely on donated staff from parent organizations, volunteers, board members, or consultants. Other commenters stated that the prohibition on relying on volunteers to demonstrate capacity would affect faith-based and other small organizations. A commenter asked that HUD permit independent contractors, in addition to paid staff, to work full time. Several commenters stated that the requirement that CHDOs have demonstrated capacity is at odds with NAHA, which has, as one of its purposes, building nonprofit development capacity. Other commenters urged HUD to continue to permit the use of consultants to meet the demonstrated capacity test, stating that this arrangement is particularly important in rural areas. Several commenters further urged HUD to phase in these requirements over a period of 5 or 10 years, or to apply them only to new CHDOs.

HUD Response: HUD acknowledges the concerns raised by commenters and understands that the adoption of these provisions will result in changes to the manner in which CHDOs have operated to date. HUD recognizes that, with these changes in place, some current CHDOs will be unable to meet the new requirements for CHDO designation, and therefore will not receive additional CHDO set-aside funds. Additionally, HUD understands that because of these changes, in some participating jurisdictions, CHDO set-aside funds may be deobligated due to a lack of qualified CHDOs.

Notwithstanding the recognized difficulty that compliance with the new provisions applicable to CHDOs may present, HUD determined that these changes are necessary to ensure that the hundreds of millions of CHDO set-aside funds that are awarded each year are committed to organizations that have adequate capacity to carry out and complete the projects for which they are being funded, so that the funds benefit the low-income individuals and families the HOME program is designed to serve. Therefore, the final rule retains the requirement that CHDOs that receive CHDO set-aside funds to develop HOME-assisted housing must demonstrate development capacity through paid staff with development experience.

It is important to note that the rule does not prohibit the CHDO from using volunteers, board members, and staff of parent organizations in its operations; however, these individuals cannot be the basis for the determination of development capacity. Further, in requiring paid employees, HUD is not prohibiting a CHDO from employing an individual who is an independent contractor and using that contractor's experience as the basis for the demonstrated capacity determination. Paid staff is not required to be full time, but their hours must be appropriate for the role they play in the organization.

Additionally, HUD agrees that the use of consultants by new CHDOs is appropriate. Accordingly, HUD has revised at this final rule stage, the proposed rule language to permit the use of consultants to demonstrate capacity, but only during the first year of an organization's operation as a CHDO. Because the provisions of the proposed rule were made applicable to FY 2012 HOME funds in HUD's FY 2012 appropriation law, HUD sees no benefit to participating jurisdictions or CHDOs in delaying the implementation of these provisions.

In response to the concerns raised about the effect of these provisions on organizations that are currently designated as CHDOs, HUD has made a substantial change in the definition of owner in revised § 92.300(a)(2) that establishes a new role for CHDOs to become owners of rental housing that they do not develop. HUD expects that this change will allow CHDOs without demonstrated development capacity to continue to access HOME funds to address the affordable housing needs in their communities.

Homeownership. HUD proposed rearranging existing provisions in the definition of “homeownership” in § 92.2 to improve clarity, as well as clarifying that contracts for deed (also known as installment contracts or land sales contracts) and mutual or cooperative housing that receives LIHTC do not constitute homeownership.

Comments: A few commenters stated that contracts for deed or installment contracts should constitute homeownership for purposes of the HOME program. Other commenters stated that the revised definition inappropriately excluded individuals who own manufactured homes that are located in manufactured housing communities. Other commenters requested clarification on the eligibility of 50-year community land trust ground leases as an eligible form of homeownership and requested that HUD explicitly address ground leases and the community land trust approach in the definition of homeownership.

HUD Response: While HUD acknowledges that contracts for deed, installment contracts, and land sales contracts are common in certain areas of the country, these contracts fail to provide equitable title to the contracting party, who remains vulnerable to forfeiting the property until the final payment is made. Although some states provide some protections to the contracting party, the rights are not equal to those individuals

who own their homes fee simple or in an equivalent form of homeownership. Assisting individuals and families who have entered into contracts for deeds to acquire their home fee simple is an appropriate use of HOME funds, but assisting low-income families through contract for deed situations is not. For these reasons HUD is adopting the restriction in the proposed rule in this final rule.

HUD does not agree that the homeownership definition in the proposed rule excludes owner-occupied manufactured homes located in manufactured home communities. However, HUD has revised the homeownership definition to reflect the existing language in § 92.205(a)(4) to clarify that, in such situations, the ground lease must be at least equal to the applicable period of affordability.

Several commenters interpreted the proposed rule as permitting community land trusts with 50-year ground leases as an eligible form of homeownership. The commenters, however, misread the language, which is applicable only to Indian trusts. The proposed rule retained the 99-year leasehold requirement for projects, other than community land trusts, involving ground leases.

Other commenters suggested that HUD add a section to the homeownership definition explicitly addressing community land trusts. While HUD does not agree that a separate paragraph is needed to address community land trusts in this definition, HUD does agree that it would be appropriate to recognize community land trusts with 50-year ground leases as homeownership. Consequently, at this final rule stage, HUD is amending the definition to explicitly permit ground leases of 50 or more years for community land trusts.

Housing. HUD proposed to amend the definition of “housing” in § 92.2 to exclude all student housing, not just student dormitories. The use of HOME funds for student housing, in any configuration, is inconsistent with the statutory purposes of the program. In addition, the proposed rule amended the definition to clarify that dormitories, including those for farmworkers, do not constitute housing.

Comments: HUD received many comments on the proposed revisions to the definition of housing. Commenters expressed concern about the language limiting housing for students and asked whether the proposed definition excludes providing any type of housing to any student, regardless of need or situation. Other commenters expressed concern that the student housing exclusion will negatively affect persons with disabilities and the homeless who may be participating in classes as part of a broader supportive or transitional housing program. Other comments sought clarification and guidance on farmworker housing, including whether farmworker dormitories constitute housing, or are differentiated from student housing.

HUD Response: The use of HOME funds is statutorily limited to permanent and transitional affordable housing for low-income households. Consequently, housing that does not provide a permanent or transitional residence for income-eligible households is ineligible for HOME assistance. Student housing and dormitories, including farmworker dormitories, provide short-term or transitory housing, not permanent or transitional housing, as required by statute. In reviewing the comments, HUD found that several commenters appeared to confuse what constitutes eligible housing with who is considered an eligible beneficiary of HOME-assisted housing. The proposed changes to

the definition of housing addressed the housing structure and what constitutes eligible affordable housing.

In revising the definition of housing, HUD's intent was to clarify the difference between ineligible student or farmworker housing and eligible permanent or transitional housing. Given the many commenters commenting on this provision, and who appeared to not understand this distinction, HUD has further clarified the definition of housing. Revisions were also made to the language in the definitions of low-income and very low-income families that provide additional clarification on when a student household may be an eligible beneficiary.

Low-Income Family and Very Low-Income Family. HUD proposed revising the definition of "low-income families" and "very low-income families" in § 92.2 to conform with the definitions used in the Section 8 Housing Choice Voucher (HCV) program, which excludes certain students from qualifying as a low-income or very low-income family.

Comments: Several commenters expressed concern about eliminating students who are dependents of their families from eligibility for HOME assistance. Some commenters recommended that HUD align the HOME requirements with the HCV provisions. Other commenters suggested that HUD align the HOME requirements with LIHTC policy. Yet, other commenters stated that HUD should remove the term "married" from the definition, as it might prohibit participation of students in other types of domestic partnerships. Several commenters questioned whether this policy would prohibit the use of HOME funds to assist homeless youth or youth aging out of foster care.

HUD Response: The addition of this language to these definitions would have no effect on the eligibility of homeless youth, who would be considered either individually low-income or a member of a low-income family, or youth aging out of foster care, who would qualify as individually low-income. This provision is intended solely to help ensure that HOME funds benefit individuals and families who are low-income or very low-income, and that scarce HOME resources are not targeted to students who are dependents of families who are not low-income. HUD proposed adopting the Section 8 Housing Choice Voucher provisions, which were the result of recent legislative changes, because the voucher provisions reflect the intent of Congress that federal housing resources be targeted to low-income and very low-income families. Instead of including the entire HCV definition in § 92.2, HUD is replacing the proposed rule language with a cross-reference to the HCV requirement at 24 CFR 5.612.

Program income. HUD proposed amending the definition of “program income” in § 92.2 to clarify that it does not include gross income from the use, rental, or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, subrecipient, or state recipient.

Comments: A few commenters stated that rental income should not be considered program income unless otherwise owed and paid to the participating jurisdiction or subrecipient.

HUD Response: The purpose of this change is to clarify that rent received by project owners is not program income unless it is required to be paid to the participating jurisdiction or subrecipient. The commenters appear to have misunderstood that HUD

was intending only to clarify this requirement. HUD agrees that rent should not be considered program income unless it is received by a participating jurisdiction or subrecipient. HUD is adopting the proposed rule language without change.

Project Completion. HUD proposed amending the definition of “project completion” in § 92.2 to clarify the conditions that must be met for projects to be considered completed, including the point at which a participating jurisdiction can complete a project in IDIS, the HOME data system.

Comments: HUD received several comments expressing confusion regarding the difference between project completion in IDIS and the point at which the proposed 6-month period that homebuyer units must be sold or converted to rental units. A commenter stated that commencing the period of affordability for a homebuyer project on the date that a project is completed in IDIS rather than on the date that the sale takes place penalizes homebuyers by extending the period of affordability on their unit.

HUD Response: HUD acknowledges that the proposed rule may have caused some confusion by using the term “project completion” in § 92.254(a)(3) when describing the point at which the proposed 6-month timeframe for sale or conversion of homebuyer units is triggered. Section 92.254(a)(3) should have stated that the completion of construction triggers the beginning of this 6-month period. HUD has corrected the error in that section of this rule. While HUD understands that there may be some lag between closing on a homebuyer unit and entry of project completion data in IDIS, the participating jurisdiction has the required information to complete the homebuyer project in IDIS on the day of the closing and must adopt procedures that

minimize delays in entering completion data. HUD is adopting the proposed rule language without change.

Reconstruction. HUD proposed amending the definition of “reconstruction” in § 92.2 to facilitate participating jurisdictions’ rebuilding efforts after disasters by permitting reconstruction of units that were not standing on the site at the time of fund commitment.

Comments: Commenters identified a discrepancy between the proposed rule text, which permitted HOME funds to be committed for reconstruction of a unit destroyed by disaster within 12 months, and the rule text that designated the period as 6 months. Other commenters supported the 12-month timeframe to commit HOME funds for reconstruction after a disaster. Several commenters stated that 12 months would not be a sufficient period to address destroyed housing in the event of a major disaster and suggested that the timeframe be extended to 36 months. A commenter recommended that HUD establish a process for granting exceptions in the event of major disasters. Another commenter suggested that HUD establish a continuum of timeframes for committing funds for reconstruction, covering situations ranging from a single house fire to mass destruction of housing due to a natural disaster. Several commenters urged HUD to include replacement of a manufactured housing unit with stick-built housing in the definition of reconstruction.

HUD Response: Because the situations covered by this proposed change in the definition will range from destruction of a single unit to destruction of hundreds of housing units, HUD does not support extending the regulatory timeframe beyond 12 months. As explained in the preamble to the proposed rule, waivers of the timeframe can

be granted in the event of widespread destruction of housing due to natural disaster. Further, establishing appropriate timeframes for disasters of differing magnitudes would be difficult and would cause undue complexity for participating jurisdictions. HUD does not agree that replacement of a manufactured housing unit with stick-built housing should be defined as reconstruction. While it is possible to use HOME funds to replace manufactured housing with stick-built housing, these projects are considered new construction, not reconstruction. HUD is adopting the proposed 12-month timeframe for committing HOME funds for reconstruction of a unit.

Single room occupancy. HUD proposed revising the definition of “single room occupancy (SRO)” in § 92.2 to require that a project could be designated as an SRO for HOME purposes only if its characteristics are consistent with the participating jurisdiction’s applicable zoning and building code classifications for SRO housing.

Comments: Several commenters expressed concern that some jurisdictions do not include a SRO designation in their zoning and building code classifications. Consequently, participating jurisdictions without such classifications might be prohibited from using HOME funds for SROs or might be required to designate such projects as group homes, resulting in lower HOME subsidy limits and rents.

HUD Response: HUD agrees with the concerns raised by commenters and has revised the SRO definition to require that the designation of the HOME project as an SRO cannot be inconsistent with local zoning and building code classifications, resolving potential conflicts in jurisdictions that do not include SROs in their zoning and building code classifications.

Subrecipient. HUD proposed making minor revisions to the definition of “subrecipient” in § 92.2, for the purpose of clarifying that subrecipients receive funds to carry out programs (e.g., downpayment assistance programs, owner-occupied rehabilitation programs, etc.), not to undertake specific housing projects.

Comments: A commenter supported the clarification provided by the revised definition. Some commenters recommended that HUD include specific language in the regulations stating that selection of entities acting as owners, developers, or sponsors of housing is not subject to federal procurement rules, nor are owners, developers or sponsors themselves required to comply with federal procurement rules.

HUD Response: HUD did not find it necessary to specifically state in the HOME regulations that the selection of owners, developers and sponsors of housing is not subject to the procurement rules at 24 CFR part 84 and part 85, although a participating jurisdiction may choose to follow these requirements. The new provisions in 24 CFR part 91 requiring participating jurisdictions to include a description of eligible applicants and the method of soliciting applications and awarding HOME funding should clarify the selection methods of each participating jurisdiction.

2. Program Requirements

a. Jointly Funded Projects of Contiguous Jurisdictions. (§ 92.201)

Section 218(a) of NAHA prohibits a participating jurisdiction from investing HOME funds in projects outside its boundaries, except for projects located in a contiguous jurisdiction that are joint projects that serve the residents of both jurisdictions. HUD found that there were participating jurisdictions unfamiliar with or not fully familiar with this provision. HUD proposed to revise § 92.201 to clarify that, to qualify

as a joint project, a project must be “jointly funded” by the two contiguous jurisdictions and both jurisdictions must make a substantial financial contribution (e.g., waiver of impact fees, property taxes or other taxes or fees customarily imposed on projects within the jurisdiction) to the project.

Comments: Some commenters expressed their support for this clarification. A commenter suggested that HUD require one of the jurisdictions to take the lead role and permit only one jurisdiction to count the completed project toward their production goal.

HUD Response: HUD believes it is essential that each participating jurisdiction that invests HOME funds in a joint project be permitted to count a portion of the units toward its production totals. HUD is adopting the proposed rule language without change but will provide guidance regarding appropriate reporting in IDIS for these jointly funded projects.

b. Site and Neighborhood Standards. (§ 92.202)

The proposed rule included a conforming change that would update the citation in § 92.202 to the site and neighborhoods regulations, which were moved to 24 CFR 983.57(e)(2) and (3). The site and neighborhood standards have applied to new construction rental projects funded with HOME since the inception of the program.

Comments: Several commenters appeared to misunderstand that this was a conforming change only, and opposed the imposition of new site and neighborhood requirements. These commenters recommended that participating jurisdictions be permitted to adopt their own standards. Commenters also suggested that HUD issue guidance on site and neighborhood standards for the HOME Program.

HUD Response: HUD included guidance on site and neighborhood standards in its guide entitled *Fair Housing for HOME Participants*, which is posted on HUD's website.² HUD is adopting the proposed rule language without change, with the exception of correcting the regulatory citation.

c. Income Determinations. (§ 92.203)

HUD proposed several changes to § 92.203 related to calculation of annual income of a family or household for the purpose of determining the family's or household's eligibility for HOME assistance.

Required Source Documentation for Income Determinations

HUD proposed revising § 92.203(a)(1)(i) and (a)(2) to require participating jurisdictions to examine at least 3 months of source documentation (e.g., wage statements, interest statements, unemployment compensation) when performing income determinations for potential HOME beneficiaries.

Comments: While a few commenters expressed their support for this change, the majority of commenters commenting on this provision expressed their opposition to the requirement that participating jurisdictions examine at least 3 months of source documentation when determining income. The commenters offered different timeframes for required source documentation, with one commenter stating that 2 months was a more reasonable timeframe. Some commenters expressed concern that the new requirement would be inconsistent with other housing programs. Other commenters expressed concern that the requirement for 3 months of documentation might be an obstacle to low-income households receiving HOME assistance, because they might not have saved sufficient wage statements or bank statements. Several commenters specifically

² See <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/2005/200510.cfm>.

suggested that HUD align the required source documentation for the HOME program with the requirements outlined in HUD Handbook 4350.3³, which requires examination of 6 pay statements. Other commenters suggested that HUD accept Social Security disability insurance statements and certified copies of Form 1040 issued by the IRS as sources of documentation.

HUD Response: HUD's intent in proposing this requirement was to establish a standard period during which all participating jurisdictions must obtain income documentation. Because employers may pay employees weekly, biweekly or monthly, establishing a documentation standard based upon a number of pay stubs does not accomplish HUD's goal of a uniform standard. However, HUD agrees that it is appropriate to balance the need for accurate income determinations and eliminate inconsistent income documentation standards used by HOME participating jurisdictions, with the increased burden that will be placed on potential HOME beneficiaries if they are required to produce income documentation for an extended period of time. Consequently, HUD determined that it is appropriate to reduce the required timeframe for source documentation to 2 months.

This change aligns with the requirements of many private mortgage lenders and should be less burdensome to potential applicants, particularly applicants for rental housing who may not have retained documentation for an extended period. HUD is adopting a provision that requires examination of 2 months of income documentation when determining a family's eligibility for HOME assistance. HUD is not adopting the suggestion that it accept a certified IRS 1040 as income documentation. Certified IRS

³ See http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35639.pdf.

1040 forms are very frequently obtained by participating jurisdictions for the purpose of determining income eligibility. However, unlike source documentation, such as wage statements, stubs and bank statements, these forms do not contain the level of detail necessary to enable income to be accurately projected over the next 12 months.

Elimination of Census Long Form

HUD proposed revising § 92.203(b)(2) to eliminate the option currently available to participating jurisdictions to use the definition of “annual income” that is based on income reported on the Census long form because it was rarely used by participating jurisdictions.

Comments: Although few commenters commented on this provision, those who did expressed their support for eliminating this definition of income, stating that the elimination of the definition would eliminate confusion.

HUD Response: HUD did not receive any comments in opposition to elimination of this income definition, confirming HUD’s belief that the definition is not being employed by participating jurisdictions. This rule eliminates the Census long form definition from the HOME regulations. Participating jurisdictions continue to have the option of using either the income definition in HUD’s regulations at 24 CFR part 5 (often referred to as the Section 8 definition) or the definition of adjusted gross income of the IRS, both of which are broadly used in other housing and supportive service programs.

Federal and Military Cost of Living Allowance

HUD proposed revising the IRS definition of “adjusted gross income” in § 92.203(b) to require that cost-of-living allowances for federal employees and military personnel in certain areas that are currently excluded from annual gross income by the

IRS be included in adjusted gross income calculations when determining eligibility of applicants for HOME assistance. No comments regarding this proposed requirement were received. Section 1914 of the Non-Foreign Area Retirement Equity Assurance Act (Title XIX of Public Law 111-84, approved October 28, 2009) is phasing out these cost of living allowances. Consequently, HUD has determined that this regulatory change is not necessary. The language is eliminated in the final rule.

Single Income Definition for Each HOME-funded Program

HUD proposed revising § 92.203(c) to clarify that a participating jurisdiction must designate and implement only one definition of income for each HOME-assisted program (e.g., downpayment assistance program, rental housing program) that it administers.

Comments: A commenter expressed support for this change, but other commenters opposed the clarification and expressed concern that this proposed language would reduce the flexibility of participating jurisdictions, especially those investing in projects with other sources of funding that have different income requirements. A few commenters requested clarification regarding whether all subrecipients and state recipients funded by a participating jurisdiction would be required to adopt the same definition of income. A commenter recommended that HUD allow participating jurisdictions to select an income determination method on a project-by-project basis for rental housing.

HUD Response: HUD agrees that participating jurisdictions should be permitted to determine an income definition on a project-by-project basis for rental housing programs. This approach will reduce administrative burden for participating jurisdictions

and project owners by enabling them to better align HOME requirements applicable to individual projects with the requirements of other common funding sources, while still ensuring that all applicants for a specific rental project are treated equally. HUD is adopting the requirement that participating jurisdictions select a single definition of income for use in each program it administers (e.g., downpayment assistance), but has also revised the language at § 92.203(c) to reflect the change related to rental projects. HUD is not adding language to address the question regarding the income definitions that may be used by subrecipients or state recipients receiving HOME funds from a single participating jurisdiction. HUD views each subrecipient's or state recipient's program as distinct. Consequently, a participating jurisdiction can permit the use of different income definitions in these programs. HUD does not find that a regulatory clarification is necessary, but will further address this issue in guidance.

Counting All Household Members' Income

HUD proposed revising § 92.203(d)(1) to clarify that, when determining the annual income of a household to determine eligibility for HOME assistance, the participating jurisdiction must count the income of all persons in the household, including nonrelated individuals.

Comments: A few commenters expressed concern about the use of the terms “family” and “household” throughout § 92.203, and specifically in the revisions to § 92.203 (d)(1). These commenters requested that HUD define the two terms so that they are identical.

HUD Response: While the terms “family” and “household” do not have the same meaning (a “household” can be comprised of more than one family or multiple, unrelated

individuals), HUD acknowledges that the terms are sometimes used interchangeably in statute, regulation, and guidance (i.e., HOME uses the 24 CFR part 5 definition of family at 24 CFR 5.403, but defines household as one or more persons residing in a unit).

However, to help ensure that HOME units serve only those who are low-income or very low-income, HUD is clarifying that determinations of annual income include the income of all persons residing in a household. HUD is adopting the proposed rule language at § 92.203 (d)(1) without change.

d. Eligible Activities: General. (§ 92.205)

HUD proposed to revise several provisions of § 92.205.

Housing Must Meet Property Standard to Be Eligible

The proposed rule would add language to paragraph (a)(1) to clarify that activities and costs are eligible for HOME funding only if the housing meets the property standards in § 92.251 upon project completion. HUD did not receive specific comments on this clarification and the clarification is retained in the final rule.

Acquisition of Vacant Land or Demolition Are Not Eligible Stand-Alone Activities

To improve the clarity of the regulation, HUD proposed revising § 92.205(a)(2) to specify that the acquisition of vacant land or demolition with HOME funds may be undertaken only with respect to a particular affordable housing project for which construction will begin within 12 months, as established in paragraph (2) of the definition of “commitment” in § 92.2.

Comments: Several commenters stated that the 12-month timeframe from commitment to the commencement of construction, which is incorporated in the existing definition of “commitment” at § 92.2, is too short.

HUD Response: The provision at § 92.205(a)(2) is intended only to reinforce the existing requirement in the definition of “commitment.” The requirement that construction is expected to begin within 12 months is not new. The proposed rule language is adopted without change.

On-Site Manager’s Unit

HUD proposed revising § 92.205(d) to address the effect of converting a residential unit to an on-site manager’s unit after project completion on the cost allocation and designation of HOME units.

Comments: One commenter stated that the proposed change was appropriate, but also suggested that HUD permit participating jurisdictions to repay HOME funds invested in a unit that must be converted to an on-site manager’s unit after project completion. The commenter stated that this alternative would eliminate the need to revise cost allocation to reflect fewer units and avoid problems related to potentially exceeding the maximum per unit subsidy limit.

HUD Response: HUD would consider permitting a participating jurisdiction to make a prorated repayment of HOME funds, in the event that a HOME-assisted unit must be converted to an on-site manager’s unit. However, HUD finds that such cases are more appropriately handled administratively, rather than including language to address them in the regulation. HUD is therefore adopting the proposed rule language without change.

Four-Year Project Completion Deadline

HUD proposed changes to § 92.205(e)(2) that would establish a 4-year time period from commitment of HOME funds and set-up of a project in IDIS to complete the project. Projects that are not completed within this timeframe would be deemed

terminated before completion and, in accordance with § 92.503, the participating jurisdiction would be required to repay HOME funds invested in the project to its HOME account. The proposed rule would permit participating jurisdictions to request a 12-month extension of the completion deadline by submitting information about the status of the project, steps being taken to overcome any obstacles to completion, proof of adequate funding to complete the project, and a schedule with milestones for completion of the project for HUD's review and approval.

Comments: HUD received many comments on this provision. Commenters opposed the imposition of a project deadline, citing the many delays that can occur in affordable housing development. A few commenters suggested that the timeframe be lengthened to anywhere from 5 years to 8 years. Other commenters suggested that HUD not implement a timeframe for completing projects but rather strengthen up-front project evaluation and feasibility measures to ensure better project selection. Some commenters did not object to the deadline, but opposed the requirement that participating jurisdictions repay HOME funds invested in projects that are not completed. Other commenters suggested that HUD not require repayment in cases where the failure to complete the project was beyond the control of the participating jurisdiction or where the participating jurisdiction is unable to recover the HOME funds expended on the project from the developer.

HUD Response: While recognizing that a large number of HOME program participants do not support the proposed provision establishing a 4-year timeframe for completing a HOME project, HUD continues to maintain that the adoption of this provision is necessary to help ensure that projects proceed timely and that participating

jurisdictions do not set up HOME projects in IDIS before the project is ready to move forward. Congress indicated its agreement with HUD's position by legislatively imposing the 4-year timeframe for project completion on projects receiving Fiscal Year 2012 HOME funds.⁴ Consequently, HUD is adopting the proposed rule provisions, including the 4-year timeframe for project completion and the 1-year exception authority. The requirement that HOME funds expended on projects that are terminated before completion (and therefore never met HOME affordability requirements) must be repaid, as required by statute, is not new and is also being retained. However, in response to some apparent confusion among commenters, HUD makes minor revisions to paragraph (e) to clarify that the participating jurisdiction, not the project owner, is required to repay its HOME account.

Many commenters opposed the provision because of the length of time that it takes to obtain zoning approval, secure necessary financing, or overcome neighborhood opposition to an affordable housing project. These comments made clear to HUD that many HOME program participants continue to misunderstand the point at which a participating jurisdiction may commit HOME funds to a project. The existing HOME regulations require that, when committing HOME funds to a project, a participating jurisdiction must have a reasonable expectation that construction will begin within 12 months. Further, existing regulations require that a subsidy layering review and cost allocation be performed before commitment of funds and that the written agreement committing funds to a project include a project budget and a detailed construction

⁴ See Consolidated and Further Continuing Appropriations Act, 2012, Public Law 112-55, 125 Stat. 552, approved November 18, 2011 which imposed, for Fiscal Year 2012, project-related deadlines, underwriting, developer capacity, and neighborhood market adequacy determinations, and CHDO capacity. (See specifically 125 Stat. 684.)

schedule. Consequently, it has never been permissible to commit HOME funds to a project if delays in zoning or permitting approvals are anticipated, or if other necessary financing has not been secured. The proposed rule attempted to clarify these requirements. HUD is further amending the definition of “commitment” at § 92.2 to emphasize that HOME funds cannot be committed to a project (other than as a CHDO predevelopment loan) until financing necessary to complete the project has been secured and a construction schedule that ensures completion within 4 years has been developed. Corresponding changes are being made to the provisions applicable to written agreements with owners, developers, or sponsors of housing at § 92.504(c)(3) to require that written agreements include a schedule that ensures that construction will begin within 12 months and be completed within 4 years.

e. Eligible Project Costs and Eligible Administrative and Planning Costs. (§ 92.206 and § 92.207)

HUD proposed revising § 92.206(b)(1) to emphasize that it is rehabilitation, rather than refinancing, which is the primary activity that makes refinancing an eligible cost under the HOME program. The proposed rule added language to § 92.206(b)(1) to condition refinancing as an eligible cost to projects in which the cost of the actual rehabilitation is greater than the amount of debt that is refinanced with HOME funds. HUD also proposed amending § 92.206(b)(2) to allow that the eligibility of costs of refinancing existing debt under paragraph (b)(2), as well as the requirement for participating jurisdictions to adopt accompanying refinancing guidelines, are intended to cover all rental housing – multifamily and single family.

Comments: Several commenters recommended that HUD permit the use of HOME funds to refinance existing debt of projects in which minimal or no rehabilitation is taking place. This would permit HOME funds to be used for preservation of affordable housing with little or no need for physical improvements. A commenter recommended that HUD remove the existing prohibition on using HOME funds to refinance existing federal or federally-insured debt (e.g., a loan made with CDBG funds or a FHA-insured loan). No comments were received on the provision that expanded the refinancing guidelines to include single family rental housing.

HUD Response: HUD does not have the authority to permit refinancing of existing debt of properties that are not being rehabilitated. The HOME statute establishes four eligible activities: acquisition, rehabilitation, new construction, and tenant-based rental assistance. HOME funds can be used to preserve affordable housing through acquisition or acquisition and rehabilitation. Refinancing is not an eligible HOME activity and HOME funds may not be used to refinance existing debt of projects unless rehabilitation is the primary activity taking place. Further, HUD believes that using HOME funds to replace or refinance federal or federally-insured debt that was previously obtained by the owner would be an inappropriate use of limited HOME program resources that could be used to provide additional affordable housing. The proposed rule changes to § 92.206(b)(1) and (2) are adopted without change.

f. Eligible Community Housing Development Organization (CHDO) Operating Expense and Capacity Building Costs. (§ 92.208)

HUD proposed a revision to the CHDO operating expense provisions of § 92.208 to clarify that CHDO operating funds are separate from and not intended to supplant

CHDO set-aside funds provided under § 92.300(a). CHDO operating funds are to cover general operating costs such as office rents and utilities, staff salaries, and insurance, and are not to be awarded in conjunction with CHDO set-aside funds to pay for project-related soft costs, such as architectural or engineering costs or in lieu of developer's fees. Such costs are eligible to be paid with CHDO set-aside funds.

Comments: Several commenters supported the clarification of the appropriate use of CHDO operating expense funds. A few commenters recommended that HUD mandate that every participating jurisdiction use the full 5 percent of each annual HOME allocation for CHDO operating expenses. Other commenters requested that HUD clarify that the 5 percent of each allocation that may be used for CHDO operating expenses is not part of the 15 percent CHDO set-aside or the 10 percent planning and administration set-aside available to the participating jurisdiction.

HUD Response: HUD finds that the regulation is clear that the 5 percent CHDO operating expense authority is not a subset of either the 15 percent CHDO set-aside or the 10 percent administrative and planning set-aside. HUD does not have the authority to require that each participating jurisdiction use the full 5 percent of each HOME allocation for CHDO operating expenses. NAHA makes clear that participating jurisdictions have the option to use 5 percent of the allocation in this way; however, there is no basis for mandating this use of funds. HUD is adopting the proposed rule language without change.

g. Tenant-based Rental Assistance: Eligible Costs and Requirements. (§ 92.209)

Eligible Costs

HUD proposed adding language to § 92.209(a) to expressly permit the payment of utility deposits as an eligible HOME cost when provided in conjunction with HOME tenant-based rental assistance or security deposit assistance.

Comments: A commenter supported the explicit inclusion of utility deposits as an eligible cost, in connection with ongoing tenant-based rental assistance or security deposit assistance. A few commenters suggested HUD further revise the regulation to permit project delivery costs related to tenant-based rental assistance costs to be eligible as project-related soft costs under § 92.206(d), instead of being required to charge them as administrative costs under § 92.207(a).

HUD Response: The existing HOME regulations at § 92.209(a) state that costs associated with administration of tenant-based rental assistance are eligible only as general management and oversight and coordination at § 92.207(a). This language prohibited costs such as annual unit inspections from being charged to a tenant-based rental assistance project. Further, the fact that many participating jurisdictions find the 10 percent administrative set-aside inadequate to cover general program administration costs may constitute a disincentive to undertake a tenant-based rental assistance program, even if needs data and area market conditions indicate that such a program would be an appropriate use of HOME funds. HUD agrees with the commenters that the cost of performing inspections and income determinations should be permitted to be charged as either general management and oversight and coordination under § 92.207(a) or project-related soft costs under § 92.206(d). HUD is therefore adding language to § 92.209(a) to make the cost of conducting unit inspections and determining the income of tenant-based rental assistance applicants or recipients specifically eligible as project-related soft costs

for tenant-based rental assistance. HUD is adopting the proposed rule language with respect to the eligibility of utility deposits without change.

Tenant Selection

HUD proposed adding language to § 92.209(c) to clarify that a participating jurisdiction's tenant selection policies and criteria must be based on local housing needs and priorities that are consistent with the participating jurisdiction's consolidated plan. There was support and no opposition to this proposed change, and HUD is adopting the proposed rule language without change.

Preferences for HOME Tenant-Based Rental Assistance

HUD proposed revising § 92.209(c)(2)(i) to clarify that a participating jurisdiction may establish a preference for individuals with special needs (e.g., homeless persons or elderly persons) or persons with disabilities if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons. HUD also proposed adding a provision at § 92.209(c)(2)(ii) specifying that participation may be limited to persons with a specific disability, in accordance with the provisions in 24 CFR 8.4(b)(1)(iv), and clarified that participating jurisdictions may not require participation in medical or disability-related services as a condition of receiving HOME tenant-based rental assistance.

Comments: Several commenters support the ability to target HOME tenant-based rental assistance to special needs populations and persons with disabilities. A few commenters provided suggested regulatory language that would establish a specific

preference for providing tenant-based rental assistance to households participating in permanent supportive housing programs for disabled persons.

HUD Response: HUD does not agree that a separate provision for establishing a preference for disabled households participating in permanent supportive housing programs is necessary. The proposed rule provisions related to preferences for individuals with disabilities adequately address such situations. Further, HUD carefully drafted the proposed rule language to ensure compliance with all applicable civil rights provisions. HUD is adopting the proposed rule language without change.

Tenant-based Rental Assistance in Self-Sufficiency Programs

HUD proposed adding language to § 92.209 (c)(2) to specifically address the use of HOME tenant-based rental assistance in self-sufficiency and homeownership programs (including lease-purchase programs), expressly permitting a participating jurisdiction to condition selection for the program and renewal of the tenant-based rental assistance on the household's participation in the self-sufficiency program.

Comments: A few commenters supported the use of HOME tenant-based rental assistance in conjunction with self-sufficiency programs. However, several commenters opposed permitting HOME tenant-based rental assistance in connection with self-sufficiency programs without specifying the basis of their objection. A commenter objected to the use of HOME funds in connection with self-sufficiency programs because tenants who do not fulfill the responsibilities of the program would lose their rental assistance and potentially experience housing instability. Another commenter supported the proposed language, but encouraged HUD to further revise the regulations to permit

the escrow of HOME tenant-based assistance funds for self-sufficiency program participants.

HUD Response: HUD's administrative guidance on HOME-funded tenant-based rental assistance has included self-sufficiency programs and lease-purchase programs since 1996. Consequently, the proposed rule provisions were intended as codification of existing policy rather than the authorization of previously prohibited uses. HUD understands commenters' concerns that self-sufficiency program participants may experience housing instability if tenant-based rental assistance is not renewed due to failure to participate in the self-sufficiency program. However, unlike other HOME-funded tenant-based rental assistance programs, a self-sufficiency program is not intended to be a source of permanent housing assistance. In this respect, tenant-based rental assistance provided in connection with a self-sufficiency program is similar to transitional housing, in which occupancy is time-limited and participation in supportive services to facilitate transition to independence is required. HOME funds cannot be deposited in escrow accounts for self-sufficiency participants because the only eligible costs associated with tenant-based rental assistance are rental payments, security deposits, and utility deposits. However, the HOME regulations do not prohibit other funding from being deposited in escrow accounts for recipients of HOME-funded tenant-based rental assistance. HUD is adopting the proposed rule language without change.

Other Proposed Changes

HUD proposed: 1) adding a provision to redesignated § 92.209(c)(2)(v) to specifically prohibit the exclusion of persons who are given preferences for HOME assistance from participating in any other program of the jurisdiction; 2) revising §

92.209(g) to make explicit that all tenants must have a lease and that the lease must comply with the requirements that are already cross-referenced in the existing provision; 3) revising § 92.209(h)(3)(ii) to replace the existing description of one alternative for establishing the amount of rent for a unit with a cross-reference to the regulations in 24 CFR part 982, which govern the HCV program; and 4) making a technical change to § 92.209(l) to clarify that the provision applies whenever HCV assistance becomes available, rather than just when it becomes available “to a participating jurisdiction.”

HUD did not receive comments on these proposed revisions and is adopting the proposed rule language without change.

h. Troubled HOME-Assisted Rental Housing Projects. (§ 92.210)

HUD proposed adding a new § 92.210 to the HOME regulations, establishing provisions that facilitate participating jurisdictions’ efforts to preserve HOME-assisted housing projects that have become financially unviable and, as a result, are at risk of failure or foreclosure.

Comments: Many commenters supported the addition of these provisions. A commenter opposed the provisions, stating that the decision to reduce the number of HOME units in a troubled project belongs solely to the property owner and the participating jurisdiction and should not involve HUD. Another commenter asked that HUD provide guidance on the process for obtaining approval to reduce the number of HOME units in a project. Several commenters urged HUD to define what constitutes a troubled project more broadly to include projects suffering from physical deterioration. Other commenters urged HUD to vest approval authority relative to project workouts with HUD field offices rather than in Headquarters. Several commenters urged HUD to

explicitly include refinancing of existing debt as an eligible use of HOME funds in a work-out situation. A commenter recommended that HUD make initial capitalization of replacement reserves eligible for all HOME rental projects. Another commenter urged HUD to specify that the maximum per unit subsidy limit that applies to HOME-assisted units receiving additional HOME funds during the period of affordability be the limit in effect at the time of the additional investment rather than the initial commitment of HOME funds. Other commenters urged HUD to require that the existing period of affordability be extended on all projects that receive additional HOME funds. Another commenter recommended that HUD not require an extension of the affordability period for any project receiving additional HOME funds during the period of affordability, irrespective of the amount of HOME funds being invested.

HUD Response: Under the existing HOME regulations, a participating jurisdiction would be required to obtain a waiver of § 92.504(a)(1) in order to reduce the number of HOME-assisted units that were originally designated. The purpose of the change offered by the proposed rule was to permit this reduction to occur without a waiver. However, HUD has an obligation to ascertain that a reduction involves only units that were designated in excess of the minimum, will not unduly burden low-income tenants, and is both necessary to preserve the unit and more effective than other potential options for preserving the project's viability. Consequently, it is necessary for HUD to approve any plan to reduce the number of HOME-assisted units in a project. Additionally, it remains HUD's position that the authority to approve workouts overall, as well as the authority to execute Memoranda of Agreement with participating jurisdictions on behalf of HUD, is appropriately placed in HUD Headquarters.

The use of additional HOME funds to refinance existing debt would be permissible under the proposed rule language. However, HUD chose not to list this use because the use of HOME funds for this purpose is relatively rare. In instances where HOME funds were used to refinance existing debt, it would be necessary for the participating jurisdiction to designate all the units in the project as HOME-assisted, which may not be desirable or practicable in many circumstances. Consequently, HUD is not adding refinancing of existing debt to the uses listed in § 92.210(b). HUD agrees that the maximum per unit subsidy limit applicable to a project receiving additional HOME funds should be the limit in effect at the time that the funds are added. HUD has opted not to revise the regulation to clarify, but will include this provision in administrative guidance.

HUD disagrees with commenters who urged that the period of affordability always be required to be extended if the project receives additional HOME assistance and those who stated that the period of affordability never be extended on such a project under any circumstance. HUD's experience related to troubled project workouts has been that flexibility is essential to success. Many participating jurisdictions already impose periods of affordability that greatly exceed the required minimum periods in § 92.252. Alternately, some projects may face market or physical conditions that make an extended period of affordability unworkable or unrealistic. The minimum period of affordability required by HUD in a workout will never be less than the minimum period required under the regulations based upon the total of the initial and subsequent per unit HOME investment. Although HUD's preference is to extend affordability periods

whenever practicable, it declines to make the requested change in order to preserve the flexibility necessary to achieve successful workouts.

i. HOME Funds and Public Housing. (§ 92.213)

HUD proposed adding a new § 92.213 to the HOME regulations to address the use of HOME funds with public housing funds. The use of HOME funds in public housing projects, and, in particular, the use of HOME funds in HOPE VI projects is an area that would benefit from further regulatory elaboration, given that HOME funds and public housing funds are each governed by separate statutes and NAHA prohibits the use of HOME funds to provide assistance authorized under section 9 of the United States Housing Act of 1937 (Public Housing Capital and Operating Funds). This prohibition is reflected in paragraph (a) of § 92.213, which prohibits the use of HOME funds for public housing modernization or operating assistance. This provision also prohibits a HOME-assisted unit from receiving Operating Fund or Capital Fund assistance under Section 9 during the period of affordability. With respect to the development of new public housing, paragraph (a) also makes clear that HOME funds cannot be used for public housing units, whether funded under section 9 or another source. Paragraph (b) of § 92.213 establishes an exception to this prohibition that permits the use of HOME funds to develop a unit that receives funds for development under section 24 (HOPE VI), so long as no Capital Funds are used to develop the unit. Paragraph (c) of § 92.213 makes clear that HOME funds may be used to develop or rehabilitate affordable housing units that are not public housing units in projects that also contain public housing units funded by Section 9, HOPE VI, or other funds.

Comments: While a few commenters supported the provision, the majority of commenters commenting on this provision opposed the provision stating that the primary activity of many HOPE VI projects has been to demolish public housing units and replace them largely with market-rate LIHTC units leaving only a small percentage of units as public housing. A commenter stated that the National Affordable Housing Act (NAHA) prohibits the use of HOME funds for any public housing purpose. The commenters that supported the inclusion of the provision requested further clarification on the interplay of HOME funds, HOPE VI funds and public housing funds. Another commenter welcomed the inclusion of the provision stating that this interpretation had previously only been available through guidance. Other commenters expressed uncertainty over how the statutory rent provisions applicable to HOME-assisted units could be met in a public housing unit and requested that HUD provide additional guidance .

HUD Response: HUD included a new provision in the proposed rule to clarify the permissible and impermissible uses of HOME and HOPE VI funds in the development and management of public housing units. The provision offered by HUD is based upon a longstanding legal interpretation of the three statutes: the HOME authorizing statute, the HOPE VI authorizing statute and the 1937 Act. HUD was not presenting a policy option but rather clarifying the statutory parameters governing the eligible uses of these funds. The commenters who opposed this language appeared to oppose the language more on the basis of policy as opposed to disagreement with HUD's statutory interpretation. HOME funds are not statutorily prohibited from being for any public housing purpose, but are specifically prohibited from being used "to provide assistance authorized under section 9" and "to carry out activities authorized under

section 9(d)(1)” of the 1937 Act (public housing capital fund and operating fund). There is no statutory prohibition on using public housing operating assistance or public housing capital fund assistance for units that were developed with HOME and HOPE VI funds, authorized under section 24 of the 1937 Act, and are operated as public housing.

The HOME Program was established to stimulate public-private partnerships to develop affordable housing, but the HOME authorizing statute specifically excluded from such partnerships combining HOME funds with public housing operating or capital funds for the operation, modernization or development of public housing under sections 9 and 14. As explained in the Senate report accompanying S.566 (the bill that became NAHA and authorized the HOME program) “These prohibitions are made necessary by the Committee's intent that [HOME] be a new initiative focused on expanding public and private investment for more affordable housing and not just a general fund for undifferentiated federal housing assistance” (S. Rep. 101-316, June 8, 1990, at 51). This prohibition remained in place even after section 9 of the 1937 Act was significantly revised by the Quality Housing and Work Responsibility Act (QHWRA) (Pub.L. 105-276, approved October 21, 1998) to establish the public housing operating and capital funds. The general HOME prohibition on use for activities “under section 9” remained in place, and the provision prohibiting use under section 14 was amended to reflect the new capital fund provision—section 9(d)(1)—and expanded the explicit prohibition on using HOME funds for public housing capital investments. However, Section 535 of QHWRA added a new section 24 to the 1937 Act (42 U.S.C. 1437v) to establish the HOPE VI program that is in operation today, and QHWRA did not preclude combining HOME funds with HOPE VI funds in the development and management of affordable housing.

The HOME rule is consistent with these provisions and does not allow HOME funds to be used for public housing units, except to develop units under section 24 of the 1937 Act. Units developed with both HOME and HOPE VI may receive operating assistance and may subsequently receive Capital Funds for rehabilitation or modernization under section 9 of the 1937 Act. Once developed, public housing units may not receive HOME funds, and HOME-assisted housing units may not receive Operating Fund or Capital Fund assistance under section 9 of the 1937 Act during the HOME period of affordability.

HUD agrees that clarification of how HOME rent requirements of § 92.252(a) and (b) affect the tenant and operating payments of public housing units is appropriate. Therefore, a new paragraph (d) is added to provide the requested clarification.

j. Prohibited Activities and Fees (§ 92.214)

Prohibition of Certain Fees

HUD proposed several revisions to § 92.214(b) for the purpose of clarifying the prohibition against program participants charging fees to cover their administrative costs and that the amount of application fees charged must not create an undue impediment to a low-income family, a jurisdiction, or other entity's participation in the participating jurisdiction's HOME program. HUD also proposed a new provision at § 92.214(b)(2) prohibiting owners of HOME-assisted rental projects from charging fees to tenants that are not reasonable or customary.

Comments: One commenter stated that the prohibition on the inclusion of the term "other fees" in the prohibition at § 92.214(b)(1) will have the effect of disallowing developer fees and fees paid to construction contractors and subcontractors for overhead

and profit, as well as fees paid to other HOME-funded contractors such as property inspectors, cost estimators, architects, engineers, real estate brokers and others. The commenter stated that the rule should expressly allow these fees, as long as they are reasonable and the services are properly procured. Several commenters questioned the use of the term “program participants,” stating that it was unclear what entities were covered by the term. Other commenters stated that participating jurisdictions should be permitted to charge origination fees for HOME loans, as well as servicing fees. A few commenters identified an apparent contradiction between § 92.214(b)(2) and the written agreement provisions at § 92.504(c)(3)(xi), which require inclusion of a prohibition on parking fees in the written agreement between the participating jurisdiction and the owner or developer of HOME-assisted housing.

HUD Response: HUD does not agree that the inclusion of the term “other fees” would prohibit developer fees, contractor overhead and profit, and fees for professional services, such as architectural and engineering services, all of which are expressly eligible costs under § 92.206(d). Paragraph § 92.214(b) clearly states that it applies to fees charged to cover the cost of administering the program. However, HUD does agree that the use of the term “program participant” in this section is unclear and may have led to misinterpretation of the requirements. HUD is amending the rule to remove the term “program participant” and add CHDO to the list of entities covered by this prohibition. HUD has also revised § 92.214(b)(1) to further clarify the circumstances under which the participating jurisdictions, subrecipients, and state recipients may charge certain fees.

Fees for Ongoing Monitoring of HOME Rental Projects

HUD also proposed revising § 92.214(b)(1) to eliminate the prohibition against monitoring fees and expressly permitting participating jurisdictions to charge fees to owners of HOME rental housing to cover the cost of ongoing monitoring, financial oversight, and physical inspection during the period of affordability.

Comments: HUD received many comments supporting this proposed change. Some commenters suggested that HUD ensure that monitoring fees are reasonable and do not jeopardize the affordability of the property to the residents, particularly extremely low-income tenants. A few commenters stated that it was unfair to charge fees to property owners, because the owners have no control over the amount of the fee. Other commenters objected to HUD's stated position in the preamble that monitoring fees could only be charged to projects that received a commitment of HOME funds on or after the effective date of a final rule. These commenters stated that participating jurisdictions should be permitted to charge monitoring fees on all rental projects under a period of affordability. Other commenters expressed concern about how to determine a monitoring fee that is reasonable and requested guidance from HUD. A commenter stated that HUD should allow participating jurisdictions to charge ongoing monitoring fees to homeowners who receive HOME homebuyer or rehabilitation assistance. Several commenters urged HUD to adopt elements of the Rental Alignment Demonstration and permit participating jurisdictions to rely on monitoring performed by other entities, as long as that monitoring met all HOME requirements.

HUD Response: HUD recognizes that many participating jurisdictions would like to impose monitoring fees on existing HOME rental projects. However, HUD's position is that it is neither prudent nor practicable to permit fees to be imposed on projects where

the written agreement does not include a required monitoring fee and the underwriting did not include payment of annual monitoring fees. HUD does not agree that it is appropriate to permit ongoing monitoring fees to be charged to low-income homebuyers and homeowners, and notes that ongoing physical inspections, income determinations, and financial assessments are not required for homeownership projects. HUD shares commenters' concerns about ensuring that monitoring fees charged to rental projects are reasonable. Monitoring fees on LIHTC projects vary widely and, in some states, do not appear to be related to the actual cost of compliance activities performed. Consequently, adoption of a state's LIHTC monitoring fee in a state as a HOME monitoring fee would not be reasonable in some states. HUD is revising this section to require that participating jurisdictions base their monitoring fees on an estimate of the average per unit staff time and materials consumed by compliance monitoring to ensure that the fees charged are not excessive and are based upon the actual cost of performing the compliance monitoring function. Participating jurisdictions will be required to document the basis on which they calculated their fee and retain this documentation for monitoring by HUD. Participating jurisdictions will also be required to ensure that the amount of the annual fee is included in the underwriting of the project. HUD will issue additional guidance regarding developing fee schedules.

k. Match Credit (§ 92.221)

HUD proposed adding a new paragraph (d) to § 92.221 requiring that a contribution to HOME-assisted or HOME-eligible homeownership projects must be valued not at face value, but by the amount by which it reduced the sales price to the

homebuyer. Contributions that are included in a homebuyer's mortgage (e.g., donated land or construction materials) would not count as a match contribution.

Comments: Several commenters opposed the provision, stating that it would require them to lower sales prices on units in order to count these contributions as match. Some commenters raised concerns that lowering prices would have detrimental effects on neighborhood housing markets, particularly in distressed communities. Other commenters were concerned that they would not be able to meet the minimum match requirement if the new provisions are adopted. Several commenters stated that contributions to homebuyer housing that are included in the homebuyer's mortgage serve the important purpose of enabling the housing developer to roll the value of the contributions forward into the next affordable homebuyer unit it develops. Other commenters stated that limiting match to contributions that reduce the price of the housing to the homebuyer ignores the fact that these contributions often write-down the development cost of a unit so that it can be sold to a low-income household at fair market value.

HUD Response: HUD has carefully considered the commenters' concerns and has revised the proposed rule to balance those concerns with the requirement that match consist of permanent contributions that facilitate development and enhance affordability of HOME-assisted and other match-eligible housing. In response to comments, HUD has revised the final rule to make a distinction between contributions to the development of affordable housing and contributions that directly benefit low-income homebuyers. Under this approach, there will be no change to the eligibility of contributions that directly benefit the homebuyer (e.g., downpayment or closing cost assistance from non-

federal sources, the yield foregone on below-market interest rate mortgage financing, the direct cost of donated homebuyer counseling). However, in order to count as a match contribution, this final rule requires that contributions to the *development* of homebuyer also benefit the homebuyer in one of two ways. Contributions to the development of housing could include: cash or below-market interest rate construction financing, forbearance of fees, donated real property, housing bond financing provided to a project developer, donated site preparation and construction materials, and donated labor or professional services. The contribution must either reduce the sale price of the housing below fair market value, or if the development cost of a unit exceed the market value, by enabling the unit to be sold for less than the cost of development. In either case, a contribution can be credited to the extent that it reduced the sale price below fair market value or the cost of development.

I. Match Reduction (§ 92.222)

HUD proposed revising § 92.222(b) so that HUD would take the extent of a disaster's fiscal impact on a participating jurisdiction into account when determining whether to grant the reduction, as well as the amount and duration of any match reduction.

Comments: A commenter requested that HUD clarify how it will make this determination.

HUD Response: As indicated in the preamble of the proposed rule, HUD plans to issue administrative guidance regarding the factors HUD will consider and the information that the participating jurisdiction should submit with its match reduction request.

m. Maximum Per-unit Subsidy Amount, Underwriting, and Subsidy Layering (§ 92.250)

Maximum Per Unit Subsidy Limits

HUD proposed revising § 92.250(a) to clarify that the maximum HOME per-unit subsidy may not be increased above 240 percent of the base limits authorized by section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(iii)), despite the fact that section 221 of the General Provisions of Title II, Division K of the Consolidated Appropriations Act, 2008 (Public Law 110-161, approved December 26, 2007) increased the maximum exceptions that HUD may grant for the 221(d)(3) mortgage insurance program to up to 315 percent of the base limits. The clarification was determined necessary because section 212(e) of NAHA, which establishes the 221(d)(3) mortgage insurance limits as the per-unit cost limits for HOME-assisted units, was not amended and continues to limit HOME subsidy to the lesser of a participating jurisdictions' actual high cost percentage or to 240 percent of the base limit. HUD did not receive any comments on this provision and is adopting the proposed rule language without change.

Subsidy Layering, Underwriting, and Market Analysis

HUD proposed revising § 92.250(b) to require participating jurisdictions to: (1) evaluate subsidy layering and conduct or examine the underwriting of all projects to ensure that the HOME subsidy is not excessive and does not result in an undue or excessive return to the owner; and (2) adopt underwriting and subsidy layering guidelines that include an assessment of, at minimum, the market conditions of the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer, and firm financial commitments for the project.

Comments: Many commenters supported these proposed additions to the regulations, citing the importance of sound underwriting and adequate market need to making affordable housing viable. However, other commenters cited concerns about the added burden, cost, and complexity of the new requirements. A number of commenters urged the Department to permit participating jurisdictions to accept the underwriting and subsidy layering conducted by other funders. Several commenters stated that the proposed rule would require a full-scale market analysis for every project, even individual homebuyer units. A few commenters asked for clarification of what would constitute an acceptable assessment of neighborhood market conditions for projects of different sizes and types (e.g., homeownership, special needs). Other commenters requested clarification about whether subsidy layering and underwriting requirements applied to homebuyer projects.

HUD Response: HUD recognizes that the proposed requirements will result in additional burden for those participating jurisdictions that are not already engaging in these practices. However, requiring these practices for all participating jurisdictions is intended to ensure successful and timely completion of HOME projects, reduce the possibility of undue enrichment of project owners, and ensure that HOME funds are used for projects for which there is adequate demand. HUD's interest in safeguarding and optimizing scarce taxpayer funds justifies any additional burden that may arise from these requirements. HUD is adopting the proposed provisions, but has added a new paragraph (3) that explicitly states that these provisions do not apply to owner-occupied rehabilitation projects where assistance is provided as a grant or to homebuyer assistance projects that do not involve development or rehabilitation of housing (e.g., downpayment

assistance). These requirements apply to homebuyer projects that involve development activities. To improve clarity of the provision, HUD is revising the language at § 92.250(b)(2) to eliminate the phrase “market conditions” with “current market demand in the neighborhood.” For the same reason, this paragraph is being revised to specify that firm financial commitments must be made in writing.

HUD will issue guidance on these requirements. However, it is important to clarify that not all HOME projects will require a full-scale market analysis and that the market area for projects of various sizes or other characteristics varies. While such analyses are appropriate for large-scale developments, assessing market conditions in the case of smaller projects will be considerably less burdensome. The purpose of the requirement is to ensure that there will be adequate market demand for a project before committing HOME funds.

HUD has determined that additional guidance on the applicability of these requirements to specific types of projects is necessary. This final rule makes explicit that an underwriting analysis is only required for owner-occupied rehabilitation projects if the HOME-funded rehabilitation loan is amortizing; participating jurisdictions will not be required to perform underwriting analyses of HOME-funded grants or deferred, forgivable loans to owner-occupants seeking rehabilitation assistance. This rule also makes clear that participating jurisdictions will not be required to perform neighborhood market analyses or evaluate developer capacity for owner-occupied rehabilitation projects or projects involving the provision of HOME-funded downpayment assistance, but no HOME-funded development. New paragraphs § 92.250(b)(3) and (4) have been added to provide this clarification.

n. Property Standards (§ 92.2 and § 92.251)

HUD proposed substantial revisions to the property standards applicable to HOME-assisted properties. The proposed changes to § 92.251 reorganized the section and established new requirements for HOME-assisted projects involving new construction, rehabilitation, acquisition of standard housing, manufactured housing, as well as ongoing property condition standards for HOME-assisted rental housing. In the final rule, the standards for rehabilitation projects, in § 92.251 (b), were reorganized and revised to reflect public comment and to clarify misunderstandings of the proposed requirements.

Definitions (§ 92.2)

HUD proposed to add definitions for “observed deficiency (OD)” and “Uniform Physical Condition Standards (UPCS)” to § 92.2.

Comments: A few commenters were concerned with the context of the term “observed deficiency” in connection with UPCS. The commenters noted that the proposed definition only addresses technical standards (i.e., routes, widths of main entrances, interior halls, and outside common areas). The commenter suggested that participating jurisdictions should be required to inspect for compliance with the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and Americans with Disabilities Act (ADA) standards for structural accessibility.

HUD Response: With the revisions to the property standards in § 92.251, HUD is eliminating the definition of “observed deficiency. That term is no longer used in § 92.251 and as used in § 92.504(d) refers to the participating jurisdiction’s property standard rather than to UPCS. Under the participating jurisdiction’s property standards,

pursuant to § 92.251(a)(2)(ii) and (b)(2)(v), the housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504, and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act.

Written Standards for Methods and Materials for New Construction Projects (§ 92.251(a))

Comments: A few commenters supported the proposed requirement in § 92.251(a)(v) to establish written standards for methods and materials for new construction projects. Other commenters, however, opposed the requirement to establish written standards for new construction when using HOME funds. The commenters stated that this requirement is burdensome, especially for small participating jurisdictions; will require significant resources to develop; and is not feasible for participating jurisdictions with limited capacity, housing construction expertise, and administrative budgets. For new construction building activity, several commenters argued that the development of written standards for methods and materials is unnecessary because state and local codes for new construction, as well as the International Residential Code (IRC) and International Building Code (IBC), provide sufficient specificity such that scopes of work can be developed using these codes. Some commenters expressed concern that this requirement will do little to improve housing quality, and if participating jurisdictions do not do a good job in developing standards, this could generate sub-optimal development practices and potential liability issues for participating jurisdictions, or could void manufacturer's warranties. Some commenters suggested allowing participating

jurisdictions to rely on standards imposed by other public agencies, such as agencies that administer LIHTC, as participating jurisdictions are already familiar with these standards. Several commenters requested more information about what HUD envisioned would be in written methods and materials and asked that HUD provide training, guidance, templates with recommended minimum standards, and other technical assistance from HUD to help participating jurisdictions implement this requirement.

HUD Response: HUD acknowledges the concern expressed by many commenters about the requirements for written standards for methods and materials. With respect to HOME-funded new construction projects, HUD agrees with the commenters that its proposal would be duplicative to require participating jurisdictions to establish written standards for methods and materials solely for new construction of HOME-assisted projects that are separate from codes already established. The final rule requires new construction of HOME-assisted projects to meet all applicable state and local building codes, or in the absence of such codes, the IRC or IBC, as applicable. HUD has determined that these codes provide sufficient detail to establish the materials and methods for new construction. Therefore, at this final rule stage, separate written standards for methods and materials will not be required for new construction activity. This requirement in § 92.251(a)(2)(v) is removed in the final rule.

Rehabilitation Projects (§ 92.251(b))

The proposed regulation required the participating jurisdiction's property standards for rehabilitation projects to describe, in detail, the scope of the rehabilitation that may be performed and the participating jurisdiction's written requirements for the design, amenity, and materials, beyond that which is contained in the local code (i.e.,

written methods and materials). The rehabilitation standards must establish the requirements for the minimum acceptable product that the rehabilitation completes, and a basis for a uniform inspection of the rehabilitated housing.

In the final rule, HUD reorganized and revised language in § 92.251(b) to clarify the requirements for rehabilitation standards for HOME-assisted projects. The final rule requires that a participating jurisdiction's rehabilitation standards must include requirements to: address health and safety defects immediately; determine the useful life cycle of major systems in both rental and owner-occupied housing and appropriately fund replacement reserves to address capital repair and replacement needs; meet existing lead-based paint and accessibility laws and regulations; rehabilitate HOME-assisted projects to mitigate the impact of potential disasters; ensure that the housing meets all applicable state and local codes, ordinances and zoning requirements upon completion of rehabilitation; correct all critical deficiencies from the list of Observable Deficiencies in UPCS that HUD requires to be included in a participating jurisdiction's standards; review construction cost estimates, contracts and related documents; conduct construction progress and final inspections to ensure that the work performed is in compliance with all requirements and establish requirements for the frequency of these inspections. The requirements of § 92.251(b) apply to the rehabilitation of HOME assisted rental housing projects and homebuyer acquisition and rehabilitation projects, as well as homeowner rehabilitation.

State and Local codes, ordinances, and zoning requirements

Comments: Commenters requested that HUD clarify how participating jurisdictions could meet the proposed requirement in § 92.251(b)(1) that rehabilitated

HOME-assisted projects meet state and local codes and ordinances if the state or local jurisdiction has no such codes or ordinances that apply to rehabilitation work where the project is located.

HUD Response: The final rule at § 92.251(b)(1) requires that, upon completion, all rehabilitation work performed on HOME-assisted projects must meet all state and local codes, ordinances, and requirements. In the absence of state or local building codes that address rehabilitation, the work must meet the International Existing Building Code (IEBC). In general, the IEBC provides alternative approaches to the IBC and IRC with respect to remodeling, repair, or alteration of existing buildings, as many existing buildings cannot comply with building code requirements for new construction. However, the IEBC does contain basic health and safety requirements for the rehabilitated building, such as requirements for fire prevention, structural or other life safety features. HUD plans to provide training and technical assistance to address the need for training on these new requirements and coordinate across HUD to develop model rehabilitation standard checklists. In addition, HUD will issue a notice that identifies which of the observable deficiencies in UPCS that participating jurisdictions must be corrected as part of the rehabilitation standards they adopt.

Proposed Use of UPCS in the HOME Program

Comments: Several commenters opposed the proposed use of UPCS in the HOME program, expressing concern about the administrative burden and expense of using UPCS and suggesting retention of Housing Quality Standards (HQS). Commenters requested training and guidance on the new standards before the requirements take effect. A few commenters were concerned that the additional standards and necessary repairs

would cause delays and prevent real estate transactions from moving forward, and requested a reasonable period of transition to UPCS. A commenter recommended that the 2009 International Property Maintenance Code be used as a standard for rental activities in rural areas rather than UPCS. Several commenters requested that HUD clarify whether inspection procedures of HUD's Real Estate Assessment Center (REAC) would be required.

Some commenters supported the use of UPCS for rental properties, but suggested that the UPCS standards should not apply to owner-occupied homeowner rehabilitation. Some commenters requested that HUD clarify the difference between UPCS, standards in state and local codes, and the proposed required rehabilitation standard that prescribes the methods and materials to be used in rehabilitation activities.

HUD Response: For HOME-assisted rental housing projects, HUD has determined that the use of UPCS will result in better housing quality and long-term viability of HOME-assisted units than HQS, because UPCS includes a more comprehensive list of inspectable items and areas than HQS. The existing regulations require that all HOME-assisted rental units meet applicable state and local codes, this is a statutory requirement and is not changed in this final rule. In addition, the existing regulations require that in the absence of such state or local codes, HQS must be used as the property condition inspection protocol to meet the requirement for inspections of HOME-assisted rental housing. In the final rule, instead of using HQS in the absence of applicable state or local codes, UPCS must be used as the property condition inspection protocol when there are no applicable state or local codes. The use of UPCS as an inspection protocol for ongoing property inspections could facilitate alignment

inspections of HOME-assisted units with other federal housing programs. For example, UPCS is used to conduct inspections in many of HUD's rental housing programs and is familiar to HUD housing providers participating in these programs. Further, UPCS is used to conduct inspections in the LIHTC program, which is frequently a funding source in HOME-assisted rental housing. HUD and other federal agencies are currently engaged in a pilot program to examine ways to align the property inspections required by different housing programs. If this alignment is achieved, it will promote coordination at the local level and may promote cost savings.

HUD will issue guidance specifying which inspectable items and areas in UPCS must be included in these inspections. Where the 2009 International Property Maintenance Code has been adopted as the state or local code, participating jurisdiction would incorporate those requirements in the standards they establish to meet the requirements of § 92.251(f).

In the final rule at § 92.251(b)(1)(viii), HUD also clarifies how deficiencies listed in UPCS are incorporated into a participating jurisdiction's rehabilitation standards. HUD agrees that not every deficiency would be required to be addressed for all HOME-assisted rehabilitation. Based on the list of inspectable items and areas in the UPCS, HUD will establish which critical deficiencies must be corrected as a minimum requirement for each type of rehabilitation — rental, homebuyer, and homeowner housing — and, therefore, must be included in the participating jurisdiction's rehabilitation standards.

HUD disagrees that the UPCS standards should not apply to owner-occupied homeowner rehabilitation. Although the current regulation requires that HOME-funded

homeowner rehabilitation correct all property code violations, HUD has found that in many instances, the completed housing units did not meet the existing property codes and that all health and safety defects were not removed. Along with existing state and local property condition and building codes, or the IEBC, the use of UPCS inspections on completed HOME-funded homeowner rehabilitation will help assure that these units are free of life-threatening conditions, as well as health and safety defects, and meet minimum quality standards. HUD will issue guidance that establishes which observed deficiencies in homeowner rehabilitation, from the list of inspectable items and areas in UPCS, must be included in a participating jurisdiction's rehabilitations standards and corrected as part of HOME-funded homeowner rehabilitation.

To clarify the difference between codes such as the IEBC or local building codes and UPCS, UPCS is an inspection protocol that is used to evaluate the condition of housing. In this final rule, HUD is requiring participating jurisdictions to use this inspection protocol to establish minimum property condition standards for rehabilitation standards, (e.g., if certain deficiencies are observed as part of the UPCS inspection, then the housing must be rehabilitated to correct them). HUD previously issued guidance regarding written rehabilitation standards and how they differ from property standards in HOMEfires Vol. 3, No. 1, January 2001, which is posted on HUD's website.⁵

Many commenters misunderstood the proposed use of UPCS in inspecting HOME-assisted units and believed HUD proposed that participating jurisdictions adopt existing REAC inspection procedures and protocols (i.e., item weight, scoring, and level of criticality). As stated earlier, HUD proposed to use UPCS for property condition inspections and as part of rehabilitation standards in the HOME program. Use of

⁵ See <http://www.hud.gov/offices/cpd/affordablehousing/library/homefires/volumes/vol3no1.cfm>.

certified REAC inspectors is not required. Further, participating jurisdictions, subrecipients, and state recipients are not required to use their own staff to conduct the inspections; they may contract with third parties to do so. HUD is aware that some participating jurisdictions are not familiar with UPCS, and agrees with commenters that a transition period and training would be helpful. The final rule delays the effective date of the provisions of § 92.251 by 18 months so that HUD may develop additional guidance to facilitate an efficient transition to the new requirements.

Written Standards for Methods and Materials for Rehabilitation Standards (§ 92.251(b)(2)(i))

Comments: Some commenters expressed concern that the proposed rule was not sufficiently clear about what is required in § 92.251(b)(2)(i) with respect to written methods and materials for rehabilitation standards. Commenters asked that HUD provide training, guidance, templates with recommended minimum standards, and other technical assistance to help participating jurisdictions implement this requirement. A commenter stated that while HUD requires participating jurisdictions to meet all applicable state and local codes, not all jurisdictions have rehabilitation codes, and asked that HUD make clear that rehabilitation work is not required to meet the same standards as new construction. Other commenters recommended relying on other public entities or federal funders for these standards.

HUD Response: This final rule requires participating jurisdictions to adopt written standards for methods and materials for rehabilitation of HOME-assisted projects, as part of the required rehabilitation standards found in § 92.251(b)(1). Over the history of the program, HUD has found that numerous participating jurisdictions have not made

determinations of whether rehabilitation performed with HOME funds was adequate.

The adoption of written methods and materials, which are sometimes referred to as specifications and include details such as the grade of lumber to be used, the number of nails per square foot, the type of material that can or cannot be used for doors serving as fire exits, the distribution pattern and material of roofing tiles, will improve the quality of rehabilitation performed with HOME funds. This final rule clarifies that participating jurisdictions may adopt written standards for methods and materials for rehabilitation work that are part of applicable national, state or local codes, or may establish standards that exceed the minimum requirements of these codes.

Health and Safety Issues

The proposed rule required that the participating jurisdiction's rehabilitation standards must address health and safety issues.

Comments: A commenter suggested that the property standards language should reference the National Fire Protection Association (NFPA) 101, *Life Safety Code* or NFPA 5000, *Building Construction and Safety Code*, and include several specific requirements to address fire safety objectives. A few commenters requested that HUD provide specific standards to cover health and safety inspection items. Some commenters suggested that HUD expand its definition of property standards to incorporate the principles of healthy and safe housing, broaden the rule beyond life-threatening deficiencies, and include specific examples of eligible safety and healthy homes improvements in the rule, such as installation of handrails, grab bars in bathrooms, improved lighting, kitchen exhaust fans, ventilation systems, removal of mold, repair of deteriorated paint, and promotion of integrated pest management.

HUD Response: HUD previously issued guidance that addresses implementation of the Fire Administration Authorization Act of 1992 in CPD Notice 94-05, which applies to HOME-assisted housing and is posted on HUD's website.⁶ This guidance prohibits the use of housing assistance in connection with certain assisted and insured properties, unless certain NFPA fire protection and safety standards are met. While HUD agrees with the importance of healthy and safe housing, the specific examples provided by commenters do not fall under the category of required property standards. However, they are already HOME-eligible costs covered under § 92.206. In accordance with 24 CFR 5.703(f), UPCS also specifically addresses health and safety concerns. To clarify the health and safety requirements, HUD is revising the language in § 92.251(b)(1)(i) to remove the first sentence, which is already covered in § 92.251(f)(1)(ii), and state that a participating jurisdiction's rehabilitation standards must address, not just identify, life-threatening health and safety deficiencies immediately if the property is occupied.

Useful Life of Major Systems and Capital Needs Assessments

The proposed rule required that the remaining useful life of each major system be 15 years, at a minimum, after project completion, or the major system must be rehabilitated or replaced to have a minimum useful life of 15 years. A capital needs assessment would be required for all multifamily rental projects with 26 or more total units and determine the useful life of major systems with a capital needs assessment. For owner-occupied housing undergoing rehabilitation with HOME funds, the participating jurisdiction would be required to ensure that each major system has a remaining useful life of at least 5 years at the time the project is completed; major systems with a useful

⁶ See <http://www.hud.gov/offices/cpd/lawsregs/notices/priorto95/cpd9405.pdf>.

life of less than 5 years after project completion would be required to be rehabilitated or replaced to meet this requirement.

Comments: Some commenters supported the requirements for major systems as proposed. Other commenters questioned who would determine the life expectancy of major systems and by what method, what documents would be required to be maintained, whether a capital needs assessment serves as a reliable tool to determine when major systems need to be replaced, and whether major systems with a significant remaining useful life (e.g., 10-15 years) must be replaced. Several commenters opposed these requirements and stated that repairing or replacing major systems with a remaining useful life shorter than 15 years may be unnecessary, inefficient, wasteful, unsustainable, and cost prohibitive. Many commenters suggested that capitalized replacement reserves, achieved through adequate underwriting, could be used to fund repairs and replacements of major systems in rental housing in the future when necessary. Several commenters suggested that HUD permit HOME funds to be used to fund a replacement reserve in anticipation of future needs. A few commenters suggested that HUD should provide additional time beyond acquisition to reach the 15-year remaining useful life standard, as many large rehabilitation projects take place over several years. A few commenters questioned whether the participating jurisdiction would be responsible for the cost to repair or replace a new system that originally met the useful life requirements if it fails sooner than the estimated timeframe of 15 years.

One commenter stated that the 5-year life expectancy requirement for homeownership housing would make it difficult for homebuyers to qualify their selected resale homes as eligible for HOME assistance. Some commenters stated that it is unfair

to require a single-family rental house to have a 15-year useful life when a single-family homebuyer house is only required to have a 5-year useful life, and requested more flexibility with these requirements. Other commenter suggested a shorter useful life requirement of 5, 7, or 10 years for rental housing. A commenter recommended that the provision should state that all major systems must be in good operational condition rather than specifying time limits. A commenter supported the proposed capital needs assessment requirement for projects with 26 or more units. Another commenter recommended that a capital needs assessment be required for all rental projects, regardless of size. A few commenters recommended that HUD not impose a specific capital needs assessment format or process, and instead allow participating jurisdictions to use their own process. Another commenter requested clarification that a PJ is not required to conduct a capital needs assessment and it can be conducted by a professional third party entity.

HUD Response: HUD acknowledges the concerns that commenters expressed about the proposed language requiring that after rehabilitation all major systems must have a useful life of 15 years. HUD agrees with the commenters who stated that major systems with a significant remaining useful life should not be required to be replaced when the systems are in good condition and replacement is unnecessary. Consequently, for rental housing, the proposed requirement for a minimum 15-year useful life of major systems in § 92.251(b)(1)(ii) is removed in the final rule. Instead, as suggested by many commenters, the final rule states that for rental housing, the participating jurisdiction must estimate the remaining useful life of systems (based on age and current condition) and, to the extent that it is less than the period of affordability, the participating

jurisdiction must ensure, through underwriting, that a replacement reserve is established and annual payments to the replacement reserve are adequate to replace or repair major systems as needed. HOME funds cannot be used to fund replacement reserves; however, larger HOME subsidies can be initially provided to reduce debt payments and overall operating expenses, making more operating revenue available to fund replacement reserves.

HUD is not imposing a specific format or process for the required capital needs assessment. Participating jurisdictions will have the flexibility to develop their own capital needs assessment format and process. However, the White House Domestic Policy Council's Rental Policy Working Group alignment initiative may recommend capital needs assessment requirements and/or guidance that may apply to all federally assisted and funded multifamily rental housing in the future. While the participating jurisdiction is ultimately responsible for the management and oversight of its HOME program to ensure compliance with the property standards requirements, a qualified third party can be procured to carry out these tasks. Therefore, the participating jurisdiction is not required to conduct the capital needs assessments, but it must review and approve any capital needs assessment conducted by a qualified third party. HUD has determined that the capital needs assessment requirement would be overly burdensome for multifamily projects with less than 26 units. HUD is adopting the proposed rule language without change.

For HOME-assisted homeowner housing (homebuyer acquisition and/or rehabilitation projects and rehabilitation of owner-occupied housing), HUD disagrees with the comment that the requirement for a minimum useful life of major systems would

negatively impact local homeownership programs. The final rule does not change the proposed rule, and therefore states that each of the major systems must have a minimum useful life of 5 years, or the system(s) must be rehabilitated.

Disaster Mitigation

HUD proposed that, where applicable, housing would be required to be improved to mitigate the impact of disasters such as earthquakes, hurricanes, flooding, and fires.

Comments: Some commenters supported the language that allows construction of housing to mitigate the impact of potential disasters. A commenter requested guidance regarding how participating jurisdictions can meet the disaster mitigation requirements.

HUD Response: Where relevant, participating jurisdictions should consult applicable state and local codes, ordinances, and other requirements for guidance regarding how to construct housing to mitigate the impact of potential disasters. HUD is adopting the proposed rule language without change.

Discretionary Housing Improvements

HUD proposed adding a new paragraph, § 92.251(b)(2)(viii) to clarify that discretionary housing improvements beyond those required to meet property standards may include modest amenities and aesthetic features that are in keeping with housing of similar type in the community, and must avoid luxury improvements, as defined by the participating jurisdiction.

Comments: A few commenters opposed the prohibition against luxury improvements and the specific examples of luxury items provided in the preamble. Several commenters stated that what constitutes “modest” versus “luxury” may be subjective, and requested clarification regarding what is allowed or prohibited in HOME-

assisted units and the level of discretion afforded to the participating jurisdiction. Other commenters suggested that cost effectiveness be considered when determining which materials, appliances, and fixtures are appropriate.

HUD Response: The commenters appeared not to understand that the proposed rule was not imposing new requirements. The requirement for non-luxury housing with suitable amenities, which applies to all HOME-assisted housing, is established in the existing regulation under “eligible activities” in § 92.205(a)(1). Because the non-luxury requirement is already established in § 92.205(a)(1), HUD has decided to remove the paragraph “other improvements” in proposed § 92.251(b)(2)(viii) at this final rule stage to avoid redundancy and clarify that new requirements are not being imposed.

Work Write-Ups, Construction Progress Inspections and Payment Schedules in New Construction and Rehabilitation Projects

HUD proposed to add new paragraphs to § 92.251(a)(2)(vi) and § 92.251(b)(3) and (4) to provide additional detail on required inspections and work write-ups. The proposed regulatory language was intended to make clear that a participating jurisdiction must inspect the property, and review and approve work write-ups for the project that describe the work needed to bring the project up to the participating jurisdiction’s rehabilitation standards. The proposed language also provided that the participating jurisdiction must have written construction progress inspection procedures (including a description of how and by whom the inspections will be carried out) and detailed inspection checklists reflecting all aspects of the property standards, and that progress and final payments be tied to inspections of the completed work.

Comments: Some commenters expressed support for the requirement to establish progress payment schedules. Other commenters were concerned that the proposal would require additional expense and time (especially in rural areas); for example, requiring inspection before payments may delay disbursements until project completion and consequently increase interest costs for construction loans. The commenter stated that this, in turn, may prevent participating jurisdictions from investing in rural areas due to higher costs. They also expressed concern that the proposal would duplicate other inspections. Some commenters opposed these requirements and stated that construction progress inspections would significantly increase project costs and administrative burden, particularly for participating jurisdictions with limited staff. Other commenters said that participating jurisdiction staff may not be qualified or have the capacity to conduct the required inspections. Several commenters asked that HUD clarify that participating jurisdictions may enter into agreements that allow inspections to be done by a subrecipient or other qualified third party that is independent of the developer carrying out the activity. Some commenters suggested that the HOME regulations should allow independent architects under contract with developers to perform construction progress inspections and provide sign-off for payment disbursements to align with the LIHTC program and avoid redundancy. Other commenters suggested that participating jurisdictions should be permitted to rely on construction standards used and inspections performed by other governmental agencies (e.g., housing finance agencies) or private lenders, as long as they meet the HOME requirements. Another commenter requested that HUD provide a reasonable timeframe for completion of both the inspections and work write-ups to enable developers to include them in their construction schedules.

Some commenters also requested training, technical assistance, and guidance materials to assist in implementing these provisions.

HUD Response: HUD appreciates the commenter's requests for clarification of these requirements. One of the primary purposes of proposing additional detail on required inspections and work write-ups was to ensure that participating jurisdictions are aware of the requirement to assess the work performed through periodic monitoring. While the participating jurisdiction is responsible for determining compliance with property standards requirements, it may hire a qualified third party inspector to carry out the tasks. For progress inspections, a participating jurisdiction can either use qualified in-house staff conduct inspections or hire or secure a qualified third party that is independent of the developer to conduct these inspections. For example, a participating jurisdiction may contract with an independent inspector, or in certain circumstances, use inspections conducted by other funders, such as investors or the bank, to satisfy these inspection requirements. Subrecipients can conduct the inspections, if specified in the written agreement with the participating jurisdiction, or it can hire an independent third party contractor to conduct the inspections. The participating jurisdiction cannot rely on or accept inspections and certifications performed by the developer or an agent or contractor of the developer. In response to the commenters' requests for clarification, the proposed regulatory language in § 92.251(a)(2)(vi), (a)(vii), and (b)(4) is revised in the final rule in a new paragraphs § 92.251(a)(2)(iv), (a)(2)(v) and (b)(2) and (b)(3) to clarify these requirements. HUD also plans to provide training and technical assistance to assist participating jurisdictions in implementing these provisions.

Regarding progress payment schedules, HUD agrees with the commenters that expressed concern about requiring progress inspections before payment may delay construction and potentially increasing costs. In many projects, HOME funds are used to acquire the site and construction is financed by other sources. Therefore, the proposed language may not effectively accomplish this purpose. At this final rule stage, HUD is revising § 92.251(a)(2)(vii) and (b)(4)(iii) to state that the participating jurisdiction must conduct periodic inspections during construction, see § 92.251(a)(2)(iv), (a)(2)(v) and (b)(2) and (b)(3). These inspections do not need to be tied to the progress payments. Progress payments and inspections should be tied to the normal construction schedule; a separate payment schedule is not required for HOME.

Acquisition of Standard Housing

When HOME funds are used to purchase existing rental housing, such housing must be in good condition or it must be rehabilitated with HOME funds to ensure that the housing is in standard condition at the time of project completion. HUD proposed revising § 92.251(c)(1) to set forth property standards for existing housing in standard condition that is acquired with HOME funds. If the housing was newly constructed or rehabilitated less than one year before HOME funds were committed to acquire the housing as rental housing, the housing would be required to meet the property standards in § 92.251(a). The participating jurisdiction would be required to document this compliance based upon a review of approved building plans and Certificates of Occupancy, and a current inspection conducted no less than 30 days before the commitment of HOME assistance. Existing housing that did not meet these standards would be required to be rehabilitated.

In § 92.251(c)(2) HUD proposed that existing rental housing, which does not meet the definition of § 92.251(c)(1), is acquired with HOME funds would be required to be rehabilitated and meet the requirements of § 92.251(b). The participating jurisdiction would be required to document this compliance based upon a current inspection conducted no less than 30 days before the date of commitment of HOME assistance, in accordance with the inspection procedures that the participating jurisdiction established pursuant to this section.

Comments: A commenter stated that the requirements in § 92.251(c)(1) would impose an undue burden on properties that are in good condition. Some commenters asked HUD to reconsider the UPCS requirement for down payment assistance programs, stating that lenders already conduct inspections in accordance with local codes. A few commenters stated that the requirement to conduct a current inspection less than 30 days before the commitment of HOME assistance is not practical and does not allow sufficient time for financing issues and other required loan documentation. These commenters stated that by the time the participating jurisdiction obtains the inspection report, which is after the lender has approved the borrower's loan package, the proposed 30-day period may already have elapsed and another inspection may be required. A few commenters suggested that the requirement be changed to 120 days, as Federal Housing Administration (FHA) appraisals are valid within 120 days of the loan closing date. Another commenter recommended that the timeframe for inspections mirror the 90-day period for Uniform Residential Appraisal Report.

Several commenters expressed concern and opposition to the proposed required inspections for homebuyer housing. Some commenters expressed opposition to

inspecting the unit after it is sold to the homebuyer, stating concern over cost and accessibility to the unit once it is sold. For homebuyer acquisition projects, one commenter recommended that, in addition to ensuring that the housing must be free from all health and safety defects before occupancy, the participating jurisdiction be required to ensure that all property standards are met before transfer of ownership and occupancy (instead of not later than 6 months after the transfer) to facilitate administration and ensure compliance.

HUD Response: HUD does not agree with commenters that stated that UPCS should not be applied to direct homebuyer assistance (e.g. downpayment assistance) because lenders already conduct inspections in accordance with local codes. While inspections for appraisal purposes are sometimes performed by lenders (e.g., for FHA-insured mortgages), there is no guarantee that these inspections, when performed, are always shared with homebuyers, or that these inspections contain details about the condition of the housing. Further, in many real estate transactions, the appraisal performed by the lender does not constitute an inspection and homebuyers are not required to obtain housing inspections. Low-income homebuyers who receive HOME downpayment assistance should be provided information that enables them to make informed decisions. Further, HUD must put rules in place that prevent the use of HOME funds for the purchase of substandard housing. Current regulations require that when HOME downpayment assistance is provided, the unit must meet applicable state and local codes, or in the absence of these codes, HQS. The final rule does not establish requirements significantly different from either the current regulation or the proposed rule.

The final rule states that existing housing that is acquired for homeownership (e.g., downpayment assistance) must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the deficiencies proscribed by HUD based on the inspectable items and inspected areas in HUD-prescribed physical inspection procedures (UPCS) pursuant to 24 CFR 5.705.

HUD agrees that the requirement to conduct an inspection no less than 30 days before the commitment of HOME assistance may not allow sufficient time, resulting in duplicative inspections and unnecessary costs. Consequently, in the final rule at § 92.251(c)(1) and (c)(2), HUD is requiring that an inspection be conducted no less than 90 days before the commitment of HOME assistance. HUD acknowledges the concerns expressed about the proposed inspection required by the participating jurisdiction after a homeowner acquires a unit with HOME funds. In the final rule, to address public comment, HUD has revised the language to remove the requirement for the participating jurisdiction to inspect the unit after it is sold.

Informing homebuyers of any defects in the unit provides them with the opportunity to negotiate with the seller for repairs, or they can seek financial assistance for rehabilitation from the participating jurisdiction. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards or it cannot be acquired with HOME funds.

Manufactured Housing

HUD proposed adding a requirement to § 92.251(e) that manufactured housing assisted with HOME funds must be attached to a permanent foundation.

Comments: A few commenters requested clarification regarding which definition and type of permanent foundation would be required. The commenters inquired about the foundation requirements in HUD Handbook 4930.3G⁷ and CPD Notice 03-05⁸, as well as FHA Title II requirements for permanent foundations. Foundations for manufactured housing have major implications for the types of financing accessible to buyers and owners of manufactured homes. Some commenters expressed concern that this requirement may not be physically feasible for several existing manufactured housing sites or it would be very cost prohibitive if required as part of rehabilitation, and this could potentially exclude many units in need of rehabilitation from receiving HOME funds.

HUD Response: In the final rule, HUD is requiring permanent foundations for the new construction and replacement of manufactured housing units under § 92.251(e). HUD clarifies that the definition of “permanent foundation” means a foundation system of supports that is capable of transferring all design loads to the ground and meets the requirements of 24 CFR 203.43f(c)(i). This definition is consistent with the FHA mortgage insurance requirements for all manufactured homes, which must be constructed in conformance with the Federal Manufactured Home and Safety Standards, as evidenced by an affixed certification label in accordance with 24 CFR 3280.11. Accordingly, what determines whether a foundation is permanent is HUD's Permanent Foundation Guide for

⁷ See

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/4930.3G.

⁸ See <http://www.hud.gov/offices/cpd/lawsregs/notices/2003/03-05.pdf>.

Manufactured Housing, (HUD Publication 7584). To address commenters' concerns that it may not be possible to secure some existing manufactured housing to a permanent foundation, HUD is clarifying that foundation systems for existing units must be inspected and meet the applicable state or local codes, subject to the approval of the participating jurisdiction's building officials. In the absence of local or state codes, the participating jurisdiction must use the Model Manufactured Home Installation Standards at 24 CFR part 3285.

Ongoing Property Condition Standards during Period of Affordability

HUD proposed to eliminate the requirement that HOME-assisted rental housing meet the housing quality standards (HQS) in 24 CFR 982.401 applicable during the period of affordability and instead adopt UPCS as the minimum habitability standard, in concert with applicable state and local code requirements. HUD proposed that at a minimum, the participating jurisdiction's ongoing property standards would be required to include all inspectable items in the most recent notice setting forth the physical inspection procedures prescribed by HUD, pursuant to 24 CFR 5.705.

Comments: A few commenters supported the requirement that the housing must meet all applicable state and local code requirements and ordinances, but suggested that HUD not require participating jurisdictions to inspect or enforce those local standards. These commenters also recommended that the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926 remain as an alternative standard for compliance when viable. Other commenters suggested that participating jurisdictions should be allowed to rely on the findings of other agencies and organizations that conduct ongoing inspections to

minimize administrative burden and improve efficiency. A commenter requested guidance to assist in implementing these standards.

HUD Response: While the participating jurisdiction is responsible for ensuring compliance with the ongoing property standards requirements, it may contract with a qualified third party to perform these tasks. A participating jurisdiction can use qualified in-house staff conduct inspections or execute a contract with a qualified third party (as a contractor of the participating jurisdiction) that is independent of the project owner to conduct inspections.

Subrecipients can conduct these inspections if it is specified in their written agreement with the participating jurisdiction or it can hire an independent, third-party contractor to do the inspections. Although the participating jurisdiction staff is not required to conduct the inspections, the participating jurisdiction cannot rely on or accept independent inspections performed by any party not under contract to the participating jurisdiction or its subrecipient, including inspections and certifications by the project owner or a contractor of the project owner. Participating jurisdictions or its subrecipients cannot rely on any inspections performed by any party that is not contractually obligated to perform the participating jurisdiction's obligations to determine compliance with HOME property standards requirements. If the participating jurisdiction uses a state recipient, subrecipient, or contractor to perform these inspections, it must assess the work performed through periodic monitoring.

HUD finds that the UPCS is a more suitable inspection protocol for HOME-assisted housing than the MPS. As discussed above, the adoption of UPCS in the HOME program could facilitate alignment between HOME and other Federal affordable housing

programs. When administrative alignment regarding the use of UPCS across federal affordable housing programs is completed, participating jurisdictions and their subrecipients may choose to cooperate with other federal funders in a jointly funded project to share inspection data, and may use inspections conducted by these funders if they willing to accept the data. This could result in decreased administrative burden and cost. HUD will issue guidance or modify these regulations at the appropriate time to facilitate alignment.

In the final rule, the language has been revised to remove UPCS as a minimum requirement for the participating jurisdiction's ongoing property standards. HUD has determined that this requirement may result in duplicative inspections and could result in HOME-assisted rental units being inspected in accordance with both UPCS and state or local codes by different inspectors. The HOME statute requires that all HOME units must be inspected and meet applicable state and local codes. In many places it may be administratively burdensome or impracticable to try to combine or compare state or local codes with UPCS. Therefore, participating jurisdictions will use UPCS for property inspections of HOME-assisted rental housing only in the absence of applicable state or local codes. HUD plans to issue guidance to establish which inspectable items and areas must be included in the participating jurisdiction's ongoing property standards and which critical deficiencies must be corrected. The participating jurisdiction's property standards are not required to use any scoring, item weight, or level of criticality in the UPCS.

HUD has added language to the final regulation at § 92.251(f)(2) clarifying that the ongoing property standards for existing HOME rental projects and for rental projects to which funds are committed before the effective date of the new ongoing property

standards must continue to meet the standards in effect at the time HOME funds were committed.

o. Qualification as Affordable Housing: Rental Housing (§ 92.252)

Initial Occupancy of HOME-Assisted Units

HUD proposed revising § 92.252 to require that HOME-assisted rental units be occupied by an initial tenant within a specified period from the date of project completion. While the regulation itself did not include a timeframe, the preamble specifically solicited comments on the appropriate timeframe, which would not be less than 3 months or longer than 6 months. If units have not been leased to an eligible tenant within that time, HUD will require the participating jurisdiction to provide information about current marketing efforts and, if appropriate, a plan for marketing the unit so that it is leased as quickly as possible. If a unit is not occupied by an initial tenant after 18 months, HUD would require repayment of HOME funds invested in the units.

Comments: Several commenters stated that 18 months was a reasonable timeframe to expect HOME-assisted units to achieve initial occupancy. Of these commenters, some suggested that extensions be permitted or a formal appeals process be established. Other commenters opposed the proposed provision in § 92.252 that would require HOME funds invested in a unit that has not had an initial occupant within 18 months to be repaid to by the participating jurisdiction to its HOME account. HUD received many comments regarding the point at which a vacant unit should trigger HUD review of the marketing plan or a requirement for enhanced marketing efforts. HUD received no comments supporting a 3-month period to achieve initial occupancy and few comments in support of a 6-month period. Several commenters recommended a 9- or 12-

month timeframe for achieving initial occupancy. Some commenters cited weak market conditions in some areas, or the administrative burden of overseeing enhanced marketing on participating jurisdictions as justification for a longer period to achieve occupancy before enhanced marketing requirements are triggered. One national organization that works exclusively in rural areas commented that projects in rural areas routinely take longer than 6 months to rent up.

HUD Response: HUD agrees with commenters that for many projects it will take longer than 3 months to achieve initial occupancy of all HOME-assisted units, even when acceptable marketing. However, HUD remains concerned that a unit that is still vacant at 6 months may be the result of inadequate marketing or market demand, and that intervention to improve the marketing of the unit is needed at that point.

A unit that has not served a low- or very low-income household has never met the purposes of the HOME program and therefore, the costs associated with the unit are ineligible. HUD therefore maintains that 18 months is a more than adequate amount of time for a HOME-funded unit to be rented to an initial occupant, if the market demand for the project was adequate at the time funds were committed to it. The requirement that HOME funds expended on a unit that is never rented to an income-eligible household would have to be repaid provides participating jurisdictions further incentive to select projects for which there is adequate market demand for the affordable units. HUD is adopting the proposed provision of § 92.252 without change. Projects that encounter extraordinary circumstances can be dealt with administratively.

Requirement for Leases

HUD proposed adding a sentence to the introductory paragraph of § 92.252 to make explicit that leases are required for all HOME-assisted rental units.

Comments: Only a few commenters commented on this provision, but they were all supportive of the change. One of the commenters recommended that HUD explicitly make permissible “master leases” signed by organizations that rent individual units to clients.

HUD Response: HUD is adopting the proposed rule language without change. NAHA requires that HOME rental units be rented to low- or very low-income families. Leasing of HOME units by organizations that rent to individuals is not permissible.

High HOME Rent and Low HOME Rent Terminology

HUD proposed to incorporate the “High HOME rent” (i.e., “maximum HOME rent”) and “Low HOME rent” (i.e., “additional requirements”) terminology, which is commonly used by HUD, participating jurisdictions, and other HOME program participants, including owners, developers, and property managers, into paragraphs (a) and (b) for clarity. No comments were received on this change, and HUD is adopting the proposed language without change.

Inclusion of Utilities and Utility Allowances in HOME Rent Limits

HUD proposed a revision to § 92.252(a) to specifically state that HOME rent limits include both rent and utilities or utility allowance. No comments were received on this change, and the proposed rule language is adopted without change.

Low HOME Rent Units Receiving Project-Based Rental Assistance

HUD proposed a change to paragraph (b)(2) to make clear that participating jurisdictions may designate more than the minimum 20 percent of units in a project as

Low HOME rent units, as is common practice in many HOME projects, particularly in projects that also receive project-based rental assistance. This practice facilitates the use of HOME funds for extremely low-income households, such as Section 202 projects for the elderly or permanent supportive housing for the homeless.

Comments: A few commenters expressed concern that, by limiting the applicability of the project-based assistance rents to Low HOME rent units (which must be occupied by households with incomes at or below 50 percent of area median income), HUD is limiting the benefit of this provision.

HUD Response: The HOME rent limitations, including required occupancy of Low HOME rent units by very low-income households, are statutory. HUD does not have the discretion to extend the Low HOME rent provisions to units occupied by households with incomes above 50 percent of area median income. The proposed rule language is adopted without change.

Single Room Occupancy Unit Rents

HUD proposed adding language to § 92.252(c) to establish the applicable rent limits for Single Room Occupancy (SRO) units assisted with HOME. Recognizing that a zero-bedroom rent was not appropriate for all SROs, depending on the amenities located within the unit, HUD established these rent limitations in administrative guidance in 1994. HUD did not receive comments on this provision, and is adopting the proposed rule language except that a circular reference to fair market rents is corrected in both subparagraphs (c)(1) and (c)(2). The reference should be to maximum HOME rent.

Utility Allowances

HUD proposed adding language to § 92.252(d) to require participating jurisdictions to use the HUD Utility Schedule Model to determine a project's annual utility allowance or to otherwise determine a project's utility allowance based upon the utilities used at the project. The model was developed by HUD and enables the user to calculate utility schedules by housing type after inputting utility rate information. The IRS uses this model to determine utilities for its LIHTC program. The model can be found at: <http://huduser.org/portal/resources/utlmodel.html>.

Comments: A few commenters opposed the adoption of the Utility Schedule Model, stating that it is more complicated to determine a utility allowance for each project as opposed to relying on the local Public Housing Agency's (PHA) utility allowance. One of the commenters asked whether participating jurisdictions would be able to continue using the PHA utility allowance under the proposed regulatory language.

HUD Response: Under the proposed rule language, a participating jurisdiction would be required to determine an individual utility allowance for each HOME rental project, either by using the model or by otherwise determining the allowance based upon the specific utilities used at the project. Participating jurisdictions would no longer be permitted to use the utility allowance established by the local PHA for every HOME-assisted rental project. Application of these standardized utility allowances may result in undercharging or overcharging of rent, particularly in projects where tenants pay utilities directly. As more projects are constructed or rehabilitated to higher energy-efficiency standards, thus enhancing affordability of the units, the use of a standard utility allowance that may not represent actual utility costs is difficult to justify. The availability of the

HUD Utility Schedule Model minimizes any burden associated with determining utility allowance for each project. HUD is adopting the proposed rule language without change.

Requirement to Repay when Affordability Restrictions are Terminated during the Affordability Period

HUD proposed adding a sentence to § 92.252(e) to clarify existing regulatory requirements by specifically stating that the termination of affordability restrictions under paragraph (e) does not relieve a participating jurisdiction of its repayment obligation for housing that did not remain affordable for the required period under § 92.503(b). To increase local administrative flexibility, HUD also proposed specifically authorizing use agreements to impose affordability restrictions, in addition to those currently included in the regulations (i.e., deed restrictions and covenants running with the land). HUD also proposed adding language to clarify that HOME affordability restrictions must be recorded in accordance with state recordation laws.

Comments: A few commenters stated that participating jurisdictions should only be required to repay the prorata share of the HOME investment in a foreclosed project attributable to the proportion of the affordability period that was not met. Another commenter suggested that participating jurisdictions should only be required to repay to its HOME account funds that the participating jurisdiction is able to recover through the foreclosure. Other commenters stated that they record enforcement mechanisms other than deed restrictions, land covenants or use restrictions to impose HOME requirements on project deeds.

HUD Response: HUD does not agree that participating jurisdictions should only be required to repay a prorata share of the HOME investment in a project that does not

meet affordability requirements for the required period or that they should only be required to repay what they can obtain at foreclosure. Adopting the former approach would provide an incentive for owners or participating jurisdictions to repay HOME funds to terminate restrictions and potentially convert housing to market rate. Under the latter approach, a participating jurisdiction with a troubled HOME project would lack a financial incentive to pursue a financial or physical workout of the project. In response to comments regarding the mechanisms that participating jurisdictions employ to impose HOME requirements, HUD is revising this paragraph to eliminate the term “use agreements” and instead state that there must be an agreement restricting the use of the property that gives the participating jurisdiction the right to require specific performance.

Review and Approval of Rents Charged in HOME Units

HUD proposed adding a sentence to § 92.252(f)(2) to require that a participating jurisdiction must review and approve the rents for its HOME-assisted rental projects each year to ensure that they comply with the HOME limits and do not result in undue increases from the previous year. Participating jurisdictions are currently required to provide the published maximum HOME rents to project owners and then to examine reports submitted by owners outlining for each HOME unit the rent being charged and the income of the tenant. The additional step codifies existing practice of most participating jurisdictions, which do not permit HOME project owners to raise rents without approval or to charge the maximum permissible HOME rent.

Comments: A few commenters, all members of the same HOME consortium, expressed concern about the administrative burden of reviewing and approving rents. A commenter requested that HUD provide guidance on how to implement an efficient rent

approval process. Another commenter questioned the legal basis for participating jurisdictions to approve the amount of rent increases as long as rents remain at or below the HOME maximum rent limits.

HUD Response: While upfront review and approval of rents may create a modest additional burden for participating jurisdictions that are not currently engaging in the practice, HUD maintains that adopting this practice, which is already widely in use among participating jurisdictions, will reduce the much greater burden associated with bringing rental projects with noncompliant rents into compliance with HOME affordability requirements. Further, participating jurisdictions that underwrite projects with long-term sustainability as a goal rarely permit a project to charge maximum HOME rents to ensure that future viability of the project is not endangered by minimal rent increases or even decreases in the applicable HOME rents. These participating jurisdictions generally include upfront approval of rent increases in their HOME written agreements. HUD is adopting the proposed rule language without change.

Fixed and Floating HOME Rental Units

HUD proposed adding language to § 92.252(j) to specify that the written agreement between the participating jurisdiction and a project owner must state whether HOME rental units will be fixed or floating during the period of affordability because participating jurisdictions are not always documenting the determination or including the specific designation in their written agreements.

Comments: A commenter stated that HUD should permit a project's unit designation as fixed or floating to be changed during the period of affordability. Another commenter asked how a participating jurisdiction could designate units in a project with

floating units as HOME units at the time of commitment, since units would not yet be occupied.

HUD Response: The decision regarding whether HOME units will be fixed during the period of affordability or will be permitted to float is nearly always determined by whether or not the units in a project are comparable in terms of mix of bedroom sizes, square footage, and level of amenities. Consequently, there are few projects that can change from a fixed to a floating designation during the period of affordability. For this reason, HUD is not adopting this suggestion. To clarify, the participating jurisdiction must determine whether the units in a project will be fixed or floating at the time of commitment of the HOME funds because that decision affects the amount of HOME funding the project can receive. Depending on the mix of unit sizes in a project, HOME units may not be permitted to float. The fixed versus floating determination dictates the income targeting requirements applicable to each HOME unit, HUD is adopting the proposed rule language. However, it is revising the language slightly to clarify that the written agreement must require the project owner to provide the participating jurisdiction with the address and unit number of each HOME-assisted unit no later than initial occupancy rather than at project completion.

Cross-References for User Convenience

HUD proposed adding two new paragraphs to § 92.252 to make the regulations more user-friendly for persons attempting to locate requirements related to rental housing. No comments were received on this change and HUD is adopting the proposed rule language without change. A new § 92.252(k) that cross-references the tenant selection requirements located in § 92.253(d) is added. A new paragraph (l) is added to §

92.252 that cross-references participating jurisdictions' ongoing responsibilities for on-site inspections, and financial oversight located in § 92.504(d).

p. Tenant Protections and Selection (§ 92.253)

Required Leases in HOME Rental and Tenant-Based Rental Assistance Units

HUD proposed revising § 92.253(a) to clarify that there must be a written lease for all HOME-assisted rental units and units rented by HOME tenant-based rental assistance recipients, and that the statutory tenant protections in this paragraph must be integrated into the lease. HUD received no comments on the proposed clarification, and the proposed rule language is adopted without change.

Mandatory Supportive Services

HUD proposed adding a new paragraph § 92.253(b)(9) prohibiting lease terms that make acceptance of supportive services mandatory, except that a tenant in transitional housing may be required to accept supportive services. This clarification is consistent with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of disability in Federally-funded programs and activities and HUD's implementing regulations at 24 CFR part 8. HUD did not receive comments on the provision in this paragraph. HUD received comments on the related provision in § 92.253(c), which are addressed below. HUD is adopting this proposed rule provision without change.

Termination of Tenancy through Eviction or Refusal to Renew a Lease

HUD proposed revising § 92.253(c) to provide that a tenant's failure to follow a transitional housing services plan is a permissible basis for terminating a tenancy or refusing to renew a lease, to ensure the unit can be made available to individuals who use

the transitional housing for its intended purpose. HUD also proposed revising § 92.253(c) to make explicit that an increase in a tenant's income does not constitute good cause for termination or refusal to renew.

Comments: HUD received several comments supporting the addition of the provision making failure to follow a transitional housing services plan a basis for evicting or refusing to renew the lease of a tenant of a transitional housing project. A few commenters requested that HUD clarify whether supportive services are the same as a transitional housing services plan.

Several commenters objected to the requirement that owners of HOME rental housing provide 30-day written notice before evicting a tenant or refusing to renew a lease. Commenters stated that it is necessary for project owners to have the ability to remove tenants who pose an imminent threat to residents or employees of the project or to the property.

HUD Response: HUD agrees that the use of the term “transitional housing services plan” may lead to confusion, since not all transitional housing providers establish such plans. Consequently, at this final rule stage, HUD is revising the rule language to eliminate the term and to make clear that failure to participate in any required supportive services is a basis for terminating tenancy of a transitional housing resident.

The 30-day written notice requirement for eviction or refusal to renew a lease is not new. It is a longstanding provision of the HOME regulations that implements a statutory requirement that 30-day written notice be provided in these cases. HUD is adopting the proposed rule language without change.

Nondiscrimination against Rental Assistance Subsidy Holders

HUD proposed moving the provisions on nondiscrimination against rental assistance subsidy holders in existing § 92.252(d) to § 92.253(d)(4). No substantive change was proposed.

Comments: A few commenters suggested that HUD expand the prohibition on discrimination against voucher holders to include policies and criteria that have the effect of excluding families with vouchers or HOME tenant-based rental assistance.

HUD Response: The existing rule language reflects the provisions of section 215(a)(1)(D) of NAHA. HUD finds that this language adequately implements the statutory intent. The provision is being moved to § 92.253(d)(4) as proposed, without change.

Preferences for Persons with Disabilities

HUD proposed adding language at new § 92.253(d)(3)(i) that would provide that any limitation or preference for HOME-assisted housing must not violate nondiscrimination requirements listed in § 92.350, and clarify that a limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., HUD's Section 202 supportive housing for the elderly, Section 811 housing for persons with disabilities, etc.). HUD also proposed a new § 92.253(d)(3)(ii) that would provide that preferences may be given to disabled families who need services offered at a project, if certain conditions are met.

Comments: A commenter supported the change as written in the proposed rule. Other commenters drafted and submitted substitute language addressing permanent supportive housing, manufactured housing, and housing receiving LIHTC. A commenter

submitted revised regulatory language addressing what was believed to be technical and interpretative issues.

HUD Response: HUD's proposed language is compliant with applicable civil rights laws and regulations, including Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8. Additionally, the proposed rule language does not present problems for the particular permanent supportive housing model favored by several commenters, which was their primary concern. In fact, adopting the suggested language would limit flexibility to use other models of permanent supportive housing. Consequently, HUD declines to adopt any of the alternative language offered by commenters and is adopting the proposed rule language without change.

q. Qualification as Affordable Housing: Homeownership (§ 92.254)

95 Percent of Area Median Purchase Price Limitation on Sales Price and After-Rehabilitation Value

HUD proposed revising § 92.254(a)(2)(iii) so that participating jurisdictions would no longer be permitted to use the FHA Single Family Mortgage Limit (known as the 203(b) limit) as a surrogate for 95 percent of area median purchase price. Section 215(b) of NAHA requires that the initial purchase price of homeownership units assisted with HOME funds not exceed 95 percent of the area median purchase price for single family housing, as determined by HUD. The preamble to the proposed rule describes in detail why continuing to use the 203(b) limit as the sales price or after-rehabilitation value limit for HOME homeownership projects would violate NAHA. HUD proposed calculating 95 percent of median purchase price for each MSA or county and providing the limits annually, as it has been doing for informational purposes since 2008. In

response to participating jurisdictions' concerns regarding the very low median sales prices in some non-metropolitan areas, HUD proposed amending § 92.254(a)(2)(iii) to permit participating jurisdictions to use the greater of the HUD-issued 95 percent of area median purchase price limit or 95 percent of the Bureau of the Census' median sales price for single family houses sold outside of MSAs.

Comments: Many commenters opposed elimination of the 203(b) limit, which currently has a floor of \$200,170, as the sales price or after-rehabilitation value limit for HOME-assisted homeownership units. Several of these commenters suggested that HUD adopt 95 percent of the national median sales price as the HOME homeownership limit. A commenter recommended that HUD permit each State participating jurisdiction to use 95 percent of its statewide median sales price as its HOME limit. Another commenter suggested that HUD adopt a phased approach to implementing the new limits. Several commenters approved HUD's proposal to permit participating jurisdictions to use the greater of its HUD-calculated 95 percent of area median purchase price or the Census Bureau's median sales price for single family houses sold outside of MSAs as the HOME homeownership limit for new construction units. Other commenters expressed concern that the requirement that the after-rehabilitation value of homeownership units rehabilitated for sale or for existing low-income owner-occupants not exceed the HUD-calculated 95 percent limits would all but eliminate many participating jurisdictions' ability to use HOME funds for such purposes. These commenters stated that eliminating or limiting the use of HOME funds for rehabilitation of existing housing would have a detrimental effect on low-income seniors and on neighborhood revitalization efforts. Some of these commenters recommended that HUD establish a minimum limit for

existing housing acquired or rehabilitated with HOME funds, similar to the Census Bureau figure proposed for newly constructed homeownership units.

HUD Response: HUD agrees that limiting the use of HOME funds for rehabilitation in areas with low median sales prices and/or dilapidated housing stock may be an unintended consequence of the NAHA provision, the purpose of which is to ensure that HOME funds are used only for modest housing. However, HUD is statutorily prohibited from retaining the 203(b) limit as the 95 percent of area median purchase price for an area. Consequently, HUD is eliminating the 203(b) limit as the sales price or after-rehabilitation value limit for HOME-assisted homeownership housing in this final rule.

HUD has carefully considered how to address commenters' concern about the effect that low median sales prices in some areas will have on the HOME program while still complying with the NAHA provisions. HUD has determined that the use of an alternate data set that excludes housing that is not in standard physical condition is consistent with the statutory intent and yields 95 percent of area median sales figures that more accurately reflect the market value of newly constructed and standard existing housing. For newly constructed single family housing units being developed or acquired with HOME funds, HUD will provide limits for affordable newly constructed housing based on 95 percent of the median purchase price of newly constructed housing in the area using data from the Federal Housing Administration (FHA) and other appropriate data sources, with a minimum limit based on 95 percent of the U.S. median purchase price for new construction for nonmetropolitan areas. For existing single family housing units being acquired and/or rehabilitated with HOME funds, HUD will provide limits for affordable existing housing based on 95 percent of the median purchase price of existing

housing in the area using data from the FHA and other appropriate data sources on sale prices of existing homes in standard condition, with a minimum limit based on 95 percent of the state-wide nonmetropolitan area median purchase price using this data.

Participating jurisdictions also would continue to have the option to determine their own 95 percent of area median value limit using the methodology in the regulation, which remains unchanged. HUD is amending § 92.254(a)(2)(iii) of the regulation to establish these affordable housing value limits.

Conversion of Unsold Homeownership Units to Rental Housing

HUD proposed revising § 92.254(a)(3) to require participating jurisdictions to convert homebuyer housing that has not been sold to an eligible homebuyer within 6 months of the completion of construction or rehabilitation to rental housing that complies with all provisions of § 92.252. If an unsold homebuyer unit is not converted to rental housing, the participating jurisdiction would be required to repay the HOME funds expended on it.

Comments: HUD received many comments opposing adoption of this proposed provision. The commenters stated that the provision would discourage the use of HOME funds for development of homebuyer housing, because both developers and construction lenders would be unwilling to risk participating in projects that might be required to change tenure type after construction. Commenters were also concerned about finding permanent financing to repay private construction loans, since there would be no sales proceeds to retire construction debt. Other commenters were concerned that homeowner association rules might prohibit a conversion to rental housing; one commenter asked that HUD specifically exclude HOME-funded condominium units for this reason. Many

commenters stated that the 6-month deadline was arbitrary or unrealistic given current market conditions. Some commenters recommended that HUD extend the period for sale of homebuyer units to periods ranging from 9 to 24 months before requiring conversion. Several commenters requested that HUD permit unsold homebuyer units to be placed into service as lease-purchase units. Many commenters pointed out that the developers that build homeownership units often do not have the capacity to function as owners/property managers of rental units. Other commenters requested that units converted to rental be permitted to convert back to homeownership at any time.

HUD Response: HUD recognizes that commenters raised valid concerns regarding this provision. HUD shares the commenters' concerns about the availability of permanent financing and the challenge of finding an alternate owner for a homebuyer unit being converted to a HOME rental unit. HUD is also aware that some participating jurisdictions continue to award HOME funds for additional homebuyer units, despite large inventories of foreclosed properties, a lack of current market demand for homebuyer units, and/or inability of the target population to access first mortgage financing necessary to purchased HOME-assisted units. Congress demonstrated that it shares HUD's concern by including a 6-month deadline for selling homebuyer units funded with FY 2012 and FY 2013 HOME funds. Clearly, participating jurisdictions that wish to use HOME funds for development of additional homebuyer units must carefully consider projected demand for the units and the availability of private mortgage financing for low-income homebuyers. They must create and maintain their own list of potential low-income homebuyers, rely less on developers to identify homebuyers, and pre-identify specific homebuyers for units to the extent possible.

In response to the concerns raised, HUD has determined that it is appropriate to extend the timeframe for selling homebuyer units to 9 months from the completion of construction. In addition, to alleviate potential noncompliance due to common delays in closings, HUD is specifying that a ratified contract for purchase of a HOME-assisted unit is sufficient to meet the deadline for sale of the unit. This extension balances, to some extent, the interest in ensuring that federal funds timely result in public benefit. Because this final rule applies to projects to which HOME funds are committed on or after the effective date, this provision will not affect units that are already built or under construction. HOME homebuyer projects funded with FY 2012 and FY 2013 HOME funds will be subject to the provisions of Public Law 112-55, *Consolidated and Further Continuing Appropriations Act, 2012*, which established a 6-month period for selling HOME homebuyer units or converting them to rental. Before committing HOME funds to a homebuyer project, participating jurisdictions must carefully consider how they would address issues of ownership, management, and financing should they be required to convert an unsold homebuyer unit to a rental unit. HUD is not adopting the recommendation to permit unsold homebuyer units to be converted to lease-purchase units. Lease-purchase arrangements can work very well when administered through a well-designed lease-purchase program that includes strong management and tenant supports and counseling. If a participating jurisdiction has such a program, it can identify a lease-purchase candidate and place an unsold unit into this program before 9 months has elapsed. If a tenant wishes to purchase a unit that has been converted from a homebuyer activity to a rental activity, this is allowable under 24 CFR 92.255 of the existing regulations.

Income of all Persons Residing in the Housing

HUD proposed revising §§ 92.254(a)(3) and 92.254(b)(2) to specify that the income of all adults residing in the housing must be included when determining the income of a family applying for homebuyer or homeowner rehabilitation assistance. No opposition was expressed for this proposal and a commenter voiced support for this proposed change. HUD is adopting the proposed rule provision in the final rule.

Housing Counseling

HUD proposed revisions to § 92.254(a)(3) to require that all homebuyers receiving HOME assistance or purchasing units developed with HOME funds receive housing counseling.

Comments: HUD received several comments related to the proposed housing counseling requirement. A commenter opposed requiring that HOME-assisted homebuyers receive housing counseling. Several commenters expressed support for the requirement, citing the value of housing counseling in preparing families for homeownership. However, some commenters expressed concern about the cost of compliance, given that counseling provided to individuals who do not complete a HOME-assisted purchase can only be charged as HOME administrative costs. A few commenters presented alternative approaches to addressing the possible financial burden, including establishing housing counseling eligible as a stand alone activity under which participating jurisdictions could run HOME-funded housing counseling programs. Many commenters assumed that potential homebuyers could not be charged a fee for homebuyer counseling and objected to the perceived prohibition.

HUD Response: Because the HOME statute clearly specifies that there are four eligible activities, HUD cannot administratively establish additional eligible activities. For this reason, it is not possible to establish freestanding housing counseling programs as eligible for HOME funds. Housing counseling provided to an individual or family can be charged as a project-related soft cost under § 92.205(d) or as an administrative cost under § 92.207(b). Contrary to the understanding of several commenters, HUD does not currently prohibit potential HOME homebuyers from paying a fee to cover the cost of housing counseling and did not contemplate creating such a prohibition in the proposed rule. HUD is adding language to §§ 92.206(d)(6), 92.207(b) and 92.214(b)(1)(iii) to make clear that homebuyers may be charged reasonable fees to cover the cost of housing counseling. HUD is adopting the provision requiring housing counseling for homebuyers as published in the proposed rule.

Approval of Resale and Recapture Provisions

HUD proposed revising § 92.254(a)(5) to require participating jurisdictions to obtain HUD's specific written approval of their resale and recapture provisions.

Comments: Several commenters expressed concern that HUD does not have adequate staff to timely review and approve the number of resale and recapture provisions that would be submitted for review and approval. Specifically, commenters stated that limited HUD staffing and the potential for a short approval timeframe would delay approval of resale and recapture provisions. Several commenters stated that HUD could simplify the approval process by either providing standard resale and recapture language, thereby eliminating the need for HUD approval, or by maintaining the current

process of approving the provisions in each participating jurisdiction's annual action plan.

HUD Response: Currently participating jurisdictions are required to describe their resale and recapture provisions in their annual action plans they submit to HUD for review and approval. HUD's approval of an annual action plan provided implicit approval of the resale and recapture provisions contained in the plan. HUD did not propose a significant change to this process. Participating jurisdictions will still submit resale and recapture provisions in the consolidated or annual action plans, unless they have a need to submit new provisions at some other point in the year. The change is that HUD must specifically provide notification that the provisions have been approved or disapproved. HUD does not view this as a significant additional burden on HUD staff and is not concerned that this change would affect the timeliness of approvals. Consequently, HUD is adopting the proposed rule language without change.

Fair Return and Affordability to a Reasonable Range of Low-income Homebuyers

HUD proposed amending § 92.254(a)(5)(i) to require participating jurisdictions, in their resale provisions, to specifically define "fair return on investment" and "affordability to a reasonable range of low-income buyers," and to address how it will make the housing affordable if the resale price that is needed for a fair return on investment is too high to be within the affordable range.

Comments: HUD received a few comments related to defining fair return on investment and affordable to a reasonable range of low-income homebuyers. The commenters stated that HUD should not adopt the language as proposed, instead requesting that HUD permit participating jurisdictions the flexibility to determine fair

return and affordability based on market conditions at the time of sale. The commenters also stated that HUD should clearly define these terms for participating jurisdictions to ensure clarity and accuracy.

HUD Response: HUD has found that many resale provisions are not clearly described and do not meet statutory and regulatory requirements. Requiring participating jurisdictions to clearly define these terms is expected to encourage participating jurisdictions to improve their ability to design resale requirements that are understandable to potential homebuyers and reflect the local housing market. Further, resale provisions are required to be imposed at the time that the HOME-assisted purchase takes place. Participating jurisdictions are not permitted to decide what constitutes fair return or affordability to a reasonable range of low-income homebuyers at the time that the HOME-assisted unit is resold. HUD is adopting the proposed rule language without change.

Assumption of Recapture Obligations by Subsequent Homebuyer

HUD proposed amending § 92.254(a)(5)(ii) to permit a subsequent low-income purchaser of a HOME-assisted homeownership unit to assume the HOME loan and recapture obligation entered into by the original buyer.

Comments: Several commenters supported the proposed provision permitting a subsequent income-eligible homebuyer to assume existing loan and affordability restrictions under a recapture provision, agreeing that it would promote administrative simplicity for participating jurisdictions and assisted homebuyers.

HUD Response: HUD is adopting the provision, but has added a clarification that the subsequent, eligible homebuyer can only assume the existing loan and affordability

obligations if no additional HOME assistance is provided to the subsequent homebuyer. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in § 92.254) to the original homebuyer would be recaptured and separate HOME subsidy would be provided to the new homebuyer.

Exceptions to Qualification as Homeowner

HUD proposed amending § 92.254(c) to permit rehabilitation assistance to be provided in three types of situations – heir properties, life estates, and living trusts -- under which the occupant of the housing would not meet the definition of “homeownership” in § 92.2.

Comments: Two commenters urged HUD to include beneficiary deeds, under which a property passes, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges and other encumbrances made by the owners during the owner’s lifetime, directly to a grantee beneficiary upon the death of the owner, as an eligible form of homeownership.

HUD Response: HUD agrees that beneficiary deeds, which are used in a number of states, should qualify as a form of homeownership for purposes of owner-occupied rehabilitation projects. HUD has revised this final rule to permit owners that have beneficiary deeds to qualify for HOME rehabilitation assistance, if the owner is low-income at the time assistance is provided.

Oversight of Certain Subrecipients and Contractors

HUD proposed adding a new § 92.254(e) that would put in place safeguards to prevent potential abuses in situations in which the same entity is under contract with the

participating jurisdiction to provide HOME homeownership assistance (e.g., downpayment assistance) and is also providing first mortgage financing to the same families.

Comments: A commenter opposed requiring participating jurisdictions to verify income eligibility and inspect units in situations in which subrecipients or contractors are providing both the first mortgage and HOME downpayment assistance because it was overly burdensome. A few commenters sought clarification of whether the provisions would apply this requirement to primary lenders that perform HOME administrative functions (e.g., income determinations) related to qualifying applicants for HOME assistance, but do not originate HOME loans to homebuyers.

HUD Response: The proposed rule limits this provision to situations in which a contractor or subrecipient acts as a private mortgage lender and as the originator of HOME loans. However, at this final rule stage, HUD extends these provisions to situations in which a primary lender also acts as a subrecipient or contractor qualifying a household or housing unit for HOME assistance. It is in the public interest to provide this extension because these organizations earn fees for originating non-HOME mortgages to borrowers also receiving HOME funds. Participating jurisdictions that find this additional oversight burdensome should avoid entering into contractual agreements that may result in financial incentives to approve HOME assistance. HUD is adopting the proposed provision and extending it to cover the situations described above.

Underwriting, Responsible Lending, and Refinancing Policies

HUD proposed adding a new paragraph (f) to § 92.254 requiring participating jurisdictions that use HOME funds for homebuyer assistance to develop and follow

written policies for underwriting homeownership assistance, preventing predatory lending (i.e., ensuring responsible lending), and resubordinating HOME debt in the event of refinancing of private debt.

Comments: Several commenters recommended that HUD clarify the proposed language by adopting industry terms of art such as housing payment ratio and installment debt ratio. Commenters also emphasized that participating jurisdictions should be encouraged to fully and carefully evaluate borrower credit and develop strict anti-predatory lending guidelines.

HUD Response: HUD agrees with the commenters about the importance of fully and carefully evaluating borrower credit. Accordingly, HUD maintains the requirement in the proposed rule that participating jurisdictions establish underwriting policies providing underwriting standards for homeownership assistance that evaluate housing debt and overall debt of the family, the amount of assistance request, monthly expenses of the family, assets available to acquire the housing, and financial resources to sustain homeownership. However, at this final rule stage, HUD has substituted the term “responsible lending” for “anti-predatory lending” on the basis that such term better reflected the objective of having underwriting policies that strive to ensure that the HOME funds used for homeownership opportunities in which the other (non-HOME) mortgage debt is affordable to and sustainable by the borrower.

With respect to sustainable homeownership, it is important to note that since issuance of the December 16, 2011, proposed rule, the Consumer Financial Protection Bureau (CFPB) completed its rulemaking under section 1411 of subtitle B of Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Publ. L. 111-230,

124 Stat. 1736, approved July 21, 2010) (Dodd-Frank Act). Section 1411 added a new section 129C to the Truth-in-Lending Act (TILA) to provide minimum standards for considering a consumer's ability to repay a residential mortgage. The CFPB published a final rule on January 30, 2013, at 78 FR 6408, entitled, "Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z)" (QM rule) to implement the provisions of new section 129C of TILA. Section 1412 of the Dodd-Frank Act requires that HUD, with regard to mortgages insured under the National Housing Act; the Department of Veterans Affairs (VA), with regard to a loan made or guaranteed by the Secretary of Veterans Affairs; the Department of Agriculture (USDA), with regard to loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h); and the Rural Housing Service (RHS), with regard to loans insured by the RHS, prescribe rules in consultation with the CFPB to define the types of loans they insure, guarantee, or administer, as the case may be, that are "qualified mortgages," and revise, add to, or subtract from the statutory criteria used to define a qualified mortgage. Although the CFPB final rule established certain minimum requirements for creditors making ability-to-repay determinations, those requirements are not designed to address the specific homeownership concerns of the HOME program, which pertain to the ability of low-income homebuyers to sustain homeownership. While the CFPB requirements are a good starting point for assessing the appropriateness of private first mortgages, a participating jurisdiction's lending policy will need to consider additional factors because HOME-assisted homebuyers are low-income.

Therefore, as noted earlier, HUD is adopting the requirement in the proposed rule that participating jurisdictions establish underwriting and responsible lending policies

that help to ensure that HOME-assisted homebuyers obtain mortgages that they have the ability to repay. HUD will issue guidance on responsible lending that explains the CFPB ability-to-pay principles and suggests additional considerations that would be appropriately included in a lending policy applicable to low-income homebuyers. The final lending policies, however, rest with the judgment of the participating jurisdiction, which is in the best position to craft responsible lending policies based on the populations they serve.

r. Converting Rental Units to Homeownership Units for Existing Tenants (§ 92.255)

HUD proposed a revision to § 92.255 to clarify that the existing regulation does not permit conversion of an entire HOME-assisted multifamily rental project to condominium ownership during the period of affordability and that tenants' refusal to purchase their rental housing unit does not constitute grounds for eviction or failure to renew the lease.

Comments: A few commenters supported the clarification that tenants cannot be evicted or lose their lease because they cannot or will not purchase the HOME rental unit they occupy. A commenter stated that this provision conflicted with LIHTC rules.

HUD Response: HUD is adopting the proposed rule language without change. HUD disagrees that this provision conflicts with LIHTC rules, which require a unit to remain a rental unit during the 15-year compliance period. LIHTC does permit long-term lease-purchase agreements to permit a tenant to purchase a unit after the 15-year rental period has elapsed. HUD does not see a parallel rationale, since the provision for HOME rental units applies during the HOME period of affordability.

s. Set-aside for CHDOs (§ 92.300)

Housing Owned, Developed or Sponsored by a CHDO

HUD proposed to codify longstanding definitions of housing that is owned, developed, or sponsored by a CHDO currently established in HUD's administrative guidance into the regulation in §92.300(a)(2) through (a)(6), with minimal revisions. The proposed definitions included the existing requirement that a CHDO must have demonstrated development capacity to undertake development of a project in order to receive CHDO funds, regardless of whether the CHDO would be the "owner," "developer," or "sponsor" of the project. The proposed rule differentiated between the roles of CHDO "sponsors" and CHDO "developers" of rental housing, making clear that a developer of HOME-assisted rental housing must also own the housing during the period of affordability, whereas a sponsor may sell the HOME-assisted rental housing to a non-profit organization or another CHDO.

Comments: HUD received many comments on the proposed changes to the definitions of own, develop and sponsor that were included in the proposed rule. Several commenters expressed concerns about the modifications to the definition of "developer" and the specificity in the "sponsor" model. Other commenters expressed concern about the requirements of CHDOs to demonstrate development experience in order to access CHDO set-aside funds, stating that in many areas CHDOs lack capacity to develop housing, particularly in rural or non-metro areas.

HUD Response: In response to public comment, HUD is establishing a set of definitions for the CHDO as "owner, developer, or sponsor" that facilitates participation of CHDOs that have the capacity to own affordable rental housing, but do not have the capacity to develop such housing. These modified definitions would allow non-profit

organizations an increased ability to access the CHDO set-aside funds to assist their neighborhoods address their affordable housing needs. In this final rule, HUD establishes a definition of “owner” that allows for a CHDO to receive CHDO set-aside funds if it has the capacity to own and operate HOME-assisted housing, even if it does not have the capacity to develop it. The new definition of owner for CHDOs should aid large rural States, which consistently experience great difficulty in developing and retaining capable CHDOs. The majority of the changes in the definition of CHDO as the “owner,” “developer,” or “sponsor” pertain to HOME-assisted rental housing. A CHDO that is an “owner” would be required to own the HOME project during development and throughout the period of affordability, and would be required to hire a project manager or have a contract with a development contractor to oversee all aspects of the development. A CHDO that is a “developer” of rental housing must arrange for the construction financing and is in sole charge of the construction, and must own the HOME-assisted housing throughout the period of affordability. A CHDO that is a “sponsor” of HOME-assisted rental housing “owns” and “develops” the rental housing project that it agrees to convey to a private nonprofit organization at a predetermined time after completion of the development of the project.

For HOME-assisted homebuyer projects, the housing is “developed” by the CHDO if it is the owner (in fee simple absolute) and developer of new housing that will be constructed or existing substandard housing that is owned or will be acquired by the CHDO and rehabilitated for sale to low-income families, in accordance with § 92.254. To be the “developer,” the CHDO must arrange financing of the project and be in sole charge of construction.

CHDO Must Be Sole General Partner in Limited Partnerships and Limited Liability Corporations

HUD proposed language to clarify the allowable ownership structures and roles of CHDOs when they are participating in limited partnerships or limited liability corporations as developers or sponsors of HOME-assisted projects.

Comments: HUD received several comments opposing the requirement that the CHDO, or its subsidiary, must be the “sole general partner” in a limited partnership, or the sole managing member of a limited liability company (LLC), when acting as the “developer” or “sponsor” of rental housing owned by a limited partnership or an LLC. Commenters expressed concern about this requirement, specifically as it relates to securing financing for projects that will receive Low Income Housing Tax Credits (LIHTCs). Commenters described and supported ownership structures in which the CHDO is the “co-general” partner, with another entity that may or may not have control or authority in decision making on behalf of the ownership entity.

HUD Response: The HOME regulations, at § 92.300(a)(1) have always required that, if a CHDO owns a project in partnership, or owns the project through its wholly-owned for-profit or non-profit subsidiary, it must be the managing general partner. This requirement implements the statutory intent of the CHDO set-aside to provide funding for housing under the control of CHDOs, in order to help ensure that community needs are met. In the proposed rule, HUD is extending its existing requirement to LLCs, which are ownership entities very similar to limited partnerships. The other partnership arrangements raised by commenters, such as “co-general partners,” do not meet the

statutory requirements for CHDOs. HUD is adopting the proposed rule language without change.

Ownership “In Fee Simple Absolute”

HUD proposed language that CHDOs must own the HOME-assisted housing in “in fee simple absolute.”

Comments: Several commenters opposed the requirement that the property be owned by the CHDO “in fee simple absolute.” Commenters requested that HUD consider housing “owned” by a CHDO if it is subject to a long-term ground lease.

HUD Response: HUD agrees with the comments submitted and, at this final rule stage, has revised this requirement to include long-term ground leases in the definition of housing owned by a CHDO. The revision accommodates ownership structures where the ownership of the land is not permitted due to other restrictions (e.g., land trusts).

Replacement of CHDO for Cause

The proposed rule required that rental housing that is developed or owned by a CHDO must be owned by a CHDO throughout the period of affordability. Should a CHDO be removed as owner, HUD proposed that the owner of the HOME-assisted housing be replaced by another CHDO.

Comments: Several commenters opposed the requirement that if a CHDO is removed for cause, it must be replaced with another CHDO. Other commenters requested additional guidance on what constitutes “for cause.” Some commenters requested specific guidance and clarification about how the requirements of this section will be applied.

HUD Response: CHDO funds are required to be used for projects that will be owned, developed or sponsored by a CHDO. HUD has determined that, if a CHDO is removed for cause, meaning it violated the written agreement or partnership agreement, it must be replaced by another CHDO in order for the project to remain an eligible CHDO set-aside project. HUD will issue additional guidance on all CHDO requirements established in this final rule.

t. Other Federal Requirements

1. Affirmative Marketing; Minority Outreach Program (§ 92.351)

HUD proposed revising § 92.351 to: (1) remove the provision that affirmative marketing requirements do not apply to tenants with tenant-based rental assistance because HOME-assisted rental housing must always be affirmatively marketed without regard to whether the potential tenant has rental assistance; and (2) expand the applicability of affirmative marketing provisions to HOME-funded programs in addition to projects with 5 or more HOME-assisted units.

Comments: Several commenters supported the expanded affirmative marketing requirements. One commenter was concerned that a one-size-fits-all approach to affirmative marketing would have limited effectiveness. Another commenter requested clarification on how affirmative marketing requirements would apply to a downpayment assistance program in which homebuyers choose their own homes.

HUD Response: In accordance with 24 CFR 92.351, participating jurisdictions are required to adopt affirmative marketing procedures for their programs and projects. The specific procedures to be used will depend on the type and size of the project. A participating jurisdiction administering a downpayment assistance program would be

required to affirmatively market the program (i.e., the availability of federal funds for downpayment assistance), rather than units available for purchase. HUD is adopting the proposed rule language without change.

2. Environmental Review (§ 92.352)

HUD proposed revising § 92.352 to clarify that the applicability of environmental review regulations is based on the type of HOME project (new construction, rehabilitation, acquisition) or activity (tenant-based rental assistance), not the particular cost paid with HOME funds.

Comments: A few commenters suggested the HUD adopt a two-step environmental review process, whereby project owners could incur costs for project predevelopment activities that would be “exempt” under 24 CFR part 58, and participating jurisdictions could reimburse those costs after completion of environmental review requirements for the physical activity.

HUD Response: The HOME Program regulation is not the appropriate vehicle for proposing or effectuating changes to the implementing regulations for the National Environmental Policy Act and related statutes. This final rule enables participating jurisdictions to reimburse certain project-related soft costs (e.g., architectural and engineering costs) incurred up to 24 months before the commitment of HOME funds to a project, without the need for an environmental review to be performed for the soft costs. For soft costs incurred after commitment of HOME funds to a project site, a two-step process would inappropriately facilitate participating jurisdictions committing and expending HOME funds on projects before the completion of an environmental review on the project. It is not inappropriate for participating jurisdictions to expend HOME

funds on projects (other than on the environmental review) before it is certain that they will proceed.” HUD is adopting the proposed rule language without change.

3. Labor (§ 92.352)

HUD proposed revising § 92.352(a)(3) to remove the reference to HUD Handbook 1344.1 Federal Labor Standards Compliance in Housing and Community Development Programs and replace this reference with a regulatory citation. HUD did not receive any comments on the proposed change and is adopting the proposed rule language without change.

4. Conflict of Interest (§ 92.356)

Financial Interest or Benefit

HUD proposed revising the conflict of interest provisions of § 92.356(b) to clarify that the covered conflict involves a financial benefit or interest, and that covered familial relationships are limited to immediate family members. The proposed change would align the HOME provisions with the CDBG regulations. HUD did not receive comments on this revision and is adopting the proposed rule language without change.

Occupancy of HOME-Assisted Units

HUD proposed revising § 92.356(f)(1) to prohibit immediate family members of an officer, employee, agent, elected or appointed official or consultant of an owner, developer, or sponsor from occupying a HOME-assisted affordable housing unit in a project.

Comments: A commenter expressed concern that the proposed provision was vague, and could result in the immediate family members of project owners being prohibited from occupying a HOME-assisted unit in perpetuity, rather than during the

applicable HOME period of affordability. Another commenter requested that HUD define immediate family member. A commenter recommended that HUD expand the prohibition to persons in an intimate relationship with an officer or employee of the owner, developer or sponsor of a HOME-assisted project. Another commenter asked that HUD clarify that the existing regulatory provision that applies to officers and employees of the owner, developer or sponsor of HOME-assisted housing does not prohibit a tenant of a HOME-assisted property from joining the board of a CHDO.

HUD Response: HUD agrees that the prohibition on occupying HOME-assisted housing should apply only during the HOME affordability period, not to the entire period of ownership of the entity that received HOME assistance, and has revised the language in § 92.356(b) accordingly. In this final rule, HUD has revised the language in paragraph (b) to specify the familial relationships that are considered immediate family members. HUD declines to include persons in intimate relationships with officers or employees of the owner, developer or sponsor in the prohibition due to the difficulty of establishing the nature and existence of such relationships. HUD agrees with the commenter that existing tenants of HOME units should not be prohibited from joining a CHDO or non-profit board simply because they occupy a HOME-assisted unit. HUD will address this issue in guidance. HUD is adopting this provision with the two clarifications described above.

u. Program Administration

1. The HOME Investment Trust Fund (§ 92.500)

Interest-Bearing Accounts for Program Income

HUD proposed amending § 92.500(c) to require that participating jurisdictions' local HOME accounts be interest-bearing.

Comments: A commenter indicated that its State law prohibited jurisdictions from maintaining interest-bearing accounts for Federal funds and asked how it could comply with the proposed requirement.

HUD Response: If state law prohibits a jurisdiction from maintaining interest-bearing accounts, the participating jurisdiction would have to request a waiver of this provision. HUD is adopting the proposed rule language without change.

Separate Deadline for CHDO Set-Aside Funds

To provide an incentive for participating jurisdictions to proactively manage CHDO set-aside funds by moving them from nonperforming CHDOs to performing CHDOs before they expire, HUD proposed adding a new paragraph at § 92.500(d)(1)(C) to establish a separate 5-year expenditure deadline for community housing development organization set-aside funds.

Comments: A few commenters expressed concern regarding the establishment of this deadline, stating that it might increase the amount of CHDO set-aside funds subject to recapture and negatively affect their CHDO programs.

HUD Response: HUD is adopting the proposed rule language without change to ensure that CHDO funds are actively managed and CHDO set-aside funds are initially awarded or reallocated by participating jurisdictions to the best performing organizations. The 5-year deadline for expending CHDO set-aside funds will parallel the existing regulatory 5-year deadline for expenditure of other HOME funds, with HUD deobligating shortfall amounts and reallocating them in accordance with the provisions of NAHA and implementing regulations.

2. Program Disbursement and Information System (§ 92.502)

Reporting of Program Income

HUD proposed adding a provision to § 92.502(a) clarifying that participating jurisdictions are required to report all program income earned on HOME funds in IDIS.

Comments: Several commenters disagreed with the proposed requirement in paragraph (a) in § 92.502, stating that it will require participating jurisdictions to report all program income earned on HOME funds in IDIS. A few commenters stated that the current system of reporting program income is working and should be maintained.

A commenter requested implementation flexibility with respect to reporting program income in IDIS and stated that reporting program income in IDIS should only be required if it is received after the effective date of the new regulations. The same commenter stated that the regulations should not be required to ensure that program income received and held by one state recipient is used before it draws HOME funds from its HOME Treasury Account to pay costs incurred by another state recipient or CHDO.

HUD Response: HUD has found that some participating jurisdictions are not consistently reporting program income in IDIS and are not expending program income before drawing down additional HOME funds from their HOME Treasury Accounts. HUD recently made changes to IDIS to assist participating jurisdictions to accurately report program income, including program income retained by state recipients and subrecipients. Program income that is retained by one state recipient does not have to be expended before a state participating jurisdiction draws funds for another state recipient. HUD is adopting the proposed rule language without change. As a result, participating

jurisdictions will be required to record all program income received after the effective date of this rule in IDIS.

Access to HUD's Integrated Disbursement and Information System (IDIS)

HUD proposed revising § 92.502(e) to clarify that even though other participants may be permitted to access HUD's disbursement and information system, only participating jurisdictions and State recipients (if permitted by the State) may request disbursement.

Comments: Several commenters objected to the new language in paragraph (e) in § 92.502 clarifying that only participating jurisdictions and State recipients may request disbursements from IDIS. A few commenters stated that HUD should grant exceptions to the proposed rule to permit subrecipients designated under state statute to administer the HOME program. A commenter stated that requiring the State to request every HOME draw would add cost and reduce efficiency, adding an extra layer of administration.

HUD Response: The proposed rule language was added to the regulations to codify HUD's longstanding administrative guidance with respect to the authority to request drawdown of funds from IDIS. Participating jurisdictions that have been permitting entities other than State recipients to draw funds have done so in violation of that administrative guidance. It is imperative to the integrity of the program that the ability to request draws from IDIS be limited to the participating jurisdiction or State recipients. HUD is adopting the proposed rule language without change. State agencies or instrumentalities designated by the state to administer the HOME program (e.g., housing finance agencies) as the state participating jurisdiction will retain the ability to request disbursement in IDIS. Other organizations may be allowed to access the system

and perform various administrative functions, but will not be able to request disbursement of funds.

3. Repayments (§ 92.503)

HUD proposed revising § 92.503 to provide that, when repayment of HOME funds is required, HUD will instruct a participating jurisdiction whether to repay funds to the HOME Investment Trust Fund Treasury account or the local account. HUD did not receive any comments on this proposed change and is adopting the rule language without change.

4. Participating Jurisdiction Responsibilities; Written Agreements; On-site Inspection (§ 92.504)

Required Policies and Procedures

HUD proposed revising § 92.504(a) to: require participating jurisdictions to develop and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects, and a system for monitoring entities, to ensure that HOME requirements are met; to make explicit that State recipients are included in the entities that must be evaluated annually; and clarify that the evaluation must include a review of each entity's compliance with HOME program requirements.

Comments: Some commenters supported the requirement that participating jurisdictions develop and follow written policies and procedures to administer their HOME programs. Another commenter stated that HUD should provide training and technical assistance to assist participating jurisdictions in developing the required policies and procedures. Other commenters requested that HUD clarify what constitutes risk assessment or how risk assessment should be conducted.

HUD Response: HUD has developed numerous training and technical assistance products relating to appropriate policies and procedures. These products include classroom training with an accompanying manual on how participating jurisdictions can determine risk elements in their HOME program and how to develop and implement a risk assessment process. HUD anticipates developing additional guidance and training on appropriate policies and procedures related to the HOME program. HUD is adopting the proposed rule language without change.

Written Agreements

HUD proposed several revisions to § 92.504(c), which sets forth the provisions that are required in participating jurisdictions' written agreements with participants in their HOME programs, including state recipients, subrecipients, owners, developers, sponsors, contractors, and CHDOs to reflect new or altered requirements that would be added to other sections of the HOME regulations and to improve the ability of participating jurisdictions to use written agreements to ensure compliance.

Comments: HUD received numerous comments related to § 92.504(c). However, these comments addressed the underlying requirement established elsewhere in the proposed rule rather than the requirement to include the requirement in the written agreement. Several commenters stated that HUD should not require the inclusion of an address in the written agreement between the participating jurisdiction and the owner, developer or sponsor of the housing because an address may not have been assigned to a property at the time HOME funds are committed to the project.

HUD Response: HUD has addressed comments on specific requirements in the sections of this preamble relating to those requirements. HUD agrees that the

requirement that a project address be included in the written agreement between the participating jurisdiction and an owner, developer, or sponsor of housing may not be possible in all cases. At this final rule stage, HUD has revised the language at § 92.504(c)(3)(i) to permit the inclusion of the legal description of the property location if an address has not been assigned to the property to which HOME funds are being committed. The final rule is also revised to require that the project owner provide the property address and unit numbers to the participating jurisdiction no later than the date of initial occupancy of each unit, rather than at project completion. In response to questions directed to HUD regarding the fees that owners, developers or sponsors of housing can charge in HOME projects or for HOME assistance, HUD has revised § 92.504(c)(3)(xi) to more explicitly describe the permissibility of fees for rental projects and homebuyer projects.

On-site Inspections and Financial Oversight

HUD proposed revising § 92.504(d)(1) to require on-site completion inspections of all completed HOME-assisted units, and proposing different sampling and frequency schedules in the requirements for ongoing periodic inspections of rental property in § 92.504(d)(1) to provide participating jurisdictions with flexibility to implement risk-based monitoring. HUD proposed that participating jurisdictions must conduct inspections at least every 3 years, but more frequently if deficiencies are revealed during inspection. The proposed rule also required that inspections be performed on a larger number of HOME-assisted units.

Comments: Several commenters expressed concern that the requirement to inspect 20 percent of the HOME units in a building would be too onerous for

participating jurisdictions that have HOME projects with a large number of HOME units. Other commenters supported the proposed rule requirement for inspection at the time of project completion and during the period of affordability. A few commenters opposed reducing the frequency of periodic inspections from what is currently required in the existing regulation. Several commenters recommended that HUD allow participating jurisdictions to hire contractors for these inspections, or to accept the inspections of other funders of the project, if any. Some commenters suggested that the proposal to require a re-inspection within 12 months of when a deficiency that must be corrected is observed is too long a time to have lapse. A commenter expressed concern over how these requirements could be implemented for single-family and scattered site rental units. Some commenters suggested that the requirement to re-inspect HOME-assisted properties within 12 months if there are any observed deficiencies could result in a costly and disproportionate response, (e.g., a minor deficiency should not necessitate a second onsite inspection, which would be particularly costly in rural or remote areas). A few commenters stated that this requirement appeared to reduce flexibility and eliminate the opportunity for the participating jurisdiction to establish a risk-based approach.

HUD Response: HUD does not agree that the requiring inspection of 20 percent of HOME units in each building would result in burdensome sample sizes, particularly when the inspections may occur only once every three years. This percentile was chosen to facilitate alignment with the sampling requirements for inspections currently required for LIHTC projects. HOME funds are frequently combined with LIHTCs in affordable housing projects. However, HUD has removed this specific requirement from the final rule in favor of using statistically valid samples, noting that in some projects a different

sample size may be appropriate. HUD plans to issue guidance about appropriate sampling for the purposes of ongoing physical inspections of HOME-assisted units. HUD proposed the 3 year time frame to facilitate alignment of inspections for HOME-assisted projects with other funding sources, such as LIHTC. Participating jurisdictions may contract with third parties to conduct these inspections and, in the future, inspections performed by other funders may be permitted once administrative alignment at the Federal level has been achieved. Participating jurisdictions also may establish inspection schedules that involve more frequent inspections or larger sample sizes. This final rule retains the requirement that a follow up on-site inspection must be performed within 12 months to ensure that health and safety violations or other serious and significant defects do not exist in the property, but permits participating jurisdictions to establish a list of minor deficiencies for which it may accept third-party verification.

Financial Oversight

HUD proposed a new a requirement pertaining to annual financial oversight of HOME-assisted rental properties in § 92.504(d)(2). The purpose of this requirement is to enable participating jurisdictions to identify HOME-assisted projects that may become financially troubled before problems become severe. HUD proposed that this requirement apply only to projects with 10 or more HOME-assisted unit and specifically requested public comment on whether a different applicability threshold was appropriate.

Comments: Some commenters expressed concern that HOME administrative funds would not provide sufficient resources to pay for type of oversight. Some requested training and guidance from HUD about how to monitor the financial condition of projects, and other commenters requested that HUD provide software to participating

jurisdictions to assist them. Two commenters suggested that HUD adopt a higher number of units (between 20 and 30 HOME units) as the unit threshold for applicability of this requirement.

HUD Response: A threshold of 10 HOME-assisted units or more will result in just over one-third of all HOME rental projects being subject to this requirement (34 percent of HOME projects completed in the last 10 years have 10 or more HOME-assisted units). Because many rental projects with 10 or more HOME-assisted units are quite large (41percent of projects with 10 or more HOME units contain 26 or more total units), HUD finds the requirement for an annual examination of financial condition appropriate. This final rule requires that participating jurisdictions examine the financial condition of HOME-assisted rental projects with 10 or more HOME-assisted units annually. HUD will provide guidance and training on how to implement this requirement.

5. Applicability of Uniform Administrative Requirements (§ 92.505)

HUD proposed revising § 92.505(a) and (b) to add a reference to the regulations implementing OMB Circular No. A-87 (2 CFR part 225) and OMB Circular No. A-122 (2 CFR part 230). Circular A-87 is entitled “Cost Principles for States, Local, and Indian Tribal Governments.” Circular A-122 is entitled “Cost Principles for Non-Profit Organizations.” The provisions of these cost principle circulars are codified in the government-wide regulations found at 2 CFR part 225 and 2 CFR part 230, respectively. HUD received no comments on this proposed change and is adopting the proposed rule language without change.

6. Recordkeeping (§ 92.508)

HUD proposed revising § 92.508 to require participating jurisdictions to maintain records pertaining to new requirements that would be established under this rule.

Comments: HUD received a few comments related to record keeping revisions in the proposed rule. Some commenters expressed concern that participating jurisdictions may find it difficult to ensure that all of the proposed recordkeeping changes are implemented should HUD adopt the proposed changes, and requested technical assistance, training or software to assist in the requirements. Other commenters stated that the proposed recordkeeping requirements pose an administrative and paperwork burden on participating jurisdictions.

HUD Response: Whenever HUD establishes a requirement for a grant program, generally HUD creates corresponding recordkeeping requirements to enable HUD to monitor for compliance with the requirements governing the grant. The estimated burden associated with new recordkeeping requirements is included in the Paperwork Reduction Act submission for this rule. HUD is adopting the proposed rule language. HUD plans to implement comprehensive training and technical assistance initiatives to assist program participants in understanding and implementing all provisions of this rule.

7. Corrective and Remedial Actions (§ 92.551)

HUD proposed amending § 92.551(c) by revising and adding to the remedial actions available for imposition on a participating jurisdiction. The current provision for requiring matching contributions would be expanded to include establishment of a remedial plan to make up a matching contribution deficit.

Two new remedial actions, which are establishing procedures to ensure compliance with HOME requirements and forming a consortium with the urban county,

would also be added. The existing provision under which HUD may change the method of payment from advance to reimbursement would be expanded to require submission of supporting documentation before payment is made. Finally, the proposed change would provide that HUD may determine the participating jurisdiction to be high-risk and impose special conditions or restrictions in accordance with 24 CFR 85.12. HUD did not receive any comments on these changes and is adopting the proposed rule language without change.

8. Hearing Proceedings (§ 92.552)

HUD proposed to revise § 92.552(b) to remove the reference that subpart B of 24 CFR part 26 governs hearing proceedings. HUD did not receive any comments on this change and the final rule removes this reference.

9. Other Federal Requirements (§ 92.614)

HUD proposed a minor technical change to § 92.614. HUD proposed to move the reference to the affirmative marketing requirements in § 92.351(a) from § 92.614(b) to § 92.614(a)(3). HUD did not receive any comments on this change and is adopting the proposed rule language without change.

III. Findings and Certifications

Regulatory Planning and Review– Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective,

insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a “significant regulatory action,” as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). HUD submits that updating the HOME program regulations is consistent with the objectives of Executive Order 13563 to reduce burden, as well as the goal of modifying and streamlining regulations that are outmoded and ineffective.

This rule makes several changes to the HOME Program regulations, which are over 16 years old, and without a significant update during that period. The changes in this rule, for which public comment was received and considered, are designed to improve the performance of the program. The rule updates definitions and adds new terminology relevant to the housing market and real estate market; modifies the eligibility requirements of community housing development organizations that seek to participate in the HOME program to ensure that they have the capacity to undertake their responsibilities under the HOME Program, establishes deadlines for project completion in an effort to ensure that housing units needed by low-income households are in fact constructed and made available; strengthens conflict of interest provisions; and clarifies language in several existing HOME regulatory provisions to remove any possible ambiguity as to what is expected of participating jurisdictions, community housing development organizations and other entities that participate in the HOME program.

The rule is an administrative one and so the economic impacts are almost entirely within the program. The requirements that improve program oversight and avoid noncompliance will lead to a more efficient allocation of resources within the program and the provision of more affordable housing. Some elements of the rule have the potential to impose compliance costs on participants. However, these costs will either be subsidized by HUD or can be avoided through more efficient behavior on the part of the participating jurisdictions and developers. Although the rule is expected to create some efficiencies within the HOME program, the rule it is not expected to have a measurable impact beyond the grant program. The costs and benefits of the regulatory changes made by this rule are more fully discussed in the regulatory impact analysis (RIA) that accompanies this rule and can be found at

<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/>.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number).

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2506-0171. For the information collection and recordkeeping changes made by this final rule, HUD estimated that annually the number of respondents would be 180,487, responding only

once annually but with varying hours per response, resulting in a total annual burden hours of 208,886. HUD estimated the total annual cost of \$31 per hour, resulting in a total cost of \$6,475,450.00. HUD's supporting statement that is submitted to OMB describes in more detail the changes made by this final rule to the existing HOME program information collection and recordkeeping requirements can be found on the HOME program website.⁹ This web page also includes a chart that describes how this rule added or reduced the existing information collection requirements. In accordance with the Paperwork Reduction Act, 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 currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule addresses the allocation and use of formula grant funds by state and local jurisdictions (participating jurisdictions) under the HOME program. As discussed in the preamble, this rule updates the regulations governing the HOME program, which have not been updated in 16 years. The rule does not alter the allocation of funds under the HOME program, but is directed to revising the HOME program regulations to: reflect changes in the housing market that have occurred over the past 16 years; clarify and enhance the roles and responsibilities and accountability of participating jurisdictions; and strengthen HUD's own oversight of the program.

⁹ See <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/>.

Section 601 of the Regulatory Flexibility Act defines the term “small entity” to include small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. Currently, there are 644 jurisdictions participating in the HOME program, and 33 jurisdictions meet the definition of small governmental jurisdictions. HUD is cognizant of the greater difficulties that small entities may have in meeting regulatory requirements, but as noted in the preamble, the requirements governing this program are designed to ensure that the use of HOME program grant funds, are consistent with statutory requirements and the objectives of the HOME program. Additionally, as a grant program, the program provides that up to 10 percent of a participating jurisdiction’s annual allocation may be used for program planning and program administration.

Nevertheless HUD has strived to meet the objective of responsible and accountable use of grant funds without imposing undue burden on small jurisdictions or any other size jurisdiction. As discussed earlier in this preamble, several provisions adopted by this final rule are best practices, not requirements. As also discussed earlier in this preamble, additional costs that may arise as result of enhanced accountability and monitoring may be paid with HOME grant funds as project-related soft costs. Further the majority of the provisions in this rule are applicable only to projects to which HOME funds are committed after the effective date of this final rule, which allows participating jurisdictions to better plan the expenditure of their funds. For new property standards, this final rule allows an additional 18 months after the publication date of this final rule to meet new standards. Section III of this preamble, which provides an overview of key changes made to the HOME program regulations at the final rule stage highlights

decisions that HUD made to further minimize burden as a result of the update of 16-year old regulations. Such changes include adopting a 12-month timeframe for committing HOME funds for reconstruction of a unit that was destroyed; making the cost of conducting unit inspections and determining income of tenant-based rental assistance applicants or recipients as an eligible project-related cost; and eliminating the requirement for written standards for methods and materials for new construction projects, to name a few of the burden reduction changes.

Accordingly, for these reasons and as further discussed in the preamble, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made, at the proposed rule stage, 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(2)(C)). The Finding remains applicable to this final rule and is available for

public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339.

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 will 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.

List of Subjects

24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, and Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs-housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD amends 24 CFR parts 91 and 92, as follows:

**PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING
AND DEVELOPMENT PROGRAMS**

1. The authority citation for part 30 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. In § 91.220, revise paragraphs (l)(2)(i) and (ii), redesignate paragraph (l)(2)(iv) as paragraph (l)(2)(vii), and add new paragraphs (l)(2)(iv), (v), and (vi), to read as follows:

§ 91.220 Action plan.

* * * * *

(l) * * *

(2) HOME. (i) For HOME funds, a participating jurisdiction shall describe other forms of investment that are not described in 24 CFR 92.205(b). HUD's specific written approval to the jurisdiction is required for other forms of investment, as provided in § 92.205(b). Approval of the consolidated plan or action plan under § 91.500 or the failure to disapprove the consolidated plan or action plan does not satisfy the requirement for specific HUD approval for other forms of investment.

(ii) If the participating jurisdiction intends to use HOME funds for homebuyers, it must set forth the guidelines for resale or recapture, and obtain HUD's specific, written approval, as required in 24 CFR 92.254. Approval of the consolidated plan or action plan

under § 91.500 or the failure to disapprove the consolidated plan or action does not satisfy the requirement for specific HUD approval for resale or recapture guidelines.

* * * * *

(iv) If the participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single family housing and does not use the HOME affordable homeownership limits for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with 24 CFR 92.254(a)(2)(iii).

(v) The jurisdiction must describe eligible applicants (e.g., categories of eligible applicants), describe its process for soliciting and funding applications or proposals (e.g., competition, first-come first-serve) and state where detailed information may be obtained (e.g., application packages are available at the office of the jurisdiction or on the jurisdiction's website).

(vi) The participating jurisdiction may limit the beneficiaries or give preferences to a particular segment of the low-income population only if described in the action plan.

(A) Any limitation or preference must not violate nondiscrimination requirements in 24 CFR 92.350, and the participating jurisdiction must not limit or give preferences to students.

(B) A limitation or preference may include, in addition to targeting tenant-based rental assistance to persons with special needs, as provided in 24 CFR 92.209(c)(2), limiting beneficiaries or giving preferences to such professions as police officers, teachers, or artists.

(C) The participating jurisdiction must not limit beneficiaries or give a preference to all employees of the jurisdiction.

(D) The participating jurisdiction may permit rental housing owners to limit tenants or give a preference in accordance with 24 CFR 92.253(d) only if such limitation or preference is described in the action plan.

* * * * *

3. In § 91.320, revise paragraphs (k)(2)(i) and (ii), redesignate paragraph (k)(2)(iv) as paragraph (k)(2)(vii), and add new paragraphs (k)(2)(iv), (v), and (vi) to read as follows:

§ 91.320 Action plan.

* * * * *

(k) * * *

(2) HOME. (i) The State shall describe other forms of investment that are not described in 24 CFR 92.205(b). HUD's specific written approval is required for other forms of investment, as provided in § 92.205(b). Approval of the consolidated plan or action plan under § 91.500 or the failure to disapprove the consolidated plan or action plan does not satisfy the requirement for specific HUD approval for resale or recapture guidelines.

(ii) If the State intends to use HOME funds for homebuyers, it must set forth the guidelines for resale or recapture, and obtain HUD's specific, written approval, as required in 24 CFR 92.254. Approval of the consolidated plan or action plan under §

91.500 or the failure to disapprove the consolidated plan or action does not satisfy the requirement for specific HUD approval for other forms of investment.

* * * * *

(iv) If the participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single family housing and does not use the HOME affordable homeownership limits for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with 24 CFR 92.254(a)(2)(iii).

(v) The State must describe eligible applicants (e.g., categories of eligible applicants), describe its process for soliciting and funding applications or proposals (e.g., competition, first-come first-serve; subgrants to local jurisdictions) and state where detailed information may be obtained (e.g., application packages are available at the office of the State or on the State's website).

(vi) The participating jurisdiction may limit the beneficiaries or give preferences to a particular segment of the low-income population only if described in the action plan.

(A) Any limitation or preference must not violate nondiscrimination requirements in 24 CFR 92.350, and the participating jurisdiction must not limit or give preferences to students.

(B) A limitation or preference may include, in addition to targeting tenant-based rental assistance to persons with special needs as provided in 24 CFR 92.209(c)(2), limiting beneficiaries or giving preferences to persons in certain occupations, such as police officers, firefighters, or teachers.

(C) The participating jurisdiction must not limit beneficiaries or give a preference to all employees of the jurisdiction.

(D) The participating jurisdiction may permit rental housing owners to limit tenants or give a preference in accordance with 24 CFR 92.253(d) only if such limitation or preference is described in the action plan.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

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

Authority: 42 U.S.C. 3535(d) and 12701– 12839.

5. In § 92.2:

- a. Revise the introductory text;
- b. Add, in alphabetical order, the definition of CDBG program;
- c. Revise paragraphs (1) and (2)(i) of the definition of Commitment;
- d. Revise paragraphs (3)(ii) and (3)(iii), add paragraph (3)(iv), and revise paragraphs (4), (5), and (9) of the definition of Community housing development organization;
- e. Add, in alphabetical order, the definition of Consolidated plan;
- f. Revise the definitions of Homeownership, Housing, and Low-income families;
- g. Revise paragraph (2) of the definition of Program income;

h. Revise the definitions of Project completion, Reconstruction, Single room occupancy (SRO) housing, and Subrecipient;

i. Add, in alphabetical order, a definition of Uniform Physical Condition Standards (UPCS); and

j. Revise the definition of Very low-income families.

§ 92.2 Definitions.

The terms 1937 Act, ALJ, Fair Housing Act, HUD, Indian Housing Authority (IHA), Public housing, Public Housing Agency (PHA), and Secretary are defined in 24 CFR 5.100.

* * * * *

CDBG program means the Community Development Block Grant program under 24 CFR part 570.

* * * * *

Commitment means:

(1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with a State recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance; or has met the requirements to commit to a specific local project, as defined in paragraph (2) of this definition. (See § 92.504(c) for minimum requirements for a written agreement.) An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (e.g., an agency whose

officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment. An agreement between the representative unit and a member unit of general local government of a consortium does not constitute a commitment.

(2) Commit to a specific local project means:

(i) If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or sub recipient) and project owner have executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project for which all necessary financing has been secured, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within twelve months of the agreement date. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project set-up date.

* * * *

Community housing development organization * * *

(3) * * *

(ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members;

(iii) The community housing development organization must be free to contract for goods and services from vendors of its own choosing; and

(iv) The officers and employees of the for-profit entity may not be officers or employees of the community housing development organization.

(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)–1 or 1.501(c)(4)–1)), is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986, or if the private nonprofit organization is an wholly owned entity that is disregarded as an entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly owned by an organization that qualifies as tax-exempt), the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and meets the definition of “community housing development organization;”

(5) Is not a governmental entity (including the participating jurisdiction, other jurisdiction, Indian tribe, public housing authority, Indian housing authority, housing finance agency, or redevelopment authority) and is not controlled by a governmental entity. An organization that is created by a governmental entity may qualify as a community housing development organization; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization’s governing body and no more than one- third of the board members may be public officials or employees of governmental entity. Board members appointed by a governmental entity may not appoint the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a community housing development organization;

* * * * *

(9) Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience who will work on projects assisted with HOME funds. For its first year of funding as a community housing development organization, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization. An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of § 92.300(a)(2). A nonprofit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization; and

* * * * *

Consolidated plan means the plan submitted and approved in accordance with 24 CFR part 91.

* * * * *

Homeownership means ownership in fee simple title in a 1- to 4-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD.

(1) The land may be owned in fee simple or the homeowner may have a 99- year ground lease.

(i) For housing located in the insular areas, the ground lease must be 40 years or more.

(ii) For housing located on Indian trust or restricted Indian lands or a Community Land Trust, the ground lease must be 50 years or more.

(iii) For manufactured housing, the ground lease must be for a period at least equal to the applicable period of affordability in § 92.254.

(2) Right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made) is not an equivalent form of ownership.

(3) The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

(4) The participating jurisdiction must determine whether or not ownership or membership in a cooperative or mutual housing project constitutes homeownership under State law; however, if the cooperative or mutual housing project receives Low Income Housing Tax Credits, the ownership or membership does not constitute homeownership.

* * * * *

Housing includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters for disaster victims) or

facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories).

* * * * *

Low-income families means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.

* * * * *

Program income * * *

(2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income (*Program income* does not include gross income from the use, rental or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, subrecipient or State recipient);

* * * * *

Project completion means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under § 92.251); the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of § 92.502(d) of this part, project completion occurs upon completion of construction and before occupancy. For tenant-based rental assistance, project completion means the final drawdown has been disbursed for the project.

Reconstruction means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment, except that housing that was destroyed may be rebuilt on the same lot if HOME funds are committed within 12 months of the date of destruction. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is rehabilitation for purposes of this part.

* * * * *

Single room occupancy (SRO) housing means housing (consisting of single- room dwelling units) that is the primary residence of its occupant or occupants. The unit must contain either food preparation or sanitary facilities (and may contain both) if the project consists of new construction, conversion of nonresidential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure or hotel, neither food

preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants. A project's designation as an SRO cannot be inconsistent with the building's zoning and building code classification.

* * * * *

Subrecipient means a public agency or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME programs to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of a housing project is not a subrecipient. The participating jurisdiction's selection of a subrecipient is not subject to the procurement procedures and requirements.

* * * * *

Uniform Physical Condition Standards (UPCS) means uniform national standards established by HUD pursuant to 24 CFR 5.703 for housing that is decent, safe, sanitary, and in good repair. Standards are established for inspectable items for each of the following areas: site, building exterior, building systems, dwelling units, and common areas.

* * * * *

Very low-income families means low-income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD

findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a very low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.

6. Add § 92.3 to read as follows:

§ 92.3 Applicability of 2013 regulatory changes.

The regulations of this part, as revised by final rule published on **[insert date of publication in the Federal Register]** are applicable to projects for which HOME funds are committed on or after **[Insert date that is 30 days after the date of publication in the Federal Register]**, with the exception of the following provisions;

(a) Section 92.2, for the definition of commitment, the change which eliminates reservations of funds that are not project-specific to CHDOs as a commitment will be applicable on **[insert date 90 days after date of publication in the Federal Register]** and will be implemented by HUD for deadlines that occur on or after January 1, 2015;

(b) Section 92.251, Property Standards, will apply to projects to which funds are committed on or after January 24, 2015;

(c) Section 92.254(f). Homebuyer program policies, for written policies related to underwriting, responsible lending, and refinancing, will be applicable on January 24, 2014;

(d) Section 92.500(d)(1)(C), establishing the separate 5-year deadline for expenditure of CHDO set-aside funds will be applicable on January 1, 2015 and will be implemented by HUD for all deadlines that occur on or after that date; and

(e) Section 92.504(a), for written policies, procedures, and systems, will be applicable on July 24, 2014.

(f) Section 92.504(d)(2), for financial oversight of projects assisted with HOME funds, will be applicable on July 24, 2014.

7. In § 92.201, revise paragraph (a)(2) to read as follows:

§ 92.201 Distribution of assistance.

(a) * * *

(2) The participating jurisdiction may only invest its HOME funds in eligible projects within its boundaries, or in jointly funded projects within the boundaries of contiguous local jurisdictions which serve residents from both jurisdictions. For a project to be jointly funded, both jurisdictions must make a financial contribution to the project. A jurisdiction's financial contribution may take the form of a grant or loan (including a loan of funds that comes from other federal sources and that are in the jurisdiction's control, such as CDBG program funds) or relief of a significant tax or fee (such as waiver of impact fees, property taxes, or other taxes or fees customarily imposed on projects within the jurisdiction).

* * * * *

8. In § 92.202, revise paragraph (b) to read as follows:

§ 92.202 Site and neighborhood standards.

* * * * *

(b) New rental housing. In carrying out the site and neighborhood requirements with respect to new construction of rental housing, a participating jurisdiction is responsible for making the determination that proposed sites for new construction meet the requirements in 24 CFR 983.57(e)(2) and (3).

9. In § 92.203, revise paragraphs (a)(1)(i), (a)(2), (b), (c), and (d)(1) to read as follows:

§ 92.203 Income determinations.

(a) * * *

(1) * * *

(i) Examine at least 2 months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

* * * * *

(2) For all other families (i.e., homeowners receiving rehabilitation assistance, homebuyers, and recipients of HOME tenant-based rental assistance), the participating jurisdiction must determine annual income by examining at least 2 months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(b) When determining whether a family is income eligible, the participating jurisdiction must use one of the following two definitions of “annual income”:

(1) Annual income as defined at 24 CFR 5.609 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the

homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR 5.603); or

(2) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual Federal annual income tax purposes.

(c) Although the participating jurisdiction may use either of the definitions of “annual income” permitted in paragraph (b) of this section to calculate adjusted income, it must apply exclusions from income established at 24 CFR 5.611. The HOME rents for very low-income families established under § 92.252(b)(2) are based on adjusted income. In addition, the participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family. The participating jurisdiction may use only one definition for each HOME-assisted program (e.g., downpayment assistance program) that it administers and for each rental housing project.

(d)(1) The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income shall include income from all persons in the household. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

* * * * *

10. In § 92.205, revise paragraphs (a)(1), (a)(2), (b)(1), (d), and (e) to read as follows:

§ 92.205 Eligible activities: General.

(a) * * *

(1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing. The specific eligible costs for these activities are set forth in §§ 92.206 through 92.209. The activities and costs are eligible only if the housing meets the property standards in § 92.251 upon project completion.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing within the time frames established in paragraph (2) of the definition of “commitment” in § 92.2.

* * * * *

(b) * * *

(1) A participating jurisdiction may invest HOME funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this

part and specifically approves in writing. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

* * * * *

(d) Multi-unit projects. HOME funds may be used to assist one or more housing units in a multi-unit project.

(1) Only the actual HOME eligible development costs of the assisted units may be charged to the HOME program. If the assisted and nonassisted units are not comparable, the actual costs may be determined based on a method of cost allocation. If the assisted and non- assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the HOME- assisted units can be determined by prorating the total HOME eligible development costs of the project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME-assisted units in the project.

(2) After project completion, the number of units designated as HOME- assisted may be reduced only in accordance with § 92.210, except that in a project consisting of all HOME- assisted units, one unit may be subsequently converted to an on-site manager's unit if the participating jurisdiction determines that the conversion will contribute to the stability or effectiveness of the housing and that, notwithstanding the loss of one HOME-assisted unit, the costs charged to the HOME program do not exceed the actual costs of the HOME- assisted units and do not exceed the subsidy limit in § 92.250(b).

(e) Terminated projects. A HOME assisted project that is terminated before completion, either voluntarily or involuntarily, constitutes an ineligible activity, and the

participating jurisdiction must repay any HOME funds invested in the project to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b) (except for project- specific assistance to community housing development organizations as provided in § 92.301(a)(3) and (b)(3)).

(1) A project that does not meet the requirements for affordable housing must be terminated and the participating jurisdiction must repay all HOME funds invested in the project to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b).

(2) If a participating jurisdiction does not complete a project within 4 years of the date of commitment of funds, the project is considered to be terminated and the participating jurisdiction must repay all funds invested in the project to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b). The participating jurisdiction may request a one-year extension of this deadline in writing, by submitting information about the status of the project, steps being taken to overcome any obstacles to completion, proof of adequate funding to complete the project, and a schedule with milestones for completion of the project for HUD's review and approval.

11. In § 92.206, revise paragraphs (a)(1), (a)(2), (a)(3) introductory text, (a)(4), (b) introductory text, (b)(1), (b)(2) introductory text, (b)(2)(vi), (d)(1), (d)(3), and (d)(6) to read as follows:

§ 92.206 Eligible project costs.

* * * *

(a) * * *

(1) For new construction projects, costs to meet the new construction standards in § 92.251;

(2) For rehabilitation, costs to meet the property standards for rehabilitation projects in § 92.251;

(3) For both new construction and rehabilitation projects, costs:

* * * *

(4) For both new construction and rehabilitation of multifamily rental housing projects, costs to construct or rehabilitate laundry and community facilities that are located within the same building as the housing and which are for the use of the project residents and their guests.

* * * *

(b) Refinancing costs. The cost to refinance existing debt secured by a housing project that is being rehabilitated with HOME funds. These costs include the following:

(1) For single-family (one- to four- family) owner-occupied housing, when loaning HOME funds to rehabilitate the housing, if the refinancing is necessary to reduce the overall housing costs to the borrower and make the housing more affordable and if the rehabilitation cost is greater than the amount of debt that is refinanced.

(2) For single family or multifamily projects, when loaning HOME funds to rehabilitate the units if refinancing is necessary to permit or continue affordability under § 92.252. The participating jurisdiction must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. Regardless of the amount of HOME funds invested, the minimum affordability period shall be 15 years. The

guidelines shall describe the conditions under which the participating jurisdictions will refinance existing debt. At minimum, the guidelines must:

* * * *

(vi) State that HOME funds cannot be used to refinance single family or multifamily housing loans made or insured by any Federal program, including CDBG.

* * * *

(d) * * *

(1) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups. The costs may be paid if they were incurred not more than 24 months before the date that HOME funds are committed to the project and the participating jurisdiction expressly permits HOME funds to be used to pay the costs in the written agreement committing the funds.

* * * *

(3) Costs of a project audit, including certification of costs performed by a certified public accountant, that the participating jurisdiction may require with respect to the development of the project.

* * * *

(6) Staff and overhead costs of the participating jurisdiction directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers, e.g., housing counseling, may be charged to project costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project.

For multi-unit projects, such costs must be allocated among HOME- assisted units in a reasonable manner and documented. Although these costs may be charged as project costs, these costs (except housing counseling) cannot be charged to or paid by low-income families.

* * * *

12. In § 92.207, revise paragraph (b) to read as follows:

§ 92.207 Eligible administrative and planning costs.

* * * *

(b) Staff and overhead. Staff and overhead costs of the participating jurisdiction directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, lead-based paint evaluations (visual assessments, inspections, and risk assessments) and other services related to assisting potential owners, tenants, and homebuyers (e.g., housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 92.206(d)(6) and (f)(2), at the discretion of the participating jurisdiction; however, these costs(except housing counseling) cannot be charged to or paid by the low-income families.

* * * *

13. In § 92.208, revise paragraph (a) to read as follows:

§ 92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs.

(a) Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). This amount is in addition to amounts set aside for housing projects that are owned, developed, or sponsored by CHDOs as described in § 92.300(a). These funds may not be used to pay operating expenses incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials; and supplies. The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.300(e) and (f).

* * * * *

14. In § 92.209, revise paragraphs (a), (c) introductory text, (c)(2), (g), (h)(3)(ii), and (l) to read as follows:

§ 92.209 Tenant-based rental assistance: Eligible costs and requirements.

(a) Eligible costs. Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family pursuant to this section. Eligible costs also include utility deposit assistance, but only if this assistance is provided with tenant-based rental assistance or security deposit payment. Administration of tenant-based rental assistance is eligible only under general management oversight and coordination at § 92.207(a), except that the costs of inspecting the housing and

determining the income eligibility of the family are eligible as costs of the tenant-based rental assistance.

* * * * *

(c) Tenant selection. The participating jurisdiction must select low-income families in accordance with written tenant selection policies and criteria that are based on local housing needs and priorities established in the participating jurisdiction's consolidated plan.

* * * * *

(2) Targeted assistance. (i) The participating jurisdiction may establish a preference for individuals with special needs (e.g., homeless persons or elderly persons) or persons with disabilities. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of nonmandatory services that may be most appropriate for persons with a special need or a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with special needs or disabilities who can benefit from such services. Participation may be limited to persons with a specific disability if necessary to provide as effective housing, aid, benefit, or services as those provided to others in accordance with 24 CFR 8.4(b)(1)(iv).

(ii) The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

(iii) Self-sufficiency program. The participating jurisdiction may require the family to participate in a self- sufficiency program as a condition of selection for assistance. The family's failure to continue participation in the self-sufficiency program is not a basis for terminating the assistance; however, renewal of the assistance may be conditioned on participation in the program. Tenants living in a HOME- assisted rental project who receive tenant-based rental assistance as relocation assistance must not be required to participate in a self- sufficiency program as a condition of receiving assistance.

(iv) Homebuyer program. HOME tenant-based rental assistance may assist a tenant who has been identified as a potential low-income homebuyer through a lease-purchase agreement, with monthly rental payments for a period up to 36 months (i.e., 24 months, with a 12-month renewal in accordance with paragraph (e) of this section). The HOME tenant-based rental assistance payment may not be used to accumulate a downpayment or closing costs for the purchase; however, all or a portion of the homebuyer-tenant's monthly contribution toward rent may be set aside for this purpose. If a participating jurisdiction determines that the tenant has met the lease-purchase criteria and is ready to assume ownership, HOME funds may be provided for downpayment assistance in accordance with the requirements of this part.

(v) Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a). For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance. Persons who are eligible for a preference must have the opportunity

to participate in all programs of the participating jurisdiction, including programs that are not separate or different.

* * * *

(g) Tenant protections. The tenant must have a lease that complies with the requirements in § 92.253 (a) and (b).

(h) * * *

(3) * * *

(ii) The Section 8 Housing Choice Voucher Program (24 CFR part 982).

* * * *

(l) Use of Section 8 assistance. In any case where assistance under section 8 of the 1937 Act becomes available, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the HOME tenant-based rental assistance under this part.

15. Add § 92.210 to read as follows:

§ 92.210 Troubled HOME-assisted rental housing projects.

(a) The provisions of this section apply only to an existing HOME- assisted rental project that, within the HOME period of affordability, is no longer financially viable. For purposes of this section, a HOME assisted rental project is no longer financially viable if its operating costs significantly exceed its operating revenue. HUD may approve one or both of the actions described in paragraphs (b) and (c) of this section to strategically preserve a rental project after consideration of market needs, available resources, and the likelihood of long-term viability of the project.

(b) Notwithstanding § 92.214, a participating jurisdiction may request and HUD may permit, pursuant to a written memorandum of agreement, a participating jurisdiction to invest additional HOME funds in the existing HOME-assisted rental project. The total HOME funding for the project (original investment plus additional investment) must not exceed the per-unit subsidy limit in § 92.250(a). The use of HOME funds may include, but is not limited to, rehabilitation of the HOME units and recapitalization of project reserves for the HOME units (to fund capital costs). If additional HOME funds are invested, HUD may require the period of affordability to be extended, based on such considerations as the amount of additional HOME funds or additional units.

(c) HUD Headquarters may, through written approval, permit the participating jurisdiction to reduce the number of HOME-assisted units, if the project contains more than the minimum number of units required to be designated as HOME-assisted under § 92.205(d). In determining whether to permit a reduction in the number of HOME-assisted units, HUD will take into account the required period of affordability and the amount of HOME assistance provided to the project.

16. Add § 92.213 to read as follows:

§ 92.213 HOME Funds and Public Housing.

(a) General rule. HOME funds may not be used for public housing units. HOME-assisted housing units may not receive Operating Fund or Capital Fund assistance under section 9 of the 1937 Act during the HOME period of affordability.

(b) Exception. HOME funds may be used for the development of public housing units, if the units are developed under section 24 of the 1937 Act (HOPE VI) and no

Capital Fund assistance under section 9(d) of the Act is used for the development of the unit. Units developed with both HOME and HOPE VI may receive operating assistance under section 9 of the 1937 Act. Units developed with HOME and HOPE VI funds under this paragraph may subsequently receive Capital Funds for rehabilitation or modernization.

(c) Using HOME funds in public housing projects. Consistent with § 92.205(d), HOME funds may be used for affordable housing units in a project that also contains public housing units, provided that the HOME funds are not used for the public housing units (except as provided in paragraph (b) of this section) and HOME funds are used only for eligible costs in accordance with this part.

(d) The HOME funds must be used in accordance with the requirements of this part and the project must meet the requirements of this part, including rent requirements in § 92.252.

17. In § 92.214, revise the section heading and paragraphs (a)(4) and (b) to read as follows:

§ 92.214 Prohibited activities and fees.

(a) * * *

(4) Provide assistance for uses authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds);

* * * * *

(b)(1) Participating jurisdictions may not charge (and must prohibit State recipients, subrecipients, and community housing development organizations from

charging) servicing, origination, or other fees for the purpose of covering costs of administering the HOME program (e.g., fees on low-income families for construction management or for inspections for compliance with property standards) (see § 92.206(d)(6) and § 92.207), except that:

(i) Participating jurisdictions and State recipients may charge owners of rental projects reasonable annual fees for compliance monitoring during the period of affordability. The fees must be based upon the average actual cost of performing the monitoring of HOME-assisted rental projects. The basis for determining the amount of for the fee amount must be documented and the fee must be included in the costs of the project as part of the project underwriting;

(ii) Participating jurisdictions, subrecipients and State recipients may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. The amount of application fees must be appropriate to the type of application and may not create an undue impediment to a low-income family's, subrecipient's, State recipient's, or other entity's participation in the participating jurisdiction's program; and

(iii) Participating jurisdictions, subrecipients and State recipients may charge homebuyers a fee for housing counseling.

(2) All fees charged under paragraph (b)(1) of this section are applicable credits under 2 CFR part 225 (OMB Circular A-87, entitled "Cost Principles for State, Local, and Indian Tribal Governments").

(3) The participating jurisdiction must prohibit project owners from charging fees that are not customarily charged in rental housing (e.g., laundry room access fees), except that rental project owners may charge:

- (i) Reasonable application fees to prospective tenants;
- (ii) Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and
- (iii) Fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

18. In § 92.221, add paragraph (d) to read as follows:

§ 92.221 Match credit.

* * * * *

(d) Match credit for the development of affordable homeownership housing for sale to homebuyers. Contributions to the development of homeownership housing may be credited as a match only to the extent that the sales price of the housing is reduced by the amount of the contribution or, if the development costs exceed the fair market value of the housing, the contribution may be credited to the extent that the contributions enable the housing to be sold for less than the cost of development.

19. In § 92.222, revise paragraph (b) to read as follows:

§ 92.222 Reduction of matching contribution requirement.

* * * * *

(b) Reduction of match for participating jurisdictions in disaster areas. If a participating jurisdiction is located in an area in which a declaration of major disaster is made pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5206), the participating jurisdiction may request a reduction of its matching requirement.

(1) In determining whether to grant the request and the amount and duration of the reduction, if any, HUD must consider the fiscal impact of the disaster on the participating jurisdiction.

(i) For a local participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218 by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year.

(ii) For a State participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218, by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year with respect to any HOME funds expended in an area to which the declaration of a major disaster applies.

(2) At its discretion and upon request of the participating jurisdiction, the HUD Field Office may extend the reduction for an additional year.

20. Revise § 92.250 to read as follows:

§ 92.250 Maximum per-unit subsidy amount, underwriting, and subsidy layering.

(a) Maximum per-unit subsidy amount. The total amount of HOME funds and ADDI funds that a participating jurisdiction may invest on a per-unit basis in affordable

housing may not exceed the per-unit dollar limitations established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C.17151(d)(3)(ii)) for elevator- type projects that apply to the area in which the housing is located. HUD will allow the per-unit subsidy amount to be increased on a program-wide basis to an amount, up to 240 percent of the original per unit limits, to the extent that the costs of multifamily housing construction exceed the section 221(d)(3)(ii) limit.

(b) Underwriting and subsidy layering. Before committing funds to a project, the participating jurisdiction must evaluate the project in accordance with guidelines that it has adopted for determining a reasonable level of profit or return on owner's or developer's investment in a project and must not invest any more HOME funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at minimum, the period of affordability in § 92.252 or § 92.254) and that will not provide a profit or return on the owner's or developer's investment that exceeds the participating jurisdiction's established standards for the size, type, and complexity of the project. The participating jurisdiction's guidelines must require the participating jurisdiction to undertake:

(1) An examination of the sources and uses of funds for the project and a determination that the costs are reasonable; and

(2) An assessment, at minimum, of the current market demand in the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer, and firm written financial commitments for the project.

(3) For projects involving rehabilitation of owner-occupied housing pursuant to § 92.254(b):

(i) An underwriting analysis is required only if the HOME-funded rehabilitation loan is an amortizing loan; and

(ii) A market analysis or evaluation of developer capacity is not required.

(4) For projects involving HOME-funded downpayment assistance pursuant to § 92.254(a) and which do not include HOME-funded development activity, a market analysis or evaluation of developer capacity is not required.

21. Revise § 92.251 to read as follows:

§ 92.251 Property standards.

(a) New construction projects. (1) State and local codes, ordinances, and zoning requirements. Housing that is newly constructed with HOME funds must meet all applicable State and local codes, ordinances, and zoning requirements. HOME-assisted new construction projects must meet State or local residential and building codes, as applicable or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon project completion.

(2) HUD requirements. All new construction projects must also meet the requirements described in paragraphs (a)(2)(i) through (v) of this section:

(i) Accessibility. The housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.

794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619).

(ii) [Reserved]

(iii) Disaster mitigation. Where relevant, the housing must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

(iv) Written cost estimates, construction contracts and construction documents. The participating jurisdiction must ensure the construction contract(s) and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The participating jurisdiction must review and approve written cost estimates for construction and determining that costs are reasonable.

(v) Construction progress inspections. The participating jurisdiction must conduct progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.

(b) Rehabilitation projects. All rehabilitation that is performed using HOME funds must meet the requirements of this paragraph (b).

(1) Rehabilitation standards. The participating jurisdiction must establish rehabilitation standards for all HOME- assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The

participating jurisdiction's description of its standards must be in sufficient detail to determine the required rehabilitation work including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. The rehabilitation standards must address each of the following:

- (i) Health and safety. The participating jurisdiction's standards must identify life-threatening deficiencies that must be addressed immediately if the housing is occupied.
- (ii) Major systems. Major systems are: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For rental housing, the participating jurisdiction's standards must require the participating jurisdiction to estimate (based on age and condition) the remaining useful life of these systems, upon project completion of each major systems. For multifamily housing projects of 26 units or more, the participating jurisdiction's standards must require the participating jurisdiction to determine the useful life of major systems through a capital needs assessment of the project. For rental housing, if the remaining useful life of one or more major system is less than the applicable period of affordability, the participating jurisdiction's standards must require the participating jurisdiction to ensure that a replacement reserve is established and monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. For homeownership housing, the participating jurisdiction's standards must require, upon project completion, each of the major systems to have a remaining useful life for a minimum of 5 years or for such longer period specified by the

participating jurisdiction, or the major systems must be rehabilitated or replaced as part of the rehabilitation work.

(iii) Lead-based paint. The participating jurisdiction's standards must require the housing to meet the lead-based paint requirements at 24 CFR part 35.

(iv) Accessibility. The participating jurisdiction's standards must require the housing to meet the accessibility requirements in 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619). Rehabilitation may include improvements that are not required by regulation or statute that permit use by a person with disabilities.

(v) [Reserved]

(vi) Disaster mitigation. Where relevant, the participating jurisdiction's standards must require the housing to be improved to mitigate the impact of potential disasters (e.g., earthquake, hurricanes, flooding, and wildfires) in accordance with State and local codes, ordinances, and requirements.

(vii) State and local codes, ordinances, and zoning requirements. The participating jurisdiction's standards must require the housing to meet all applicable State and local codes, ordinances, and requirements or, in the absence of a State or local building code, the International Existing Building Code of the International Code Council.

(viii) Uniform Physical Condition Standards. The standards of the participating jurisdiction must be such that, upon completion, the HOME-assisted project and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703. HUD will establish the minimum deficiencies that must be corrected under the participating jurisdiction's rehabilitation standards based on inspectable items and inspected areas from HUD-prescribed physical inspection procedures (Uniform Physical Conditions Standards) pursuant to 24 CFR 5.705.

(ix) Capital Needs Assessments. For multifamily rental housing projects of 26 or more total units, the participating jurisdiction must determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the project through a capital needs assessment of the project.

(2) Construction documents and cost estimates. The participating jurisdiction must ensure that the work to be undertaken will meet the participating jurisdiction's rehabilitation standards. The construction documents (i.e., written scope of work to be performed) must be in sufficient detail to establish the basis for a uniform inspection of the housing to determine compliance with the participating jurisdiction's standards. The participating jurisdiction must review and approve a written cost estimate for rehabilitation after determining that costs are reasonable.

(3) Frequency of inspections. The participating jurisdiction must conduct an initial property inspection to identify the deficiencies that must be addressed. The participating jurisdiction must conduct progress and final inspections to determine that work was done in accordance with work write-ups.

(c) Acquisition of standard housing. (1) Existing housing that is acquired with HOME assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HOME funds, must meet the property standards of paragraph (a) or paragraph (b) of this section, as applicable, of this section for new construction and rehabilitation projects. The participating jurisdiction must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance.

(2) All other existing housing that is acquired with HOME assistance for rental housing must meet the rehabilitation property standards requirements of paragraph (b) of this section. The participating jurisdiction must document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the property does not meet these standards, HOME funds cannot be used to acquire the property unless it is rehabilitated to meet the standards of paragraph (b) of this section.

(3) Existing housing that is acquired for homeownership (e.g., downpayment assistance) must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the specific deficiencies proscribed by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (Uniform Physical Condition Standards) issued pursuant to 24 CFR 5.705 .

The participating jurisdiction must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) or it cannot be acquired with HOME funds.

(d) Occupied housing by tenants receiving HOME tenant-based rental assistance.

All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards in 24 CFR 982.401, or the successor requirements as established by HUD.

(e) Manufactured housing. Construction of all manufactured housing including manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes which are not identical to the federal standards for the new construction of manufactured housing. Participating jurisdictions providing HOME funds to assist manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer’s written instructions for installation of manufactured housing units. All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.43f(c)(i). All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of “reconstruction” must, at the time of project completion, be connected to

permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability. In HOME-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or state codes, the Model Manufactured Home Installation Standards at 24 CFR 3285. Manufactured housing that is rehabilitated using HOME funds must meet the property standards requirements in paragraph (b) of this section, as applicable. The participating jurisdiction must document this compliance in accordance with inspection procedures that the participating jurisdiction has established pursuant to § 92.251, as applicable.

(f) Ongoing property condition standards: Rental housing. (1) Ongoing property standards. The participating jurisdiction must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period. The standards must ensure that owners maintain the housing as decent, safe, and sanitary housing in good repair. The participating jurisdiction's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HOME rental projects. The participating jurisdiction's ongoing property standards must address each of the following:

(i) Compliance with State and local codes, ordinances, and requirements. The participating jurisdiction's standards must require the housing to meet all applicable State and local code requirements and ordinances. In the absence of existing applicable State or local code requirements and ordinances, at a minimum, the participating jurisdiction's

ongoing property standards must include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (Uniform Physical Condition Standards (UPCS)) prescribed by HUD pursuant to 24 CFR 5.705. The participating jurisdiction's property standards are not required to use any scoring, item weight, or level of criticality used in UPCS.

(ii) Health and safety. The participating jurisdiction's standards must require the housing to be free of all health and safety defects. The standards must identify life-threatening deficiencies that the owner must immediately correct and the time frames for addressing these deficiencies.

(iii) Lead-based paint. The participating jurisdiction's standards must require the housing to meet the lead-based paint requirements in 24 CFR part 35.

(2) Projects to which HOME funds were committed before January 24, 2015 must meet all applicable State or local housing quality standards or code requirements, and if there are no such standard or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(3) Inspections. The participating jurisdiction must undertake ongoing property inspections, in accordance with § 92.504(d).

(4) Corrective and remedial actions. The participating jurisdiction must have procedures for ensuring that timely corrective and remedial actions are taken by the project owner to address identified deficiencies.

(5) Inspection procedures. The participating jurisdiction must establish written inspection procedures inspections. The procedures must include detailed inspection checklists, description of how and by whom inspections will be carried out, and

procedures for training and certifying qualified inspectors. The procedures must also describe how frequently the property will be inspected, consistent with this section, § 92.209, and § 92.504(d).

22. In § 92.252:

a. Revise the introductory text, paragraph (a) introductory text, paragraph (b) introductory text, paragraphs (c), (d), (e), (f)(2), paragraph (g) heading, and paragraph (j); and

b. Add paragraphs (k) and (l).

The revisions and additions read as follows:

§ 92.252 Qualification as affordable housing: Rental housing.

The HOME-assisted units in a rental housing project must be occupied by households that are eligible as low-income families and must meet the requirements of this section to qualify as affordable housing. If the housing is not occupied by eligible tenants within six months following the date of project completion, HUD will require the participating jurisdiction to submit marketing information and, if appropriate, submit a marketing plan. HUD will require the participating jurisdiction to repay HOME funds invested in any housing unit that has not been rented to eligible tenants 18 months after the date of project completion. The affordability requirements also apply to the HOME-assisted non-owner-occupied units in single-family housing purchased with HOME funds in accordance with § 92.254. The tenant must have a written lease that complies with § 92.253.

(a) Rent limitation. HUD provides the following maximum HOME rent limits.

The rent limits apply to the rent plus the utilities or the utility allowance. The maximum HOME rents (High HOME Rents) are the lesser of:

* * * * *

(b) Additional rent limitations (Low HOME Rents). The participating jurisdiction may designate (in its written agreement with the project owner) more than the minimum HOME units in a rental housing project, regardless of project size, to have Low HOME Rents that meet the requirements of this paragraph (b). In rental projects with five or more HOME-assisted rental units, at least 20 percent of the HOME-assisted units must be occupied by very low-income families and meet one of the following rent requirements:

* * * * *

(c) Additional rent limitations for SRO projects. (1) For SRO units that have both sanitary and food preparation facilities, the maximum HOME rent is based on the zero-bedroom fair market rent. The project must meet the requirements of paragraphs (a) and (b) of this section.

(2) For SRO units that have no sanitary or food preparation facilities or only one of the two, the maximum HOME rent is based on 75 percent of the zero-bedroom fair market rent. The project is not required to have low HOME rents in accordance with paragraph (b)(1) or (2) of this section, but must meet the occupancy requirements of paragraph (b) of this section.

(d) Initial rent schedule and utility allowances. (1) The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding

telephone) and update the allowances annually. The participating jurisdiction must use the HUD Utility Schedule Model or otherwise determine the utility allowance for the project based on the type of utilities used at the project.

(2) The participating jurisdiction must review and approve rents proposed by the owner for units, subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.

(e) Periods of affordability. The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion.

(1) The affordability requirements:

(i) Apply without regard to the term of any loan or mortgage, repayment of the HOME investment, or the transfer of ownership;

(ii) Must be imposed by a deed restriction, a covenant running with the land, an agreement restricting the use of the property, or other mechanisms approved by HUD and must give the participating jurisdiction the right to require specific performance (except that the participating jurisdiction may provide that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure); and

(iii) Must be recorded in accordance with State recordation laws.

(2) The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure in order to preserve affordability.

(3) The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

(4) The termination of the restrictions on the project does not terminate the participating jurisdiction's repayment obligation under § 92.503(b).

Rental housing activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000 or rehabilitation involving refinancing	15
New construction or acquisition of newly constructed housing	20

(f) * * *

(2) The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (f)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner. Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section. The participating jurisdiction must review rents for compliance and approve or disapprove them every year.

* * * * *

(g) Adjustment of HOME rent limits for an existing project.***

* * * * *

(j) Fixed and floating HOME units. In a project containing HOME-assisted and other units, the participating jurisdiction may designate fixed or floating HOME units. This designation must be made at the time of project commitment in the written agreement between the participating jurisdiction and the owner, and the HOME units must be identified not later than the time of initial unit occupancy. Fixed units remain the same throughout the period of affordability. Floating units are changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

(k) Tenant selection. The tenants must be selected in accordance with § 92.253(d).

(l) Ongoing responsibilities. The participating jurisdiction's responsibilities for on-site inspections and financial oversight of rental projects are set forth in § 92.504(d).

23. In § 92.253:

- a. Revise the section heading and paragraphs (a), (c), and (d);
- b. Remove "and" from the end of paragraph (b)(7);
- c. Remove the period from the end of paragraph (b)(8) and add "; and" in its place; and
- d. Add paragraph (b)(9),

The revisions and additions read as follows:

§ 92.253 Tenant protections and selection.

(a) Lease. There must be a written lease between the tenant and the owner of rental housing assisted with HOME funds that is for a period of not less than one year, unless by mutual agreement between the tenant and the owner a shorter period is specified.

(b) * * *

(9) Mandatory supportive services. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

(c) Termination of tenancy. An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

(d) Tenant selection. An owner of rental housing assisted with HOME funds must comply with the affirmative marketing requirements established by the participating jurisdiction pursuant to § 92.351(a). The owner must adopt and follow written tenant selection policies and criteria that:

(1) Limit the housing to very low- income and low-income families;

(2) Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants);

(3) Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the participating jurisdiction (and only if the limitation or preference is described in the participating jurisdiction's consolidated plan).

(i) Any limitation or preference must not violate nondiscrimination requirements in § 92.350. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., the Housing Opportunity for Persons with AIDS program under 24 CFR part 574, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, supportive housing for the elderly or persons with disabilities under 24 CFR part 891), and the limit or preference is tailored to serve that segment of the population.

(ii) If a project does not receive funding from a Federal program that limits eligibility to a particular segment of the population, the project may have a limitation or preference for persons with disabilities who need services offered at a project only if:

(A) The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;

(B) Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and

(C) Such services cannot be provided in a nonsegregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

(4) Do not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher Program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

(5) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(6) Give prompt written notification to any rejected applicant of the grounds for any rejection.

24. In § 92.254, revise paragraph (a)(2)(iii), (a)(3), (a)(5) introductory text, (a)(5)(i) introductory text, (a)(5)(ii) introductory text, (b)(2), and (c), and add paragraphs (e) and (f) to read as follows:

§ 92.254 Qualification as affordable housing: Homeownership.

(a) * * *

(2) * * *

(iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for the rehabilitation of owner-occupied single-family properties, the

participating jurisdiction must use the HOME affordable homeownership limits provided by HUD for newly constructed housing and for existing housing. HUD will provide limits for affordable newly constructed housing based on 95 percent of the median purchase price for the area using Federal Housing Administration (FHA) single family mortgage program data for newly constructed housing, with a minimum limit based on 95 percent of the U.S. median purchase price for new construction for nonmetropolitan areas. HUD will provide limits for affordable existing housing based on 95 percent of the median purchase price for the area using Federal FHA single family mortgage program data for existing housing data and other appropriate data that are available nation-wide for sales of existing housing, with a minimum limit based on 95 percent of the state-wide nonmetropolitan area median purchase price using this data. In lieu of the limits provided by HUD, the participating jurisdiction may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows. The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. The participating jurisdiction may determine separate limits for existing housing and newly constructed housing. For housing located outside of metropolitan areas, a State may aggregate sales data from more than one county, if the counties are contiguous and similarly situated. The following information must be included in the annual action plan of the Consolidated Plan submitted to HUD for review and updated in each action plan.

(A) The 95 percent of median area purchase price must be established in accordance with a market analysis that ensured that a sufficient number of recent housing sales are included in the survey.

(B) Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one- month reporting period; for 250 through 499 sales per month, a 2-month reporting period; for less than 250 sales per month, at least a 3-month reporting period. The data must be listed in ascending order of sales price.

(C) The address of the listed properties must include the location within the participating jurisdiction. Lot, square, and subdivision data may be substituted for the street address.

(D) The housing sales data must reflect all, or nearly all, of the one- family house sales in the entire participating jurisdiction.

(E) To determine the median, take the middle sale on the list if an odd number of sales, and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by 0.95 to determine the 95 percent of the median area purchase price.

(3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family, and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section. If there is no ratified sales contract with an eligible homebuyer for the housing within 9 months of the date of completion of construction or rehabilitation, the housing must be rented to an eligible tenant in accordance with § 92.252. In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing. The homebuyer must receive housing counseling.

* * * * *

(5) Resale and recapture. The participating jurisdiction must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate and must specifically approve them in writing.

(i) Resale. Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as the family's principal residence. The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers. The participating jurisdiction must specifically define "fair return on investment" and "affordability to a reasonable range of low-income homebuyers," and specifically address how it will make the housing affordable to a low-income homebuyer in the event that the resale price necessary to provide fair return is not affordable to the subsequent buyer. The period of affordability is based on the total amount of HOME funds invested in the housing.

* * * * *

(ii) Recapture. Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. The period of affordability is based upon

the total amount of HOME funds subject to recapture described in paragraph (a)(5)(ii)(A)(5) of this section. Recapture provisions may permit the subsequent homebuyer to assume the HOME assistance (subject to the HOME requirements for the remainder of the period of affordability) if the subsequent homebuyer is low-income, and no additional HOME assistance is provided.

* * * * *

(b) * * *

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing. In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing.

(c) Ownership interest. The ownership in the housing assisted under this section must meet the definition of “homeownership” in § 92.2, except that housing that is rehabilitated pursuant to paragraph (b) of this section may also include inherited property with multiple owners, life estates, living trusts and beneficiary deeds under the following conditions. The participating jurisdiction has the right to establish the terms of assistance.

(1) Inherited property. Inherited property with multiple owners: Housing for which title has been passed to several individuals by inheritance, but not all heirs reside in the housing, sharing ownership with other nonresident heirs. (The occupant of the housing has a divided ownership interest.) The participating jurisdiction may assist the owner-occupant if the occupant is low-income, occupies the housing as his or her principal residence, and pays all the costs associated with ownership and maintenance of the housing (e.g., mortgage, taxes, insurance, utilities).

(2) Life estate. The person who has the life estate has the right to live in the housing for the remainder of his or her life and does not pay rent. The participating jurisdiction may assist the person holding the life estate if the person is low-income and occupies the housing as his or her principal residence.

(3) Inter vivos trust, also known as a living trust. A living trust is created during the lifetime of a person. A living trust is created when the owner of property conveys his or her property to a trust for his or her own benefit or for that of a third party (the beneficiaries). The trust holds legal title and the beneficiary holds equitable title. The person may name him or herself as the beneficiary. The trustee is under a fiduciary responsibility to hold and manage the trust assets for the beneficiary. The participating jurisdiction may assist if all beneficiaries of the trust qualify as a low-income family and occupy the property as their principal residence (except that contingent beneficiaries, who receive no benefit from the trust nor have any control over the trust assets until the beneficiary is deceased, need not be low-income). The trust must be valid and enforceable and ensure that each beneficiary has the legal right to occupy the property for the remainder of his or her life.

(4) Beneficiary deed. A beneficiary deed conveys an interest in real property, including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that expressly states that the deed is effective on the death of the owner. Upon the death of the owner, the grantee beneficiary receives ownership in the property, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime. The participating jurisdiction may assist if the owner

qualifies as low-income and the owner occupies the property as his or her principal residence.

* * * * *

(e) Providing homeownership assistance through lenders. Subject to the requirements of this paragraph (e), the participating jurisdiction may provide homeownership assistance through for-profit or nonprofit lending institutions that provide the first mortgage loan to a low-income family.

(1) The homeownership assistance may be provided only as specified in a written agreement between the participating jurisdiction and the lender. The written agreement must specify the forms and amounts of homeownership assistance that the participating jurisdiction authorizes the lender to provide to families and any conditions that apply to the provision of such homeownership assistance.

(2) Before the lender provides any homeownership assistance to a family, the participating jurisdiction must verify that the family is low-income and must inspect the housing for compliance with the property standards in § 92.251.

(3) No fees (e.g., origination fees or points) may be charged to a family for the HOME homeownership assistance provided pursuant to this paragraph (e), and the participating jurisdiction must determine that the fees and other amounts charged to the family by the lender for the first mortgage financing are reasonable. Reasonable administrative costs may be charged to the HOME program as a project cost. If the participating jurisdiction requires lenders to pay a fee to participate in the HOME program, the fee is program income to the HOME program.

(4) If the nonprofit lender is a subrecipient or contractor that is receiving HOME assistance to determine that the family is eligible for homeownership assistance, but the participating jurisdiction or another entity is making the assistance to the homebuyer (e.g., signing the documents for the loan or the grant), the requirements of paragraphs (e)(2) and (3) of this section are applicable.

(f) Homebuyer program policies. The participating jurisdiction must have and follow written policies for:

(1) Underwriting standards for homeownership assistance that evaluate housing debt and overall debt of the family, the appropriateness of the amount of assistance, monthly expenses of the family, assets available to acquire the housing, and financial resources to sustain homeownership;

(2) Responsible lending, and

(3) Refinancing loans to which HOME loans are subordinated to ensure that the terms of the new loan are reasonable.

25. Revise § 92.255 to read as follows:

§ 92.255 Converting rental units to homeownership units for existing tenants.

(a) The participating jurisdiction may permit the owner of HOME-assisted rental units to convert the rental units to homeownership units by selling, donating, or otherwise conveying the units to the existing tenants to enable the tenants to become homeowners in accordance with the requirements of § 92.254. However, refusal by the tenant to purchase the housing does not constitute grounds for eviction or for failure to renew the lease.

(b) If no additional HOME funds are used to enable the tenants to become homeowners, the homeownership units are subject to a minimum period of affordability equal to the remaining affordable period if the units continued as rental units. If additional HOME funds are used to directly assist the tenants to become homeowners, the minimum period of affordability is the affordability period under § 92.254(a)(4), based on the amount of direct homeownership assistance provided.

26. Revise § 92.257 to read as follows:

§ 92.257 Faith-based activities.

(a) Equal treatment of program participants and program beneficiaries. (1) Program participants. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in HOME program. Neither the Federal Government nor a State or local government receiving funds under the HOME program shall discriminate against an organization on the basis of the organization's religious character or affiliation. Recipients and subrecipients of program funds shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(2) Beneficiaries. In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(b) Separation of explicitly religious activities. Recipients and subrecipients of HOME program funds that engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, must perform such activities and offer such services outside of programs that are supported with federal financial assistance separately, in time or location, from the programs or services funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services.

(c) Religious identity. A faith-based organization that is a recipient or subrecipient of HOME program funds is eligible to use such funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a HOME program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) Alternative provider. If a program participant or prospective program participant of the HOME program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and subrecipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of § 92.508(a)(2)(xiii). Recipients shall ensure that all subrecipient agreements make organizations receiving program funds aware of these requirements.

(e) Structures. Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. When a structure is used for both eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the HOME program. Sanctuaries, chapels, or other rooms that a HOME program-funded religious

congregation uses as its principal place of worship, however, are ineligible for HOME program-funded improvements. Disposition of real property after the term of the grant, or any change in the use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(f) Supplemental funds. If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

27. In § 92.300, revise paragraphs (a), (e), and (f) to read as follows:

§ 92.300 Set-aside for community housing development organizations (CHDOs).

(a) Within 24 months after the date that HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be owned, developed or sponsored by community housing development organizations. For a State, the HOME allocation includes funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, includes funds transferred from a State under § 92.102(b). The participating jurisdiction must certify the organization as meeting the definition of “community housing development organization” and must document that the organization has capacity to own, develop, or sponsor housing each time it commits funds to the organization. For purposes of this paragraph:

(1) Funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization (or project owner as described in paragraph (a)(4) of this section) committing the funds to a specific local project in accordance with paragraph (2) of the definition of “commitment” in § 92.2.

(2) Rental housing is “owned” by the community housing development organization if the community housing development organization is the owner in fee simple absolute of multifamily or single family housing (or has a long term ground lease) for rental to low-income families in accordance with § 92.252. If the housing is to be rehabilitated or constructed, the community housing development organization hires and oversees the developer that rehabilitates or constructs the housing. At minimum, the community housing development organization must hire or contract with an experienced project manager to oversee all aspects of the development, including obtaining zoning, securing non-HOME financing, selecting a developer or general contractor, overseeing the progress of the work and determining the reasonableness of costs. The community housing development organization must own the rental housing during development and for a period at least equal to the period of affordability in § 92.252. If the CHDO acquires housing that meets the property standards in § 92.251, the CHDO must own the rental housing for a period at least equal to the period of affordability in §92.252.

(3) Rental housing is “developed” by the community development housing organization if the community housing development organization is the owner of multifamily or single family housing in fee simple absolute (or has a long term ground lease) and the developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for rent to low-income families in accordance with §

92.252. To be the “developer,” the community development housing organization must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME financing, selecting architects, engineers and general contractors, overseeing the progress of the work and determining the reasonableness of costs. At a minimum, the community housing development organization must own the housing during development and for a period at least equal to the period of affordability in § 92.252.

(4) Rental housing is “sponsored” by the community development housing organization if it is rental housing “owned” or “developed” by a subsidiary of a community housing development organization, a limited partnership of which the community housing development organization or its subsidiary is the sole general partner, or a limited liability company of which the community housing development organization or its subsidiary is the sole managing member.

(i) The subsidiary of the community housing development organization may be a for-profit or nonprofit organization and must be wholly owned by the community housing development organization. If the limited partnership or limited liability company agreement permits the community housing development organization to be removed as general partner or sole managing member, the agreement must provide that the removal must be for cause and that the community housing development organization must be replaced with another community housing development organization.

(ii) The HOME funds must be provided to the entity that owns the project.

(5) HOME-assisted rental housing is also “sponsored” by a community housing development organization if the community housing development organization

“developed” the rental housing project that it agrees to convey to an identified private nonprofit organization at a predetermined time after completion of the development of the project. Sponsored rental housing, as provided in this paragraph (a)(5), is subject to the following requirements:

(i) The private nonprofit organization may not be created by a governmental entity.

(ii) The HOME funds must be invested in the project that is owned by the community housing development organization.

(iii) Before commitment of HOME funds, the community housing development organization sponsor must select the nonprofit organization that will obtain ownership of the property.

(A) The nonprofit organization assumes the community housing development organization’s HOME obligations (including any repayment of loans) for the rental project at a specified time after completion of development.

(B) If the housing is not transferred to the nonprofit organization, the community housing development organization sponsor remains responsible for the HOME assistance and the HOME project.

(6) Housing for homeownership is “developed” by the community development housing organization if the community housing development organization is the owner (in fee simple absolute) and developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for sale to low-income families in accordance with § 92.254.

(i) To be the “developer” the community development housing organization must arrange financing of the project and be in sole charge of construction. The community housing development organization may provide direct homeownership assistance (e.g., downpayment assistance) when it sells the housing to low-income families and the community housing development organization will not be considered a subrecipient. The HOME funds for downpayment assistance shall not be greater than 10 percent of the amount of HOME funds for development of the housing.

(ii) The participating jurisdiction must determine and set forth in its written agreement with the community housing development organization the actual sales prices of the housing or the method by which the sales prices for the housing will be established and whether the proceeds must be returned to the participating jurisdiction or may be retained by the community housing development organization.

(A) While proceeds that the participating jurisdiction permits the community housing development organization to retain are not subject to the requirements of this part, the participating jurisdiction must specify in the written agreement with the community housing development organization whether the proceeds are to be used for HOME-eligible activities or other housing activities to benefit low-income families.

(B) Funds that are recaptured because the housing no longer meets the affordability requirements under § 92.254(a)(5)(ii) are subject to the requirements of this part in accordance with § 92.503.

(7) The participating jurisdiction determines the form of assistance (e.g., grant or loan) that it will provide to the community housing development organization receives or,

for rental housing projects under paragraph (a)(4) of this section, to the entity that owns the project.

* * * * *

(e) If funds for operating expenses are provided under § 92.208 to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be owned, developed or sponsored by the community housing development organization, the participating jurisdiction's written agreement with the community housing development organization must provide that the community housing development organization is expected to receive funds under paragraph (a) of this section for a project within 24 months of the date of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

(f) The participating jurisdiction must ensure that a community housing development organization does not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or \$50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under § 92.208.

28. In § 92.351, revise paragraphs (a)(1) and (a)(2)(ii) through (iv) to read as follows:

§ 92.351 Affirmative marketing; minority outreach program.

(a) Affirmative marketing. (1) Each participating jurisdiction must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME- funded programs, including, but not limited to, tenant-based rental assistance and downpayment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If participating jurisdiction's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with § 92.253(d)(3), the participating jurisdiction must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

(2) * * *

(ii) Requirements and practices each subrecipient and owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the participating jurisdiction and by subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions; and

* * * * *

29. In § 92.352, revise paragraph (a) to read as follows:

§ 92.352 Environmental review.

(a) General. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. The applicability of the provisions of 24 CFR part 50 or part 58 is based on the HOME project (new construction, rehabilitation, acquisition) or activity (tenant-based rental assistance) as a whole, not on the type of the cost paid with HOME funds.

* * * * *

30. In § 92.353 paragraph (c)(2)(C)(1)(ii) is revised to read as follows:

§ 92.353 Displacement, relocation, and acquisition.

* * * * *

(c) ***

(2) ***

(C) ***

(1) ***

(ii) The total tenant payment, as determined under 24 CFR 5.628, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;

* * * *

31. In § 92.354, paragraphs (a)(1) and (3) are revised to read as follows:

§ 92.354 Labor.

(a) * * *

(1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

* * * *

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards, as applicable. Participating jurisdictions shall be responsible for ensuring compliance by contractors and subcontractors with labor standards described in this section. In accordance with procedures specified by HUD, participating jurisdictions shall:

(i) Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations;

- (ii) Conduct on-site inspections and employee interviews;
- (iii) Collect and review certified weekly payroll reports;
- (iv) Correct all labor standards violations promptly;
- (v) Maintain documentation of administrative and enforcement activities; and
- (vi) Require certification as to compliance with the provisions of this section before making any payment under such contracts.

* * * * *

32. In § 92.356, paragraphs (b) and (f)(1) are revised to read as follows:

§ 92.356 Conflict of interest.

(b) Conflicts prohibited. No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

* * * * *

(f) Owners and Developers. (1) No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required period of affordability specified in § 92.252(e) or § 92.254(a)(4). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

* * * * *

33. In § 92.500, paragraphs (c)(1), (d)(1)(A) and (C), and (d)(2) are revised to read as follows:

§ 92.500 The HOME Investment Trust Fund.

* * * * *

(c) * * *

(1) The local account of the HOME Investment Trust Fund includes deposits of HOME funds disbursed from the Treasury account; the deposit of any State funds (other than HOME funds transferred pursuant to § 92.102(b)(2)) or local funds that enable the jurisdiction to meet the participating threshold amount in § 92.102, any program income

(from both the allocated funds and matching contributions in accordance with the definition of program income), and any repayments or recaptured funds as required by § 92.503. The local account must be interest-bearing.

* * * * *

(d)(1) * * *

(A) Any funds in the United States Treasury account that are required to be reserved (i.e., 15 percent of the funds) by a participating jurisdiction under § 92.300 that are not committed to a community housing development organization project within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;

* * * * *

(C) Any funds in the United States Treasury account that are not expended within 5 years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement and any funds in the United States Treasury account that were committed to community housing development organization projects that are not expended within 5 years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement; and

* * * * *

(2) For purposes of determining the amount by which the HOME Investment Trust Fund will be reduced or recaptured under paragraphs (d)(1)(A), (B) and (C) of this section, HUD will consider the sum of commitments to CHDOs, commitments, or expenditures, as applicable, from all fiscal year allocations. This sum must be equal to or

greater than the sum of all fiscal year allocations through the fiscal year allocation being examined (minus previous reductions to the HOME Investment Trust Fund), or in the case of commitments to CHDOs, 15 percent of those fiscal year allocations.

34. In § 92.502, paragraphs (a), (b)(2), and (e) are revised to read as follows:

§ 92.502 Program disbursement and information system.

(a) General. The HOME Investment Trust Fund account established in the United States Treasury is managed through a computerized disbursement and information system established by HUD. The system disburses HOME funds that are allocated or reallocated, and collects and reports information on the use of HOME funds in the United States Treasury account. (For purposes of reporting in the Integrated Disbursement and Information System, a HOME project is an activity.) The participating jurisdiction must report all program income in HUD's computerized disbursement and information system.

(b) * * *

(2) If the project set-up information is not completed within 20 days of the project set-up, the project may be cancelled by the system. In addition, a project that has been committed in the system for 12 months without an initial disbursement of funds may be cancelled by the system.

* * * * *

(e) Access by other participants. Access to the disbursement and information system by other entities participating in the HOME program (e.g., State recipients) will

be governed by procedures established by HUD. Only participating jurisdictions and State recipients (if permitted by the State) may request disbursement.

35. In § 92.503, paragraph (b)(3) is revised to read as follows:

§ 92.503 Program income, repayments, and recaptured funds.

* * * * *

(b) * * *

(3) HUD will instruct the participating jurisdiction to either repay the funds to the HOME Investment Trust Fund Treasury account or the local account. Generally, if the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund Treasury account, they must be repaid to the Treasury account. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund local account, they must be repaid to the local account. If the jurisdiction is not a participating jurisdiction at the time the repayment is made, the funds must be remitted to HUD, and reallocated in accordance with § 92.454.

* * * * *

36. In § 92.504:

- a. Paragraph (a) is revised;
- b. Paragraphs (c)(1) introductory text, (c)(1)(i), (ii), (vii), and (xi) are revised;
- c. Paragraph (c)(1)(xiii) is added;
- d. Paragraphs (c)(2) introductory text, (c)(2)(i), (iv), (v), and (x) are revised;
- e. Paragraph (c)(2)(xi) is added;

- f. Paragraph (c)(3) introductory text is added;
- g. Paragraphs (c)(3)(i) through (iv), (c)(3)(v)(A), (vi), (vii), and (x) are revised;
- h. Paragraph (c)(3)(xi) is added;
- i. Paragraph (c)(4) introductory text is revised;
- j. Paragraph (c)(6) is added; and
- k. Paragraph (d) is revised.

The revisions and additions read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

(a) Responsibilities. The participating jurisdiction is responsible for managing the day-to-day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance and compliance of each contractor, State recipient, and subrecipient must be reviewed at least annually. The participating jurisdiction must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

* * * * *

(c) ***

(1) State recipient. The provisions in the written agreement between the State and a State recipient will depend on the program functions that the State specifies the State

recipient will carry out in accordance with § 92.201(b). In accordance with § 92.201, the written agreement must either require the State recipient to comply with the requirements established by the State or require the State recipient to establish its own requirements to comply with this part, including requirements for income determinations and underwriting subsidy layering guidelines, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability.

(i) Use of the HOME funds. The agreement must describe the amount and use of the HOME funds to administer one or more programs to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance, including the type and number of housing projects to be funded (e.g. the number of single- family homeowner loans to be made or number of homebuyers to receive downpayment assistance), tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects that meet the deadlines established by this part), a budget for each program, and any requirement for matching contributions. These items must be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreement.

(ii) Affordability. The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. The agreement must state if repayment of HOME funds or recaptured HOME funds must be remitted to the State or retained by the State recipient for additional eligible activities.

* * * * *

(vii) Affirmative marketing. The agreement must specify the State recipient's affirmative marketing responsibilities in accordance with § 92.351.

* * * * *

(xi) Written agreement. Before the State recipient provides funds to for-profit owners or developers, nonprofit owners or developers or sponsors, subrecipients, homeowners, homebuyers, tenants (or landlords) receiving tenant-based rental assistance, or contractors who are providing services to the State recipient, the State recipient must have a written agreement with such entities that meets the requirements of this section.

* * * * *

(xiii) Fees. The agreement must prohibit the State recipient and its subrecipients and community housing development organizations from charging servicing, origination, processing, inspection, or other fees for the costs of administering a HOME program, except as permitted by § 92.214(b)(1).

(2) Subrecipient. A subrecipient is a public agency or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME programs to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance. The agreement must set forth and require the subrecipient to follow the participating jurisdiction's requirements, including requirements for income determinations, underwriting and subsidy layering guidelines, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability requirements. The agreement between the participating jurisdiction and the subrecipient must include:

(i) Use of the HOME funds. The agreement must describe the amount and use of the HOME funds for one or more programs, including the type and number of housing projects to be funded (e.g., the number of single-family homeowners loans to be made or the number of homebuyers to receive downpayment assistance), tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects in accordance with deadlines established by this part), a budget, any requirement for matching contributions and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement.

* * * * *

(iv) Other program requirements. The agreement must require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the subrecipient does not assume the participating jurisdiction's responsibilities for environmental review under § 92.352 and the intergovernmental review process in § 92.357 does not apply. The agreement must set forth the requirements the subrecipient must follow to enable the participating jurisdiction to carry environmental review responsibilities before HOME funds are committed to a project.

(v) Affirmative marketing. The agreement must specify the subrecipient's affirmative marketing responsibilities in accordance with § 92.351.

* * * * *

(x) Written agreement. Before the subrecipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers or sponsors, subrecipients,

homeowners, homebuyers, tenants (or landlords) receiving tenant-based rental assistance, or contractors, the subrecipient must have a written agreement that meets the requirements of this section. The agreement must state if repayment of HOME funds or recaptured HOME funds must be remitted to the participating jurisdiction or retained by the subrecipient for additional eligible activities.

(xi) Fees. The agreement must prohibit the subrecipient and any community housing development organizations from charging servicing, origination, or other fees for the costs of administering the HOME program, except as permitted by § 92.214(b)(1).

(3) For-profit or nonprofit housing owner, sponsor, or developer (other than single-family owner-occupant). The participating jurisdiction may preliminarily award HOME funds for a proposed project, contingent on conditions such as obtaining other financing for the project. This preliminary award is not a commitment to a project. The written agreement committing the HOME funds to the project must meet the requirements of “commit to a specific local project” in the definition of “commitment” in § 92.2 and contain the following:

(i) Use of the HOME funds. The agreement between the participating jurisdiction and a for-profit or nonprofit housing owner, sponsor, or developer must describe the address of the project or the legal description of the property if a street address has not been assigned to the property, the use of the HOME funds and other funds for the project, including the tasks to be performed for the project, a schedule for completing the tasks and the project, and a complete budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance

under the agreement to achieve project completion and compliance with the HOME requirements.

(ii) Affordability. The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. The affordability requirements in § 92.252 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the participating jurisdiction has the right to require specific performance.

(A) If the owner or developer is undertaking rental projects, the agreement must establish the initial rents, the procedures for rent increases pursuant to § 92.252(f)(2), the number of HOME units, the size of the HOME units, and the designation of the HOME units as fixed or floating, and include the requirement that the owner or developer provide the address (e.g., street address and apartment number) of each HOME unit no later than the time of initial occupancy.

(B) If the owner or developer is undertaking a homeownership project for sale to homebuyers in accordance with § 92.254(a), the agreement must set forth the resale or recapture requirements that must be imposed on the housing, the sales price or the basis upon which the sales price will be determined, and the disposition of the sales proceeds. Recaptured funds must be returned to the participating jurisdiction.

(iii) Project requirements. The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project

assisted. The agreement may permit the owner to limit eligibility or give a preference to a particular segment of the population in accordance with § 92.253(d).

(iv) Property standards. The agreement must require the housing to meet the property standards in § 92.251, upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing compliance with § 92.251 for the duration of the affordability period.

(v) * * *

(A) The agreement must specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.

* * *

(vi) Records and reports. The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements. The owner of rental housing must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with § 92.252. If the rental housing project has floating HOME units, the owner must provide the participating jurisdiction with information regarding unit substitution and filling vacancies so that the project remains in compliance with HOME rental occupancy requirements. The agreement must specify the reporting requirements (including copies of financial statements) to enable the participating jurisdiction to determine the financial condition (and continued financial viability) of the rental project.

(vii) Enforcement of the agreement. The agreement must provide for a means of enforcement of the affordable housing requirements by the participating jurisdiction and the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The affordability requirements in § 92.252 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the participating jurisdiction has the right to require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

* * * * *

(x) Community housing development organization provisions. If the nonprofit owner or developer is a community housing development organization and is using set-aside funds under § 92.300, the agreement must include the appropriate provisions under §§ 92.300, 92.301, and 92.303. If the community development organization is receiving HOME funds as a developer of homeownership housing, the agreement must specify if the organization may retain proceeds from the sale of the housing and whether the proceeds are to be used for HOME-eligible or other housing activities to benefit low-income families. Recaptured funds are subject to the requirements of § 92.503. If the community housing development organization is receiving assistance for operating expenses, see paragraph (c)(6) of this section.

(xi) Fees. The agreement must prohibit project owners from charging fees that are not customarily charged in rental housing such as laundry room access fees, and other fees. However, rental project owners may charge reasonable application fees to prospective tenants may charge parking fees to tenants only if such fees are customary for

rental housing projects in the neighborhood; and may charge fees for services such as bus transportation or meals, as long as such services are voluntary. The agreement must also prohibit the developer that is undertaking a homeownership project from charging servicing, origination, processing, inspection, or other fees for the costs of providing homeownership assistance.

(4) Contractor. The participating jurisdiction selects a contractor through applicable procurement procedures and requirements. The contractor provides goods or services in accordance with a written agreement (the contract). For contractors who are administering all or some of the participating jurisdiction's HOME programs or specific services for one or more programs, the contract must include at a minimum the following provisions:

* * * * *

(6) Community housing development organization receiving assistance for operating expenses. The agreement must describe the use of HOME funds for operating expenses; e.g., salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; and materials and supplies. If the community housing development organization is not also receiving funds for a housing project to be developed, sponsored, or owned by the community housing development organization, the agreement must provide that the community housing development organization is expected to receive funds for a project within 24 months of the date of receiving the funds for operating expenses, and must specify the terms and conditions upon which this expectation is based and the consequences of failure to receive funding for a project.

(d) On-site inspections and financial oversight. (1) Inspections. The participating jurisdiction must inspect each project at project completion and during the period of affordability to determine that the project meets the property standards of § 92.251.

(i) Completion inspections. Before completing the project in the disbursement and information system established by HUD, the participating jurisdiction must perform an on-site inspection of HOME-assisted housing to determine that all contracted work has been completed and that the project complies with the property standards of § 92.251.

(ii) Ongoing periodic inspections of 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. The inspections must be in accordance with the inspection procedures that the participating jurisdiction establishes to meet the inspection requirements of § 92.251.

(A) The on-site inspections must occur within 12 months after project completion and at least once every 3 years thereafter during the period of affordability.

(B) If there are observed deficiencies for any of the inspectable items in the property standards established by the participating jurisdiction, in accordance with the inspection requirements of § 92.251, a follow-up on-site inspection to verify that deficiencies are corrected must occur within 12 months. The participating jurisdiction may establish a list of non-hazardous deficiencies for which correction can be verified by third party documentation (e.g., paid invoice for work order) rather than re-inspection. Health and safety deficiencies must be corrected immediately, in accordance with §

92.251. The participating jurisdiction must adopt a more frequent inspection schedule for properties that have been found to have health and safety deficiencies.

(C) The property owner must annually certify to the participating jurisdiction that each building and all HOME- assisted units in the project are suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the participating jurisdiction to meet the requirements of § 92.251.

(D) Inspections must be based on a statistically valid sample of units appropriate for the size of the HOME-assisted project, as set forth by HUD through notice.. For projects with one-to-four HOME-assisted units, participating jurisdiction must inspect 100 percent of the HOME0-assisted units and the inspectable items (site, building exterior, building systems, and common areas) for each building housing HOME-assisted units..

(iii) Annual inspections. Tenant- based rental assistance (TBRA). All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards in 24 CFR 982.401 or the successor requirements as established by HUD. The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to determine compliance with these standards.

(2) Financial oversight. During the period of affordability, the participating jurisdiction must examine at least annually the financial condition of HOME-assisted rental projects with 10 units or more to determine the continued financial viability of the housing and must take actions to correct problems, to the extent feasible.

37. Revise § 92.505 to read as follows:

§ 92.505 Applicability of uniform administrative requirements.

(a) Governmental entities. The requirements of 2 CFR part 225 (OMB Circular No. A–87) and the following requirements of 24 CFR part 85 apply to the participating jurisdictions, State recipients, and governmental subrecipients 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) Nonprofit organizations. The requirements of 2 CFR part 230 (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.

38. In § 92.508:

- a. Paragraphs (a)(2)(ii), (iii), and (viii) are revised, and a new paragraph (a)(2)(xiii) is added;
- b. Paragraphs (a)(3)(i), (ii), (iii), (iv), (vi), and (xiii) are revised;
- c. Paragraph (a)(3)(xiv) is added;
- d. Paragraphs (a)(4)(i) and (iii) are revised; and
- e. Paragraphs (a)(6)(i) through (a)(6)(iii) are redesignated as paragraphs (a)(6)(ii) through (a)(6)(iv) and new paragraph (a)(6)(i) is added.

The revisions and addition read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(2) * * *

(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 that are not identified in § 92.205(b), and which are specifically approved by HUD.

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

* * *

(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), as set forth in the Consolidated Plan.

* * *

(xiii) Records documenting objections to the religious character of an organization that provides services under the HOME program, and the reasonable efforts undertaken to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection, as provided in § 92.257(d).

(3) Project records. (i) A full description of each project assisted with HOME funds, including the location (address of each unit), 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; and records to document the eligibility and permissibility of the project costs, including the documentation of the actual HOME-eligible development costs of each HOME-assisted unit (through allocation of costs, if

permissible under § 92.205(d)) where HOME funds are used to assist less than all of the units in a multi-unit project.

(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 and underwriting evaluation adopted in accordance with § 92.250(b).

(iv) Records (e.g., inspection reports) demonstrating that each project meets the property standards of § 92.251 at project completion. In addition, during the period of affordability, records for rental projects demonstrating compliance with the property standards and financial reviews and actions pursuant to § 92.504(d).

* * *

(vi) Records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of § 92.209(c), including any targeting requirements, the rent reasonableness requirements of § 92.209(f), the maximum subsidy provisions of § 92.209(h), property inspection reports, and calculation of the HOME subsidy.

* * *

(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 983.57(e)(2) and (e)(3), in accordance with § 92.202.

(xiv) Records (written agreements) demonstrating compliance with the written agreements requirements in § 92.504.

(4) * * *

(i) Written agreements committing HOME funds to CHDO projects in accordance with § 92.300(a).

* * *

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

* * * * *

(6) Program administration records. (i) Written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

* * * * *

39. In § 92.551, paragraph (c)(1)(vii) is redesignated as paragraph (c)(1)(viii) and revised, new paragraphs (c)(1)(vii) and (c)(1)(ix) are added, and paragraph (c)(2) is revised to read as follows:

§ 92.551 Corrective and remedial actions.

* * * * *

(c) * * *

(1) * * *

(vii) Establishing procedures to ensure compliance with HOME requirements;

(viii) Making matching contributions as draws are made from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account and establishing a remedial plan to make up the matching contributions deficit; and

(ix) If the participating jurisdiction is a metropolitan city, forming a consortium with the urban county if the urban county is willing to carry out the HOME program in the metropolitan city.

(2) HUD may also change the method of payment from an advance to reimbursement basis and may require supporting documentation to be submitted for HUD review for each payment request before payment is made; determine the participating jurisdiction to be high risk and impose special conditions or restrictions on the next year's allocation in accordance with 24 CFR 85.12; and take other remedies that may be legally available.

40. 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.

41. In § 92.614:

a. Paragraphs (a)(3) through (6) are redesignated as paragraphs (a)(4) through (7), respectively;

b. New paragraph (a)(3) is added;

c. Paragraph (b)(1) is removed; and

d. Paragraphs (b)(2) and (3) are redesignated as paragraphs (b)(1) and (2), respectively.

The addition reads as follows:

§ 92.614 Other Federal requirements.

(a) * * *

(3) Affirmative marketing. The affirmative marketing requirements contained in § 92.351(a).

* * * * *

Date: July 15, 2013

Shaun Donovan
Secretary

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