

HOME Proposed Rule Summary of Changes: Section by Section

The HOME rule published on December 16, 2011 proposed to make the following changes to the existing HOME regulations:

§ 92.2 Definitions

New definitions are added and several existing definitions are revised:

Commitment

- Non-specific reservations of funds to CHDOs will not count as commitments. The definition is revised so that only funds that are reserved for project-specific activities will be counted as CHDO commitments (towards the required 15% CHDO set-aside requirement). See also § 92.504(c) – written agreements.
- The definition of subrecipient is revised to exclude an agreement between a PJ and a subrecipient that the PJ controls, such as a redevelopment agency or public housing authority that is part of the local government. Similarly, an agreement between the lead entity of a consortium and a consortium member does not constitute a commitment.
- The definition of commitment is expanded to include a written agreement with a state recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing, or provide downpayment assistance or tenant-based rental assistance. The regulation previously did not explicitly include these types of activities in the definition of “commitment.”

Community Housing Development Organization (CHDOs)

- The definition is revised to add a reference to the Internal Revenue Service (IRS) regulations that implement section 501(c)(4) of the Internal Revenue Code which was inadvertently omitted from the regulation.
- New language is added to clarify that if a nonprofit organization created or sponsored by a for-profit entity seeks designation as a CHDO, the officers or 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.
- Paragraph (5) of the definition is revised to clarify that a CHDO must be separate from and not under the control of a government entity. A government entity is still permitted

to create a CHDO but it is not permitted to control the CHDO by providing its employees to the CHDO as staff or officers.

- Paragraph (9) is revised to strengthen the CHDO capacity requirements. CHDOs must have paid employee staff with housing development experience in order to receive CHDO designation. Nonprofit organizations are no longer permitted to meet the organizational capacity requirement for CHDOs through the use of consultants or through a plan for staff to be trained by consultants. In addition, the capacity requirement cannot be met through the use of volunteers. While volunteers and consultants can be used to fill occasional skill gaps or undertake activities that are required only on a periodic basis, the use of volunteers and consultants cannot be the basis of determining a CHDO's capacity.

Homeownership

- The definition is revised to state that a the right to possession under a contract for deed, installment contract, or land sales contract (pursuant to which the deed is not given until the final payment is made) does not meet the definition of homeownership in the HOME program.
- The definition is revised to make clear that mutual housing cooperatives that receive Low Income Housing Tax Credits do not meet the definition of homeownership.

Housing (Student Housing and Dormitories)

- The definition of housing is revised to exclude all forms of student housing. Dormitories of any kind are also explicitly excluded from the definition.

Low-income families and very low-income families

- The definition is revised to state that a student enrolled at an institution of higher learning, who is not a veteran, is under 24 years of age, does not have a dependent child, is not otherwise individually low-income, and does not have parents who qualify as low-income does not qualify as a low-income family.

Project Completion

- The definition of project completion is revised. For all HOME projects, project completion will mean that all construction work and title transfer (if applicable) is completed and the final draw of HOME funds has been disbursed. In addition,
 - for homeownership projects, completion means that beneficiary data is entered into IDIS;
 - for rental projects, project completion shall mean that the units must be ready for occupancy but tenant data input in IDIS is not required for completion of rental projects (The rental units may be marked vacant when completing the project the

- project in IDIS);
- for tenant-based rental assistance projects, project completion means that all HOME funds associated with the TBRA contract have been disbursed.

NOTE: Failure to meet the definition of project completion will trigger new requirements in Sections 252 and 254 that require repayment of HOME funds related to vacant rental units and conversion of unsold homebuyer units to rental units.

Program income

- New language added to this definition clarifies that 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 to the PJ, subrecipient, or state recipient.

Reconstruction

- The definition is revised to provide an exception to the reconstruction requirement that housing must be standing on a site at the time of commitment. The exception allows housing that was destroyed by disaster to be rebuilt on the same lot, if the HOME funds are committed to the project within 12 months of the destruction of the housing that originally stood on the site.

Single room occupancy

- The definition is revised to require that a project may be designated as an SRO for HOME purposes, its characteristics is also consistent with the PJ's applicable building and zoning code classifications.

Subrecipient

- The language is revised to clarify the distinction between a subrecipient and a developer by stating that subrecipients receive funds to carry out programs (e.g., downpayment assistance programs, owner-occupied rehabilitation programs, etc.).

Uniform Physical Condition Standards (UPCS)

- A new definition is added, meaning uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair.

§ 92.201 Distribution of Assistance

(a)(2) The financial contribution requirement for jointly funded projects is clarified. To qualify as jointly funded, a project must receive financial contributions from both jurisdictions. The contribution may take the form of a grant or loan, including a loan of funds from other federal sources, or relief of a significant tax or fee customarily imposed by the jurisdiction.

§ 92.202 Site and Neighborhood Standards

(b) The paragraph is revised to update the reference to the site and neighborhood standards at 24 CFR 983.57(e)(2) and (3).

§ 92.203 Income Determinations

Income Documentation

(a)(1)(i) This provision is revised to require examination of at least 3 months of source documents when determining the income of an applicant for HOME assistance.

(b)(2) The Census Long Form definition of annual income is eliminated as a definition of annual income for the HOME Program.

(b)(2) The IRS “adjusted gross income” definition is revised to include government cost-of-living allowances in income that are not otherwise included in adjusted gross income (e.g., for a federal civilian employee or a federal court employee who is stationed in Alaska, Hawaii, or outside the United States) be added to the adjusted gross income of applicants for HOME assistance for the purpose of determining income eligibility.

Other Income Related Changes

Choice of Income Definitions

(c) A PJ may only use one income definition for each HOME-assisted program it administers (e.g., TBRA, downpayment assistance) or rental project it funds.

(d)(1) Annual income must include income from all persons (not just family members) living in the housing.

§ 92.205 Eligible Activities: General

(a)(1) This paragraph is revised to clarify that activities and costs are only eligible if housing meets the property standards in §92.251.

Acquisition of Vacant Land or Demolition

(a)(2) This paragraph is revised to clarify that the project must meet the timeframe established in paragraph (2) of the “commitment” definition at § 92.2. HOME funds may be used for acquisition of vacant land or demolition only when construction for a specific project on that site is expected to commence within 12 months of the demolition or acquisition.

On-site Managers

(d)(2) Language is added to make clear that, for multi-unit projects, the number of HOME units may only be reduced in accordance with §92.210, except that one unit may be converted to an on-site manager's unit if specified conditions are met.

Terminated Projects

(e) Language is revised to clarify that a project that is terminated before completion constitutes an ineligible activity for which the PJ must repay, from non-federal funds, the entire amount of HOME funds invested in the project. A project is considered terminated before completion if the project is not completed by the deadline established in 92.205(e)(2).

Project Completion Deadline Established

(e)(2) A new paragraph is added to establish a project completion deadline. For projects that are not completed within 4 years of the commitment date pursuant to the definition of "project completion" in § 92.2, termination of the projects and repayment of the entire HOME investment from non-federal funds are required. A PJ may request a one-year extension from HUD.

§ 92.206 Eligible Project Costs

The term "housing" is replaced with the term "project" in several places in this section.

Forms of Assistance: Refinancing

(b)(1) For refinancing of single-family owner-occupied housing, language is added to emphasize that rehabilitation costs must exceed the amount of debt that is refinanced in order for rehabilitation to constitute the primary eligible activity.

(b)(2) Language is added to expand applicability of the existing refinancing provisions for multifamily housing to include all rental housing, whether multifamily or single family.

Eligible Costs Explicitly Addressed

(d)(3) The cost of obtaining a CPA cost certification for a project audit and the cost of project energy audits are explicitly made eligible.

Costs Incurred Before Commitment of HOME funds

(d)(1) Eligible activities section is revised to allow for the use of HOME funds to pay architectural and engineering and other professional services costs incurred within 18 months prior to commitment of HOME funds to a project, provided that the PJ authorizes payment of the costs in the written agreement.

Prohibition on Charging Administrative Costs to Beneficiaries

(d)(6) Revised language clarifies that PJ staff and overhead costs related to carrying out a project are allowable as administrative costs or project-related soft costs, but cannot be charged to or paid by low-income families. Examples of this are loan servicing fees, loan processing fees, construction management fees.

§ 92.207 Eligible Administrative and Planning Costs

(b) Staff and Overhead. Language is revised to explicitly prohibit these costs from being charged to, or paid by, low-income program beneficiaries. Reasonable and customary fees commonly charged to a loan applicant in unassisted real estate transactions, such as the cost of credit reports or appraisals, are permissible. In addition, nominal application fees charged to applicants for assistance are still permitted, pursuant to § 92.214(b).

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

(a) Language is added to clarify that CHDO operating expense funding is separate from, and not intended to supplant CHDO set-aside funds by using operating funds to pay for project costs.

§ 92.209 Tenant-Based Rental Assistance: Eligible Costs and Requirements

Eligible Cost Clarification

(a) Language is added to explicitly state that utility deposits assistance is an eligible cost only when provided as part of ongoing HOME TBRA or security deposit assistance.

Tenant Selection Clarification

(c) New language clarifies that tenant selection policies and criteria must be based on the local housing needs and priorities set forth in the consolidated plan.

Targeted Assistance

(c)(2)(i) Language is added to clarify that PJs may provide a preference for persons with special needs or individuals with disabilities (based on consolidated plan). PJs may also offer non-mandatory services in conjunction with a TBRA program, and participation in such programs may be limited to persons with a specific disability only when required to provide the same effective housing or benefit as provided to other persons with other disabilities or persons without disabilities.

(c)(2)(ii) PJs are also allowed to establish preferences for specific categories of disabilities (e.g., persons with HIV/AIDS or chronic mental illness) in accordance with its consolidated plan.

Self Sufficiency Programs

(c)(2)(iii) Language is added that allows PJs to use HOME TBRA to administer a self-sufficiency program in which the family is required to participate as a condition of selection for the assistance. However, failure to continue in the self-sufficiency program may not be basis for termination of lease.

TBRA Recipient Participation in Homebuyer Programs

(c)(2)(iv) Provision is added to allow a tenant-based rental assistance recipient to participate in a lease-purchase program. While HOME tenant-based rental assistance cannot be used to pay directly for a downpayment or closing costs, a portion of the tenant's monthly contribution toward rent may be used for that purpose.

TBRA Recipient Eligibility for other Programs

(c)(2)(v) Language is added to specifically prohibit the exclusion of persons eligible for a preference for HOME tenant-based rental assistance the opportunity to participate in all programs of the PJ.

Tenant Protections

(g) Language is revised to make explicit that all tenants must have a lease that complies with all HOME requirements.

Maximum Subsidy Requirements

(h)(2) Language revised to allow PJs to establish unit rent standards based on the Section 8 program, using the methodology for the Housing Choice Voucher program found at 24 CFR Part 982.

§ 92.210 Troubled HOME-Assisted Rental Housing Projects

This new section will facilitate financial work-outs of existing HOME-assisted rental projects that are troubled (i.e., projects in which operating costs significantly exceed operating revenues). HUD may approve one or more of the following actions to preserve a HOME-assisted rental project:

- 1) investment of additional HOME funds provided the total amount of HOME investment does not exceed the maximum per unit subsidy limits established in § 92.250;
- 2) use of HOME funds to capitalize operating reserves; and,
- 3) reduction of the number of HOME units if more than the required minimum number of units were originally designated.

HUD may require the extension of existing affordability periods, depending on the amount of additional funds investment and market factors. HUD Headquarters must approve these actions taken under the authority of this section.

§ 92.213 HOME Funds and Public Housing

This section is added to clarify that HOME funds cannot be used for public housing and that HOME units cannot receive public housing Capital Fund or Operating Fund assistance. However, HOME funds can be used to develop a HOPE VI unit that will serve as public housing, if no Capital Funds (Section 9) are used to develop the unit. HOME funds may be used in a project that also contains public housing units, provided that HOME funds are not used in the public housing units and the HOME units are separately designated.

§92.214 Prohibited Activities and Fees

This section title is revised to further address prohibited fees.

(b)(1) Language is revised to clarify that PJs may not charge servicing, origination, or other fees related of the cost of administering the HOME program and must prohibit State recipients, subrecipients or other program participants (e.g. CHDOs) from charging such fees.

(b)(1)(i) Language is added to permit PJs to charge owners of HOME rental projects reasonable annual monitoring compliance fees during the period of affordability.

(b)(1)(ii) Language is clarified to state that a nominal application fee may be charged by owners of HOME-assisted rental projects but the fee must be appropriate to the type of application and may not create an undue impediment to participation.

(b)(2) This paragraph is added to clarify that tenants living in HOME–assisted housing may not be charged fees that not customarily charged in rental housing (e.g., laundry room fees). Rental project owners may charge reasonable application fees, parking fees (if customary for rental housing projects in that neighborhood) and meals or bus/shuttle transportation (as long as this service is voluntary).

§ 92.221 Match Credit

(d) This new paragraph is added to state that the contributions to homeownership housing constitute match only to the extent that the sales price of the housing is reduced by the amount of the contribution.

§ 92.222 Reduction of Matching Contribution Requirement

(b) Language is added to require HUD to take the fiscal impact of a Presidentially-declared disaster on the PJ into account when considering a match reduction request (e.g, when determining whether to grant the reduction as well as the length and amount of reduction).

§ 92.250 Maximum Per-Unit Subsidy Amount, Underwriting and Subsidy Layering

Maximum Per-Unit Subsidy

(a) The language is revised to clarify that the maximum per-unit subsidy that 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)).

Underwriting and Subsidy Layering

(b) This paragraph has been revised to strengthen the requirements for underwriting HOME-assisted projects. The new language requires that subsidy layering and underwriting of all HOME-assisted projects be performed by the PJ, in order to make a determination regarding long-term viability of the project as well as the reasonableness of the amount of return to the owner. PJs must: 1) examine the sources and uses for each project and determine whether the costs are reasonable; 2) assess the market conditions of the neighborhood in which the project will be located; and, 3) assess the experience of the developer, the financial capacity of the developer, and ensure that there are firm financial commitments for the project.

§ 92.251 Property Standards

The section is reorganized. There are substantial new requirements and language revisions throughout this entire section to update and clarify applicable codes and standards.

Highlights of New Construction Property Standards

(a)(1) In the absence of state and local codes, projects must meet the International Residential Code or International Building Code.

(a)(2)(v) PJs will be required to have written standards for methods and materials, plans, specifications, work write-ups, and cost estimates; (a)(2)(vi) property inspections; and, (a)(2)(vii) progress payment schedule requirements.

(a)(2)(vi) The PJ must conduct progress and final inspections of construction to ensure that work is done in accordance with established standards.

(a)(2)(viii) The PJ must have procedures to ensure that progress payments are consistent with the amount of work performed satisfactorily and that final payment does not occur until the construction on the project is satisfactorily completed.

Highlights of New Rehabilitation Property Standards

(b)(1) The PJ must establish and comply with its rehabilitation standards, which include requirements of applicable state and local codes;

(b)(2) PJs must establish written standards for methods and materials (which must address health and safety, habitability and functionality, useful life of major systems, lead-based paint, accessibility, disaster mitigation, and other improvements), work write-ups and cost estimates, and property inspection procedures to ensure that, at a minimum, all units pass an inspection that addresses all of the inspectable items under HUD's Uniform Physical Condition Standards (UPCS) notice; frequency of inspections; and payment schedule.

(b)(2)(iii) A capital needs assessment is required for all multifamily rental projects of 26 or more total units.

(b)(2)(viii) A new paragraph clarifies that discretionary housing improvements beyond those required to meet property standards may include modest amenities and aesthetic features, but not luxury improvements.

(b)(3) and (b)(4) New paragraphs provide additional detail on required inspections and work write-ups.

Acquisition of Standard Housing Property Standards

(c)(1) For acquisition of standard housing that is to be used as rental housing, housing must meet the property standards for new construction or rehabilitation, as applicable, and document compliance, or be rehabilitated to meet these standards at the time of project completion.

(c)(3) For acquisition projects that are homebuyer projects the housing must be free from all health and safety defects before occupancy and must meet the property standards not later than 6 months after transfer.

Manufactured Housing Property Standards

(e) Manufactured housing must be on a permanent foundation and meet the Manufactured Home Construction and Safety standards (issued by HUD at 24 CFR 3280) that often pre-empt state and local codes. The PJ must document compliance in accordance with established inspection procedures.

Ongoing Property Standards During Period of Affordability

(f) For rental housing, the PJ must establish ongoing property standards that apply throughout the affordability period, inspection procedures, and corrective and remedial actions. These standards must be implemented in accordance with § 92.504(d).

§ 92.252 Qualification as Affordable Housing: Rental Housing

The section is reorganized, and paragraph (e) is expanded.

Initial Occupancy of Vacant Units

Language revised to include a requirement that, to be considered HOME-eligible, rental units be occupied by the initial tenant within a specified period of time. The proposed rule specifically requests comments from interested parties as to the appropriate standard for initial occupancy. If the deadline established in the rule is not met, the PJ must provide information about current marketing efforts and, if appropriate, a plan for enhanced marketing the units. If efforts to market the units are unsuccessful and the units are not occupied by initial tenants after 18 months, HUD would require repayment of the HOME funds invested in those vacant units.

Leases Required for Rental Units

Existing language is revised to make explicit that all tenants must have a written lease that complies with § 92.253.

Rent Limits

(a) Language is revised to clarify that rent limits include both the rent and utilities or the utility allowance.

Designation of Units for Low HOME Rents

Language is revised to incorporate the “High HOME” and “Low HOME” rent terminology into paragraphs (a) and (b) for clarity.

(b) Language is added to clarify that a PJ may designate more than the minimum required number of units (i.e., 20% of HOME units in projects with five or more HOME units) as Low HOME rent units.

(c) Language is added to specify the applicable rent limitations for SRO units. These rent limits have been long-established in administrative guidance and are now added to the rule. For SRO units that have both sanitary and food preparation facilities, the rent may not exceed the zero-bedroom Section 8 Fair Market Rents (FMR). For SRO units that have no sanitary (bathroom) or food preparation facilities, or just one of these, the rent may not exceed 75% of the FMR.

Utility Allowances

(d)(1) Revised language states that the PJ must use the HUD Utility Schedule Model or otherwise determine the allowance for the project based on the type of utilities used at the project.

Nondiscrimination Against Rental Assistance Subsidy Holders

The provisions on nondiscrimination against rental assistance subsidy holders in existing § 92.252(d) are moved to § 92.253(d)(4).

Periods of Affordability and Repayment Obligation

(e)(1)(ii) Language is revised to specifically add use agreements as an allowable mechanism to impose affordability restrictions required by § 92.252.

(e)(1)(iii) Language is added to clarify that affordability restrictions must be recorded in accordance with state recordation laws.

(e)(4) Language is added to specifically state that the termination of affordability restrictions under paragraph § 92.252(e) does not relieve a PJ of its repayment obligation under § 92.503(b) for housing that did not remain affordable for the required period.

Rent Review and Approval

(f)(2) Language is revised to clarify the requirement that the PJ must review and approve or disapprove rents for its HOME-assisted rental units each year.

Fixed and Floating Units

(j) Language is added to clarify that the designation of fixed or floating HOME units must be specified in the written agreement, and that the HOME-assisted units must be identified not later than the date of project completion.

Cross-References to Other Requirements for Rental Housing

(k) A new paragraph § 92.252(k) is added to cross-reference the tenant selection requirements located in § 92.253(d).

(l) A new paragraph § 92.252(l) is added to cross-reference the PJ's ongoing responsibilities for on-site inspections and financial oversight of rental projects located in § 92.504(d).

§ 92.253 Tenant Protections and Selection

The section title is revised to “Tenant Protections and Selection.”

(a) Language is revised to clarify that there must be a written lease for all tenants living in HOME-assisted rental units and for units rented by tenants with HOME tenant-based rental assistance. The minimum term of the must be for one year unless another is mutually agreed upon. Renewal of tenancy also requires a written lease.

Prohibited Lease Terms

(b)(9) Language is added to make explicit that supportive services that are disability-related cannot be established as mandatory.

(c) Language is revised to make explicit that an increase in tenant’s income is not good cause for termination of tenancy. Language is added here that states that termination of tenancy is allowed for failure to follow a transitional housing services plan, so as to facilitate the use of transitional housing for its intended purpose.

Tenant Selection Requirements

(d) Language is added to state that a rental project may be limited to a particular subpopulation if the limitation or preference is described in a PJ’s annual action plan and specifically authorized in written agreement with the owner.

(d)(3)(i) Language is added to clarify that any limitation or preference must not violate nondiscrimination requirements listed 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 (i.e. HOPWA, SHP, HUD 202 or 811).

(d)(3)(ii) Language is added that explains that preferences may be given to disabled families who need services offered at a project, only if certain conditions are met (i.e. such families will not be able to obtain and maintain themselves in housing without appropriate supportive services; and such services are provided in a non-segregated setting).

NOTE: Generally, separate or different housing or services for individuals with disabilities are not permitted. However, 24 CFR 8.4 permits different or separate housing, aid benefits, or services to individuals with disabilities or to any class of individuals with disabilities from that provided to others in extremely limited circumstances, that is, when necessary to provide qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others.

Even when separate housing or services are permitted, individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different.

§ 92.254 Qualification as Affordable Housing: Homeownership

New Purchase Price Limits

(a)(2)(iii) 95% of Area Median Purchase Price Value Limitation: The use of the FHA 203(b) mortgage limits to establish the maximum HOME purchase price limits is eliminated. Revised language would require PJs to use the actual 95% area median purchase price, as determined by HUD; or PJs have the option of calculating its own 95% of median sales price.

In addition, HUD proposes to establish an alternative 95% figure to facilitate the use of HOME funds for new construction of HOME-assisted homeownership housing in areas in which very low housing prices make it difficult to use HOME funds for new construction because the cost of constructing a unit greatly exceeds median sales prices. The alternative figure is the Census Bureau's median sales price for single family houses sold outside of Metropolitan Statistical Areas (currently \$179,900).

Deadline for Transfer of Homeownership Units

(a)(3) A new requirement is added to require that a homeownership unit not sold to an eligible buyer within 6 months of completion must be rented in accordance with § 92.252.

Required Homeownership Counseling

(a)(3) Language is added that would require all homebuyers receiving HOME assistance to receive counseling before purchase.

HUD Approval of Resale and Recapture Provisions

(a)(5) Language is revised to make explicit the requirement that a PJ must obtain HUD approval of its resale and/or recapture provisions.

Resale Provisions

(a)(5)(i) The language clarifies that a PJ that proposes to use resale provisions must define "fair return" and "affordability to a reasonable range of low-income homebuyers" in its annual action plan.

Recapture Provisions

(a)(5)(ii) The current regulation states that if the housing under a recapture agreement does not continue to be the principal residence of the assisted family for the required period of affordability, the PJ must recapture all or part of the HOME assistance provided to the homebuyers. Revised language permits PJs to structure recapture provisions so that a subsequent

buyer can assume the remaining period of affordability if the subsequent buyer is low-income.

Determining Household Eligibility

(b)(2) Revised language clarifies that a PJ must count the income of all persons residing or expected to reside in the housing at the time of purchase.

Qualification as Homeownership

(c) The language is revised to permit rehabilitation assistance in situations that do not meet the definition of homeownership in § 92.2, including inherited property, life estate, and living trust.

Providing HOME Homeownership Assistance Through Lenders

(e) New language is added governing situations in which the HOME homeownership assistance is provided through an organization that also lends non-HOME funds to the homebuyer. PJs are required to verify that the family to be assisted is low-income and inspect the housing for compliance with property standards in §92.251. Certain fees, such as loan origination fees, are prohibited when the lender provides both a non-HOME mortgage and HOME assistance.

Sustainable Homeownership Program Design

(f)(1) New language is added to require PJs to develop and follow written policies for underwriting standards, anti-predatory lending strategies, and policies that ensure that the terms of any loan that refinances debt, to which HOME loans are subordinate, are reasonable.

§ 92.255 Converting Rental Units to Homeownership Units for Existing Tenants

(a) The section is revised to make clear that refusal by the tenant to purchase the housing does not constitute grounds for eviction or failure to renew the lease.

§ 92.300 Set-aside for Community Housing Development Organizations (CHDO)

Several changes are made to this section.

CHDO Reservation

(a) A new provision is added that requires a PJ to certify that an organization qualifies as a CHDO each time it commits CHDO set-aside funds to the organization. The PJ is also required to document that the CHDO has the capacity to own, develop, or sponsor housing in accordance with the revised CHDO definition in §92.2.

(a)(1) Language is revised so that the concept of a CHDO reservation would change from being a general agreement to provide funds for a project that will be identified at a future date to an executed written agreement between the PJ and the CHDO committing funds to a specific local

project. This change makes PJs more accountable for ensuring that CHDOs perform in accordance with HOME requirements.

Housing Owned, Developed or Sponsored by a CHDO

Language is added to clarify what constitutes housing “owned,” “sponsored,” or “developed” by a CHDO.

(a)(2) Housing will meet the “owned” standard if the CHDO is the owner (in fee simple absolute) of multifamily or single family housing that will be rented to low-income families in accordance with §92.252.

(a)(3) Housing will meet the “developed” standard if the CHDO is the owner (in fee simple absolute) and developer of 1) new single-family housing that is or will be constructed, or 2) existing single-family substandard housing that is or will be acquired and rehabilitated for sale to low-income families in accordance with §92.254.

(a)(4) Housing meets the “sponsor” standard if rental housing is owned (in fee simple absolute) by a subsidiary of a CHDO, a limited partnership of which the CHDO or its subsidiary is the sole general partner, or a limited liability company which the CHDO or its subsidiary is the sole managing member. The subsidiary of the CHDO could be a for-profit or nonprofit organization and is required to be wholly owned by the CHDO.

(a)(5) Language is added to clarify the situations in which the CHDO owns and develops the HOME-assisted rental housing and agrees to convey the housing to a private nonprofit organization at a pre-determined time after the completion of development is recognized as “sponsorship.” The CHDO is required to own the property before the development phase, and select the nonprofit organization before it enters into the agreement with the PJ. The nonprofit organization assumes the CHDO’s obligation for the project at a specified time after completion of development. If the property is not transferred to the nonprofit organization, the CHDO sponsor remains liable for the HOME assistance and the project.

§ 92.351 Affirmative Marketing; Minority Outreach Program

(a) The provision stating that the affirmative marketing requirements do not apply to tenants with TBRA is removed. Affirmative marketing requirements, which currently apply only to projects of 5 or more HOME-assisted units, are expanded to include HOME-funded programs (e.g., TBRA, down payment assistance programs). Language is revised to clarify that that subrecipients and HOME-assisted property owners must follow the PJ’s affirmative marketing procedures.

§ 92.352 Environmental Review

(a) The language is clarified regarding the applicability of environmental review regulations based on the type of HOME project (e.g., new construction, rehabilitation), not the particular cost paid with HOME funds.

§ 92.354 Labor

(a) The reference to HUD Handbook 1344.1 is removed. The monitoring and oversight responsibilities which are addressed in the handbook have been incorporated in this section.

§ 92.356 Conflict of Interest

(b) Language is added to clarify that a covered conflict of interest involves a financial benefit or financial interest.

(f) A new requirement is added that extends the current prohibition against owners, developers, or sponsors of HOME-assisted housing occupying HOME-assisted units to immediate family members of owners, developers, or sponsors.

§ 92.500 The HOME Investment Trust Fund

This section includes changes to conform language to new or revised requirements in § 92.252 and § 92.300.

CHDO Commitment Deadline

(d)(1)(a) A new requirement is added that establishes a 24-month project commitment deadline for CHDO set-aside funds. This change reflects revisions in the definition of commitment in 92.2, and is designed to make PJs accountable for ensuring the CHDOs perform in accordance with the HOME program requirements.

Deadline for Expenditure of CHDO funds

(d)(1)(C) A new requirement is added that establishes a 5-year deadline for expenditure of CHDO set-aside funds that is measured separately from the overall 5-year deadline for expenditure of HOME funds.

Interest bearing local HOME accounts

(c)(1) Language is added establishing a new requirement that local HOME accounts be interest bearing.

§ 92.502 Program Disbursement and Information System

(a) Language is added to clarify that PJs are required to report all program income earned on HOME funds in IDIS.

(e) Language is added to clarify that only PJs and State recipients are permitted to request disbursements from IDIS.

§ 92.503 Program Income, Repayments, and Recaptured Funds

(b)(3) Language is revised to state that, when repayment of HOME funds is required, HUD will inform the PJ whether to repay funds to the Treasury HOME account or local HOME account.

§ 92.504 Participating Jurisdiction Responsibilities; Written Agreements; On-Site Inspection

There are numerous changes to the requirements in this section. Listed below are some of the most noteworthy.

Responsibilities of PJs

(a) Language is revised to require PJs 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 the HOME requirements are met.

Provisions in Written Agreements

(c) Language is revised to clarify the required provisions in written agreements between a PJ and state recipients, subrecipients, for-profit or nonprofit owners, sponsors, developers, and CHDOs that receive operating funds.

Fees

(c)(1)(xiii) Language is added to require that each written agreement shall explicitly prohibit state recipients and subrecipients from charging servicing, origination, processing, inspection and other fees associated with the costs of administering the HOME program.

Use of HOME Funds/Awards vs. Commitments

(c)(3)(i) Language is revised to clarify that preliminary awards of HOME funds do not constitute a commitment and may not be entered into IDIS until a legally binding written agreement containing all required provisions is executed.

Affordability

(c)(3)(ii) Language is revised to clarify the homeownership and rental affordability requirements that must be addressed in the written agreement, including the recordation of deed restrictions and repayment requirements.

CHDO Operating Assistance

(c)(6) A paragraph is added regarding the required provisions for written agreements providing CHDO operating expense funds. The written agreement must describe the uses of operating funds and, if the CHDO is not also receiving HOME funds for a project that it is to own, develop, or sponsor, the agreement must also state the expectation that such funds will be provided to the CHDO within 24 months.

On-site Inspections and Financial Oversight

Inspections

(d)(1) On-site inspections will now be required at the time of project completion and during the period of affordability to determine compliance with property standards established in §92.251. There are also new requirements related to the sample size of the units to be inspected and the frequency of inspections, which is partially determined by a risk-based system.

Annual Examination of Rental Projects

(d)(2) Language is added that requires PJs to examine the financial condition of HOME rental projects at least annually during the period of affordability, and take actions to correct the problems. In the preamble, HUD proposes applying this provision to projects with 10 or more HOME-assisted units. See § 92.210 for new provisions pertaining to financially troubled HOME-assisted projects.

§ 92.505 Applicability of Uniform Administrative Requirements

Citations are added for the regulations implementing OMB Circulars No. A-87 and A-122.

§ 92.508 Recordkeeping

(a)(2)(iii) Language is added that requires that PJs have underwriting and subsidy layering guidelines.

(a)(3)(iv) Language is revised to clarify that PJs are required to maintain records demonstrating that HOME-assisted properties are in compliance with property standards and that annual financial inspections of these properties were conducted in accordance with the on-site inspection requirements set forth in § 92.504.

(a)(4) CHDO records must include written agreements, qualification of CHDOs, and the amount of set-aside funds committed.

(a)(6) Language is added that requires PJs to document program administration requirements have been met, including records of written policies, procedures, and systems, including risk assessment and a system for monitoring entities.

§ 92.551 Corrective and Remedial Actions

(c) This section is revised, adding to the remedial actions available to HUD.

Remedial Actions

(c)(viii) Language is added that provides that HUD may establish a remedial plan to make up for a matching contribution deficit.

(c)(ix) Language is added that permits HUD to require a metropolitan city PJ to form a consortium with the urban county.

(c)(ix)(2) Language is added that clarifies that HUD may request supporting documentation for each payment, and allows HUD to identify high-risk PJs and impose special conditions or restrictions on the HOME allocation per 24 CFR 85.12.

§ 92.552 Notice and Opportunity for Hearing; Sanctions

The proceedings reference to subpart B is removed.