THIS PROPOSED RULE IS PENDING PUBLICATION IN THE FEDERAL REGISTER. PUBLICATION IN THE FEDERAL REGISTER WILL DETERMINE THE START OF THE PUBLIC COMMENT PERIOD. PUBLIC COMMENTS WILL NOT BE ACCEPTED IN ADVANCE OF THAT DATE.

Department of Housing and Urban Development

24 CFR Parts 91, 92, 570, and 982

[Docket No. FR-6144-P-01]

RIN 2506-AC50

HOME Investment Partnerships Program: Program Updates and Streamlining

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

ACTION: Proposed rule.

SUMMARY: HUD's HOME Investment Partnerships Program (HOME program or HOME) provides formula grants to States and units of general local government to fund a wide range of activities to produce and maintain affordable rental and homeownership housing and provides tenant-based rental assistance for low-income and very low-income households. This proposed rule would revise the current HOME regulations to update, simplify, or streamline requirements, better align the program with other Federal housing programs, and implement recent amendments to the HOME statute. This rule also includes minor revisions to the regulations for the Community Development Block Grant and Section 8 Housing Choice Voucher (HCV) Programs consistent with the implementation of proposed changes to the HOME program.

DATES: Comment Due Date: **[INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Electronic Submission of Comments. Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through www.regulations.gov can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

Note: To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street S.W., Room 7160, Washington, D.C. 20410; telephone number (202) 708-2684 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.

SUPPLEMENTARY INFORMATION:

I. Background—The HOME Program

The HOME program is authorized by title II of the Cranston-Gonzalez National Affordable Housing Act[1] ("NAHA") and has been in operation since 1992. The HOME program provides grants to States, local jurisdictions, and consortia of local jurisdictions (collectively, participating jurisdictions or PJs) and is used, often in partnership with local nonprofit groups, to fund a wide range of activities to build, buy, or rehabilitate affordable housing for rent or homeownership or to fund direct rental assistance to low-income people.[2] HOME program funds are awarded annually as formula grants to participating jurisdictions. After the Department obligates funds to a participating jurisdiction, the Department establishes a HOME Investment

[1] 42 U.S.C. 12721 *et seq.*

[2] *See* HUD's HOME Investment Partnerships Program webpage at https://www.hud.gov/program_offices/comm_planning/home.

Trust Fund[3] for each participating jurisdiction, providing a line of credit that a participating jurisdiction may draw upon as needed.

The HOME program is the largest Federal block grant to States and local governments designed exclusively to create affordable housing for low-income households. Each year, the program allocates approximately $1.5 billion among States and approximately 600 localities nationwide. In fiscal year 2023, participating jurisdictions completed 6,848 rental housing units and 4,051 homebuyer units, assisted 2,717 low-income homeowners to repair their homes, and provided tenant-based rental assistance to 13,016 low-income households. HOME funds are most often used as gap financing for rental projects, particularly for projects that have been awarded Low-Income Housing Credits (26 U.S.C. 42) ("LIHTC"). Currently, there are 245,122 HOME-assisted rental units operating in their periods of affordability (i.e., subject to ongoing HOME income and rent requirements). The HOME program is designed to reinforce several important values and principles of community development. First, the HOME program's flexibility empowers people and communities to design and implement strategies tailored to their own needs and priorities. Second, the HOME program's emphasis on consolidated planning expands and strengthens partnerships among all levels of government and the relationship with the private sector in the development of affordable housing. Third, the HOME program's technical assistance activities and set-aside for qualified community housing development organizations help to build the capacity of and partnerships with these community-based nonprofit organizations. Fourth, the HOME program's requirement that participating jurisdictions match 25 cents of every dollar in program funds helps to mobilize community resources in support of affordable housing.

[3] HUD's regulations for the HOME Investment Trust Fund can be found at 24 CFR 92.500.

While participating jurisdictions may undertake housing development activities directly, they also may provide HOME funds to for profit developers, public agencies, or private non-profit organizations to develop affordable housing for rent or sale to income-eligible households. Participating jurisdictions may provide HOME funds for affordable housing as grants, direct loans, loan guarantees, or other forms of credit enhancement, or for rental assistance or security deposits. Non-development activities such as tenant-based rental assistance or downpayment assistance for homeownership are generally administered by the participating jurisdiction, another public agency, or a non-profit organization as subrecipients acting on behalf of the participating jurisdiction.

The participating jurisdiction ensures compliance with HOME affordability requirements during the required period of affordability through the execution and recording of regulatory agreements on HOME-assisted housing and other enforceable measures such as deed restrictions or similar instruments. All HOME-assisted units must be occupied by income-eligible households. HOME-assisted rental units must have their rents approved by the participating jurisdiction and require owners to restrict the rent paid by tenants to amounts at or below the HUD-published maximum HOME rent limits. Owners of HOME-assisted rental housing must follow their adopted written tenant selection policies and criteria and select tenants from a written waiting list in chronological order of their application, insofar as practicable. Owners of HOME-assisted rental housing must also affirmatively market the availability of units in a manner likely to reach eligible tenants. Generally, participating jurisdictions maintain information on HOME-assisted rental housing (e.g., websites, brochures, fliers) that prospective tenants may access to identify housing opportunities. HOME-assisted housing for homebuyers is also subject to a period of affordability. If the HOME-assisted homeownership housing is sold

during the period of affordability, either the property must be sold at an affordable price to another low-income homebuyer or all or a portion of any purchase assistance provided to the seller must be recaptured from the net proceeds of the sale.

The HOME program regulations are codified in 24 CFR part 92 and were last substantively revised on July 24, 2013 (the 2013 HOME Final Rule).[4] The 2013 HOME Final Rule focused on improving a participating jurisdiction's performance and accountability to HOME grant funds and addressing a participating jurisdiction's operational challenges as it adopted more complex program designs and its portfolio of existing projects grew. In 2016, the Department issued an interim regulation,[5] finalized on September 22, 2022 ("the 2022 HOME Final Rule"),[6] that implemented a grant-specific method for determining compliance with the 24-month commitment and CHDO set-aside commitment deadlines. The 2022 HOME Final Rule also eliminated the use of first-in-first-out accounting for fiscal year 2015 and later HOME grants.

The HOME program provisions contained in title II of NAHA are prescriptive and the statute has not been significantly revised since the HOME program was last reauthorized by Congress in 1992. The constraints of prescriptive statutory authority that have not been significantly revised in over 30 years limits the scope of changes that the Department can propose to the HOME program regulations. Working within these limitations, the Department conducted a comprehensive review of title II of NAHA and current HOME program regulations to determine whether previously unrecognized opportunities might exist to revise current regulatory provisions. In creating this proposed rule, the Department focused on its commitment

[4] 78 FR 44627.
[5] 81 FR 86947 (Dec. 2, 2016).
[6] 87 FR 57821.

to equity and wealth-building and considered input from stakeholders throughout the years on the most challenging aspects of administering and using HOME funds to provide affordable housing. Through this proposed rule, the Department seeks to reduce burden and increase flexibility for participating jurisdictions and other program participants, while adhering to statutory intent and requiring responsible management of State and local HOME programs.

II. This Proposed Rule

HUD proposes to make multiple changes to 24 CFR part 92. The proposed changes include significant revisions to the community housing development organization (CHDO) requirements, a change in the approach to HOME rents, simplified requirements for small-scale rental projects, enhanced flexibility in HOME tenant-based rental assistance ("TBRA") programs, and simplified provisions and new flexibilities for community land trusts (CLTs). The proposed rule would significantly strengthen and expand tenant protections by requiring that a HOME tenancy addendum with a set of uniform tenant protections be appended to the leases of all tenants of HOME-assisted rental housing units. HUD also proposes requiring that a HOME tenancy addendum with a streamlined set of uniform tenant protections be appended to the leases of all tenants receiving TBRA. Additionally, HUD proposes to create incentives for meeting a more advanced property standard that incorporates green building standards, higher levels of energy efficiency, and innovative building techniques in new construction, reconstruction, and rehabilitation of housing. The proposed rule would also clarify the resale requirements for homeownership housing and would make technical amendments and simplifications to conform provisions to certain changes made in the 2013 HOME Final Rule. HUD's proposed changes are described more fully in each of the sections below.

This proposed rule incorporates changes made by the Housing Opportunity Through Modernization Act of 2016 (HOTMA), published in the *Federal Register* on February 14, 2023 (88 FR 9600) ("HOTMA Final Rule"), Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE), published in the *Federal Register* on May 11, 2023 (88 FR 30442) ("NSPIRE Final Rule"). This proposed rule also updates citations, in paragraphs where other changes are being made, to citations to conform with recent changes to the Office of Management and Budget (OMB) regulations at 2 CFR part 200. HUD intends to publish a future rulemaking to ensure that all citations throughout HUD's regulations are consistent with these changes. This proposed rule also proposes further revisions to the changes made to 24 CFR part 92 by the HOTMA Final Rule, and the NSPIRE Final Rule.

A. Changes to the HOME Program Regulations (24 CFR part 92)

1. Definitions (24 CFR 92.2).

Removal of definitions related to 24 CFR part 92, subpart M. HUD proposes to remove the definition of "ADDI Funds," "Displaced homemaker," and "First-Time Homebuyer" because the Department proposes to delete 24 CFR part 92, subpart M, which implemented the American Dream Downpayment Initiative (ADDI) and associated definitions.

Commitment. HUD proposes to make two minor changes to the definition of "commitment." This term is currently defined to generally mean that a participating jurisdiction has executed a legally binding agreement with a State recipient, a subrecipient, or a contractor to use a specific amount of HOME funds for a specified use or for a specified local project. The proposed rule would make a technical correction in paragraph (1) of the definition to change the word "official" to "officials" in the description of an agreement between the participating

jurisdiction and a subrecipient that is controlled by the participating jurisdiction. The proposed rule would also replace the term "downpayment assistance" with "homeownership assistance." The use of the term "downpayment assistance" was a drafting error which unintentionally implied that written agreements with State recipients or subrecipients to provide other forms of homeownership assistance (i.e., direct financial assistance to homebuyers or rehabilitation assistance to low-income homeowners) do not constitute commitments. The proposed rule would also remove "or subrecipient" from paragraph (2)(ii)(A) of the definition because a subrecipient, unlike a State recipient, is not permitted to acquire or assist standard housing with HOME funds it administers. This change would conform to proposed clarifications in the definitions of "State recipient" and "subrecipient."

Community housing development organization. HUD proposes to revise paragraph (4) of the "community housing development organization" (CHDO) definition to clarify the three options for meeting the requirement that the CHDO be a private nonprofit organization that is tax exempt. The proposed rule would insert the language "Is tax exempt as follows:" and add subsections (i), (ii), and (iii) to paragraph (4) to distinguish the three options to meet the tax exempt requirement. The first option is a tax exemption ruling from the Internal Revenue Service (IRS) under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and would be paragraph (4)(i). The second option's current language "is classified as a subordinate of a central organization non-profit under section 905 of the Internal Revenue Code of 1986" reflects the Department's decision in the 2013 HOME Final Rule to accommodate the IRS's recognition of a group of subordinate organizations as tax exempt if they are affiliated with a central organization.[7] To avoid the need for each of the subordinate organizations to apply for an

[7] *See* 26 CFR § 1.6033-2(a)(2)(ii)(I); Rev. Proc. 80-27, 1980-1 C.B. 677, available at https://www.irs.gov/pub/irs-tege/rp1980-27.pdf.

exemption individually, the IRS provides the central organization with a group exemption letter which is a ruling or determination issued to the central organization (generally, a State, regional, or national organization) which holds that one or more subordinate organizations (usually a post, unit, chapter, or local) are exempt from Federal income tax by virtue of being subordinate organizations of the central organization. In order to benefit from a group exemption letter, the subordinate organization must be listed in the 501(c)(3) or (4) central organization's group exemption letter. Rather than the general reference to section 905 of the Internal Revenue Code (IRC) in the current language, the proposed language in paragraph (4)(ii) of the CHDO definition would describe the applicable IRS requirement. The third option in paragraph (4) has also been revised in proposed paragraph (4)(iii) to clarify that a private nonprofit organization is tax exempt if it is wholly owned by a community housing development organization that meets the requirement of the definition in § 92.2, including either paragraph (4)(i) or (ii), and is disregarded as an entity separate from its owner organization for federal tax purposes. The 2013 HOME Final Rule included this option to permit private nonprofit organizations that were wholly owned by a CHDO to meet the tax exempt requirement in paragraph (4). However, the language for this third option in the 2013 HOME Final Rule was confusing. The proposed paragraph (4)(iii) would clarify that a private nonprofit organization may also meet the tax exempt requirement because its owner organization (that qualifies as a CHDO) has a 501(c)(3) or (4) ruling or is a subordinate organization included in a 501(c)(3) or (4) central organization's group exemption letter by the IRS.

As part of the Department's effort to provide more community-based nonprofit organizations access to the HOME CHDO set-aside within the constraints of NAHA, the proposed rule would revise several provisions of the CHDO definition to make it easier for these

organizations to meet the low-income board representation and staff capacity requirements in § 92.2. These proposed changes, when combined with the proposed revisions to the required role of the CHDO as owner, developer, or sponsor of housing at § 92.300, would enable more community-based housing organizations to qualify as CHDOs and access the CHDO set-side.

The first proposed change would revise paragraph (5) of the CHDO definition to make the limitation on public officials and employees of a governmental entity on the CHDO governing board less restrictive. The regulations currently require an individual who is an employee or public official of any governmental entity to be limited to one-third of the CHDO board members. The proposed rule would revise paragraph (5) of the definition to apply this requirement only to officials and employees of the participating jurisdiction designating the CHDO and, if the CHDO was created by a governmental entity (e.g., public housing agency), to officials and employees of the governmental entity. This change would mean that officials or employees of other governmental entities besides the participating jurisdiction designating the CHDO or governmental entity that created the CHDO (e.g., employees of other units of general local government, public school teachers, university professors) would not be required to be counted toward the one-third board membership limitation on officials or employees. The proposed requirements would also clarify that no governmental entity (which includes the participating jurisdiction) may appoint more than one-third of the organization's board members and that those board members are not permitted to appoint any of the remaining members of the board.

In addition, paragraph (8)(i) of the current definition of CHDO requires a CHDO to reserve at least one-third of the membership of its governing board for residents of low-income neighborhood organizations, other low-income community residents, or elected representatives

of low-income neighborhood organizations. The proposed rule would broaden eligible low-income representatives required in paragraph (8)(i) by permitting (1) an individual designated by a low-income neighborhood organization to qualify as a low-income representative, rather than only elected leadership of these organizations and (2) an authorized representative of a nonprofit organizations in the community that addresses the housing or supportive service needs of residents of low-income neighborhoods to qualify as a low-income representative. Examples of "nonprofit organizations in the community" include homeless providers, Community Action Agencies, Fair Housing Initiatives Program providers, Legal Aid, disability rights organizations, and victim service providers. These proposed changes would facilitate State and local participating jurisdiction efforts to identify more organizations that can undertake activities using CHDO set-aside funds.

Further, State and consortia participating jurisdictions located in rural areas face unique challenges in identifying organizations that can meet the governing board and capacity requirements to become CHDOs. To help address these challenges, the Department also proposes to revise the provision in paragraph 8(i) of the CHDO definition that defines the term "community" for rural areas as "a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State)" to remove the text in parentheses. This change would permit CHDOs operating in rural areas to count qualified low-income representatives from anywhere in the State toward the low-income board representation requirement. This change to the definition of "community" for rural areas would also apply to paragraph (10) of the CHDO definition, effectively permitting an organization that wishes to operate as a CHDO in a rural area to meet the requirement that it have at least a one-year history serving the community with a service history anywhere in the State. This change would make it possible for nonprofits

with statewide service areas to qualify as CHDOs and increase the use of CHDO set-aside funds in rural areas.

HUD proposes to make numerous revisions to paragraph (9) of the CHDO definition, which includes the statutory requirement that an organization have demonstrated staff capacity to qualify as a CHDO. The proposed rule would broaden the requirement that an organization have demonstrated capacity for carrying out projects assisted with HOME funds to also include housing projects assisted with other Federal funds, LIHTC, or local and State affordable housing funds. In addition, the proposed rule would improve the clarity of paragraph (9) by adding subsections (i), (ii), and (iii) to separately address the requirements for developer, owner, and sponsor.

The proposed rule would ease the current prohibition in paragraph (9) of the CHDO definition against using the capacity or experience of volunteers to meet the demonstrated capacity requirement. The Department made this prohibition more explicit in the 2013 HOME Final Rule to implement the staff capacity provision contained in the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. 112-55) and the Consolidated and Further Continuing Appropriations Act of 2013 (Pub. L. 113-6), which required CHDOs to have staff with demonstrated development experience. Because the connection of volunteers to an organization may be tenuous or temporary, using the capacity of volunteers to meet demonstrated staff capacity is inconsistent with both NAHA and with the provisions in the Consolidated and Further Continuing Appropriations Acts. The proposed rule would, however, permit participating jurisdictions to consider the capacity and experience of volunteers who are board members or officers of the organization in determining whether an organization meets the

CHDO capacity requirements, provided that the volunteer is not compensated by or their services are not donated by another organization.

Specific solicitation of comment #1. The Department specifically solicits public comment about any additional changes it should consider, within statutory constraints, that will improve CHDO availability and capacity in rural areas.

Community land trust. HUD proposes to add the definition of "community land trust" (CLT) to § 92.2. Section 233(f) of NAHA (42 U.S.C. 12773(f)) contains a definition of community land trust which the statute expressly states is only for the purposes of establishing the specific characteristics of CLTs that qualify to receive CHDO technical assistance funding. This statutory definition in section 233(f) of NAHA, which was developed in 1990, is not reflective of actual CLTs operating in participating jurisdictions. However, in the absence of a separate regulatory definition or any other definition of CLT in another Federal program, the Department applied the statutory definition in section 233(f) in the implementation of the amendment to NAHA in the Consolidated Appropriations Act, 2016 (Pub. L. 114-113). The amendment permitted CLTs to hold and exercise purchase options, rights of first refusal, or other preemptive rights to preserve the affordability of the housing developed by the CLT.

Recognizing the problems in applying a CLT definition for HOME that the statute expressly states is only for the purpose of allowing qualifying CLTs to receive CHDO technical assistance funding, the Department proposes a regulatory definition of CLT that encompasses the purposes for which CLTs are formed and which would generally apply in the HOME program, except where stated otherwise in the proposed rule. The proposed regulatory definition would require a community land trust to be a nonprofit organization that has the development and maintenance of housing that is permanently affordable to low and moderate-income persons as

its primary purposes, uses enforceable mechanisms to require housing and related improvements on land held by the CLT to be affordable to low- and moderate-income persons for at least 30 years, and retains a right of first refusal or preemptive right to purchase the affordable housing on land held by the CLT to maintain long-term affordability. Adoption of the proposed regulatory definition for CLT would allow the Department to discontinue application of the CLT definition expressly specified only for CHDO technical assistance in all other uses of HOME funds.

Homeownership. The proposed rule would make a technical correction to the definition of "homeownership" in § 92.2, striking the words "in a" from the phrase "1- to 4-unit dwelling or in a condominium unit . . . ." The proposed rule would also revise paragraph (4) of the definition by deleting "Tax" from the referenced term "Low-Income Housing Tax Credits" and adding the IRC statutory citation for the term. The changed term "Low-Income Housing Credits" would match the title of section 42 of the IRC.

Period of Affordability. HUD proposes to add the definition of "period of affordability," which is used throughout 24 CFR part 92. The definition would (1) clarify that the term means the required period specified in § 92.252 and § 92.254 during which the requirements of part 92 apply to HOME-assisted housing and (2) distinguish the required period specified in § 92.252 and § 92.254 from an extended period of affordability or additional compliance period that a participating jurisdiction may impose on HOME-assisted housing. The proposed rule would also make technical corrections in numerous sections of part 92 by replacing "affordability period" with "period of affordability."

Program Income. HUD proposes to make minor changes to the definition of "program income." First, the phrase "at any time" is added to the definition to clarify that program income

is gross income received by the participating jurisdiction, State recipient, or a subrecipient directly generated from the use of HOME funds or matching contributions "at any time" and is not bound by a specific timeframe such as the period of affordability or closeout of the HOME grant.

The proposed rule would also remove the term "subrecipient" from the beginning of paragraph (2) of the "program income" definition that refers to ownership of rental property. This change would clarify that a subrecipient, by definition, is a governmental entity or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME program to produce affordable housing, provide homeownership assistance, or provide TBRA and cannot, in that capacity, also receive HOME funds to be an owner or developer of affordable housing. The proposed rule would also remove "sponsor" from the parenthetical in paragraph (2) of the "program income" definition because only a CHDO may be a "sponsor" and, pursuant to § 92.300(a)(4), a "sponsor" must be a project "owner" or "developer." Therefore, the inclusion of "sponsor" in paragraph (2) of the definition is duplicative and would be deleted in the definition for clarity. The proposed definition of "program income" would also clarify that the amount of gross income from the use, rental, or sale of real property received by the project owner or developer that must be paid to the participating jurisdiction, subrecipient or State recipient is program income. Finally, the proposed rule would further clarify in paragraph (3) that program income includes payments and repayments of grants, loans, or investments made using HOME funds or matching contributions, including such payments and repayments made after the period of affordability, and is not limited to the payment of loans made using HOME funds or matching contributions.

Reconstruction. HUD proposes to revise the definition of "reconstruction" to clarify that, although reconstruction is considered rehabilitation for purposes of the HOME program, the property standards for new construction in § 92.251 apply to all HOME-assisted reconstruction projects.

Single family housing. HUD proposes to revise the definition of "single family housing" to improve the clarity of the term. The current definition states that single family housing is a one-to-four family residence, condominium unit, combination of manufactured housing unit and lot, or manufactured housing lot. The proposed change would revise "family" to "unit" to reflect current program practice and guidance, changing the definition to a one-to-four- "unit" residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot. The proposed change would clarify that the defined term is based on units and not occupancy.

Small-scale housing. HUD proposes to add the definition of "small-scale housing," which would be defined as a rental housing project containing no more than four units or a homeownership project with no more than three rental units on the same site. HUD is proposing this definition to permit these types of projects to follow streamlined procedures for income determinations, ongoing physical inspections, and written tenant waiting lists. The definition and the streamlined provisions would facilitate participation of owners of small rental properties (e.g., accessory dwelling units, duplexes, triplexes, or other small rental projects) in the HOME program.

State recipient. The current definition of "State recipient" consists of a cross reference to § 92.201(b)(2). The proposed rule would eliminate the cross reference and instead list the definition directly in § 92.2. States are not required to use State recipients, but if a State

distributes HOME funds to one or more unit(s) of general local government to carry out HOME programs, the unit(s) of general local government is a "State recipient." The proposed definition would also clarify that, unlike a "subrecipient," a "State recipient" is permitted to own or develop affordable housing as well as administer all or some of the participating jurisdiction's HOME programs, provide homeownership assistance, or provide TBRA. This change further distinguishes a "State recipient" from a "subrecipient.".

Subrecipient. HUD proposes to make changes to the definition of "subrecipient." To be consistent with the proposed change to the definition of "commitment," the term "downpayment assistance" as it is used in the current definition of "subrecipient" would be revised to "homeownership assistance." Also, the term "public agency" as it is used in the current definition of "subrecipient" would be revised to "governmental entity" because "governmental entity" is used throughout part 92, whereas "public agency" is only used in the current "subrecipient" definition. These proposed changes would also reflect the current practice to permit entities such as a public housing authority, housing finance agency, or redevelopment authority to be subrecipients.

The proposed rule would also remove the word "solely" to clarify that a governmental entity or nonprofit organization that receives HOME funds as a developer or owner of a housing project is not acting as a "subrecipient," even if it also receives funds from the participating jurisdiction to administer other HOME-funded activities as a "subrecipient." Subject to the requirements of part 92, a governmental entity or nonprofit organization may be an owner or developer of a housing project under a written agreement to acquire, rehabilitate, or construct the housing, while also operating as a "subrecipient" of other HOME programs or activities (i.e., not

the housing program in which it is an owner or developer) under a separate written agreement with the participating jurisdiction.

Tenant-based rental assistance. The proposed rule would revise the definition of "tenant-based rental assistance" to replace the use of the term "dwelling" with "housing" to align with the requirements for TBRA in § 92.209 which applies to "housing."

2. Formula allocation (24 CFR 92.50).

The proposed rule would remove the use of the term "poor household" in the formula allocation section and replace it with "households below the poverty line." The proposed term reflects the actual data that HUD uses for this formula factor when determining annual HOME allocations.

3. Consortia (24 CFR 92.101).

The proposed rule would revise § 92.101(a) to permit, under certain conditions, a unit of general local government that is separated by a body of water from the other units of general local government belonging to a consortium and only accessible to the public through a permanent means other than a connecting road, bridge, railway, or highway to be considered geographically contiguous for purposes of inclusion in a HOME consortium. The consortium would be required to demonstrate that the unit of general local government separated by the body of water is part of the same housing market and local commuting area as one or more members of the consortium. This change would allow a unit of general local government that is separated from one or more other consortium members by a body of water but that is accessible by ferry, for example, to become a member of the consortium. In the past, the Department had no regulatory basis for approving these units of general local government to be consortium

members. HUD anticipates this change would allow some consortia to increase members or new consortia to form.

The proposed rule would add language to § 92.101(d) to clarify the relationship between a representative unit of general local government (frequently referred to as the lead entity) and member units of general local government in a consortium. The proposed revision explains that, while member units of general local government in a consortium are not subrecipients, the requirements for subrecipients, including the written agreement requirements at § 92.504(c)(2), apply when the representative unit of general local government distributes HOME funds to member units of general local government in a consortium. This change would not affect the requirement in § 92.101(a)(2)(ii) for a legally binding cooperation agreement between all members of a consortium.

The proposed rule would add language that describes the effect of a change to the representative unit of general local government of a consortium. If a consortium changes the representative unit of general local government but the membership of the consortium does not change, the consortium is considered to be the same unit of general local government. However, the proposed rule states that if a representative unit of general local government of a consortium changes, and the composition of the consortium also changes because one or more members have been added or removed from the consortium, then the consortium is considered a new unit of general local government and must comply with all applicable consolidated plan requirements in 24 CFR part 91. The Department already treats a consortium as the same unit of general local government if only the representative unit of general local government changes. With this proposed rule change, HUD would codify this approach. This change is proposed to help

consortia that are contemplating a change to the representative unit of general local government or other membership to understand the programmatic consequences of those decisions.

4. Distribution of Assistance (24 CFR 92.201).

The proposed rule would add a sentence to the end of § 92.201(a)(2) clarifying that a participating jurisdiction may not commit funds to a project within the boundaries of a contiguous local jurisdiction until it has secured the required financial contribution of the jurisdiction in which the project is located. The sentence would clarify the necessary preconditions for using HOME funds outside of a participating jurisdiction's geographic boundaries and would prevent a participating jurisdiction from providing HOME funds to a project that does not have the support of the jurisdiction or community where it is located.

The proposed rule would also remove the definition of State recipient from § 92.201(b)(2) and add it to the definitions section of § 92.2 where it will be easier for practitioners to locate. Other proposed changes to clarify the definition are discussed in the preamble for § 92.2.

5. Income Determinations (24 CFR 92.203).

In the HOTMA Final Rule, published on February 14, 2023,[8] the Department revised the income regulations for the Public Housing, Section 8, Community Development Block Grant (CDBG), HOME, Housing Trust Fund, Housing Opportunities for Persons With AIDS, Supportive Housing for the Elderly, and Supportive Housing for Persons with Disabilities programs. The effective date of the regulatory changes made through the HOTMA Final Rule is January 1, 2024.[9]

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[8] 88 FR 9600.

[9] For clarity, the revisions HUD is proposing in this section of this proposed rule are revisions to the regulations as they will exist after the effective date of the HOTMA Final Rule on January 1, 2024.

As part of the HOTMA Final Rule, the Department comprehensively revised the HOME regulation (effective January 1, 2024) at § 92.203 to align the HOME income regulations with income regulations from other HUD and Federal programs that HOME funds were most likely to be used with, most notably the Section 8 program. To that end, the Department required that participating jurisdictions use income determinations made by owners and program administrators in section 8 project-based voucher and rental assistance programs instead of requiring the participating jurisdiction to engage in a separate, duplicative income review. The Department also allowed participating jurisdictions to use income determinations made by public housing agencies or other providers of Federal tenant-based rental assistance instead of requiring the participating jurisdiction to engage in a separate, duplicative income review.

As the Department was preparing guidance and training participating jurisdictions and others on how to implement the requirements of the HOTMA Final Rule, the Department determined there were still ways to be clearer about a participating jurisdiction's responsibilities regarding income determinations, including when HOME funds are used in a project with either Federal project-based or tenant-based rental assistance or subsidy programs.

HUD is proposing to revise the paragraph heading of § 92.203(a) to read "Income eligibility" to more closely align with the purpose of the paragraph. The Department is also proposing to remove the first sentence of § 92.203(a) because it is confusing and is not necessary to the requirements in § 92.203. The first sentence of the current § 92.203(a) states that income targeting requirements apply to both a participating jurisdiction's HOME program and to its HOME projects. While the statement is true, § 92.203 does not establish the HOME income targeting requirements which are contained in § 92.216. By removing the first sentence of the current § 92.203(a), the second sentence of the current § 92.203(a) would be revised to make it

the lead-in sentence to the three options of determining income eligibility for HOME under § 92.203(a). HUD believes this elimination of unnecessary and confusing verbiage would better allow participating jurisdictions to understand HOME income requirements.

The proposed rule would revise the paragraph heading of § 92.203(b) from "Required documentation for annual income calculations" to "Determining and documenting annual income" and the paragraph heading of § 92.203(c) from "Defining income for eligibility" to "Definitions of annual income" to reflect the requirements more accurately in each paragraph. The citation to § 92.252 in § 92.203(b)(1) would also be revised to conform to the renumbering of paragraph (h) to (g) in § 92.252 and the citation to § 92.252(b)(2)(i) in § 92.203(f)(1)(ii) would also be revised to "§ 92.252(a)(2)(ii) or (iii)" to conform to the revisions in § 92.252. The proposed rule would also revise the second sentence of § 92.203(b)(1)(ii) to add "by the participating jurisdiction or owner" at the end. The proposed rule would also add the requirement currently in § 92.252(g) to the end of paragraph (ii) of § 92.203(b)(1) that if there is evidence that a tenant's statement and certification failed to completely and accurately state information about the family's size or income, a tenant's income must be re-examined in accordance with § 92.203(b)(1)(i).

The proposed rule would revise § 92.203(b)(1)(iii) to clarify that the method requires the government program to examine the annual income of the family each year and to be a program that provides government benefits to the family. The proposed rule would also revise § 92.203(d) to clarify when the participating jurisdiction is permitted to use the definitions of "annual income" in § 92.203(c). Specifically, the proposed rule would further clarify that when the participating jurisdiction is accepting a public housing agency, owner, or rental assistance provider's determination of annual and adjusted income for units assisted by a Federal or State

project-based rental subsidy program or tenants receiving Federal tenant-based rental assistance in a rental housing project, the participating jurisdiction must calculate annual income in accordance with § 92.203(c)(1) for the rental housing project so there is consistency in the definition of annual income throughout the project.

The proposed rule would revise the heading of paragraph (d) of this section from "Using income definitions" to "Use of income definitions" and would remove the third sentence of paragraph (d) because it may be read to either conflict with or duplicate requirements in paragraph (c) of this section. In addition, the proposed rule would make other minor revisions to paragraph (d) for clarity. The proposed rule would also make several technical corrections to § 92.203(d). The last sentence of paragraph (d) cites to "paragraph (c)(i) of this section." This is a drafting error, and the citation should be corrected to "paragraph (c)(1) of this section."

The citations to 24 CFR part 5 requirements in the section would also be revised for consistency with the format of citations to 24 CFR part 5 in other sections of the current regulation.

6. Eligible Activities: General (24 CFR 92.205).

The proposed rule would revise § 92.205(a)(2) to clarify that acquisition of vacant land or demolition may only be undertaken for a project that will provide affordable housing and meets the requirements for a specific local project in paragraph (2)(i) of the definition of "commitment" in § 92.2. Commitment of HOME funds to a specific local project can only occur 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 12 months of the execution date of the written agreement. Although the provision at § 92.205(a)(2) has been in the HOME regulations since inception of the HOME

program, some participating jurisdictions continue to mistakenly believe that HOME funds can be used to acquire land without the development of affordable housing (e.g., "land banking") or to demolish buildings with no intention to build new affordable housing (e.g., elimination of slums or blight). This provision would be revised to further clarify the requirement that an affordable housing project must be completed when HOME funds are used for the acquisition of vacant land or demolition.

The Department proposes to move the text at the end of paragraph (b)(1) that states that a participating jurisdiction establishes the terms of HOME assistance (e.g., loan terms) subject to the requirements of the regulation to a new paragraph (b)(3) and would revise the language to better emphasize and clarify that the terms of assistance are established by the participating jurisdiction, subject to the requirements of this part.

HUD is proposing to revise § 92.205(e)(2) to clarify that if project completion, as defined in § 92.2, does not occur within 4 years from the date that the participating jurisdiction committed funds to a specific local project, then the project is terminated and the participating jurisdiction must repay all funds invested in the project. There remains a great deal of confusion surrounding the 4-year deadline, and the Department is again clarifying that a project must meet the requirements of part 92 in order to be considered complete. HUD already has a clear definition of project completion and hopes that using the same terminology will better enable participating jurisdictions to comply with the regulations.

7. Eligible Project Costs (24 CFR 92.206).

The proposed rule would make several technical corrections to § 92.206. These corrections would update the citation in § 92.206(a)(1) regarding new construction standards to

§ 92.251(a), update the citation in § 92.206(a)(2) regarding rehabilitation standards to § 92.251(b), and revise § 92.206(b) to change "affordability period" to "period of affordability."

The proposed rule would revise § 92.206(b)(2)(ii) to change "over an extended affordability period" to "over the minimum period of affordability of 15 years." The proposed rule would also revise paragraph (c) to clarify that the costs of securing a long-term ground lease are eligible acquisition costs and permitted in the development of HOME-assisted housing. HUD also proposes to revise paragraph (d)(1) to add the costs of conducting environmental assessments and reviews to the list of permissible development costs that could be reimbursed with HOME funds if the cost is 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. Lack of funding for necessary environmental studies of sites proposed for development can be an obstacle to the provision of affordable housing. The proposed rule would also remove the current § 92.206(d)(8) because the costs of environment reviews and assessments have been added to paragraph (d)(1) and replace it with the cost of property insurance during development as one of the eligible related soft costs in paragraph (d).

8. Eligible Administrative and Planning Costs (24 CFR 92.207).

The Department proposes to revise § 92.207(e) to remove the term "under a cost allocation plan prepared" from the regulation. This is an oversimplification of the underlying requirements in 2 CFR part 200, subpart E and HUD is proposing the removal of the language to reduce confusion and improve clarity.

9. Eligible Community Housing Development Organization (CHDO) Operating Expense and Capacity Building Costs (24 CFR 92.208).

Through this proposed rule, the Department seeks to correct a drafting error made in the 2013 HOME Final Rule that created an unintended barrier to using CHDO operating expense and capacity building funding provided through HOME to assist organizations to meet the requirements for CHDO designation. Paragraph (9) of the definition of CHDO in § 92.2 requires that a CHDO have demonstrated capacity to be designated as a CHDO, while the current § 92.208 limits operating and capacity building assistance to organizations that are CHDOs. These provisions inadvertently prohibit the use of CHDO operating or capacity building funds to assist an organization that meets all other provisions of the CHDO definition except the demonstrated capacity requirement. The proposed rule would add a new paragraph (c) to § 92.208 stating that an organization that meets the definition of "community housing development organization" in § 92.2 except for the capacity requirement in paragraph (9) may receive HOME funds for operating expenses and capacity building costs in order to develop demonstrated capacity and qualify as a CHDO. This change would make it possible for a nonprofit organization to receive the necessary financial assistance to attain CHDO designation. Pursuant to § 92.300(e), a participating jurisdiction may only provide operating or capacity building funds to an organization to which it expects to commit CHDO set-aside funds for a project within 24 months.

10. Tenant-Based Rental Assistance: Eligible Costs and Requirements (24 CFR 92.209).

The proposed rule would revise § 92.209(c)(1) to eliminate the requirement that adjusted income be determined annually for families receiving TBRA. Because TBRA contracts are limited by statute to two years and must be executed every time a tenant enters into a new lease,

the proposed rule would permit a participating jurisdiction to provide TBRA to a family and not redetermine adjusted income during the contract's period of assistance. Rather, proposed § 92.209(c)(1) would only require the participating jurisdiction to determine adjusted income before execution of a new contract or renewal of an existing rental assistance contract. A family receiving TBRA whose income decreases during the term of the contract is still permitted to request an income redetermination by the participating jurisdiction during the term of the rental assistance contract so the family's subsidy can be recalculated. However, as is the case under the current regulations, the choice to redetermine adjusted income of a family that experienced a change in income during the term of the contract is a participating jurisdiction's program design decision and would be based upon the participating jurisdiction's policies and procedures. This means that unless the participating jurisdiction has a written policy and a rental assistance contract that requires a family's subsidy be redetermined based upon changes in income during the period of assistance, the family's payment toward rent will not change due to changes in income during the contract term.

Consistent with HUD's Plan for Bridging the Wealth Gap: An Agenda for Economic Justice and Asset Building for Renters,[10] biennial income redeterminations would facilitate family savings and improve housing stability by facilitating longer stays in housing and avoiding evictions or economic displacement from housing. Reducing the frequency of income determinations would also significantly reduce administrative burden on participating jurisdiction staff and on participating landlords, potentially expanding units available to families receiving TBRA.

[10] See https://www.hud.gov/sites/dfiles/PIH/documents/Bridging_Wealth_Gap.pdf.

The proposed rule would revise the first sentence of § 92.209(c)(2)(iv) by adding the word "assistance" to "rental payments" to further clarify that this is describing TBRA payments. The proposed rule also clarifies that when all or a portion of the homebuyer-tenant's monthly contribution toward rent is set aside for closing costs or a downpayment, it must be set aside in accordance with the lease-purchase agreement. These clarifications are required because the Department determined that some participating jurisdictions were not explicitly stating that all or a portion of a tenant's contribution to rent was being set aside for closing costs or a downpayment on the housing in the lease-purchase agreement or providing for how the set aside would occur.

The proposed rule would revise § 92.209(c)(3) to clarify that a participating jurisdiction may select and provide TBRA to low-income families currently residing in housing units that will be rehabilitated or acquired with HOME funds. The low-income family may choose to use the TBRA in a unit rehabilitated or acquired with HOME funds or in other qualified housing. Using TBRA funds in this manner may reduce displacement or assist in decreasing the cost of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.*) (URA), which applies to the use of HOME funds for a project involving acquisition, rehabilitation, or demolition.

The proposed rule would revise § 92.209(g) to update the reference to § 92.253 to specify § 92.253(a)-(c) and (d)(2). The proposed rule would revise § 92.209(h)(2) to permit participating jurisdictions to establish hardship policies that provide exceptions to the requirement that families receiving TBRA contribute a minimum amount toward rent. Some families receiving TBRA have little or no income. Due to this, some families may be unable to comply with the requirement for a minimum tenant contribution toward rent or compliance with the requirement

may be detrimental to the family (e.g., use limited financial resources that are needed for medical care and other necessities). This revision would align HOME with other Federal tenant-based rental assistance programs in permitting a participating jurisdiction to provide relief to a family from a minimum tenant contribution in its TBRA program by increasing the assistance in accordance with the participating jurisdiction's written policies.

The Department proposes to further clarify the basis of the rent standard that a participating jurisdiction may use for its TBRA program by adding the specific regulatory citation of 24 CFR 982.503 for the Section 8 HCV payment standard to § 92.209(h)(3)(ii). With the inclusion of the specific regulatory citation, a participating jurisdiction that chooses to use the Section 8 HCV program payment standard as its TBRA payment standard will be able to quickly locate the referenced requirements.

The proposed rule would revise § 92.209(i) to clarify the requirement that the participating jurisdiction must inspect the housing initially to mean that the participating jurisdiction must determine compliance with the property standards at § 92.251 at the time of entering into a rental assistance contract. The proposed rule would require that initially and annually thereafter, the participating jurisdiction must determine that the housing complies with its property standards and is decent, safe, sanitary, and in good repair in accordance with § 92.251(f).

Currently, program participants are required to inspect housing annually. Under § 92.251(f)(4)(ii) of this proposed rule, HUD would allow program participants to forego their own inspection and instead rely on an inspection conducted for another HUD program under 24 CFR part 5, subpart G. Section 92.251(f)(4)(ii) would also allow HUD to identify other alternative inspection standards through *Federal Register* notice which may count for the annual

inspection. This proposed change would reduce administrative burden on the participating jurisdiction for performing inspections and the burden on property owners from undergoing multiple inspections by multiple parties using the same inspection standards, while posing minimal risk of substandard units being occupied by tenants assisted with TBRA. The requirement that the participating jurisdiction must reinspect annually for compliance with the property standards at § 92.251 after determining initial compliance is not proposed to be changed. The participating jurisdiction may determine compliance with the property standards at § 92.251 annually, under the same methods available to the participating jurisdiction in the initial determination.

The proposed rule would make several revisions to § 92.209(j). First, the use of "dwelling" would be replaced with "housing" in paragraph (j)(1) to specify that the use of TBRA is for housing and not "dwelling units" which part 92 does not define. Second, § 92.209(j)(5) would be revised to remove "Housing Quality Standard" to align with the proposed changes in § 92.209(i). Third, as further discussed below, the proposed rule would also add a new § 92.209(j)(6) to prohibit the use of surety bonds or security deposit insurance as a form of security deposit in units occupied by families receiving TBRA.

Some participating jurisdictions have asked about the use of surety bonds and security deposit insurance in their TBRA programs while others have requested that the Department provide them with an interpretation that surety bonds or security deposit insurance constituted a security deposit. In response, the Department investigated the nature of surety bonds and security deposit insurance and determined as a matter of law that they are not security deposits within the meaning of NAHA nor are they treated as such under state statutes. Moreover, surety bonds or security deposit insurance may disadvantage tenants without necessarily benefitting landlords.

Generally, tenants pay the cost of purchasing the surety bond or security deposit insurance in lieu of a security deposit. The surety bond obligates the bond issuer to repair all covered damage to the unit attributed to the tenant but may have coverage limits and is dependent upon the financial sufficiency of the issuer's fund. For security deposit insurance, a tenant pays a premium to purchase a policy from an insurance company that provides coverage to the landlord, as insured party, for most claims for damages to a unit. Even if there is no damage to the unit, the premium for the surety bond or security deposit insurance is not refundable to the tenant. However, if the bond issuer or the insurance company refuses to cover the damages, the landlord may be forced to litigate against both the bond issuer or insurer and the tenant for damages under the terms of the lease and may be left with little or no recourse beyond obtaining judgment liens against each, potentially damaging the tenant's credit and forcing a tenant to obtain legal counsel. The proposed prohibition on the use of surety bonds and security deposit insurance as a form of security deposit is a change made throughout the proposed rule. HUD does not believe that prohibiting the use of surety bonds and security deposit insurance will impact a family's access to the rental housing market. Section 92.209 continues to allow participating jurisdictions to use HOME funds as loans or grants for security deposits.

The proposed rule would also remove § 92.209(l) because paragraph (l) implements section 212(a)(3)(D) of NAHA which is an outdated provision that applies only when the participating jurisdiction receives Federal assistance under section 1437f of the U.S. Housing Act of 1937 (the "1937 Act") (42 U.S.C. 1437f) (i.e., section 8 program) to be used for TBRA.

11. Troubled HOME-Assisted Rental Housing Projects (24 CFR 92.210).

The proposed rule would amend § 92.210(a) to clarify that HUD may consider the physical condition of the housing or financial viability when preserving HOME-assisted units at

risk of failure or foreclosure. The use of the term "Headquarters" is proposed to be removed in § 92.210(c) for phrasing consistency with other parts of the proposed rule; however, all approvals under § 92.210 must still be made by HUD Headquarters.

The Department has provided technical assistance for workouts to several participating jurisdictions with troubled projects, and physical viability is as much a consideration as financial viability when determining whether to permit additional flexibilities to preserve the affordability of a project. The physical viability of a property may be negatively impacted due to unanticipated extreme weather conditions or emergencies such as fire, flooding, and earthquakes. Changes to physical characteristics and factors may substantively impact the physical viability of a project, including unexpected structural or design issues, deferred maintenance due to unanticipated financial limitations, or unforeseen capital needs. Further, in determining the long-term viability of a project, the Department must consider the property's physical condition and needs in its review. Therefore, the proposed rule would revise the provisions of § 92.210 to permit HUD to consider preservation of a project based on the substantive deterioration of a project's physical viability due to unforeseen circumstances. It would also allow HUD to consider the future physical viability of a project in determining whether a project may access the flexibilities under § 92.210.

The proposed rule would also clarify in § 92.210(a) that a HOME-assisted rental project is no longer financially viable if its operating costs significantly exceed its operating revenue and reserves and if it has insufficient resources to cover necessary capital repair costs. The proposed rule would revise the current requirement that the Department consider the likelihood of "long-term viability" to include physical viability and replace with the likelihood of the project's "long-term physical and financial viability to preserve affordability." The Department's consideration

of a project's "long-term" physical and financial viability does not mean that the Department will not consider projects that are near the end of their HOME periods of affordability nor does it mean that the Department's considerations of viability will be limited to a project's "long-term" performance.

The proposed rule would revise § 92.210(b) to change the amount of additional HOME funds a participating jurisdiction may invest in a troubled HOME-assisted rental project to make it financially and physically viable during the period of affordability. The total investment (original investment plus additional investment) must be the amount needed to address the physical and financial viability of the project and may not exceed the HOME per-unit subsidy limit in effect at the time of the additional investment. The use of HOME funds may include, but is not limited to, rehabilitation of the HOME units and recapitalization of project reserves to fund capital costs. The Department also proposes to clarify that it may impose conditions on the investment of additional HOME funds, including requiring the participating jurisdiction to extend the period of affordability, increase the number of HOME-assisted units, and/or change the number or designation of Low HOME rent and High HOME rent units.

The proposed rule would revise § 92.210(c) to clarify that even if there are no additional HOME funds invested in the troubled HOME-assisted rental project, the Department may, through written approval, permit participating jurisdictions to not only reduce the total number of HOME units but change the designation of units from Low HOME rent units to High HOME rent units in troubled projects with more than the minimum number of Low HOME rent units. Pursuant to 42 U.S.C. 12745 and 24 CFR 92.252, HOME requires at least 20 percent of HOME-assisted units in a project be restricted as Low HOME rent units with the other HOME-assisted units restricted as High HOME rent units. Low HOME rent units must be occupied by those at

50 percent of the Area Median Income ("AMI") and below, while High HOME rent units must be occupied by those at 80 percent AMI and below. Further, in accordance with the requirements for HOME rent limits set forth in § 92.252, the Low HOME rent units are restricted at lower rent levels than High HOME rent units. The Department has reviewed several troubled project requests in which converting Low HOME rent units to High HOME rent units (when there are more than the required minimum 20 percent Low HOME rent units) is sufficient to preserve the project by increasing the ongoing rental revenue to the project to cover project expenses and financially stabilize the property. Permitting participating jurisdictions to undertake such actions for troubled HOME-assisted rental projects will support and preserve HOME units through the required period of affordability.

12. Pre-Award Costs (24 CFR 92.212).

The proposed rule would add a new paragraph (b)(2) to address pre-award costs in a fiscal year when there is not a timely appropriation by Congress for the HOME program. The proposed rule would permit a participating jurisdiction, in a year when there is not a timely appropriation, to incur eligible administrative and planning costs as of the beginning of its program year or the date that the Department receives the consolidated plan describing the HOME allocation to which the costs will be charged, whichever is earlier. The proposed rule would also establish that an appropriation is not timely if the appropriation to the HOME program was signed into law less than 90 days before a participating jurisdiction's program year start date. The Department has waived the current § 92.212(b) to permit pre-award costs under these conditions for many of the past fiscal years. The delay in the receipt of annual appropriations by the Department may have negative consequences for participating jurisdictions, including interruption of activities. Adding this new language to § 92.212(b) would

avoid the need for approvals of a waiver of this requirement each year that there is a delayed appropriation and would assist participating jurisdictions to better plan for such years to minimize their impact.

13. Prohibited Activities and Fees (24 CFR 92.214).

The proposed rule would make several revisions to § 92.214 to expand, revise, and clarify the prohibited activities and fees for which HOME funds cannot be used. The proposed revisions to § 92.214 are described more thoroughly in the text that follows.

The proposed rule would revise § 92.214(a)(6) to add that investing additional HOME funds in a troubled project in accordance with § 92.210 is an exception to the requirement that a participating jurisdiction cannot provide additional HOME funds to a previously assisted project. Section 92.214(a)(6) would also be amended to explicitly state that the maximum per-unit subsidy applicable to a project receiving additional HOME funds within one year of project completion is the maximum per-unit subsidy applicable at the time of project underwriting. The proposed rule would further revise § 92.214(a)(6) to align with the new definition of period of affordability added as a defined term to § 92.2.

The proposed rule would make minor revisions to § 92.214(a)(7) to improve clarity and readability.

The proposed rule would add a new paragraph (10) to § 92.214(a). As noted in the TBRA preamble discussion on § 92.209(j), the Department is concerned that surety bonds, security deposit insurance, and similar instruments disadvantage tenants as the tenant pays the cost of purchasing the bond or insurance in lieu of a security deposit but does not recoup any of the cost of the bond or security deposit policy upon vacating the unit. In addition, if there is damage to the unit, the bond issuer or insurer may pursue the tenant to cover any costs incurred to repair

damage, negatively affecting the tenant's credit or forcing the tenant to secure legal counsel. In response to these concerns, the proposed rule would prohibit the use of HOME funds for surety bonds, security deposit insurance, or similar instruments in lieu of or in addition to a security deposit in units occupied by TBRA by adding a new paragraph (10) to § 92.214(a).

The proposed rule would add language similar to that in the proposed § 92.214(a)(10) in a new paragraph (i) of § 92.214(b)(3) to prohibit project owners from charging for surety bonds, security deposit insurance, or similar instruments in lieu of or in addition to a security deposit in units. The proposed rule would also add a new paragraph (iii) to § 92.214(b)(3) to explicitly prohibit project owners from charging fees to inspect units or correct deficiencies in the property condition of units or common areas of the project that were not caused by the tenant. The costs associated with normal wear and tear or damage to a unit or common areas of a project that are not the result of negligence, recklessness, or intentional acts by the tenant, must be paid from project operations and not passed on to the tenant.

Finally, to accommodate the proposed revisions to § 92.214(b)(3), the proposed rule would add a new paragraph (4) to § 92.214(b), which would detail the fees that owners are permitted to charge tenants.

14. Income targeting: Tenant-based rental assistance and rental units (24 CFR 92.216).

HUD proposes to revise § 92.216(a)(2) and (b)(2) to replace the use of the term "dwelling" with "housing" which is the accurate term for application of the requirement. While part 92 uses "housing" and "dwelling" interchangeably, these terms have been revised over the years to have separate definitions in other programs. Therefore, to avoid confusion, HUD would revise part 92 to replace "dwelling" with "housing," where appropriate.

15. Income targeting: Homeownership (24 CFR 92.217).

HUD proposes to revise § 92.217 to replace the use of the term "dwelling" with "housing."

16. Recognition of matching contribution (24 CFR 92.219).

The proposed rule would add the term "tenant protection requirements" in § 92.219(a)(2)(ii) to clarify the substance of the requirements at § 92.253(a)-(c) and (d)(2) that are cited to in the regulation. The regulatory citations for § 92.253 would also be updated to reflect the changes to this section.

17. Match Credit (24 CFR 92.221).

The proposed rule would revise § 92.221(b) to clarify the requirements a participating jurisdiction must meet when using excess match contributions earned in a previous year, also referred to as "carry-over" or "carried over" match to meet a later year's HOME match obligation. In 2015, HUD's Office of Inspector General issued an audit report on HOME matching contributions that found widespread problems with participating jurisdictions not adequately documenting the validity and eligibility of match contributions.[11] Specifically, the HUD Inspector General found that many participating jurisdictions did not maintain required match logs or that logs were insufficient, did not identify all contributions in their carry-over match balances, included nonexistent contributions in their carry-over balances, and did not fully support matching contributions they credited toward meeting their 25 percent match obligation.

To ensure that these deficiencies do not continue, the Department proposes to add a new paragraph (1) to § 92.221(b) to explicitly require a participating jurisdiction to have documentation supporting the source, eligibility, and value of match contributions that have been

[11] See HUD OIG Audit Report Number: 2015-KC-0002, available at https://www.hudoig.gov/sites/default/files/documents/2015-KC-0002.pdf.

carried over from previous years at the time that they apply the contribution toward their match obligation. The proposed rule would also add a new paragraph (2) to § 92.221(b) to require participating jurisdictions to maintain records related to the source (i.e., the project to which the contribution was made), eligibility, and amount of match contributions for 5 years from the date that they apply the match credit toward their match liability. The proposed rule would include conforming changes to the recordkeeping provisions at § 92.508(a)(2)(ix) to describe the scope and retention period that would apply for records of carried over match contributions.

18. Maximum Per-Unit Subsidy Amount, Underwriting, and Subsidy Layering (24 CFR 92.250).

The proposed rule would make several revisions to the HOME program's maximum per-unit subsidy limits regulations at § 92.250. Section 212(e) of NAHA (42 U.S.C. 12742(e)) requires the Department to establish limits on the amount of HOME funds that may be invested on a per-unit basis. For multifamily housing, NAHA requires that such maximum per-unit subsidy limits not be less than the per-unit limitations set forth in the mortgage insurance program authorized in section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l) ("section 221(d)(3) limitations"), as adjusted by HUD to reflect the costs of land and construction in the area that exceeds the national average of such costs, up to 240 percent of the base mortgage limits. The Department has additional authority to adjust the 240 percent limits further based on the market area, number of bedrooms, eligible activity type (e.g., homeownership, rental), and work performed (e.g., rehabilitation, new construction). Notwithstanding the statutory language, the Department has historically implemented a maximum cap on the amount of HOME funds that may be used for the subsidy. However, after further review of the statutory language and Congressional record of the amendments made to title II of NAHA by section 206 of the

Housing and Community Development Act of 1992 (Pub. L. 102-550), the Department has determined that Congress intended the adjusted 221(d)(3) limitations to establish a floor, rather than a cap, for the maximum subsidy amount.

Due to the discontinuation of the section 221(d)(3) mortgage insurance program, the Department must establish an alternate benchmark as the maximum subsidy limit for the HOME program. The Department is currently operating under an interim policy that directs participating jurisdictions to use the basic mortgage limitations for section 234 of the National Housing Act's Condominium Housing, for elevator-type projects ("section 234 limitations"), in place of the discontinued section 221(d)(3) limitations.[12] The Department is currently adjusting the section 234 limitations using the High Cost Percentages that the Department calculates for its mortgage insurance programs. The Department chose this policy because it determined in 2015 that "[o]ver time, the limits issued by HUD for the Section 234 program have been identical to the 221(d)(3) limits."[13] As the section 234 limitations were identical to the section 221(d)(3) limitations prior to the discontinuation of the section 221(d)(3) limitations, the Department still believes that the section 234 limitations are a reasonable alternative to the section 221(d)(3) limitations and consistent with section 212(e) of NAHA. However, due to HUD's determination that Congress intended the adjusted 221(d)(3) limitations to establish a floor, rather than a cap, for the maximum subsidy amount, HUD proposes to codify that the total amount of HOME funds that a participating jurisdiction may invest on a per-unit basis may not exceed the per unit dollar limits established by HUD in accordance with the requirements in section 212(e) of NAHA rather than codify the section 234 limitations. At § 92.250(a), HUD proposes to publish the methodology for

[12] See Notice CPD-15-003, "Interim Policy on Maximum Per-Unit Subsidy Limits for the HOME Program," available at https://www.hud.gov/sites/documents/15-03CPDN.PDF.
[13] *Id*. at 2.

determining maximum per-unit subsidy amounts in accordance with section 212(e) through a notice published in the *Federal Register* with the opportunity for comment. The proposed rule would also clarify § 92.250(a) by stating that HUD will use that methodology to publish the maximum per-unit subsidy limits for the area in which the housing is located annually, in accordance with the published methodology, and will make adjustments annually. HUD intends to publish these limits on HUD's website.

Section 212(e) of NAHA requires that the Department consider on a market-per-market basis the cost of multifamily construction that meets State and local housing and building codes and the costs of land, with inflationary adjustments. HUD declines to maintain its use of the section 234 limitations for HOME because the section 234 limitations may not align with section 212(e) in the future, such as if the cost of multifamily construction or market conditions of the participating jurisdiction require a higher limit under section 212(e). Therefore, revising § 92.250 to refer to the statutory requirements and the process for publishing a methodology in accordance with the statutory requirements would avoid the need to waive or change HOME regulations to align with section 212(e) in the future.

The proposed rule would revise § 92.250(a) to require HUD to determine maximum per-unit subsidy limits for HOME on an annual basis in accordance with the statute and publish those limits (i.e., on the HUD website or by notice).[14] Based on the Congressional record clarifying the intent of section 212(e) of NAHA,[15] the Department has determined that the statutory requirement provides much greater direction on the use of the section 221(d)(3) limitations as a floor while allowing for adjustments to the limitations based on specific criteria that affect

[14] *See* 42 USC 12742(e)(1)-(3).

[15] See House Report 102-760, 1992 U.S.C.C.A.N. 3281 at Page 3301, which clarified that Public Law 102-550 amending Section 212 of NAHA, "[a]mends cost limits requirements to establish minimum cost limits equal to the per unit dollar limitation for the section 221(d)(3) program, as adjusted …"

project costs. To implement a revised methodology for the annual determination of the maximum per unit subsidy limit, HUD intends to issue a *Federal Register* notice in conjunction with this HOME rulemaking process. The notice for the revised methodology would identify an existing limit (e.g., mortgage insurance limit) or outline a proposed method for establishing a limit in accordance with section 212(e) and request comments from industry stakeholders and the public. This would provide HUD with the opportunity to perform a higher level of review of current development and construction costs, evaluate ongoing changes in costs due to changes in building codes and industry practices, determine whether different eligible activities (i.e., homeownership vs. rental) should have different methodologies, and to consider and respond to comments in the implementation of the revised methodology. Until a revised methodology is finalized, HUD would establish the maximum per unit subsidy limit as 270 percent of the section 234 limitations.

The proposed rule would also add a new paragraph (c) to § 92.250 to permit a participating jurisdiction to exceed the maximum per-unit subsidy described in § 92.250(a) by 5 percent for a project that meets one of the acceptable Green Building standards enumerated by the Department. HUD shall allow participating jurisdictions and developers this flexibility because the Department is pursuing groundbreaking and innovative program designs in addressing the ambitious climate and green energy goals set by HUD leadership. By providing the flexibility to participating jurisdictions to exceed the per unit maximum subsidy limit by up to 5 percent to cover increased costs, HUD would be incentivizing participating jurisdictions and owners to create projects that meet a physical condition standard that involves the use of durable green building materials, innovative building methods, and renewable energy systems. The Department recognizes that the development of affordable housing that meets a green building

standard and is more resilient to extreme weather events and climate change will result in increases to the costs of production. The Department believes that permitting a participating jurisdiction to exceed the maximum per-unit subsidy described in § 92.250(a) by up to 5 percent will sufficiently enable the participating jurisdiction and developer to absorb the higher costs associated with complying with a higher standard as well as some additional development costs unrelated to meeting the green building standard. The qualifying standards will be published in the *Federal Register* or HUD website.

Specific solicitation of comment #2: The Department specifically requests public comment from participating jurisdictions, developers, and other affected members of the public about the green building standards that the Department should establish in the Federal Register. In addition, the Department seeks public comment about stakeholder experiences regarding the percentage increase in the cost of constructing or rehabilitating affordable housing to a green building standard and whether a 5 percent increase in the maximum per unit subsidy limit is sufficient. Finally, the Department requests public comment on whether permitting participating jurisdictions to exceed the maximum per unit subsidy limit by an amount in excess of the additional costs of green building measures (i.e., to provide additional HOME funds to cover a larger portion of other HOME-eligible development costs),would create a sufficient incentive to developers and owners to meet green building standards in projects that would otherwise not be designed to meet those standards.

In addition, the proposed rule would amend the language at § 92.250(b)(3)(i) to clarify that a participating jurisdiction must underwrite a homeowner's ability to repay the HOME-assistance for a homeowner rehabilitation project only if the assistance is provided as an amortizing loan.

19. Property Standards (24 CFR 92.251).

Changes to § 92.251 generally

The proposed rule would retitle § 92.251 as "Property standards and inspections." The proposed rule would move the inspection and financial oversight requirements currently at § 92.504(d) to the applicable paragraphs in § 92.251 to consolidate the property standards and inspection requirements in one section of the regulation. In addition, the Department proposes several revisions to the property standards applicable to HOME-assisted properties to implement statutory energy efficiency requirements; impose carbon monoxide detector requirements; incorporate green building standards when a participating jurisdiction elects to exceed the maximum per unit subsidy limit for a project pursuant to proposed §92.250(c); provide administrative relief to reduce duplicative physical inspections and provide additional flexibility for small-scale housing; and correct an inadvertent limitation on homebuyer acquisition programs. Finally, the proposed rule also incorporates further conforming regulatory changes to the NSPIRE Final Rule.[16] The specifics of these changes are described in further detail below.

Changes to paragraph (a)

The proposed rule would reorganize § 92.251(a) by creating a new paragraph (a)(2) which would contain and expand upon the requirements for construction progress inspections currently in § 92.251(a)(2)(v). The rest of the current paragraph (a)(2) would be moved to a new paragraph (a)(3). In addition, the completion inspection requirements currently imposed at § 92.504(d)(1)(i) would be added to the proposed paragraph (a)(2) (for new construction) and paragraph (b)(3) (for rehabilitation). Redesignated paragraph (a)(3) would also be revised to clarify that the listed requirements in paragraphs (a)(3)(i) through (vii) must be met by projects

[16] 88 FR 30442 (May 11, 2023).

upon project completion, unless an earlier deadline is otherwise specified by the applicable statute, regulation, or standard. For example, the accessibility requirement in paragraph (a)(3)(i) of § 92.251 must be met prior to project completion, and the project must comply with the required deadline under the applicable statute or regulation.

The proposed rule at § 92.251(a)(3)(ii) would codify the statutory requirement that all HOME-assisted rental and homebuyer new construction projects meet the energy efficiency standards promulgated by HUD in accordance with section 109 of NAHA,[17] including any revisions adopted by HUD and the U.S. Department of Agriculture (USDA). The 2013 HOME Final Rule did not include energy efficiency standards in § 92.251 because HUD intended to propose new standards for energy and water efficiency in a separate proposed rule. Pursuant to sections 215(a)(1)(F) and (b)(4) of NAHA (42 U.S.C. 12745(a)(1)(F) and (b)(4)), all newly constructed HOME-assisted housing must meet the energy efficiency codes promulgated by the Secretary in accordance with section 109 of NAHA (42 U.S.C. 12709). In addition, the Energy Independence and Security Act of 2007 (EISA) (Pub. L. 110-140) established procedures for HUD and the USDA to adopt periodic revisions to the International Energy Conservation Code (IECC) and to ANSI/ASHRAE/IES Standard 90.1: Energy Standard for Buildings, Except Low-Rise Residential Buildings (ASHRAE 90.1), subject to a determination by HUD and USDA that the revised energy codes do not negatively affect the availability or affordability of new construction of single and multifamily housing covered by EISA, and a determination by the Secretary of Energy that the revised codes "would improve energy efficiency."

[17] 42 U.S.C. 12709.

Carbon Monoxide detector requirements

In the NSPIRE Final Rule, the Department codified carbon monoxide detection requirements in Pub. L. 116-20 for certain covered programs at 24 CFR 5.703(d)(6).[18] Because HOME is not a covered program subject to these statutory carbon monoxide detection requirements, the Department determined that rulemaking is necessary to implement these changes for the HOME program. Consequently, the proposed rule would add new paragraphs at § 92.251(a)(3)(vi) (for new construction) and § 92.251(b)(1)(xi) (for rehabilitation) and amends § 92.251(c)(3) (for acquisition of standard housing for homeownership) to impose carbon monoxide detection requirements for all HOME-assisted projects which will be adopted by HUD through a notice published in the *Federal Register*. The Department intends to evaluate the specific standards for installation of carbon monoxide alarms or detectors at 24 CFR 5.703(d)(6) for feasibility in new construction, rehabilitation, and homebuyer acquisition projects, respectively.

Smoke detector requirements

Similar to the carbon monoxide detector requirements implemented through the 2021 Consolidated Appropriations Act, described above, the 2023 Consolidated Appropriations Act[19] created additional smoke alarm requirements in federally assisted housing. These requirements apply to several HUD programs but not HOME. These requirements include that federally assisted housing comply with National Fire Protection Association Standard (NFPA) 72, or any

[18] See section 101, "Carbon Monoxide Alarms or Detectors in Federally Insured Housing" of Title I of Division Q, Financial Services Provisions and Intellectual Property, of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), 134 Stat. 2162 (2020), which included amendments to section 3(a) and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a(a) and 42 U.S.C. 1437(f) (the "1937 Act"), section 202(j) of the Housing Act of 1959 (12 U.S.C. 1701q(j)), and sections 811(j) and 856 of the NAHA (42 U.S.C. 8013(j) and 42 U.S.C. 12905).

[19] See section 601, "Smoke Alarms in Federally Assisted Housing" of Title VI of Division AA, Financial Services Matters, of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), 136 Stat. 4459 (2022), which included amendments to section 3(a) and 8 of the 1937 Act, section 202(j) of the Housing Act of 1959 (12 U.S.C. 1701q(j)), and sections 811(j) and 856 of the NAHA (42 U.S.C. 8013(j) and 42 U.S.C. 12905).

successor standard, to use hardwired smoke alarms or sealed and tamper resistant smoke alarms with ten-year non rechargeable, nonreplaceable batteries, that provide notification for persons with hearing loss. These requirements take effect December 29, 2024. HUD believes that in most jurisdictions similar requirements already exist, as many jurisdictions already align with NFPA 72.

HUD is still working to provide guidance on these requirements for covered programs. This proposed rule does not include proposed regulatory text to align with the 2023 Consolidated Appropriations Act's smoke alarm requirements. However, HUD requests public comment on how such requirements would impact participating jurisdictions, owners, and developers of HOME-assisted housing. HUD is particularly interested in public comment on the feasibility of these requirements in HOME-funded homeownership programs that do not include rehabilitation or construction of housing (e.g., downpayment assistance programs). HUD is considering, at the final rule stage, revising the HOME regulations consistent with the forthcoming HUD guidance on these statutory requirements.

Specific solicitation of comment #3: The Department specifically seeks public comment on the proposal to require HOME-assisted units comply with NFPA 72, or any successor standard, to use hardwired smoke alarms or sealed or tamper resistant smoke alarms with ten-year non rechargeable, nonreplaceable batteries, that provide notification for persons with hearing loss. The Department is particularly interested in public comment on the feasibility of these requirements in HOME-funded homeownership programs that do not include rehabilitation or construction of housing (e.g., downpayment assistance programs).

Green building standard

HUD proposes to add paragraphs (a)(3)(vii) (for new construction) and (b)(1)(xii) (for rehabilitation) to § 92.251 to correspond with HUD's proposal at § 92.250(c) to require the housing meet one of the qualifying green building standards published in the *Federal Register* or HUD website when a participating jurisdiction exceeds the maximum per-unit subsidy limit pursuant to the proposed § 92.250(c), upon completion of the project.

Changes to paragraph (f)

The proposed rule would require participating jurisdictions to establish written property standards that meet the minimum requirements at § 92.251(f)(1) for housing occupied by tenants assisted with TBRA, including compliance with State and local codes and ordinances, health and safety, and lead-based paint requirements. The proposed rule would also retitle § 92.251(f) as "Ongoing property condition standards and inspections: Rental housing and housing occupied by tenants receiving HOME tenant-based rental assistance."

The Department also proposes to make a minor amendment to paragraph (f)(1)(i) to add the term "HOME" before "rental housing" to clarify that the *Federal Register* notice which HUD will publish will be specific to the HOME program.

Project Inspections

Through the NSPIRE Final Rule, the Department improved alignment of the HOME inspection standards with the standards of other HUD-assisted housing programs. The Department understands that HOME is frequently one of many financing sources in a multifamily rental development project and, therefore, HOME projects are often subject to the requirements of many other public and private funding sources. Consequently, HUD is proposing to provide administrative relief in this proposed rule by adding to § 92.251 paragraphs

(b)(1)(viii)(A) (for rehabilitation projects), (f)(3)(i)(B) (for ongoing inspections of rental housing), and (f)(4)(ii) (for housing occupied by tenants receiving TBRA) to permit a participating jurisdiction to accept the completion or ongoing inspection, as applicable, conducted for another funding source in accordance with the National Standards for the Condition of HUD housing (24 CFR part 5, subpart G) or an alternative inspection standard, which HUD may establish through *Federal Register* notice to determine that the project and units are decent, safe, sanitary, and in good repair. The participating jurisdiction must still conduct initial and progress inspections of rehabilitation projects and determine compliance with the participating jurisdiction's HOME rehabilitation standards, State and local codes, ordinances, and zoning requirements. Under this proposed rule, a participating jurisdiction may accept an inspection performed under the Uniform Physical Condition Standards prior to the NSPIRE effective date. Inspections that occur after the effective date of NSPIRE for HOME and used by the participating jurisdiction to verify the housing is decent, safe, sanitary, and in good repair must be conducted under NSPIRE or an alternative inspection standard, as described in the proposed § 92.251.

For ongoing inspections of rental housing, HUD proposes to amend paragraph (f)(3) to permit a participating jurisdiction to accept an inspection that occurred within the past 12 months. However, the Department encourages participating jurisdictions to align the project's ongoing inspection schedule with the schedule of inspections of other HUD programs or funders. The proposed rule would require that a participating jurisdiction perform an on-site inspection within 12 months after project completion and every three years during the period of affordability. The participating jurisdiction may not accept the determination of another funder under § 92.251 for the first ongoing inspection occurring 12 months after project completion but

may accept the determination of another funder in accordance with § 92.251 every three years thereafter.

For ongoing annual inspections for housing with tenants receiving TBRA, HUD proposes to insert a new paragraph (f)(4) for TBRA to state that a participating jurisdiction may accept an inspection performed for another funding source in accordance with § 92.251 that occurred within the past three months. The Department proposes a shorter timeframe for accepting inspections of TBRA units performed by other funders under § 92.251 because TBRA ongoing inspections are required annually after initial occupancy while inspections of HOME-assisted rental projects may be conducted every three years during the period of affordability.

The proposed rule would also add § 92.251(b)(1)(viii)(B) (for rehabilitation projects) and includes language at § 92.251(f)(3)(i)(B) (for ongoing inspections of rental housing) and § 92.251(f)(4)(ii) (for housing occupied by tenants receiving TBRA) to require that the participating jurisdiction document a determination by another funder that the project and unit(s) are decent, safe, sanitary, and in good repair. To document a determination means that the participating jurisdiction must obtain the inspection report that indicates that all deficiencies have been corrected. These paragraphs would also clarify that when the participating jurisdiction documents a determination by another funder under § 92.251, it is not required to conduct a duplicative HOME on-site inspection.

The proposed rule would restructure paragraph (c)(3) and add paragraph (c)(3)(ii) to eliminate the requirement at § 92.251(c)(3) that a homebuyer acquisition project (e.g., downpayment assistance) that does not meet HOME property standards must be rehabilitated or it cannot be acquired with HOME funds. This requirement was added in the 2013 HOME Final Rule and the Department is concerned that it had the unintended impact of reducing the supply of

housing available for purchase by HOME-assisted homebuyers by prohibiting rehabilitation after the HOME-assisted acquisition to meet required property standards. Currently, a home that does not meet property standards cannot be purchased with HOME funds. Also, the Department understands that sellers are often unwilling to perform rehabilitation to a home prior to its acquisition by a HOME-assisted homebuyer, making many properties ineligible for purchase with HOME funds. The proposed rule would add paragraph (c)(3)(ii) to § 92.251 to permit housing to be purchased by a homebuyer prior to compliance with HOME property standards if the homebuyer written agreement with the participating jurisdiction requires the project to meet HOME property standards within six months of acquisition and determines that funds are secured for rehabilitation. The participating jurisdiction would be required to conduct a final inspection within six months of the title transfer to determine compliance with the required property standards.

Through this proposed rule, the inspection standards for periodic on-site inspections of HOME-assisted rental housing including frequency of inspections, inspection samples, and annual certifications by owners at § 92.504(d)(1)(ii) would be moved to a new paragraph (f)(3). The inspection sample requirements in the proposed rule at § 92.251(f)(3)(iii) would require that the sample of units for an onsite inspection be a random sample rather than a statistically valid sample. While the Department's software creates a statistically valid sample of units for its inspection of HUD-assisted housing conducted using the NSPIRE Standards, HUD is proposing this change because it is concerned that participating jurisdictions do not have software capability to develop a statistically valid sample of units. In addition, participating jurisdictions have sought guidance about the requirement currently at § 92.504(d)(1)(ii)(D) regarding what constitutes a sample size appropriate for the size of the HOME-assisted project. Consequently, in

the proposed § 92.251(f)(3)(iii) the Department would require inspection of a sample size of 20% of the HOME-assisted units in a project, except for a project with one to four HOME-assisted units where the requirement that 100% of the units be inspected remains unchanged.

When conducting inspections, the jurisdiction should consider the project's compliance with accessibility requirements as determined by 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, and the Fair Housing Act (42 U.S.C. §§ 3601-19) implemented at 24 CFR part 100, as applicable. These accessibility requirements apply to a project as a whole, including both HOME and non-HOME-assisted units. Where practicable, HUD recommends a participating jurisdiction select a random sample of units using a methodology that captures different unit types, features, and accessibility designations, and to the extent feasible, that the same units are not inspected in every inspection.

Specific solicitation of comment #4: The Department specifically seeks public comment on the proposal to require that a participating jurisdiction inspect at least 20% of the HOME-assisted units during its ongoing on-site inspections of rental housing.

In addition, the proposed rule would move the requirements § 92.504(d)(1)(iii) for annual on-site inspections of HOME-assisted housing occupied by tenants receiving TBRA to a new paragraph (f)(4) and clarify that inspections must determine whether the housing meets the property standards in § 92.251(f)(1).

The proposed rule would move the financial oversight requirements for HOME-assisted rental projects currently at § 92.504(d)(2) to § 92.251(f)(3)(iv). This change is proposed to consolidate the other periodic review requirements for rental housing during the period of affordability into one section of the regulation. In addition, the proposed rule would clarify the

Department's intent that the financial oversight requirements apply to rental projects with 10 or more HOME-assisted units, which was discussed in the preamble to the 2013 HOME Final Rule but has remained a source of confusion for participating jurisdictions.

HUD proposes to move the requirements for re-inspections and the requirement to adopt a more frequent inspection schedule as the result of health and safety deficiencies currently at § 92.504(d)(1)(ii)(B) to the corrective and remedial action requirements of § 92.251, which HUD proposes to move to paragraph (f)(5). Relatedly, pursuant to section 226(c) of NAHA[20], the proposed rule would provide an exception for small-scale housing from the requirement that a participating jurisdiction must adopt a more frequent inspection schedule for properties that have been found to have health and safety deficiencies. If all health and safety deficiencies are corrected, the proposed rule would permit but not require a participating jurisdiction to adopt a more frequent inspection schedule for small-scale housing. In the future, the Department hopes to simplify ongoing inspections for small-scale rental housing projects by developing a streamlined list of specific deficiencies for which participating jurisdictions would inspect. The changes described in this paragraph correspond to the administrative relief provided for small-scale housing at § 92.252.

The Department also proposes to move the requirements currently at § 92.251(f)(5) to paragraph (g) of § 92.251 and revise the new § 92.251(g) to add further clarity to the requirements for inspection procedures.

Specific solicitation of comment #5: The Department specifically requests public comment from participating jurisdictions and program participants regarding the challenges they have encountered in using HOME funds to assist small-scale housing, as defined in this

[20] 42 U.S.C. 12756(c).

proposed rule. The Department also requests public comment regarding the costs and benefits of the changes that HUD is proposing for small-scale housing in requirements for the frequency of income determinations and inspections and the use of alternative waiting lists.

20. Qualification as Affordable Housing: Rental Housing (24 CFR 92.252).

The Department most recently revised § 92.252 in the HOTMA Final Rule.[21] Those changes become effective on January 1, 2024. The changes made to § 92.252(b)(2) in the HOTMA Final Rule divided the Low HOME Rent limit provision in § 92.252(b)(2) into paragraphs (b)(2)(i) and (b)(2)(ii) to separate the conditions that a HOME-assisted unit that also receives Federal or State project-based rental subsidy must meet in order for a project owner to charge the maximum rent allowable under the Federal or State project-based rental subsidy program.

The HOTMA Final Rule also revised § 92.252(h). These provisions are being renumbered, reorganized, and revised in the proposed § 92.252(g).

The proposed rule would amend the introductory text of § 92.252 to eliminate the requirement that a participating jurisdiction must submit a marketing plan to HUD for any HOME-assisted rental units that have not achieved initial occupancy within six months of project completion in IDIS. The participating jurisdiction would still be required to take action to ensure the unit is rented if the unit is not occupied within six months and repay the HOME investment if the unit does not achieve initial occupancy within 18 months. The Department does not currently approve marketing plans, so this change would provide administrative relief to participating jurisdictions without eliminating the requirement that participating jurisdictions work with the

[21] 88 FR 9600 at 9612, 9614-9615.

project owner to develop and implement a marketing plan to meet the deadline for initial occupancy. This change does not revise any affirmative marketing requirements in § 92.351.

The proposed rule would also implement several changes to the rent limits at § 92.252 for HOME-assisted rental housing. The proposed rule would reorganize the general requirements that are currently in effect and apply to all rent limits by moving these requirements to the introductory text of § 92.252(a) rather than repeating the requirements in each subsection. These general requirements include that the rent for a HOME-assisted unit must not exceed the rent limits, the Department will publish the HOME rent limits on an annual basis, with adjustments for number of bedrooms in the unit, the participating jurisdiction may designate (in its written agreement with the owner) more than the minimum HOME units (both High HOME and Low HOME rent units) in a rental housing project, and the rent limits apply to the rent plus the utilities or utility allowance. The proposed rule would also remove several duplicative requirements in § 92.252 to improve clarity and readability.

The proposed rule would reorganize § 92.252 by moving the requirements for High HOME Rent limits in § 92.252(a), Low HOME Rent limits in § 92.252(b), and SRO Housing rent limits in § 92.252(c) to the proposed § 92.252(a)(1), (a)(2), and (a)(3), respectively. The proposed rule would title the proposed § 92.252(a) as “HOME Rent Limits,” title the proposed § 92.252(a)(1) as “High HOME Rent Limits,” title the proposed § 92.252(a)(2) as “Low HOME Rent Limits,” and title the proposed § 92.252(a)(3) as “HOME Rent Limits for SRO Projects.”

The Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, 122 Stat. 2654, approved July 30, 2008) amended the 1937 Act and made comprehensive and significant reforms to HUD's Section 8 Tenant-Based Voucher and Project-Based Voucher programs. Many of the required regulatory changes at 24 CFR parts 982 were implemented through “The Housing

and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs," final rule (79 FR 36146), published on June 25, 2014 (the "HERA Final Rule"). One of the changes required by section 2835(a)(2) of HERA added section 8(o)(10)(F) to the 1937 Act (42 U.S.C. 1437f(o)(10)(F)) which streamlined the procedure for determining the rent reasonableness standard for assistance under the section 8 tenant-based voucher program in units receiving LIHTC or HOME funds. HUD fully implemented this streamlined process for LIHTC units in the HERA Final Rule. However, the HERA Final Rule did not fully implement the streamlined process for HOME-assisted units. Instead, as explained in the HERA Final Rule, the rent reasonableness requirements at § 982.507 for HOME-assisted units included a placeholder pending a future HOME rulemaking (which had just been completed in 2013) to revise conflicting HOME regulations. HUD anticipated that the future HOME rulemaking would revise the HOME regulations at 24 CFR part 92 to prevent participating jurisdictions and owners of HOME-assisted projects from being in non-compliance with HOME rent limits when receiving the rent amount determined by a public housing authority (PHA), pursuant to the rent reasonableness process established by HERA for a tenant with a section 8 housing choice voucher (HCV). As described in detail in this section, HUD is now proposing to make the required revisions to § 92.252 to align HOME rent limit requirements with the rent reasonableness requirements for HOME-assisted units in the proposed § 982.507(c)(3). The proposed changes would prevent the participating jurisdiction and an owner of HOME-assisted units from being in noncompliance with HOME rent limits when a PHA complies with the 1937 Act, as amended by HERA, in its HCV rent payments to owners. Section D. of the proposed rule discusses the proposed changes to § 982.507(c)(3) to fully implement the HERA section 8 HCV rent reasonableness process for HOME-assisted units.

The proposed rule would implement the following changes to remove conflicts with the proposed rent requirements for the section 8 HCV program at § 982.507(c)(3). HUD proposes to remove the applicability of the HOME rent limits in § 92.252 to payments provided under a Federal or State rental assistance or subsidy program. This change in proposed § 92.252(a) would revise current program requirements in § 92.252 by permitting an owner to receive the rent determined by a PHA, in accordance with proposed § 982.507(c)(3), or under another Federal or State rental assistance or subsidy program even though the rent for HCV or another Federal or State rental assistance or subsidy program exceeds the HOME rent limits. HUD would still implement the requirements for rents in section 215(a) of NAHA (42 U.S.C. 12745(a)) by continuing to apply the HOME rent limits to the rent and utilities required to be paid by the tenant. This change would align the HOME program with the changes to the 1937 Act required by HERA for the PHA's determination of rent for HCV in HOME units. As the PHA must determine the HCV rent in compliance with sections 8(o)(10)(A) and (F) of the 1937 Act (42 U.S.C. 1437f(o)(10)(A) and (F)) as proposed in § 982.507(c)(3), the proposed changes to § 92.252 would prevent an owner from being in noncompliance with HOME rent limit requirements when receiving the required rent from a PHA on behalf of a tenant with HCV. Additionally, the existing rent limit requirements in § 92.252 can be confusing for owners and these revisions would provide additional clarity so that participating jurisdictions and owners understand that the HOME rent limit requirements do not conflict with the rent requirements for Federal rental assistance or subsidy programs or LIHTC.[22] These proposed changes also align

[22] The rent limits under the Low-Income Housing Credits or LIHTC are governed by 26 U.S.C. 42(g)(2)(A).

with the LIHTC requirements for rent, including when there is section 8 HCV assistance and other comparable forms of rental assistance applicable to the unit or household.[23]

As discussed in further detail in the Regulatory Impact Assessment, estimates of increased potential annual gross rent collection arising from the proposed changes to HOME rent limits would only be fully realized if all HOME units have tenants that receive rental assistance. Precise data on how many tenants in HOME units that also receive tenant-based rental assistance like HCV does not exist, but it is unlikely that a majority of HOME units without a project-based subsidy are occupied by tenants with a tenant-based subsidy. Data reported to HUD at the time of initial HOME rental project lease-up suggests that 24 to 30 percent of tenants in units without project-based subsidies receive HCVs. HUD anticipates that the changes in the proposed rule to conform to the changes by HERA, will result in an annual increase in payments to property owners of roughly $78 -$125 million, which is approximately 0.3 to 0.5 percent of HCV's budget authority for rental assistance in FY 2023. The proposed changes therefore may potentially leave PHAs unable to provide rental assistance to 6,000-11,000 households that they otherwise would have if the PHAs had provided rental assistance payments up to the current HOME rent limits rather than the reasonable rent determined by a PHA. It is also possible that future Congressional appropriations would cover the same number of vouchers regardless of relatively small changes in per voucher costs, in which case the number of assisted households would not be affected. Nonetheless, Congress specifically provided for these proposed changes for HOME units in HERA and under the proposed rule, HOME rent limits would still apply to the rent and utilities paid by the tenant. The only impacts on tenants and prospective tenants are

[23] Under 26 U.S.C. 42(g)(2)(B)(i), LIHTC gross rent does not include any payment under section 8 of the United States Housing Act of 1937 (42 USCS § 1437f) or any comparable rental assistance program applicable to either the rental unit or the household occupying the unit.

that tenants with HCVs or other tenant-based rental assistance would become more desirable to owners, and that residents of HOME-assisted projects could experience improved housing conditions (since some projects would see improved cash flow).

The proposed revisions would make the treatment of payments consistent under Federal or State project-based and tenant-based rental assistance programs for both High HOME and Low HOME rent units. As a result, the proposed revisions would also decrease administrative burden for participating jurisdictions and owners. Consequently, a participating jurisdiction may focus its monitoring and enforcement of HOME rent limit requirements on the amount that is required to be paid by the tenant to an owner rather than on whether payments for rent under a Federal or State tenant-based or project-based rental assistance or subsidy program meet the Low HOME and High HOME rent limit requirements.

The Department also proposes to move the requirement that subsequent rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment from § 92.252(f) to the proposed § 92.252(a). The proposed revision would clarify that the rent floor for a project is established at the time of commitment of HOME funds to the project and may apply to rents at the time of initial occupancy as well as subsequent rents.

The proposed § 92.252(a)(2)(i) would clarify that the maximum rent is 30 percent of the annual income of a family whose income equals 50 percent of AMI, as determined by HUD, except when 30 percent of the annual income of a family with income at 50 percent AMI is higher than the fair market rent under the proposed § 92.252(a)(1)(i). This change would clarify that the only circumstance in which the High HOME Rent would be lower than the Low HOME Rent is if the fair market rent permitted in § 92.252(a)(1)(i) is lower than 30 percent of the

annual income of a family whose income equals 50 percent AMI, as described in the proposed § 92.252(a)(2)(i). This proposed change is appropriate because the Department does not establish the 65 percent AMI rent limit, as permitted under § 92.252(a)(1)(ii), to be lower than the 50 percent AMI rent limit in § 92.252(a)(2)(i). As a result, there is no need to continue using "applicable rent" in the proposed § 92.252(a)(2)(i). The proposed revisions would clarify that if the fair market rent, as permitted under § 92.252(a)(1)(i), is lower than the rent limit of 30 percent of the annual income of a family whose income equals 50 percent AMI, as determined by HUD, the Low HOME rent limit in § 92.252(a)(2)(i) is the fair market rent permitted under the High HOME rent limit at § 92.252(a)(1)(i).

HUD is also proposing other changes to remove conflicts with the changes implemented by HERA in the proposed § 92.252(a)(2)(ii). The proposed rule would revise the current requirements at § 92.252(b)(2)(i) and (ii) by removing § 92.252(b)(2)(i) which currently applies to Low HOME rent units with tenant-based rental assistance and revising § 92.252(b)(2)(ii) to be the proposed § 92.252(a)(2)(ii). The proposed § 92.252(a)(2)(ii) would conform the requirement on rent contribution by the family to the proposed change that the HOME rent limits do not apply to payments provided under a Federal or State rental assistance or subsidy program by removing references to "Federal or State project-based rental subsidy" and "Federal or State project-based rental subsidy program."

In the 2013 HOME Final Rule, the Department removed the discretion for a participating jurisdiction to use the local PHA utility allowance and required the use of the HUD Utility Model or a project-specific utility allowance based on the utilities used in the project. The Department identified and explained the permissible methods of determining the utility

allowance for a HOME-assisted rental project that align with LIHTC.[24] The purpose of the change in the 2013 HOME Final Rule was to require more accurate utility allowances and reward energy efficiency measures with the possibility of higher rental revenue to the owner. In doing so, the Department unintentionally created a conflict between the HOME program and the Section 8 project-based voucher (PBV) and HUD Veterans Affairs Supportive Housing (HUD-VASH) PBV programs, which require the use of a local PHA's utility allowance. Due to these conflicting requirements, the Department has approved numerous waivers of this requirement in § 92.252 when HOME and PBVs or HUD-VASH PBVs are combined in the same projects. Consequently, the proposed rule at § 92.252(b) would restore the option to use the local PHA's utility allowance for HOME-assisted rental projects to realign utility allowance requirements in HOME and PBVs.

Specific solicitation of comment #6: Rather than permitting all HOME-assisted projects to use the local PHA's utility allowance, should HUD limit the use of the PHA utility allowance to only HOME-assisted projects which also receive PBV or HUD-VASH PBV assistance?

The proposed rule would clarify the period of affordability requirements in proposed § 92.252(d) by removing "not less than" to require that HOME-assisted units meet the program requirements for the required period of affordability, beginning from the date of project completion, to prevent further confusion that the period of affordability must be more than the required period in the table in § 92.252 and to specify that the period of affordability starts at project completion. The proposed rule would also clarify in proposed § 92.252(d) that the affordability requirements for HOME rental housing include the applicable rent limits, period of

[24] HOMEfires Vol. 13, No. 2 Guidance on How to Establish Utility Allowances for HOME-Assisted Rental Units, available at https://www.hudexchange.info/resource/5034/homefires-vol-13-no-2-guidance-on-how-to-establish-utility-allowances-for-home-assisted-rental-units/.

affordability, and income requirements. The Department would also clarify that the means of enforcement for the affordability requirements include deed or use restrictions, liens on real property, a covenant running with the land, a recorded agreement restricting the use of the property, or any other mechanism approved in writing by HUD, under which the participating jurisdiction has the right to require specific performance. The Department also proposes to revise § 92.252, as well as §§ 92.254 and 92.504, to make the means of enforcement for affordability requirements consistent throughout the proposed rule. The proposed § 92.252(e)(3) would also increase the minimum number of days for prior written notice of any increase in rents for HOME-assisted units from not less than 30 days to not less than 60 days.

Due to changes to the rent limit requirements in § 92.252(a), this proposed rule would renumber § 92.252(a) through (i).

The proposed rule would also update terminology to be consistent throughout the section. This includes revising the use of the term "maximum rent limit" to "rent limit" in paragraphs (a), (c), and (e) because the applicable rent limit is the maximum rent and the use of the term "maximum rent limit" in some places is confusing. In addition, the proposed rule would update any references to the renumbered paragraphs throughout the rule.

While the proposed rule in paragraph (b) would realign utility allowance requirements in HOME and PBVs, the proposed rule would still require that the utility allowance account for energy efficiency measures of the project. Despite this requirement, the Department recognizes that certain Federal or State tax credits and other incentives are available to owners of affordable housing projects in order to encourage energy retrofits and the installation of solar and/or wind facilities. Often these types of incentive programs require that the low-income tenants of the affordable rental housing receive financial benefit from the energy efficiency measures. Because

the participating jurisdiction is required to update the project's utility allowance annually and must account for any energy efficiency measure of the project, the utility allowance provided to the tenant would likely decrease following any energy efficiency upgrades. This decrease in the utility allowance could therefore result in a financial benefit to the owner rather than the tenant. In addition, because the tenant may receive no financial benefit, the owner may not receive the tax credit or other incentives. Ultimately, as proposed, the HOME utility allowance requirements may disincentivize energy efficiency upgrades. As described below, HUD seeks public comment on how to avoid disincentivizing energy efficiency upgrades.

Specific solicitation of comment #7: The Department seeks input on whether and how the rule should facilitate the conveyance of a financial benefit to low-income tenants when the project owner makes energy efficiency upgrades such as the installation of small-scale wind or solar facilities in connection with an eligible Federal or State program. HUD has issued guidance that currently describes how certain utility discounts or rebates can be treated under HUD income and utility allowance regulations.[25] HOME is subject to the same income requirements under 24 CFR 5.609 as other program areas issuing guidance on the treatment of these discounts and rebates. The Department therefore also requests comment from the public on whether to go farther than this guidance for HOME projects through this HOME rulemaking. For example, should HUD maintain the same utility allowance for the project following energy efficiency upgrades to allow the tenant to realize the benefit of decreased utility costs? Both the current income regulations at 24 CFR 5.609 and 24 CFR 5.609 as revised in the HOTMA Final

[25] See https://www.hud.gov/sites/dfiles/Housing/documents/MF_Memo_Community_Solar_Credits_signed.pdf; https://www.hud.gov/sites/dfiles/Housing/documents/MF_Memo_re_Community_Solar_Credits_in_MM_Buildings.pdf; and https://www.hud.gov/sites/dfiles/PIH/documents/Community%20Solar%20Credits%20in%20PIH%20Programs.pdf.

Rule exclude lump-sum additions to assets, as well as non-recurring income. However, if a HUD program provided a recurring financial benefit directly to a low-income tenant, should the rule exclude this income from the HOME income determinations?

Specific solicitation of comment #8: The Department specifically requests public comment from participating jurisdictions, developers, and other affected members of the public about the appropriateness of the length of the HUD-required periods of affordability for HOME-assisted rental housing. The current regulation at 24 CFR 92.252(e) establishes periods of 5 years for a per-unit HOME investment of under $15,000, 10 years for a per-unit investment between $15,000 and $40,000, and 15 years for a per-unit investment of more than $40,000, 15 years for any unit involving refinancing of existing debt, and 20 years for any unit involving new construction. Section 215(a)(1)(E) of NAHA (42 U.S.C. 12745(a)(1)(E)) requires that the period of affordability be for the remaining useful life of the HOME-assisted property, as determined by HUD, without regard to the term of the mortgage or to transfer of ownership, or for such other period that HUD determines is the longest feasible period of time consistent with sound economics and the purposes of NAHA. Since the Department established these periods of affordability in 1991, costs have increased significantly, LIHTCs have become the primary funding mechanism for rental housing, and the housing affordability crisis in the country has worsened significantly. The Department seeks input about whether the length of the periods of affordability and the dollar thresholds and activity thresholds that are the basis of the current periods of affordability remain appropriate. In addition, the Department seeks input about any project feasibility challenges of the current HOME periods of affordability and factors that the HUD should consider in contemplating changes to the current periods of affordability.

Through this rule, the Department proposes to streamline procedures and simplify requirements in proposed §§ 92.252(g)(1), 92.253(e)(5), and 92.251(f)(5)(i) for small-scale rental housing projects (one to four total units) for reexamination of annual income, tenant selection, and ongoing physical inspections. Section 226(c) of NAHA permits HUD to provide streamlined procedures in monitoring compliance with HOME requirements for small-scale housing when HUD determines it is appropriate. While current HOME requirements may be standard for larger rental projects managed by professional landlords or property management companies, the requirements can be a significant disincentive to participation in the program for landlords or would-be landlords of small-scale properties such as homeowners adding an accessory dwelling unit (ADU) or HOME-assisted homebuyers purchasing duplexes or triplexes. Such small-scale projects may be an attainable method for participating jurisdictions with less resources to address their rental housing needs while generating income or supporting owner-occupants (irrespective of whether their own unit is HOME-assisted). Reducing administrative burden would make HOME a viable funding option for such programs that create ADUs or provide financing for resident landlords.

The proposed rule would revise § 92.252 to clarify requirements for tenant income re-examination, align with the requirements in § 92.203(a) and (b), and to provide flexibilities for small-scale housing, multifamily projects with a period of affordability of ten years or more, and for units with Federal or State project-based subsidy or tenant-based rental assistance. The proposed rule would revise the first paragraph of proposed § 92.252(g) to recognize the exceptions from § 92.203(b)(1)(i) for a participating jurisdiction that accepts an annual income determination in accordance with § 92.203(a)(1) or (2) or determines income in accordance with § 92.203(b)(2). Currently, § 92.203(a)(1) requires a participating jurisdiction to accept a Federal

or state project-based subsidy provider's determination of a family's annual income if a family is applying for a HOME unit assisted by a Federal or state project-based subsidy program. Similarly, pursuant to § 92.203(a)(2), a participating jurisdiction has the option to accept a rental assistance provider's determination of a family's annual income if the family is applying for a HOME unit and is receiving tenant-based rental assistance (e.g., a Housing Choice Voucher). This rule's revision to proposed § 92.252(g) would make the regulations at § 92.203 consistent with proposed § 92.252(g). The proposed rule would also revise the first paragraph in proposed § 92.252(g) to require the participating jurisdiction to require the owner to re-examine each tenant's annual income in accordance with the option in § 92.203(b)(1) that the participating jurisdiction selects and includes in the written agreement. The proposed rule would add paragraphs (1) through (3) to proposed § 92.252(g) to establish exceptions to this general re-examination requirement.

The proposed rule would reduce burdens on landlords of small-scale housing by adding paragraph (g)(1) to § 92.252 to permit a participating jurisdiction to permit an owner of small-scale housing to reexamine each tenant's annual income every three years rather than annually. For owners of small-scale housing that select the option at §92.203(b)(1)(ii) and are located in participating jurisdictions which permit owners of small-scale housing to reexamine a tenant's annual income every three years, the proposed rule would except these owners of small-scale housing from the requirement to obtain annual self-certifications from their tenants within the three-year period following completion of these tenants' income examinations. This proposed change to the schedule of reexamining tenant annual income for small-scale housing would have a minimal effect on the landlord's rental income because the rent limit would not change until the tenant's income increased above 80 percent of AMI. In addition, this proposed change aligns

with the other proposed changes for small-scale housing in § 92.251 to permit a three-year physical inspection requirement schedule rather than a risk-based schedule and § 92.253 to permit the participating jurisdiction, upon request by an owner of small-scale housing, to establish alternative procedures to a written waiting list for small-scale housing, subject to HUD's written approval of the procedures and determination that the selection of a tenants from a waiting list in chronological order by the owner is impracticable.

The proposed rule would add paragraph (g)(2) to § 92.252 to impose and further clarify the existing requirement for owners of a multifamily project with a period of affordability of 10 years or more. Currently, during the period of affordability, an owner may re-examine tenant income annually using a statement and certification, in accordance with § 92.203(b)(1)(ii). The proposed rule would clarify that if a participating jurisdiction permits the owner to re-examine income using a statement and certification, the participating jurisdiction must require the owner to re-examine the income of each tenant using source documentation, at minimum, every six years, in accordance with § 92.203(b)(1)(i). This reflects the same requirement currently in § 92.252(g), but the language has been revised to clarify that the participating jurisdiction must enforce compliance by the owner with this requirement.

To align with the requirements in § 92.203(a), the proposed rule would also include an exception for units with Federal or State project-based subsidy or tenant-based rental assistance by adding paragraph (3) to 92.252(g). The proposed 92.252(g)(3) would except an owner from re-examining a tenant's annual income in accordance with § 92.203(b) for HOME when a participating jurisdiction accepts an annual income determination under §92.203(a)(1) or (2).

The proposed rule would renumber the existing § 92.252(i)(2) to § 92.252(h)(2) and makes several changes to the proposed § 92.252(h)(2) to improve readability and clarity

regarding over-income tenant requirements. In addition to creating new paragraphs (h)(2)(i) and (ii), the proposed rule would clarify in the proposed § 92.252(h)(2)(i) that the participating jurisdiction may permit tenants of HOME-assisted units subject to rent restrictions under LIHTC to pay the rent amount required under LIHTC requirements. In the proposed § 92.252(h)(2)(ii), HUD would further clarify that an over-income tenant in a floating HOME-assisted unit must pay a rent amount no greater than the fair market rent for comparable, non-HOME-assisted units in the neighborhood.

In proposed § 92.252(i), the proposed rule would also explicitly prohibit the use of surety bonds, security deposit insurance, or similar instruments to be used in lieu of or in addition to a security deposit in HOME-assisted units.

The proposed revisions to § 92.252(j) and (k) update citations to conform with the redesignation of the current § 92.253(d) as § 92.253(e) and the Department's proposal to move the requirements for on-site inspections and financial oversight of rental projects from § 92.504(d) to § 92.251(f) respectively.

21. Tenant Protections and Selection (24 CFR 92.253).

The Department is proposing significant revisions to the tenant protections and selection provisions in § 92.253, consistent with the priorities set out in the Administration's Renters' Bill of Rights.[26] HUD's proposed revisions to the HOME program in § 92.253 would provide a robust set of tenant protections appropriate to the HOME program. These tenant protections are based on the Department's review of existing HUD programs (e.g., the Section 8 PBV program[27]

[26] Available at https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf.
[27] *See* HUD's Tenancy Addendum Section 8 Project-Based Voucher Program, available at https://www.hud.gov/sites/dfiles/OCHCO/documents/52530C.pdf; 24 CFR 983.256.

and the public housing program[28]), a number of State statutes and local ordinances (e.g., Virginia,[29] Washington, D.C.,[30] California,[31] Texas,[32] and Florida[33]), and the Military Housing Privatization Initiative[34]). To implement the new tenant protections, HUD is proposing in § 92.253(a)(4) to require that all tenants in HOME-assisted rental housing units or receiving TBRA have a new HOME tenancy addendum appended to their lease. This HOME tenancy addendum would include the new tenant protections listed in § 92.253(b). Through this proposed rule, the Department would replace the list of prohibited lease terms currently in § 92.253(b) with a description of the provisions that HUD will include in the HOME tenancy addendum.

The proposed rule at § 92.253(a) would revise the heading of paragraph (a) to "Lease Contents" to more accurately describe the requirements within the paragraph, as proposed. The introductory text clarifies that the protections apply to both tenants of HOME-assisted rental housing as well as tenants receiving TBRA. The paragraph also clarifies an existing requirement that the tenant lease be in writing and adds a new requirement that the owner provide the participating jurisdiction a copy of the written lease before it is executed and when the written lease is revised. This new requirement gives the participating jurisdiction the ability to verify that the owner's lease includes the HOME tenancy addendum and otherwise complies with the revised requirements of this section.

The proposed rule at § 92.253(a)(1) would require that a tenant's lease contain more than one convenient method to communicate directly with the owner or the property management

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[28] 24 CFR part 966.
[29] Va. Code Ann. §§ 55.1-1200 through 1262.
[30] D.C. Official Code, Title. 42, Ch. 35.
[31] Cal. Civ. Code, D. 2; Cal Civ. Code, D. 3, Pt. 4, T. 5.
[32] Tex. Prop. Code Title 8, Ch. 92.
[33] Fla. Stat. Title VI, Ch. 83.l.
[34] 10 U.S.C. 2890 and the Military Housing Privatization Initiative Tenant Bill of Rights, available at https://media.defense.gov/2020/May/18/2002302053/-1/-1/1/TENANT_BILLOFRIGHTS.PDF.

staff, including in person, by telephone, email, or through a web portal. This provision would provide tenants with a reasonable way to contact an owner's property management staff to request any repairs or maintenance that is necessary for the unit or the common areas of the project. Similarly, the proposed rule at § 92.253(a)(2) would require that a lease provide the participating jurisdiction's HOME program contact information so that a tenant can contact the participating jurisdiction. The proposed rule at § 92.253(a)(3) maintains the requirement that the Violence Against Women Act (VAWA) lease requirements contained in § 92.359(e) be included in a HOME tenant's lease, except as otherwise provided in § 92.359(b). The proposed rule at § 92.253(a)(4) would establish the requirement that a HOME tenancy addendum, as further described below, is contained in the lease.

The introductory text to proposed § 92.253(b) would establish that the HOME tenancy addendum shall prevail over any conflicting provisions of the lease. The introductory text would also explain that the lease, the HOME tenancy addendum, the VAWA addendum, and any addenda required by a Federal or State affordable housing program shall constitute the sole agreement between the owner and the tenant.

Specific solicitation of comment #9: The Department currently applies only the tenant protections contained in the current § 92.253(a) and (b) to tenants receiving TBRA. The proposed rule would apply proposed paragraphs (a)-(c) and (d)(2) to tenants receiving TBRA., including tenants that only receive HOME security deposit assistance. The Department is seeking public comment on whether the requirements at § 92.253(b) and (d)(2) should be required for tenants that receive TBRA. If not, what tenant protection requirements should apply to tenants that receive TBRA?

The proposed rule at § 92.253(b)(1) would describe tenant protections surrounding the physical condition of the tenant's unit and the project. Section 92.253(b)(1)(i) describes the requirement that the owner maintain the physical condition of the unit and the project in accordance with the participating jurisdiction's ongoing physical condition standards in § 92.251(f).

The proposed rule at § 92.253(b)(1)(i) would establish that an owner shall repair and maintain the unit and the common areas in accordance with § 92.253(b)(1)(i). The proposed rule at § 92.253(b)(1)(ii)(A) would require that owners, as soon as practicable, provide tenants with expected time frames for maintaining and repairing units. The Department believes that this requirement is necessary to ensure transparent communications regarding when units will be repaired. The proposed rule at § 92.253(b)(1)(ii)(B) would require that owners, as soon as practicable, make repairs and perform maintenance on units and common areas in a professional manner and in accordance with the participating jurisdiction's property standards. The Department recognizes that repairs cannot always be performed immediately but seeks to clarify that the owner is still under an obligation to perform required repairs and to do so as soon as practicable. The proposed rule at § 92.253(b)(1)(ii)(C) would prohibit owners from charging tenants for the costs of addressing normal wear and tear or damage to a unit or common areas other than that caused by the tenant's negligence, recklessness, or intentional acts.

The proposed rule at § 92.253(b)(1)(iii) would require that, when a life-threatening deficiency in the physical condition of the tenant's unit or project impacts the tenant, the tenant shall be promptly relocated into either a housing unit that is decent, safe, sanitary, and in good repair, or placed into physically suitable lodging until repairs on the tenant's housing unit or project are completed. The Department anticipates that tenant relocation would only be

necessary if repairs could not be completed on the day the life-threatening deficiency is identified, in which case the proposed rule would require that the housing unit or lodging used for tenant relocation be provided at no additional cost to the tenant. The proposed § 92.253(b)(1)(iii) would be added because the Department seeks to prevent HOME tenants from remaining in housing that poses a threat to their physical safety and from being subjected to additional costs as a result of physical housing conditions outside their control.

The proposed rule at § 92.253(b)(1)(iv) would require that, where the owner controls the utilities, owners provide tenants with uninterrupted utility service in projects. The proposed rule at § 92.253(b)(1)(iv) would provide an exception to the proposed requirement for when utility services are interrupted for a reason that is beyond the control of the owner. The Department is proposing this revision to counteract a disturbing trend of so-called "self-help" evictions where owners use their ability to control utilities in a manner that is detrimental to tenants as a means to compel tenants to terminate their tenancy. In many States this "self-help" eviction practice is already illegal,[35] but, by addressing this issue in the proposed HOME tenancy addendum, the proposed rule would prohibit the practice throughout HOME-assisted rental housing and TBRA.

The proposed rule at § 92.253(b)(2)(i) would explain that a family has the right to reside with a foster child, foster adult, or live-in aide in the unit. The proposed requirement to allow foster children and adults to reside in a unit with a family is similar to the requirements contained in the Section 8 HCV program.[36] The proposed requirement to allow a live-in aide to reside in a unit with a family is part of the nondiscrimination requirements contained in § 92.350.

The proposed rule at § 92.253(b)(2)(ii) would explain that, except for shared housing arrangements in TBRA, the tenant's household shall have exclusive use and occupancy of their

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[35] *See, e.g.*, Fla. Stat. § 83.67; Va. Code Ann. § 55.1-1243.1; Cal. Civ. Code § 789.3; Mont. Code Ann. § 70-24-411.
[36] 24 CFR 982.551(h)(4).

unit. One of the rights of tenancy is the tenants' exclusive use of their unit. Similar rights are contained in the HUD Section 8 project-based voucher program tenancy addendum,[37] in the lease requirements for public housing tenants,[38] and in other leases used by servicemembers.[39]

The proposed rule at § 92.253(b)(2)(iii) would set out the permitted situations where an owner may enter a tenant's unit. The proposed rule at § 92.253(b)(2)(iii)(A) would allow an owner to enter a unit during reasonable hours when the owner is performing routine inspections and maintenance, making repairs to the unit, or showing the unit to prospective tenants. Before the owner may enter the unit under proposed § 92.253(b)(2)(iii)(A), the owner must give the tenant at least 2 days' notice, which must include the purpose for entering the unit. The proposed rule at § 92.253(b)(2)(iii)(B) would allow an owner to enter a unit at any time, without advance notice, if the owner has a reasonable belief that an emergency requires entry to the unit. The proposed rule at § 92.253(b)(2)(iii)(C) would require that an owner that enters a unit when the tenant and all adult members of the household are absent from the unit must provide a written statement to the tenant explaining the date, time, and purpose of their entry of the unit.

The proposed rule at § 92.253(b)(2)(iv) would describe a tenant's rights to reasonable access and use of the common areas of the project. This language is proposed to clarify HUD's existing policy and explicitly prohibit owners from having separate amenities such as gyms, pools, spas, elevators, rooftop gardens, storage areas, and playrooms that only non-assisted tenants can access or use.

The proposed rule at § 92.253(b)(2)(v) would provide tenants the right to organize, create tenant associations, convene meetings, distribute literature, and post information at a project.

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[37] Available at https://www.hud.gov/sites/dfiles/OCHCO/documents/52530CENG.pdf.
[38] 24 CFR 966.4(d).
[39] *See* 10 U.S.C. 2890.

Tenants have these explicit protections in other HUD programs, including HUD Multifamily Housing programs.[40] This is also a tenant right provided in a number of jurisdictions.[41] The Department proposes to add these explicit protections to the HOME program because the Department has found that tenant organizations are especially helpful in providing tenants with representation in addressing community-wide issues and that tenant organizations may provide a more sufficient counterweight to owners of larger projects who are not compliant with lease provisions or HUD requirements.

The proposed rule at § 92.253(b)(2)(vi) would state that a tenant may not be required to accept supportive services that are offered at the housing unless the tenant is living in transitional housing and such services are required in connection with that housing. This language is proposed to clarify HUD's existing policy and is part of the prohibited lease provisions in the current § 92.253(b)(9).

The proposed rule at § 92.253(b)(3) would describe certain notices that must be provided to a tenant by an owner. The proposed rule at § 92.253(b)(3)(i) would require that an owner notify a tenant in writing of the specific grounds for any proposed adverse action by an owner. These actions can be a variety of different actions, including charging a tenant for tenant-caused damages. This proposed requirement is similar to requirements of other HUD programs such as HUD's public housing program.[42]

The proposed rule at § 92.253(b)(3)(ii) would require that a tenant be notified within 5 business days of any changes in ownership to the project, including through a foreclosure. The

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[40] *See* 24 CFR part 964 for tenant participation and tenant opportunities in public housing; 24 CFR part 245 for tenant participation in Multifamily Housing projects.
[41] *See* D.C. Official Code § 42–3505.06; New York Consolidated Laws, Real Property Law - RPP § 230; Cal. Civ Code § 1942.6.
[42] *See* 24 CFR 966.4(e)(8).

proposed rule at § 92.253(b)(3)(ii) would also require that owners provide tenants with 30 days' notice of an impending sale or impending foreclosure of the property. These proposed requirements are similar to requirements contained in a variety of State statutes[43] and the Department proposes these policies so that tenants are informed about changes in ownership in their projects. Requiring that tenants receive notice of this potential change earlier in the process helps better prepare those tenants for these and other disruptive impacts that occur when there is a change of ownership at a project. Changes in ownership of a project may lead to more extensive changes in properties, including rehabilitation of units or termination of affordability restrictions. As such, reasonable notification requirements would allow tenants to better prepare for any future changes to their housing. Section 92.253(b)(3)(iii) clarifies the existing lease prohibition contained at § 92.253(b)(4), which prohibits an owner from instituting a lawsuit against the tenant without providing the tenant with notice.

The proposed rule at § 92.253(b)(4) would describe and further specify a tenant's rights to available legal proceedings and remedies. Most of the proposed § 92.253(b)(4) reflects tenant protections that already exist in the existing HOME rule, which are proposed to be revised for inclusion in the tenancy addendum or for clarification.

The proposed rule would renumber and slightly rephrase, for the purposes of the HOME tenancy addendum, the prohibited lease terms from the current § 92.253(b)(1)-(3) to § 92.253(b)(4)(i)-(iii), respectively. The proposed rule at § 92.253(b)(4)(iv) would provide additional clarification that a tenant has the right to independent legal representation in any legal proceedings in connection with the lease. A tenant is not required to appoint the owner as attorney-in-fact as part of the lease and has the right to independent counsel that can assist the

[43] *See, e.g.*, Va. Code Ann. § 55.1-1237; Md Code, Real Property § 7-105.11.

tenant in any dispute relating to their lease, including non-binding arbitration or alternative dispute resolution processes that can precede a civil court proceeding. Preliminary studies have demonstrated that when a tenant has representation, a court is less likely to execute a warrant of eviction or enter a decision in favor of the owner.[44] While the Department is not proposing to provide HOME tenants with funds to obtain counsel, given the benefits that counsel can provide, the Department believes it is necessary to clarify that tenants always have the right to independent counsel.

The proposed rule at § 92.253(b)(4)(iv)(B) and (C) reframes the current regulatory requirements for prohibited lease terms contained in § 92.253(b)(4) and (5) into affirmative tenant protections for inclusion in the HOME tenancy addendum. The proposed § 92.253(b)(4)(iv)(B) and (C) explains that a tenant may not be required to waive any right to a trial by jury or waive the tenant's right to appeal or otherwise challenge a court decision in connection with a lease. Similarly, the proposed rule at § 92.253(b)(4)(v) would reframe the current prohibited lease term contained in § 92.253(b)(8) into a tenant protection. The proposed affirmative tenant protection in § 92.253(b)(4)(v) states that a tenant may only be required through the lease to agree to pay the owner's attorney's fees or other legal costs if the tenant loses the court proceeding with the owner.

The proposed rule at § 92.253(b)(5)(i) would state that an owner may not unreasonably interfere with the tenant's comfort, safety, or enjoyment of a rental unit or retaliate against a tenant. The proposed rule at § 92.253(b)(5)(i)(A)-(E) would provide that retaliation includes, but is not limited to, an owner's attempts, during a tenant's lease, to recover possession of the

[44] *See* Ellen, I.G., O'Regan, K., House, S. and Brenner, R., 2021, Do lawyers matter? Early evidence on eviction patterns after the rollout of universal access to Counsel in New York City, Housing Policy Debate, 31(3-5), pp.540-561.

housing unit in a way that is not consistent with HUD requirements, decrease the services to be provided to the unit, interfere with a tenant's rights to privacy under State or local law, harass a household or their lawful guests, or refuse to honor the terms of the lease.

The proposed rule at § 92.253(b)(5)(ii) would describe the rights that a tenant may exercise without fear of retaliation by an owner. These rights of tenancy that a tenant may exercise include, but are not limited to, a tenant's rights to report inadequate housing conditions of the housing unit or project to the owner, participating jurisdiction, code enforcement officials, or HUD; the ability to request enforcement of the lease or any protection guaranteed under 24 CFR part 92; and the ability to request or obtain enforcement of any applicable protections under Federal, State, or local law. The Department believes that tenants must be able to exercise their rights under their lease and applicable law free from worry of reprisal or coercion. Several States have also prohibited retaliation against tenants when the tenant has complained to a governmental agency responsible for code enforcement, made a complaint to or filed a legal action against the owner, organized or has become a member of a tenant's organization, or has testified in a court proceeding against the owner.[45] Moreover, the Department believes that establishing this as a right within the lease itself will assist in addressing situations where owners retaliate against persons with disabilities that request reasonable accommodations in HUD-assisted housing units.

The proposed rule at § 92.253(b)(6) would establish confidentiality requirements to safeguard a tenant or applicant's personally identifiable information.

The proposed rule at § 92.253(c) would establish new security deposit requirements for HOME-assisted rental housing and TBRA. Under these proposed requirements, security deposits

[45] *See, e.g.*, Fla. Stat. § 83.64; Tex. Prop Code § 92.331; Mont. Code § 70-24-431.

must be refundable and may be no greater than two months' rent. The proposed rule would also prohibit the use of surety bonds or security deposit insurance to be used in lieu of or in addition to security deposits. Additionally, proposed § 92.253(c) would also provide that if an owner charges any amount against a tenant's security deposit, then the tenant must be provided a list of all items charged against the security deposit and be promptly refunded the remainder of the security deposit balance. The proposed change to § 92.253(c) is distinct from the current HOME regulation, which does not require refundable security deposits or that the owner identify the individual charges made against a security deposit. This proposed change is consistent with various State statutes[46] and other HUD programs[47] and provides another layer of protection for tenants in HOME-assisted rental housing and with TBRA.[48]

The proposed rule at § 92.253(d) would revise the termination of tenancy provisions for both HOME-assisted rental housing and TBRA currently found at § 92.253(c). Currently, the rules are silent on what protections apply to termination of tenancy for tenants with tenant-based rental assistance, as tenant-based rental assistance is not subject to the termination of tenancy provisions in the current rule at § 92.253(c).

The proposed rule at § 92.253(d)(1)(i) would clarify that an owner may not terminate the tenancy of any tenant or household member or refuse to renew the lease of a tenant 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

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[46] *See, e.g.*, Tex. Prop Code § 92.104; SDCL § 43-32-24; Md. Code, Real. Prop. § 8-203.
[47] *See* HUD's Section 8 Project-Based Voucher Program Tenancy Addendum, part B.12, available at https://www.hud.gov/sites/dfiles/OCHCO/documents/52530CENG.pdf. *See also* 24 CFR 960.509(b)(3)(v) for public housing requirements related to security deposits.
[48] Disputes surrounding the retention of a security deposit, if they arise, would typically remain a matter of state or local landlord-tenant law.

cause. The Department is proposing this clarification to the language currently found at § 92.253(c) in response to questions about situations where an owner wishes to evict a member of the household but not the entire household. The Department recognizes that other HUD programs are more specific about the requirements that apply when expelling a single member of the household and is proposing these revisions to clarify the termination of tenancy requirements that apply to each household member.

The proposed rule at § 92.253(d)(1)(i)(A)-(D) would provide a more detailed explanation of "good cause" to terminate or refuse to renew a tenancy. The proposed rule at § 92.253(d)(1)(i)(A) would clarify that a tenant's assets or the type of income or assets that the tenant possesses is not good cause to terminate or refuse to renew a tenancy. This was clarified in the preamble to the HOTMA Final Rule. In that rule, the Department stated that "[a] HOME PJ may only terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds for good cause, as defined in § 92.253(c), which does not include having the type of assets or an amount of assets in excess of the limitations in § 5.618."[49] Because § 92.253 was not part of the HOTMA Final Rule, the Department proposes to use this opportunity to codify the requirements in proposed § 92.253(d)(1)(i)(A).

The proposed rule at § 92.253(d)(1)(i)(B) would describe other bases for other good cause, such as when a tenant creates a documented nuisance under applicable state or local law or when a tenant unreasonably refuses to provide the owner access to the unit to allow the owner to repair the unit. The Department holds these to be reasonable grounds for other good cause in

[49] 88 FR 9600, 9613 (Feb. 14, 2023).

other HUD programs, most notably the Section 8 PBV program[50], and proposes to align HOME requirements with these other programs.

The proposed rule at § 92.253(d)(1)(i)(C) would establish that other good cause can also include where an owner must terminate a tenancy to comply with an order by a governmental entity or court that requires the tenant vacate the project or unit or a local ordinance that necessitates vacating the project or unit. In these instances, the Department believes it is reasonable for an owner to terminate a tenancy or refuse to renew a lease. Depending upon the nature of the order, under the proposed rule, the owner may still be found in violation of other HOME program requirements and their written agreement with the participating jurisdiction. For instance, if a governmental entity or court order to vacate was caused by the owner's failure to maintain the property condition, then the owner of the HOME rental housing may still be found in violation of the participating jurisdiction's ongoing property condition standards.

The Department proposes to revise the notice requirements for termination or refusal to renew tenancy, currently found in § 92.253(c).

The proposed rule at § 92.253(d)(1)(i)(D) would clarify that in order for an owner to establish good cause for a violation of applicable Federal, state, or local law, there must be a record of conviction for a crime during the tenancy period that has a direct bearing on the tenant's continued tenancy in the HOME rental housing project, such as a violation of law that affects the safety of persons or property. The proposed rule would also clarify that an owner shall not use a record of arrest, parole or probation, or current indictment to establish a violation of applicable Federal, state, or local law.

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[50] *See* PBV Tenancy Addendum, Part B, paragraph 8.d, available at https://www.hud.gov/sites/dfiles/OCHCO/documents/52530CENG.pdf.

However, the proposed rule at § 92.253(d)(1)(i)(D) would further clarify that good cause based on a violation of applicable Federal, state, or local law cannot be based on a violation that occurred prior to tenancy, a violation that does not have a direct bearing on a tenant's continued tenancy, or a basis other than a record of conviction. An owner may consider any mitigating circumstances relevant to whether the tenant will commit further violations of the lease or applicable Federal, State, or local law.

The proposed rule at § 92.253(d)(1)(ii) would require that owners provide 60 days' notice instead of 30 days' notice before the termination of tenancy. The Department recognizes that this proposed 60-day notice period extends beyond the 30-day notification requirement for nonpayment of rent recently proposed in the proposed rule entitled *30-Day Notification Requirement Prior to Termination of Lease for Nonpayment of Rent*[51] *("30-Day Notice Rule")*. One of the proposed changes in the 30-Day Notice Rule is to amend several program regulations to align HUD programs to require written notification of at least 30 days prior to lease termination resulting from nonpayment of rent. However, the programs with regulations that would be amended under the 30-Day Notice Rule do not have the same minimum 30-day statutory notice period that HOME has in 42 U.S.C. 12755(b). Moreover, the 30-Day Notice Rule was describing termination of tenancy for a specific ground, nonpayment of rent, and not the HOME statutory considerations in 42 U.S.C. 12755(b), which include good cause, as discussed throughout this preamble. Recognizing the challenges of obtaining new affordable housing and to reduce the probability that a tenant will become homeless, the proposed rule's increase to the notice period to 60 days would provide HOME tenants with a sufficient period of time to locate and secure a new rental unit. This increased notice period above the statutory

[51] 88 FR 83877.

minimum would also allow tenants to have additional time to object to or cure violations in order to reverse the termination. HUD believes that the public interest in avoiding increased homelessness significantly outweighs the risk that this proposed change to increase the notice period would disincentivize developers and owners from participating in the HOME program.

The Department is also proposing to require that owners provide the participating jurisdiction with a copy of the notice to vacate to assist the participating jurisdiction with monitoring the HOME units or units with TBRA as well as to help the participating jurisdiction answer any questions it receives from the tenant. The proposed rule at § 92.253(d)(1)(ii) would also provide that the 60-day notice period is not required if the termination of tenancy or refusal to renew is due to a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the property. This proposal would codify section 235 of Division L of the Consolidated Appropriations Act of 2016, Pub. Law 114–113, which revised section 225(b) of NAHA (42 U.S.C. 12755(b)) to specifically add, "Such [60]-day waiting period is not required if the grounds for the termination or refusal to renew involve a direct threat to the safety of the tenants or employees of the housing, or an imminent and serious threat to the property (and the termination or refusal to renew is in accordance with the requirements of State or local law)." Determining whether a person poses a direct threat to the safety of the tenants or employees of the housing, or an imminent and serious threat to the property is a fact-sensitive determination. There can be many different factors that an owner may choose to consider when making that determination, such as the nature of the conduct, the tenant's past conduct, and the evidence that the owner has in their records. Moreover, even if the proposed 60-day notice period is not required pursuant to § 92.253(d)(1)(ii), any termination of tenancy or refusal to renew must comply with the requirements at § 92.253(d)(1)(iii).

The proposed rule at § 92.253(d)(1)(iii) would clarify that terminating or refusing to renew a tenancy must be in accordance with Federal, State, local law, and the requirements of 24 CFR part 92, including requirements related to fair housing, nondiscrimination, and VAWA.

The proposed rule at § 92.253(d)(1)(v) would clarify that an owner may not perform a constructive or so-called "self-help" eviction where the owner takes actions such as locking a tenant out of their unit or stopping utility services to a tenant's units. These actions are already considered a violation of HUD's current rules at § 92.253(c) but the proposed § 92.253(d)(1)(v) provides further clarification. The proposed rule at § 92.253(d)(1)(v) would also clarify that an owner may not create a hostile living environment or refuse to make reasonable accommodations in order to cause a tenant to terminate their tenancy. This proposal is consistent with the Department's policy of prohibiting retaliation, as previously described. Additionally, an owner's refusal to provide a reasonable accommodation in accordance with Federal requirements would also constitute a violation of the current HOME nondiscrimination requirements at § 92.350, as well as Federal nondiscrimination requirements under applicable Federal civil rights and fair housing laws.[52]

The proposed rule at § 92.253(d)(2) would provide the requirements for terminating or refusing to renew the tenancy of a tenant assisted with TBRA. The proposed rule at the introductory text to § 92.253(d)(2)(i) would establish a requirement that the participating jurisdiction must adopt written standards for termination or refusal to renew a tenancy in the TBRA program. The Department believes by codifying this requirement, it would provide both participating jurisdictions and owners with more definitive requirements on how to permissibly terminate or refuse to renew a tenancy. To that end, the Department is also proposing to require

[52] *See e.g.*, 24 CFR § 5.105(a).

that the written standards for terminating or refusing to renew a tenancy for a tenant assisted with TBRA be included in the lease or in the rental assistance contract between the participating jurisdiction and the tenant. As proposed, the written standards included in the lease or rental assistance contract must provide a good cause standard for terminating or refusing to renew a tenancy. The proposed rule does not modify a participating jurisdiction's discretion to provide TBRA to a tenant to lease a new unit even if an owner has terminated the family's tenancy or refused to renew the lease under § 92.253(d)(2).

The proposed rule at § 92.253(d)(2)(i)(A)-(F) would include the standard for termination or refusal to renew a tenancy for good cause for TBRA. This proposed good cause standard includes many of the same types of good cause justifications that are proposed for HOME rental housing under § 92.253(d)(1)(i), including serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State, or local law through a record of conviction of a crime that beards directly on continued tenancy; when a tenant creates a documented nuisance under applicable state or local law or when a tenant unreasonably refuses to provide the owner access to the unit to allow the owner to repair the unit; when an owner must terminate a tenancy to comply with an order issued by a governmental entity or court that requires the tenant vacate the project or unit; or a local ordinance that necessitates vacating the residential real property. Similar to the proposed changes in § 92.253(d)(1)(i)(D), HUD's proposed language in § 92.253(d)(2)(i)(B) would also clarify that good cause based on a violation of applicable Federal, state, or local law shall be based on a record of conviction of a crime that bears directly on the tenant's continued tenancy and not a record of arrest, parole or probation, or current indictment. This does not affect good cause based on a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the

property. The proposed rule would further clarify that good cause based on a violation of applicable Federal, state, or local law must not be based on a violation that occurred prior to tenancy, a violation that does not have a direct bearing on one's continued tenancy, or a violation that does not result in a record of conviction. An owner may consider any mitigating circumstances relevant to whether the tenant will commit further violations of the lease or applicable Federal, State, or local law.

The proposed rule at § 92.253(d)(2)(i)(D) would also include reasons for good cause termination or refusal to renew a tenancy that are common in private rental markets. These proposed good cause reasons include when an owner intends to withdraw the unit from the rental market so that the owner can occupy the unit; to allow an owner's family member to occupy the unit; or to demolish or substantially rehabilitate the unit. These circumstances are sufficient basis to terminate or refuse to renew a tenancy under the Section 8 HCV program and to take a unit off the rental market in most States. The Department also believes that requiring a more onerous standard would negatively impact the ability of tenants to utilize TBRA in privately held units.

The proposed rule at § 92.253(d)(2)(i)(E) would also clarify that an owner is not required to maintain tenancy after the termination of the rental assistance contract. This proposed clarification mirrors similar provisions in the project-based voucher program tenancy addendum, where the lease automatically terminates if the Housing Assistance Payments contract terminates or if the PHA terminates assistance to the tenant.[53]

Specific solicitation of comment #10: Currently, a rental assistance contract can be between a participating jurisdiction and either an owner or a tenant. The Department is also aware of many participating jurisdictions that have tri-party rental assistance contracts where

[53] *See* HUD's Section 8 Project-Based Voucher Program Tenancy Addendum, part B.9 and 10, as applicable, available at https://www.hud.gov/sites/dfiles/OCHCO/documents/52530CENG.pdf.

the owner, the tenant, and the participating jurisdiction all sign the rental assistance contract. The Department is seeking feedback on whether a rental assistance contract should always be executed by an owner so that the participating jurisdiction can require that the HOME-assisted tenant's lease contain the HOME tenancy addendum and that the owner follow all applicable TBRA requirements.

The proposed rule at § 92.253(d)(2)(ii) would require that an owner provide a tenant assisted with TBRA with a written or otherwise accessible notice to vacate the unit that specifies the grounds for the action at least 30 days before termination of the tenancy. This proposed requirement would codify the requirement contained in section 4024(c)(1) of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act (15 U.S.C. 9508(c)(1)), which requires that the lessor of a covered dwelling unit "may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." In previous guidance, the Department has determined that units receiving TBRA are covered dwelling units as defined by the CARES Act.[54] In this proposed rule, the Department would specify that the minimum 30-day notice period does not apply if the termination or refusal to renew tenancy is due to a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the property, as specified in section 235 of Division L of the Consolidated Appropriations Act of 2016 (Pub. Law 114–113), which revised section 225(b) of NAHA (42 U.S.C. 12755(b)). Even if the proposed 30-day notice period is not required pursuant to § 92.253(d)(2)(ii), any termination of tenancy or refusal to renew must comply with the requirements at § 92.253(d)(2)(iii). The Department also proposes that owners provide participating jurisdictions with a copy of the notice to vacate

[54] *See* the HOME Investment Partnerships Program FAQs (May 1, 2020), available at https://www.hud.gov/sites/dfiles/CPD/documents/HOME-FAQs-COVID-19.pdf.

within 5 business days of when the notice is served to the tenant. This proposed change would allow a participating jurisdiction to better monitor its TBRA program and enables the participating jurisdiction to further assist the tenant in finding a new unit to use their TBRA.

Similar to the HOME rental housing provisions in proposed § 92.253(d)(1)(iii), the proposed rule at § 92.253(d)(2)(iii) would require a termination of or refusal to renew tenancy to be in accordance with Federal, State, local law, and the requirements of part 92. The proposed rule would further clarify that this includes but is not limited to complying with fair housing, nondiscrimination, and VAWA requirements. HUD notes that in a forthcoming rulemaking, HUD will propose changes related to VAWA requirements, including in part 92. HUD will invite the public to comment on those proposed VAWA requirements in its future VAWA rulemaking. The proposed rule at § 92.253(d)(iv) would also clarify that an owner may not perform a constructive or so-called "self-help" eviction where the owner takes actions such as locking a tenant out of their unit or stopping utilities services to a tenant's unit.

The proposed rule would redesignate the current provisions on tenant selection at § 92.253(d) to § 92.253(e). The current § 92.253(d)(4) states that owners of HOME rental housing may not exclude an applicant on the basis of holding a housing choice voucher or certificate. The proposed rule would broaden the current requirement at § 92.253(d)(4), which would be redesignated as § 92.253(e)(4), to include an applicant with Federal or State tenant-based rental assistance. This proposal is consistent with the intent of NAHA and it better enables applicants to utilize their Federal or State TBRA. The proposed rule also revises the language in current § 92.253(d)(3)(ii), which is proposed to be redesignated as § 92.253(e)(3)(ii), to further clarify that projects with preferences or limitations for persons with disabilities must be open to all eligible persons with disabilities. The Department also proposes to further clarify that an

owner may advertise the project as offering various supportive services, including a description of the specific supportive services available, which may aid persons with disabilities in determining whether the supportive services may meet their needs.

The Department also proposes revisions to the HOME waiting list requirements, currently at § 92.253(d)(5) but proposed to be redesignated to § 92.253(e)(5). The proposed rule at § 92.253(e)(5) would allow a participating jurisdiction, upon request by an owner of a small-scale housing project, to establish alternative waiting list procedures for the selection of tenants, subject to HUD's written approval of the procedures and determination that the selection of a tenants from a waiting list in chronological order by the owner is impracticable. The proposed rule is providing this flexibility because the use and maintenance of a waiting list for a small-scale housing project is often impracticable as the lower availability and turnover of such units in a project, particularly when there is only one rental unit, may result in a list of applicants that are no longer interested in the unit or are unreachable when the unit becomes available. Owners of small-scale housing often do not have the same capacity as owners of larger multifamily properties to continuously update a waiting list to maintain an accurate list of applicants to enable leasing as soon as the unit becomes available. The Department believes this proposed change would better assist private owners of smaller rental properties that wish to participate in the HOME program by reducing their administrative burden and recognizing that the selection of a tenant from a waiting list is not practicable for some small-scale projects.

The proposed rule at § 92.253(f) would add a new provision regarding health and safety, which would require that if a participating jurisdiction has actual knowledge of an environmental, health, or safety hazard affecting a project, unit, or HOME tenants, that the participating jurisdiction inform the owner and tenants of the nature, date, and scope of such

hazards. The Department believes this is a reasonable requirement in light of recent environmental hazards like those in Jackson, Mississippi; Flint, Michigan; and East Palestine, Ohio. Similarly, the proposed rule at § 92.253(f) would require that if an owner has actual knowledge of an environmental, health, or safety hazard affecting a project, unit, or HOME tenants, that the owner inform the participating jurisdiction. The proposed rule would clarify that this notification requirement only applies for hazards discovered after the environmental review process because all hazards discovered during that process will have been corrected or mitigated, or have a satisfactory mitigation plan in place, in accordance with the requirements in 24 CFR part 50 or part 58.

22. Qualification as Affordable Housing: Homeownership (24 CFR 92.254).

The proposed rule would reformat § 92.254(a)(2) to improve clarity and readability. Specifically, the proposed rule would add a new paragraph § 92.254(a)(2)(iv) to clarify the process a participating jurisdiction must follow if it chooses to determine its own 95 percent of median purchase price for the area in lieu of using limits provided by HUD. The proposed rule would make corresponding changes to § 92.254(a)(2)(iii), including moving portions of the text from § 92.254(a)(2)(iii) to the proposed § 92.254(a)(2)(iv), which permits a participating jurisdiction to determine the 95 percent of the median purchase price for the area, consistent with the proposed § 92.254(a)(2)(iv).

The proposed rule would move language in § 92.254(a)(2)(iii) to § 92.254(a)(2)(iv)(A) and revise certain requirements. Specifically, the current regulation at § 92.254(a)(2)(iii) states that a participating jurisdiction developing its own 95 percent of median purchase price for the area must set forth the price for "different types of single family housing." This language is vague and confusing. The proposed rule at § 92.254(a)(2)(iv)(A) would clarify that the

participating jurisdiction must set forth the 95 percent median price limits for the area on single family housing of one, two, three, and four units. The proposed rule would also move requirements from the current regulation at § 92.254(a)(2)(iii) to § 92.254(a)(2)(iv)(B) and (C) and clarify that the requirements at the proposed § 92.254(a)(2)(iv)(B) apply to the 95 percent median price limits for the area on housing located outside of metropolitan areas. The proposed rule also reorganizes and lists the required information in each action plan in proposed § 92.254(a)(2)(iv)(C) for clarity and readability.

HUD proposes to revise § 92.254(a)(3) to extend the deadline for the sale of a homebuyer unit acquired, rehabilitated, or constructed with HOME funds from 9 to 12 months. If a HOME-assisted homebuyer unit is not sold before the proposed 12-month sales deadline, the unit must be restricted as an affordable rental unit under § 92.252 and rented to an eligible tenant in accordance with the rental housing requirements of § 92.252. This means that any homebuyer unit that is not sold to a qualified homebuyer by the deadline or restricted as a HOME-assisted rental unit in accordance with § 92.252 does not qualify as affordable housing under 24 CFR part 92 and therefore, the participating jurisdiction must repay the HOME funds to its local HOME account in accordance with § 92.503(b)(1).

Specific solicitation of comment #11: The Department requests public comment on whether the existing 9-month deadline for the sale of homebuyer units acquired, rehabilitated, or constructed with HOME funds is reasonable and whether extending the deadline to 12 months would increase the use of HOME funds for homeownership programs.

The proposed rule at § 92.254(a)(3) would also clarify that the rental requirements at § 92.252, including the period of affordability in § 92.252(d), apply to HOME-assisted homebuyer housing that fails to sell by the proposed 12-month deadline. In response to ongoing

misunderstandings by participating jurisdictions of this requirement, proposed revisions in § 92.254(a)(3) would more explicitly state that if a unit intended for homeownership has not been sold to an eligible homebuyer by the proposed 12-month deadline, the participating jurisdiction must immediately convert the unit to HOME-assisted rental housing that meets the requirements in § 92.252 and impose the required affordability restrictions for the appropriate rental housing period of affordability (which differs from the period of affordability for homebuyer housing). If at some future time the participating jurisdiction permits an owner to sell or otherwise convey a unit that converted from a homebuyer activity to a rental activity pursuant to § 92.254(a)(3), the participating jurisdiction may permit the sale in accordance with § 92.255.

HUD proposes to revise § 92.254(a)(5)(i) to address questions regarding the appropriate process for determining the sale price of housing at resale. When a HOME-assisted homebuyer sells a property during the period of affordability, section 215(b)(3) of NAHA requires a participating jurisdiction to sell the unit to another low-income homebuyer at a price that is affordable to a reasonable range of low-income homebuyers and that provides the original homeowner with a fair return on their investment. The current HOME regulations do not clearly define how a participating jurisdiction must set a resale price that both provides for a fair return to the original homebuyer and is affordable to a reasonable range of low-income homebuyers. The proposed rule at § 92.254(a)(5)(i) would clarify that the resale price, subject to market conditions, is the homeowner's "fair return on investment" added to the original purchase price of the housing.

Participating jurisdictions have communicated various challenges in implementing the statutory requirements that a HOME-assisted unit at resale must be sold to another low-income homebuyer at a price that is (1) affordable to a reasonable range of low-income homebuyers and

(2) provides the original homebuyer with a fair return on their investment, including the homeowner's investment and improvements made to the property. It is difficult for participating jurisdictions to create a resale formula that provides a fair return to the homeowner at a price that is affordable to a range of low-income homebuyers, without additional HOME assistance to the subsequent homebuyer. To assist participating jurisdictions that choose to impose resale provisions, HUD proposes to amend § 92.254(a)(5)(i) to add four permissible resale formulas that comply with these requirements in a new proposed paragraph (A). The Department believes that providing compliant resale formulas will help participating jurisdictions avoid noncompliance with the resale requirements and provide clarity and fairness to homebuyers.

Specifically, the Department proposes to add paragraphs (A)(*1*) through (*4*) to § 92.254(a)(5)(i) to describe the four permissible resale formulas: (*1*) itemized formula, (*2*) appraisal formula, (*3*) index formula, and (*4*) fixed-rate formula. These proposed resale formulas would be used to determine a HOME-assisted homebuyer's fair return on investment and the resale price. Variations of the proposed itemized formula are commonly used in State and local homebuyer programs not funded by the HOME program, while the appraisal, indexed, and fixed-rate formulas are commonly used by community land trusts and other advocates of shared appreciation models.[55] Though HUD is providing these four different permissible resale formulas, the proposed rule would not require participating jurisdictions to use any of the formulas and participating jurisdictions may continue to design their own resale provisions, subject to HUD review and approval. The four resale formulas in the proposed rule are described below.

[55] Shared appreciation homeownership models create long-term, affordable homeownership opportunities by imposing restrictions on the resale of subsidized housing units. See HUD's Office of Policy Development and Research *Policy Matters* (Fall 2012) for additional information, available at https://www.huduser.gov/portal/periodicals/em/fall12/highlight3.html.

The proposed rule at § 92.254(a)(5)(i)(A)(*1*) would establish an itemized resale formula, which determines the homeowner's fair return on investment by multiplying a clearly defined, publicly accessible index or standard (e.g., change in consumer price index, median area income, or median purchase price over the term of ownership) by the sum of the homeowner's downpayment, equity from the payment of mortgage principal, and the value of any capital improvements. This itemized resale formula would permit a participating jurisdiction to decide whether it will depreciate the value of the capital improvements and whether the formula will take into consideration any reduction in value due to damage or deferred maintenance of the property.

Change in clearly defined, publicly accessible index or standard
MULTIPLIED BY
(Homeowner's downpayment + sum of all homeowner principal payments+ value of capital improvements)
MINUS
OPTIONAL (Depreciation of capital improvements + property damage + delayed or deferred maintenance)
EQUALS
Fair return

Original sales price + Fair return = Resale price

The proposed rule at § 92.254(a)(5)(i)(A)(*2*) would establish an appraisal-based resale formula, which determines a homeowner's fair return on investment based on the amount of market appreciation, if any, realized over the term of ownership. The amount of market appreciation over the term of ownership would be determined by subtracting the appraised value of the property at the time of initial purchase from the appraised value at the time of resale. The fair return on investment would be determined by multiplying the amount of market appreciation over the term of homeownership by a clearly defined, publicly accessible standard or index.

Given the complexity and skill required to conduct an appraisal, the proposed rule would require State-licensed or certified third-party appraisers to conduct the appraisals.

Clearly defined, publicly accessible index or standard x (New appraisal – initial appraisal) = Fair return

Original sales price + Fair return = Resale price

The proposed rule at § 92.254(a)(5)(i)(A)(*3*) would establish an index resale formula, which determines a homeowner's fair return based on the value of the homeowner's investment adjusted in proportion to changes in a specified index, such as the Consumer Price Index or U.S Housing Price Index. Using the proposed index formula, the homeowner's fair return on investment would be calculated by multiplying the change in the index during the term of ownership by the sum of the original purchase price and the value of any capital improvements. The proposed rule would permit a participating jurisdiction to decide whether to depreciate the value of any capital improvements and/or take into consideration any reduction in value due to damage or delayed maintenance of the property.

Change in clearly defined, publicly accessible index
MULTIPLIED BY

$$\left(\begin{array}{c}\textit{(Original purchase price + value of capital improvements)}\\ \textit{MINUS}\\ \textit{OPTIONAL (Depreciation of capital improvements + property damage + delayed or deferred maintenance)}\end{array}\right)$$

EQUALS
Fair return

Original sales price + Fair return = Resale price

The proposed rule at § 92.254(a)(5)(i)(A)(*4*) would establish a fixed-rate formula, which determines a homeowner's fair return on investment by applying a fixed percentage increase to the homeowner's investment each year they own the unit. The fair return on investment would be determined by multiplying the fixed percentage by the number of years the homeowner owned and occupied the home, with the resulting rate multiplied by the sum of the original purchase

price of the home and the value of any capital improvements. Like the itemized and indexed formulas proposed in § 92.254(a)(5)(i)(A)(*1*) and (A)(*3*), the proposed rule would permit the participating jurisdiction to choose whether to depreciate the value of any capital improvements made to the property and/or take into consideration any reduction in value due to damage or delayed maintenance of the property.

(Fixed rate x length of homeownership)
MULTIPLIED BY

$$\left(\begin{array}{c}\textit{(Original purchase price + value of capital improvements)}\\ \textit{MINUS}\\ \textit{OPTIONAL (Depreciation of capital improvements + property damage + delayed or deferred maintenance)}\end{array}\right)$$

EQUALS
Fair return

Original sales price + Fair return = Resale price

The proposed rule would redesignate the text in the current paragraph (A) of § 92.254(a)(5)(i) as § 92.254(a)(5)(i)(B) and (C) and the current paragraph (B) of § 92.254(a)(5)(i) would be redesignated as § 92.254(a)(5)(i)(D). The proposed rule would also move the last sentence of the current paragraph § 92.254(a)(5)(i)(A) into the proposed § 92.254(b) under the title, "Preserving affordable housing that was previously assisted with HOME funds." To make it easier to locate requirements related to the use of enforcement mechanisms, termination of affordability restrictions in specific circumstances, the presumption of affordability requirements, and the preservation of affordability, the proposed rule would clarify and revise these requirements in the proposed paragraphs (B), (C), and (D) of § 92.254(a)(5)(i) and § 92.254(b), respectively.

The current regulatory provision in § 92.254(a)(5)(i)(A) states that "deed restrictions, covenants running with the land, or other similar mechanisms must be used as the mechanism to impose the resale requirements." HUD is proposing to revise § 92.254(a)(5)(i)(A) in the

proposed § 92.254(a)(5)(i)(B) to clarify that a recorded agreement restricting the use of the property and the imposition of “use restrictions" are both permissible methods of enforcing affordability requirements. This is a clarification of existing policy as each of these types of enforcement mechanisms would be considered “similar mechanisms” under the current rule. The proposed rule at § 92.254(a)(5)(i)(B) would also require written HUD approval of any means of enforcement other than the ones expressly listed to enforce resale provisions.

The proposed rule at § 92.254(a)(5)(i)(C) would clarify the minimum period of affordability if the owner of record before a termination event obtains an ownership interest in the property after the event.

The proposed rule at § 92.254(a)(5)(i)(D) would incorporate the text of the current § 92.254(a)(5)(i)(B), except that it would remove the specific references to Empowerment Zone or Enterprise Community applications under 24 CFR 597 which are no longer applicable, as the incentives and authority to accept applications have expired. The proposed rule would redesignate the current introductory text in § 92.254(a)(5)(ii) and provision at § 92.254(a)(5)(ii)(A) as § 92.254(a)(5)(ii)(A) and § 92.254(a)(5)(ii)(B), respectively. These proposed revisions improve clarity and the organization of § 92.254(a)(5)(ii). The text of the current paragraphs at § 92.254(a)(5)(ii)(A)(*1*)-(*5*) would be redesignated as § 92.254(a)(5)(ii)(B)(*1*)-(*5*) and HUD proposes revisions to the proposed § 92.254(a)(5)(ii)(B)(*5*), as described below.

The proposed rule at § 92.254(a)(5)(ii)(B)(*5*) would be revised to state that the HOME investment subject to recapture is the amount of HOME funds that directly assisted the homebuyer to purchase the unit. The current regulation states that the amount subject to recapture is the amount of HOME assistance that enabled the homebuyer to buy the dwelling

unit. The Department has found the current regulatory language to be problematic because participating jurisdictions have incorrectly based the amount of HOME funds subject to recapture on the total amount of HOME funds invested in the project, instead of the direct assistance to the homebuyer that enabled the homebuyer to purchase the unit (i.e., downpayment assistance and any HOME assistance that reduced the purchase price from fair market value to an affordable price). The proposed revision would improve the clarity of this requirement.

The proposed rule at § 92.254(a)(7) would be revised to improve the clarity and readability of the paragraph. In addition, to better reflect the requirements of the paragraph, the proposed rule at § 92.254(a)(7) would be retitled as "Homebuyer assistance for lease-purchase." The proposed rule at § 92.254(a)(7) would also be revised to clarify that in homeownership projects that receive HOME funds for acquisition, rehabilitation, or new construction, the participating jurisdiction may assist a homebuyer through an existing lease-purchase program if the lease-purchase agreement is executed between the owner and homebuyer prior to the completion of the acquisition, construction, or rehabilitation. The proposed rule at § 92.254(a)(7) would also clarify that if HOME funds are used to construct or rehabilitate the housing unit, the housing must be purchased within 36 months of the execution of the lease-purchase agreement. Further, if HOME funds are used to acquire housing to be resold to an eligible homebuyer, the proposed rule would require the unit to be purchased within 42 months of executing the lease-purchase agreement. The proposed rule at § 92.254(a)(7) would also clarify that a unit under a lease-purchase agreement is subject to the homeownership affordability requirements of § 92.254 unless the unit fails to sell within the required timeframes. If a unit fails to sell to an eligible homebuyer within the required timeframe, the unit must become affordable rental housing that complies with the requirements in § 92.252. Finally, the proposed rule at § 92.254(a)(7) would

clarify that the participating jurisdiction must verify the income eligibility of a household at the time of signing the lease-purchase agreement and include the income of all members living in the housing.

The proposed rule would redesignate the current § 92.254(b), (c), (d), (e), and (f) as § 92.254(c), (d), (e), (f) and (g), respectively. The Department proposes to consolidate the current requirements at § 92.254(a)(5)(i)(A) and § 92.254(a)(9) into proposed § 92.254(b) and substantially revise requirements on a participating jurisdiction's authority to use purchase options, rights of first refusal, or other preemptive rights to preserve affordability, including the use of preemptive rights to purchase housing before foreclosure, to improve the effectiveness, organization, and clarity of the rule.

The proposed rule at § 92.254(b) would revise the current heading of § 92.254(a)(9) by deleting the words "that was previously." The proposed rule would also add an introductory sentence to clarify that "preserving affordability of housing assisted with HOME funds" is permitted when there is a termination event threatening the affordability restrictions (e.g., foreclosure, transfer in lieu of foreclosure or assignment of an FHA-insured mortgage to HUD) and provides that a participating jurisdiction may take certain actions in accordance with proposed § 92.254(b)(1)-(3) to preserve the affordability of HOME-assisted housing.

The proposed rule would specify in § 92.254(b)(1) that the actions to preserve affordability include exercising purchase options, rights of first refusal, or other preemptive rights to obtain ownership of the housing before foreclosure, subject to the requirements in proposed § 92.254(b)(1)(i)-(iv). The proposed rule would add § 92.254(b)(1)(i)-(iv) to require the participating jurisdiction that acquires housing under § 92.254(b)(1) to sell the housing to a new eligible homebuyer within 6 months of the date that the participating jurisdiction obtains

ownership (§ 92.254(b)(1)(i)) and impose a period of affordability for the eligible homebuyer that is equal to the remaining period of affordability of the former homeowner, unless the participating jurisdiction provides additional direct HOME assistance to the new eligible homebuyer (§ 92.254(b)(1)(ii)). If the participating jurisdiction provides additional direct HOME assistance to the eligible homebuyer, the proposed § 92.254(b)(1)(iii) would require the period of affordability to be recalculated in accordance with § 92.254(a)(4). The proposed § 92.254(b)(1)(iii) and § 92.254(b)(2)(iv) would revise the current requirements in § 92.254(a)(9)(ii) to state that when additional HOME funds directly assist the eligible homebuyer, the additional investment or cost must be treated as a new project. The proposed rule would also move the requirement on maximum per-unit subsidy amount in the current § 92.254(a)(9)(iii) and revise the requirement in the proposed § 92.254(b)(1)(iv) to establish that the total HOME funds for a project is the original HOME investment plus additional investment and the total HOME funds must not exceed the per-unit subsidy limit in § 92.250(a) in effect at the time of the additional investment, subject to HUD approval.

HUD is proposing to permit the participating jurisdiction to use additional HOME funds for certain costs to preserve affordability of HOME-assisted units. The provisions currently at § 92.254(a)(9)(i)(A)-(D) would be redesignated as § 92.254(b)(2)(i)-(iv) and would be revised to include additional eligible costs and requirements and specify whether costs are treated as amendments to the original project or a new project. HUD proposes that the costs described in the proposed § 92.254(b)(2)(i)-(iii) be treated as amendments to the original project and the cost described in § 92.254(b)(2)(iv) be treated as a new project because the costs in proposed § 92.254(b)(2)(i)-(iii) are costs to obtain and prepare the HOME-assisted housing for resale while the cost in § 92.254(b)(2)(iv) is direct assistance to a new eligible homebuyer for a new

homeownership activity. The proposed rule at § 92.254(b)(2)(ii) would also require that when a participating jurisdiction uses additional HOME funds to undertake necessary rehabilitation of the housing, the housing must be rehabilitated to meet the applicable property standards in § 92.251. HUD is also revising the current § 92.254(a)(9)(iii) by moving the provision that allows participating jurisdictions the flexibility to charge certain costs as administrative costs under § 92.207 into a new § 92.254(b)(2)(v).

The proposed rule would add new paragraphs at § 92.254(b)(3)(i)-(iv) to codify the amendments to NAHA in the Consolidated Appropriations Act, 2016 (Pub. L. 114-113) that CLTs may hold and exercise purchase options, rights of first refusal, or other preemptive rights to purchase housing to preserve affordability, including but not limited to the right to purchase the housing in lieu of foreclosure. The proposed rule at § 92.254(b)(3)(i), (ii), (iii), and (iv) would each establish the conditions under which a participating jurisdiction may permit a CLT to exercise these rights. Specifically, the proposed rule at § 92.254(b)(3)(i) would require the CLT to obtain ownership of the housing subject to existing HOME affordability restrictions. The proposed rule at § 92.254(b)(3)(ii) would require the CLT to resell the housing within 6 months to an eligible homebuyer that will use the housing as their principal residence in accordance with § 92.254(a)(3). The proposed rule at § 92.254(b)(3)(iii) would require the CLT to impose a period of affordability that is equal to the remaining period of affordability of the former owner. Finally, the proposed rule at § 92.254(b)(3)(iv) would prohibit the participating jurisdiction from providing additional HOME funds to the CLT to obtain ownership, rehabilitate the housing, hold the housing pending resale to another homebuyer, or provide downpayment assistance to the subsequent eligible homebuyer.

The proposed rule would redesignate the current § 92.254(e) as § 92.254(f) and further clarify the requirement at § 92.254(e). Some participating jurisdictions contract with for-profit and nonprofit organizations that provide private, first mortgage financing so that these organizations may also provide HOME homeownership financing to eligible homebuyers in conjunction with the first mortgage. The 2013 HOME Final Rule added § 92.254(e) to establish safeguards to prevent inappropriate provisions of HOME funds in such situations. Although the purpose and applicability of the current § 92.254(e) are described in the preamble of the 2013 HOME Final Rule, many HOME stakeholders mistakenly believe that these provisions apply to all entities that provide HOME-funded homeownership assistance. The proposed rule at § 92.254(f) would make it explicit that participating jurisdictions must have proper oversight over these lending organizations through the execution of an appropriate written agreement. Specifically, the proposed rule at § 92.254(f) would clarify that participating jurisdictions may provide HOME funds through a for-profit lending institution that is a contractor, or provide HOME funds to a nonprofit lending institution as a contractor or subrecipient, so that the institution may provide HOME homeownership assistance in conjunction with first mortgage financing.

In addition to proposing to redesignate the current § 92.254(f) as § 92.254(g), the Department would make several revisions to the homebuyer underwriting requirements in the proposed § 92.254(g)(1). The current regulations require a participating jurisdiction to establish written underwriting standards that evaluate the 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. Affordable housing advocates have argued that the current regulation may inadvertently exclude households that

have overall debt and monthly expenses that exceed a participating jurisdiction's underwriting standards, yet the household otherwise demonstrates an ability to sustain a mortgage. To address these concerns and streamline this portion of the regulation, the proposed rule at § 92.254(g)(1) would revise the underwriting standards by eliminating the need to evaluate both the housing debt and overall debt of the family and instead would require the participating jurisdiction to evaluate the overall debt of the family projected after purchase of the housing. In addition, the proposed rule at § 92.254(g)(1) would eliminate the requirement that a participating jurisdiction evaluate the monthly expenses of the family.

The current regulation at § 92.254(f)(1) also requires a participating jurisdiction to establish written policies for underwriting standards for homeownership assistance to determine that the amount of assistance a homebuyer receives is neither more or less than necessary to sustain homeownership. However, the amount of HOME assistance required by a homebuyer may exceed the amount a participating jurisdiction has determined as reasonable given the amount of available HOME funds. Consequently, the proposed rule at § 92.254(g)(1) would require participating jurisdictions to establish a standard to determine the maximum amount of direct HOME assistance that it may provide a family. The proposed paragraph would also more explicitly state that a participating jurisdiction may not provide a single, fixed amount of assistance to every homebuyer receiving assistance in the participating jurisdiction's homebuyer program, irrespective of the homebuyer's income, assets, or other circumstances because such a program design does not take into account the individual financial circumstances of each homebuyer.

23. Purchase of HOME units by in-place tenants (24 CFR 92.255).

The proposed rule would revise § 92.255 to clarify the requirements for the purchase of a HOME-assisted rental unit during its period of affordability by an existing tenant. This section, currently titled "Converting rental units to homeownership units for existing tenants," would be retitled as "Purchase of HOME units by in-place tenants" to reflect the proposed requirements of § 92.255 more accurately. The proposed rule would retain the requirement that a tenant's refusal to purchase the unit is not good cause for termination of tenancy or a reason not to renew the lease. The proposed rule would also clarify that a participating jurisdiction may not permit an owner to sell and a tenant to buy an existing HOME-assisted rental unit through a lease-purchase program.

The proposed rule would maintain the current requirement in paragraph (a) of this section that a tenant qualify for homeownership in accordance with the requirements of § 92.254. This means that the tenant must qualify as low-income at the time of purchase. If the tenant is not assisted with additional HOME funds to purchase the unit, the proposed rule would require the period of affordability to equal the remaining period of affordability of the rental unit. However, if additional HOME funds are provided to the tenant to purchase the unit, the period of affordability would be the greater of the remaining period of affordability if the unit had remained a rental unit or the required period based on the amount of direct homebuyer assistance provided.

24. Set-Aside for Community Housing Development Organizations (CHDOs) (24 CFR 92.300).

To maintain the program's effectiveness, it is essential that HOME funds be provided only to developers that have adequate development experience and financial stability to complete

projects timely, on-budget, and at a high level of quality. Since the beginning of the HOME program, there have been challenges with CHDOs not having the required substantial expertise to meet the development capacity standards and the requirement that 15 percent of each HOME allocation be used only for housing, owned, developed, or sponsored by organizations that qualify as CHDOs, as defined at § 92.2.

Section 231(a) of NAHA[56] and § 92.300 require a participating jurisdiction to reserve not less than 15 percent of its HOME allocation for investment only in housing to be "owned, developed or sponsored" by a CHDO. The current regulations at § 92.300(a)(2), (a)(3), and (a)(4) establish the requirements for a project to be "owned," "developed," or "sponsored" by a CHDO respectively. Rental housing is "owned" by a CHDO if the CHDO is the owner in fee simple absolute of the affordable rental housing[57] and where HOME funds are used for new construction or rehabilitation of the housing, the CHDO hires and oversees the developer that rehabilitates or constructs the housing. Rental housing is "developed" by a CHDO if the CHDO is the owner of the housing in fee simple absolute[63] and the developer of the housing to be constructed or rehabilitated. The CHDO, when acting as a developer of rental housing, must be in "sole charge of all aspects of the development project." Pursuant to § 92.300(a)(2) and (3), when rental housing is "owned" or "developed" by a CHDO, the CHDO must own the housing during development and throughout the period of affordability in § 92.252. For rental housing to be "sponsored" by a CHDO, a CHDO must comply with the current § 92.300(a)(4) which requires the housing to be "owned," as defined in § 92.300(a)(2), or "developed," as defined in § 92.300(a)(3), by: a subsidiary of the CHDO, a limited partnership of which the CHDO or its

[56] 42 U.S.C. 12771(a).
[57] In accordance with § 92.300, the CHDO may have a long-term ground lease when rental housing is "owned" or "developed" by a CHDO.

subsidiary is the sole general partner, or a limited liability company of which the CHDO or its subsidiary is the sole managing member. The current § 92.300(a)(4) also provides a second rental sponsorship role under which the CHDO develops the housing project and conveys it to another nonprofit at a predetermined time. For homeownership housing, the current § 92.300(a)(6) requires housing that is "developed" by a CHDO to be in "sole charge of construction." NAHA and part 92 only permit an entity that qualifies as a CHDO to act as a sponsor in the development of affordable housing.

The proposed rule would correct a drafting error throughout § 92.300 by changing "community development housing organizations" to "community housing development organizations." The proposed rule also makes technical edits to wording in § 92.300(a)(3), (a)(4), (a)(6), and (a)(6)(i). Paragraph § 92.300(a)(5)(iii) would be revised to add the word "private" to the reference to nonprofit organizations so it refers to "private" nonprofit organizations and a technical correction to paragraph § 92.300(e) would add the word "must" before describing written agreement requirements.

The proposed rule would clarify the requirement in § 92.300(a)(2) that when rental housing is "owned" by the CHDO, the CHDO must oversee or, at minimum, hire or contract with an experienced project manager to oversee all aspects of the development. While HUD requires the CHDO to oversee all aspects of the development, the current requirement at § 92.300(a)(2) only explicitly states that at minimum, the CHDO must hire or contract with an experienced project manager. The revision clarifies that hiring or contracting with an experienced project manager is the minimum standard to meet the requirement that a CHDO oversee all aspects of the development when rental housing is "owned" by the CHDO.

Through the proposed rule, HUD is proposing to make it substantially easier for many community-based nonprofit organizations to access the CHDO set-aside as "developers" by revising § 92.300(a)(3) to permit the CHDO to share responsibilities in the development process, provided that the CHDO remains in charge of (i.e., maintains decision-making authority over) these responsibilities. The responsibilities that may be shared include: selecting the site, obtaining permit approvals and all project financing, selecting architects, engineers, and general contractors, overseeing project progress, and determining the reasonableness of costs. The Department believes this revision would assist many organizations to augment their development expertise, while preserving the statutory intent that the CHDO be in charge of project development decisions in the interest of low-income community residents. The proposed rule at § 92.300(a)(4) would also be amended so that the sponsor provisions require the CHDO or its subsidiary to be the managing general partner rather than the sole general partner of a limited partnership. The proposed rule at § 92.300(a)(4) would also allow the CHDO or its subsidiary to be the managing member of a limited liability company rather than require the CHDO to be the sole managing member of a limited liability company.

In response to ongoing questions from participating jurisdictions, the proposed rule at § 92.300(a)(4)(ii) would clarify that the set-aside funds are provided by the participating jurisdiction directly to the owner of the project. This is a statutory requirement of the HOME program under section 226 of NAHA (42 U.S.C. 12756) and is currently required in the rule. This change to add paragraph (ii) to § 92.300(a)(4) would further clarify that HOME funds are only provided by a participating jurisdiction (or its subrecipient) directly to the entity that owns the project.

The proposed rule would eliminate the requirement that rental housing developed pursuant to § 92.300(a)(3) or sponsored pursuant to § 92.300(a)(4) continue to be owned by a CHDO throughout the period of affordability. These provisions requiring ownership of the housing for the entire period of affordability by the CHDO that "developed" or "sponsored" the housing have created difficulties when the status of the CHDO that developed or sponsored the project changes (e.g., a bankruptcy, decrease in capacity, or other business necessity) and acquisition of the housing by another CHDO must occur. These difficulties include finding another qualified CHDO that has the capacity to own the project and the administrative burden in transferring the project to another CHDO, which may take a significant amount of time. In many instances, finding another CHDO that is willing and has capacity to assume ownership of the housing is often not feasible. Such difficulties have jeopardized efforts to preserve the housing's affordability. Through the proposed change to § 92.300(a)(3) and § 92.300(a)(4), HUD is seeking to enable ownership transfers that are necessary to sustain the CHDO projects in operation and maintain compliance with HOME requirements. While the proposed rule provides flexibility in ongoing ownership of rental housing that is "developed" or "sponsored" by a CHDO, the proposed rule would maintain the ongoing ownership requirements for rental housing that is "owned" by a CHDO, pursuant to the CHDO ownership provisions at § 92.300(a)(2).

The proposed rule at § 92.300(a)(5) would also revise the sponsor provisions to conform to the new requirements for housing that is "developed" by a CHDO under proposed § 92.300(a)(3) and make minor clarifications that a CHDO sponsors rental housing if the CHDO develops the rental housing "in accordance with § 92.300(a)(3)" and agrees to convey "the

project" to an identified private nonprofit organization at a predetermined time after completion of the project.

With respect to homeownership housing assisted with CHDO set-aside funds, the proposed rule would revise § 92.300(a)(6) to permit the CHDO to share the developer role with another entity provided that the CHDO is in charge of (i.e., maintains decision-making authority over) all aspects of the development process, including selecting the site, obtaining permit approvals and all project financing, selecting architects, engineers, and general contractors, overseeing project progress, determining the reasonableness of costs, identifying eligible homebuyers, and overseeing the sale of homeownership units.

The proposed rule at § 92.300(a)(7) would further clarify that a participating jurisdiction must determine the form of assistance in accordance with § 92.205(b) that it will provide to a CHDO for a rental housing project under § 92.300(a)(4) and must provide the assistance directly to the entity that owns the project. HUD also proposes to make technical corrections to the language at § 92.300(a)(7) for readability.

The proposed rule at § 92.300(b) would also permit nonprofit organizations that meet all the provisions of the "community housing development organization" definition in § 92.2, except for the capacity requirement in paragraph (9) of that definition, to be assisted with the capacity building funding authorized by § 92.300(b) in order to obtain the demonstrated capacity required to qualify as a CHDO.

25. Housing education and organizational support (24 CFR 92.302).

The proposed rule would designate all but the first sentence of the current language in § 92.302 as a new paragraph (a). The proposed paragraph (a) would include the current text in § 92.302 regarding HUD's *Federal Register* notice. The first sentence currently in § 92.302

regarding HUD's authority to provide education and organization support services would remain in the introductory text to § 92.302.

The proposed rule would also add paragraph (b) to § 92.302 to add the definition for CLT and requirements specific to the use of technical assistance funding by a CLT in section 233(f) of NAHA (42 U.S.C. 12773(f)), implemented by section 213(a)(13) of the Housing and Community Development Act of 1992 (Pub. L. 102-550). The proposed rule would establish that HUD may provide housing education and organizational support, as described in § 92.302, to a CLT, only if CLT meets the definition of a "community housing development organization" at § 92.2, except for the requirements in paragraphs (9) and (10) of the definition of CLT. The requirements would also include that the CLT is established to complete the activities in § 92.302(b)(3), the CLT carries out the activities in § 92.302(b)(3), the CLT's corporate membership is open to residents of a particular geographic area, as specified in the organization's bylaws, and the CLT's board of directors includes a majority of members who are elected by the corporate membership and is composed of equal numbers of lessees pursuant to paragraph (b)(2)(ii), members who are not lessees, and any other category of persons described in the organization's bylaws. The applicability of the definition and requirements for a CLT at § 92.302(b) would be limited to the use of HOME funds under § 92.302.

26. Displacement, relocation, and acquisition (24 CFR 92.353).

The proposed rule would amend the last sentence of § 92.353(c)(2)(ii)(A), which describes persons not displaced as including persons whose tenancy was terminated under § 92.253(d). The last sentence would be amended to conform to the change of written notice requirements contained in § 92.253(d) instead of the current 30-day notice requirement.

The proposed rule would amend the sentence in § 92.353(c)(2)(ii)(C) to explain that for purposes of determining eligibility for assistance under the URA, a person is not displaced if they meet the definition of "persons not displaced" contained in the URA at 49 CFR 24.2. This is to correct an error in the current citation.

27. Conflict of Interest (24 CFR 92.356).

The proposed rule would amend § 92.356(d)(1) to revise the description of the meaning of "public disclosure." The proposed § 92.356(d)(1) would state that public disclosure is considered a combination of various communication formats, including but not limited to publication on the recipient's website, electronic mailings, media advertisements, and display in public areas such as libraries, grocery store bulletin boards, and neighborhood centers. The proposed rule at § 92.356(d)(1) would also require evidence of the public disclosure, of the nature of the conflict, and a description of how the public disclosure was made. The proposed rule at § 92.356(e) would insert a new paragraph (2) to add whether an opportunity was provided for open competitive bidding or negotiations as a factor to be considered for exceptions under § 92.356(e).

28. Reallocation by formula (24 CFR 92.454).

The proposed rule would add a new paragraph (5) to § 92.454(a) that would explicitly allow HUD to reallocate HOME funds that become available due to reductions in grants pursuant to § 92.551 or § 92.552. While HUD applies this requirement for reallocation of funds in practice, the Department would codify the practice in this proposed rule. The proposed rule would also revise § 92.454(b) to specify that participating jurisdictions from which the reductions in funds occurred under § 92.551 or § 92.552 would not be included in the reallocation of these funds.

29. The HOME Investment Trust Fund (24 CFR 92.500).

The proposed rule would revise § 92.500(c)(2)(ii) to clarify the requirements for when a participating jurisdiction may establish a second local account of the HOME Investment Trust Fund. Specifically, the proposed rule at § 92.500(c)(2)(ii) would state that a participating jurisdiction may establish a second local account if, among other requirements, the participating jurisdiction has its own local affordable housing trust fund used for matching contributions to the HOME program and the statute or local ordinance governing the local affordable housing trust fund requires repayments from the local affordable housing trust fund to be made to the participating jurisdiction's HOME Investment Trust Fund local account. The regulation currently uses the term "trust fund" for both the participating jurisdiction's local affordable housing trust fund and its HOME Investment Trust Fund local account and the proposed change is designed to distinguish between the two types of funds and clarify the requirement.

30. Program Disbursement and Information System (24 CFR 92.502).

The proposed rule would revise the requirements in § 92.502 regarding the program's Integrated Disbursement and Information System (IDIS). First, the proposed rule at § 92.502(b) would change the paragraph heading from "Project set-up" to "Project funding." This change would clarify that this section refers to funding an activity in IDIS after the participating jurisdiction has committed funds to a specific local project. The proposed rule at § 92.502(b) would also remove the sentence that identifies investments that require the set-up in IDIS as acquisition, new construction, or rehabilitation of housing, and TBRA investments. This proposed change is appropriate because it would avoid confusion about other investments that must be set up in IDIS that are not included in the regulation. The proposed rule at § 92.502(b) would also clarify that the participating jurisdiction is required to enter complete project set-up

information before funding an activity in the data system. These changes would clarify that this requirement is about activity funding after a participating jurisdiction commits HOME funds to a specific local project and not about activity set-up. This clarification is necessary because IDIS allows a participating jurisdiction to set up an activity before having complete project set-up information. While a participating jurisdiction may set up an activity in IDIS, the participating jurisdiction cannot fund an activity (i.e., identify specific investments) before it executes the HOME Investment Partnership Agreement, submits the applicable banking and security documents, complies with the environmental requirements under 24 CFR part 58, including submission of the request for release of funds, when applicable, and commits funds to a specific local project. The addition of the written agreement execution date field in IDIS helps the participating jurisdiction to comply with the requirement to commit funds to a specific local project before funding a corresponding activity in the data system.

The proposed rule at § 92.502(d)(1) would remove the requirement that a participating jurisdiction provide satisfactory project completion information within 120 days of the final project drawdown. Currently, § 92.502(d)(1) requires the participating jurisdiction to provide satisfactory project completion information within 120 days of the final project drawdown or HUD may suspend other project set-ups or take additional corrective actions. This language is no longer needed because of the four-year project completion requirement set forth in § 92.205(e). If the participating jurisdiction is required to complete a HOME-assisted project within four years of committing funds to the project, then that time period would include entering complete project completion information into HUD's IDIS because the definition of project completion at § 92.2 includes entering the project completion information into the IDIS established by HUD.

Therefore, if a participating jurisdiction has complied with the four-year project completion requirement, it has complied with § 92.502(d) and no further HUD action is required.

The proposed rule would revise § 92.502(d)(2) to specify that the maximum amount of additional HOME funds that may be committed to a project up to one year after project completion is limited by the maximum per-unit subsidy amount established under § 92.250 at the time of underwriting. Adding this specificity would align with the changes to § 92.250 and provide further clarity on the limits on HOME investments in a project.

31. Participating Jurisdiction Responsibilities; Written Agreements (24 CFR 92.504).

The Department proposes several amendments to § 92.504, including revising the heading of the section to reflect the relocation of onsite inspection requirements to § 92.251. Many of the proposed amendments are intended to clarify ambiguous language, improve readability, move existing requirements to more appropriate paragraphs, and reformat certain provisions for clarity. The proposed revisions to § 92.504 are described more thoroughly below.

Throughout § 92.504, the proposed rule would revise the statement "the written agreement must conform" to “the written agreement must contain.” This revision would make clear the Department's intent that the written agreement must include the applicable requirements in § 92.504.

The proposed rule would amend § 92.504(b) to clarify that the required written agreement must be a legally binding agreement between the participating jurisdiction and the entity receiving HOME funds for an activity. The proposed rule would revise § 92.504(b) to require that HOME written agreements be separate and apart from financing documents such as mortgages, deeds of trust, regulatory agreements, or promissory notes. The current regulation does not specifically require a separate written agreement or use of a particular format. The

Department has commonly found that when HOME written agreement requirements are made a part of other financing documents, many required provisions are not included, and the documents do not properly commit HOME funds as defined at § 92.2. The proposed change would help ensure written agreements are compliant with HOME requirements and reduce monitoring findings and other enforcement actions, including repayment of HOME funds.

The required contents of the written agreement between participating jurisdictions and other entities are in § 92.504(c). The Department is proposing numerous changes throughout § 92.504, many of which are intended to revise or clarify the required contents of the written agreement based on the role an entity will assume or the type of project undertaken. The proposed rule would make a technical correction to the last sentence of § 92.504(c) introductory text to add "by role and type of entity." The proposed rule would also make numerous non-substantive revisions to the introductory paragraph at § 92.504(c) and to § 92.504(c)(1)-(7) to add clarity to existing language and improve readability.

The proposed rule would revise § 92.504(c)(1)(i) (*Use of the HOME funds*) to add "anticipated" before "type and number of housing projects" to specify that the written agreement must include the anticipated and not final type and number of housing projects to be funded in the description of the amount and use of the HOME funds. The proposed rule would also amend § 92.504(c)(1)(ii) (*Affordability*) and § 92.504(c)(1)(x) (*Enforcement of Agreement*) to move the requirement that the written agreement between the participating jurisdiction and the State recipient include a means of enforcement of the affordability requirements from § 92.504(c)(1)(x) to § 92.504(c)(1)(ii). The proposed rule would also add the means of enforcement examples of use restrictions, a recorded agreement restricting the use of the

property, and other mechanisms approved by HUD in writing, under which the participating jurisdiction has the right to require specific performance.

The Department proposes this change to properly place the described requirement under paragraph § 92.504(c)(1)(ii) concerning affordability requirements rather than in § 92.504(c)(1)(x) which establishes requirements for enforcement of the written agreement. After the proposed movement of text, § 92.504(c)(1)(x) would only contain provisions relating to the enforcement of the written agreement (i.e., remedies for breach of the written agreement and suspension or termination if the State recipient materially fails to comply with any term of the agreement). The proposed rule would also revise § 92.504(c)(1)(iii) to change "if" to "whether" and remove "to be" for clarity.

The proposed rule at § 92.504(c)(1)(ii) would remove the inclusion of "recaptured HOME funds" in the requirement that the agreement establish whether repayment of HOME funds must be remitted to the State or State recipient for additional eligible activities or retained by the State recipient for additional HOME activities. The Department is proposing to remove "recaptured HOME funds" because it does not accurately reflect the requirements between the participating jurisdiction and the State recipient. The use of "recaptured HOME funds" in the current provision at § 92.504(c)(1)(ii) specifically refers to funds repaid by a homeowner pursuant to § 92.254(a)(5)(ii) and its inclusion is not necessary. Section 92.504(c)(1)(ii) already specifies that the written agreement must state whether repayment of HOME funds must be paid to the State participating jurisdiction or the State recipient and such repayments include recaptured funds under § 92.254(a)(5)(ii). Conforming revisions to remove "recaptured HOME funds" in similar provisions within § 92.504(c)(2) would also be made through this proposed rule.

The proposed rule would revise § 92.504(c)(1)(v) project requirements to add that the written agreement for HOME rental housing between the participating jurisdiction and State recipient must require the use of the HOME tenancy addendum in accordance with § 92.253 for all HOME-assisted units or for all HOME-assisted tenants. The proposed amendment is necessary to conform to proposed changes at § 92.253 concerning tenant protections and selection which require, among other things, that leases for HOME-assisted rental units and tenants receiving TBRA include the HOME tenancy addendum. The proposed rule would revise § 92.504(c)(1)(v) to reflect changes for TBRA by requiring the agreement to comply with the requirements at § 92.253(a)-(c) and (d)(2) concerning lease contents, HOME tenancy addendum, security deposits, and termination of tenancy.

The proposed rule would amend § 92.504(c)(1)(vi) to clarify that the written agreement must include the imposition of VAWA requirements by the State participating jurisdiction on the State recipient when HOME funds are being provided to the State recipient for the provision of TBRA or the development of rental housing where the State recipient will own the housing.

The proposed rule would correct two citations that have changed due to updates to 2 CFR part 200 in paragraphs § 92.504(c)(1)(x) and § 92.504(c)(2)(ix) from 2 CFR 200.338 to 2 CFR 200.339 and 2 CFR 200.339 to 2 CFR 200.340.

The proposed rule would revise § 92.504(c)(1)(xi) to specify the types of entities that a State recipient may enter into a written agreement with for the use of HOME funds. These entities would be specified as a CHDO, subrecipient, homeowner, homebuyer, tenant (or landlords receiving TBRA), or contractor providing services to or on behalf of the State recipient. The Department is also proposing to further clarify the statutory and current regulatory requirements that the participating jurisdiction must ensure compliance with HOME

requirements through binding contractual agreements with project owners in response to frequent questions by participating jurisdictions on this requirement. To address these frequent questions, the proposed rule would revise § 92.504(c)(1)(xi) to clarify and confirm that HOME funds must be provided directly to the owner, by the State recipient on behalf of the participating jurisdiction, under the terms and conditions of the written agreement. Further, the proposed rule would relocate from § 92.504(c)(1)(ii) to § 92.504(c)(1)(xi) the requirement that the agreement must establish that the repayment of any form of HOME funds, from an entity with which the State recipient is entering a written agreement, must be remitted to the State or, if permitted by the State, retained by the State recipient for additional eligible activities. The requirement is proposed to be relocated because the placement reflects its applicability to repayments made by entities with whom the State recipient enters written agreements. There are no substantive changes to the relocated text.

In the introductory text to § 92.504(c)(2), the proposed rule would remove the definition of subrecipient because it is already a defined term in § 92.2. The proposed rule would add "the following" to § 92.504(c)(2) before delineating requirements of the written agreement.

The proposed rule would revise § 92.504(c)(2)(i) to clarify that the written agreement between the participating jurisdiction and the subrecipient that administers some or all the participating jurisdiction's HOME program must include the *anticipated* and not final type and number of housing projects to be funded in its description of the amount and use of the HOME funds for one or more programs. The addition of the term "anticipated" would clarify that, at the time the participating jurisdiction enters the written agreement with a subrecipient to administer the program, the exact type and number of housing projects to be funded may not be known. A

change would be made to paragraph § 92.504(c)(2)(ii) to remove "to be" from the sentence. In paragraph § 92.504(c)(2)(xii) the term "organizations" would be revised to "organization."

The proposed rule would revise the language of § 92.504(c)(2)(iv) to conform with the proposed changes to the definition of a subrecipient. Pursuant to the "subrecipient" definition in § 92.2, a governmental entity or nonprofit organization is not a subrecipient if it is receiving HOME funds as the owner of a HOME rental project. The proposed rule would revise § 92.504(c)(2)(iv) to state that when the subrecipient is administering a HOME rental housing program or TBRA program on behalf of the participating jurisdiction, the written agreement between the subrecipient and the participating jurisdiction must include the subrecipient's obligations to meet the VAWA requirements under § 92.359.

The proposed rule would revise § 92.504(c)(2)(ix) to insert "written" before "agreement" in the heading and paragraph for consistency. The proposed rule would revise § 92.504(c)(2)(x) to conform to the proposed changes to § 92.504(c)(3). The proposed changes to § 92.504(c)(3), described more thoroughly below, would include revisions to more accurately describe owner entities to which the requirements of § 92.504 are applicable. In response to inquiries by participating jurisdictions, the Department proposes additional revisions to § 92.504(c)(2)(x) to further clarify the statutory and regulatory requirement that the participating jurisdiction must ensure compliance with HOME requirements through binding contractual agreements with project owners. The proposed rule at § 92.504(c)(2)(x) would further clarify that HOME funds must be provided *directly* to the owner by the subrecipient on behalf of the participating jurisdiction under the terms and conditions of the written agreement. The proposed rule at § 92.504(c)(2)(x) would also add in the requirement that the written agreement establish whether repayment of HOME funds must be remitted to the participating jurisdiction or may be retained

by the subrecipient for additional eligible activities. The proposed rule would also amend § 92.504(c)(2)(xi) to specify that the prohibited fees or charges are those listed in § 92.214.

The proposed rule would add a new paragraph at § 92.504(c)(2)(xii) (*Project requirements*) to expressly impose the requirements that the agreement require enforcement of the project requirements in 24 CFR subpart F, as applicable and in accordance with the type of project assisted. The proposed rule at § 92.504(c)(2)(xii) would also require that for rental projects, the written agreement between the subrecipient and other entities must require that the HOME tenancy addendum is used in accordance with § 92.253 for all HOME-assisted units or for all HOME-assisted tenants. The proposed addition of this new paragraph is necessary to conform to changes at § 92.253 concerning tenant protections and selection which require, among other things, that leases for HOME-assisted rental units and tenants receiving TBRA include the HOME required tenancy addendum. The proposed new paragraph at § 92.504(c)(2)(xii) also reflects changes to § 92.253(a)-(c) and (d)(2) for TBRA by requiring the agreement between the subrecipient and the rental owner or tenant comply with the requirements concerning tenant protections, security deposits, and termination of tenancy.

The proposed rule would revise the heading at § 92.504(c)(3) to "*For-profit or nonprofit housing owner* (*other than a community housing development organization or single family owner-occupant*)." This proposed change to the paragraph heading would remove the sponsor or developer terms so that § 92.504(c)(3) would only set forth requirements for a written agreement between a for-profit or non-profit owner that is not a CHDO or single-family owner occupant, as stated in the revised paragraph heading. The proposed heading revision would remove "developer" because a participating jurisdiction is not permitted to enter into a written agreement for HOME funds with an entity that is not (or will not be) the owner of the project and is solely

managing the development process. This proposed revision would not exclude a developer that is entering into a written agreement to use HOME funds to become the owner of the project. In addition, the proposed rule would delete "sponsor" from the heading as the term is unnecessary and duplicative for purposes of the HOME program because the role of sponsor is only permitted for CHDOs and as the sponsor, pursuant to § 92.300, the CHDO must be the owner of the project.

The proposed rule would move requirements for written agreements with CHDOs from the introductory text of § 92.504(c)(3) to § 92.504(c)(6). Similar to the proposed changes at §§ 92.504(c)(1)(xi) and 92.504(c)(2)(x), the proposed rule would revise § 92.504(c)(3) to further clarify the current requirement that the participating jurisdiction must ensure compliance with HOME requirements through binding contractual agreements with project owners by stating the requirement that HOME funds must be provided directly to the owner under the terms and conditions of the written agreement.

The proposed rule would make conforming changes to § 92.504(c)(3)(i) to remove sponsor and developer in the same way those terms would be removed from the introductory text to § 92.504(c)(3). In addition, the proposed rule would revise § 92.504(c)(3)(i) to clarify that the agreement must specify the actual amount of HOME funds provided to the housing owner. In the past, participating jurisdictions have asked whether the inclusion of the final amount of HOME funds provided to a housing owner in the written agreement is required by the language in § 92.504(c)(3)(i) (i.e., "complete budget" and items "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."). The addition of "specific amount and" in § 92.504(c)(3)(i) is to further clarify that the actual (not projected)

amount of HOME funds provided to a housing owner must be in the written agreement. While the Department recognizes that the amount of HOME funds may change from the time of commitment to project completion, the participating jurisdiction must have a written agreement with the housing owner that meets the requirements under this section, including the final amount of the HOME funds, and must amend the written agreement to include the final amount, if necessary.

The proposed rule would also revise § 92.504(c)(3)(i) to clarify that the agreement must state that any and all repayments made by the owner on HOME assistance (i.e., grants or loans) must be remitted to the participating jurisdiction, unless the participating jurisdiction permits a subrecipient or State recipient to retain the funds, in accordance with HOME requirements. The proposed revision aligns with the clarification of HOME requirements regarding repayments and payments on investments of HOME funds, the use of program income, and would further assist participating jurisdictions in complying with HOME statutory and regulatory requirements when providing funds to owners.

The proposed rule would amend § 92.504(c)(3)(ii) to add liens on real property and a recorded agreement restricting the use of the property as a means of enforcing the affordability requirements in § 92.252 and § 92.254 The proposed rule at § 92.504(c)(3)(ii) would also make minor clarifying changes to improve readability. The proposed rule at § 92.504(c)(3)(ii)(A) and (B) would also remove the reference to “developer” to conform with the changes made to the introductory text of § 92.504(c).

In addition, a conforming change would be made to § 92.504(c)(3)(ii)(A) to correct a citation from § 92.252(f)(2) to § 92.252(e)(2). A conforming change would also be made to

§ 92.504(c)(3)(iii) to correct a citation from § 92.253(d) to § 92.253(e). A technical correction would be made to § 92.504(c)(3)(vii) to add "or use" before "restrictions" to add specificity.

As described earlier in this proposed rule, the Department is proposing significant changes to the tenant protections in § 92.253. To ensure compliance with these changes, the proposed rule would revise § 92.504(c)(3)(iii), which requires that the written agreement contain applicable project requirements in 24 CFR subpart F, to explicitly require that the written agreement require compliance with tenant protections in § 92.253.

The proposed rule at the introductory text to § 92.504(c)(3)(v), § 92.504(c)(3)(v)(A), and § 92.504(c)(3)(viii) would remove references to "sponsor" and "developer" to conform with the changes proposed to the introductory text of § 92.504(c). In addition, to improve clarity, the proposed rule would make minor, non-substantive edits to § 92.504(c)(3)(vi) and § 92.504(c)(3)(ix) to improve the readability of each paragraph.

The proposed rule would change the heading of § 92.504(c)(3)(vii) from "*Enforcement of the agreement*" to "*Enforcement of HOME requirements and the agreement*" to clarify that the paragraph includes requirements regarding enforcement of the written agreement and enforcement of HOME requirements. The proposed rule would amend § 92.504(c)(3)(vii) to properly describe the means of enforcement of HOME requirements and removes the duplicative text on enforcement of affordability requirements. The proposed change is necessary to eliminate non-relevant language from § 92.504(c)(3)(vii), which is already properly covered in § 92.504(c)(3)(ii) (*Affordability*). The proposed rule at § 92.504(c)(3)(vii) would also incorporate minor, non-substantive edits and be reorganized to improve readability.

The proposed rule would remove the current § 92.504(c)(3)(x). The CHDO provisions in the current § 92.504(c)(3)(x) would be moved to the revised requirements for written agreements

between participating jurisdictions and CHDOs at § 92.504(c)(6). The proposed rule would re-number paragraph (xi) of § 92.504(c)(3) to § 92.504(c)(3)(x) and amend the proposed § 92.504(c)(3)(x) to add clarity by specifying that the agreement must state the fees that may be charged by the owner in accordance with § 92.214(b)(4) and prohibit owners from charging any of the prohibited fees in § 92.214. The proposed § 92.504(c)(3)(x) would delete the second sentence in the paragraph because it restates the requirements in § 92.214 for fees rather than describing a requirement for the written agreement. The proposed rule would also change a reference from "developer" to "owner" in § 92.504(c)(3)(x) to conform with the changes proposed to the introductory text of § 92.504(c).

To improve clarity and readability, the Department proposes minor, non-substantive revisions to the introductory text of § 92.504(c)(4), including removing "and the length of the agreement" in § 92.504(c)(4)(i) because it duplicates § 92.504(c)(4)(iii), as well as other non-substantive revisions to § 92.504(c)(4)(ii). The Department also proposes minor revisions to the heading and introductory text to § 92.504(c)(5), § 92.504(c)(5)(i), and § 92.504(c)(5)(ii). The proposed rule would amend the heading of § 92.504(c)(5) to clarify that the paragraph also applies to an owner receiving TBRA or security deposit assistance. The amendment is necessary to address the omission of the express inclusion of owner and does not create a new requirement. The proposed rule would also add new paragraphs at § 92.504(c)(5)(i)(A) and § 92.504(c)(5)(i)(B).

The proposed rule at § 92.504(c)(5)(i) would move its second sentence to the new paragraph at § 92.504(c)(5)(i)(A). The proposed new paragraph at § 92.504(c)(5)(i)(B) would reflect the proposed changes to § 92.251(c)(3) concerning the applicability of property standards to existing housing that is acquired for homeownership. The proposed rule would also revise

§ 92.504(c)(5)(iii) to clarify that the requirement to enter into a rental assistance contract or security deposit contract may be entered into by either tenants or owners receiving payments under a TBRA program. This proposed revision is necessary to correct the omission of "owner" and does not create a new requirement.

The Department proposes to revise § 92.504(c)(6) to cover written agreements with CHDOs for all eligible activities or projects. The proposed rule at § 92.504(c)(6) would be organized by the HOME activity or use of assistance and would incorporate the requirements in the current paragraphs at § 92.504(c)(3)(x), § 92.504(c)(6), and § 92.504(c)(7). The proposed rule at § 92.504(c)(6) would also reflect the proposed revisions made to §§ 92.300, 92.301, and 92.303. The proposed rule at § 92.504(c)(6) would establish minimum requirements for a written agreement with a CHDO for the use of set-aside funds under § 92.300 in the proposed § 92.504(c)(6)(i), for the use of HOME funds for operating expenses in the proposed § 92.504(c)(6)(ii), and for project-specific technical assistance and site control loans or project-specific seed money loans in the proposed § 92.504(c)(6)(iii).

The proposed rule would redesignate the current § 92.504(c)(6) and the current § 92.504(c)(7) as § 92.504(c)(6)(ii) and § 92.504(c)(6)(iii), respectively. The proposed rule at § 92.504(c)(6)(i) would require that an agreement for the use of set-aside funds by a CHDO must include the requirements in § 92.504(c)(3) and other additional CHDO-specific requirements. These requirements include that the agreement must identify the role of the CHDO, require that the CHDO comply with the applicable requirements in § 92.300(a) for its role, must specify whether a CHDO developing homeownership housing may retain the proceeds from the sale of the housing and the funds must be used for HOME activities or to benefit low-income families, and must require a separate written agreement between the CHDO and its co-developer that

contain the provisions described in the proposed § 92.504(c)(6)(i)(C)(*1*)-(*4*) if the CHDO will be sharing developer responsibilities. The proposed rule at § 92.504(c)(6)(ii) would also clarify that if a CHDO enters into a written agreement to receive HOME funds for operating expenses, there must be separate written agreement that complies with § 92.504(c)(6) for the CHDO's use of HOME funds for the project. The text of the proposed § 92.504(c)(6)(iii) would remain unchanged from the current text in § 92.504(c)(7) except that the term "Community housing development organization" would be removed from the heading.

The proposed rule would redesignate paragraph § 92.504(c)(8) as § 92.504(c)(7). The proposed rule would also move the inspection and financial oversight requirements at § 92.504(d) of the existing rule to the applicable paragraphs in § 92.251 to consolidate the property standards and inspection requirements in one section of the regulation.

32. Applicability of uniform administrative requirements (24 CFR 92.505).

The proposed rule would revise the applicability of 2 CFR part 200 to participating jurisdictions, State recipients, and subrecipients receiving HOME funds, to exclude the additional provisions of 2 CFR 200.328 and 200.344. The Department proposes to remove 2 CFR 200.328 from 24 CFR 92.505 because HOME is subject to statutory requirements that mandate the collection of data through IDIS in order to monitor compliance with HOME requirements and HUD does not apply 2 CFR 200.328 in practice. The Department would also remove the applicability of 2 CFR 200.344 because the regulation poses significant challenges to participating jurisdictions and does not align with programmatic requirements. The proposed rule would therefore remove the applicability of 2 CFR 200.344 and establish HOME-specific closeout procedures in § 92.507.

33. Closeout (24 CFR 92.507).

HUD proposes to amend the HOME closeout regulations at §92.507 to establish program-specific procedures and better align programmatic and administrative requirements for grant closeout. The existing regulation references the closeout requirements at 2 CFR 200.344, which has very specific requirements for the timing of closeouts and reporting by the participating jurisdiction after the end of the grant's period of performance, as set forth in the HOME grant agreement. Under the proposed closeout requirements at § 92.507, HUD would provide participating jurisdictions greater flexibility to request additional time, if needed, to meet certain program requirements, such as meeting project completion requirements. HUD recognizes that there are many things that could disrupt a participating jurisdiction's intended timeline for activity completion. To complete all program activities, including, but not limited to, satisfying reporting requirements, participating jurisdictions are permitted to request an extension of one year beyond the nine-year period of performance, as identified in the grant agreement, for good cause.

The proposed rule at § 92.507(a) would codify the current closeout process for HOME grants and describe the process, including the requirements that must be completed by the participating jurisdiction prior to initiating closeout. The proposed § 92.507(a) would require the participating jurisdiction complete certain actions required for closeout in proposed § 92.507(b), and obligations and actions required post-closeout in § 92.507(c). The proposed rule would establish that HUD may report a participating jurisdiction's material failure to comply with the terms and conditions of the award or closeout requirements to the OMB-designated integrity and performance system (currently, FAPIIS) and pursue other remedies in 2 CFR 200.339.

Even if HUD approves an extension pursuant to the proposed §92.507, a participating jurisdiction must still expend its funds by the end of the grant's budget period. The statutory requirement that funds must be expended within the budget period or returned to the U.S. Department of Treasury cannot be revised. Further, the proposed rule would clarify that certain requirements survive grant closeout. While this is not a change from the current requirements, HUD is taking the opportunity to again clarify that closeout of a HOME grant does not relieve a participating jurisdiction from project oversight in accordance with 24 CFR part 92 for as long as specified in the requirements applicable to the assisted project and participating jurisdiction.

34. Recordkeeping (24 CFR 92.508).

The proposed rule would make several conforming changes in the recordkeeping section of the regulation at § 92.508 to cross reference updated citations throughout the section. The proposed rule at § 92.508(a)(2)(ix) would also add language requiring that a participating jurisdiction that will apply excess matching contribution to a future fiscal year's liability must have records of the source of match at the time of application of the match credit and maintain the records for five years from the date of application to demonstrate compliance with the matching requirements of § 92.218 through § 92.222. The addition of this language would make it clear that participating jurisdictions must track the source and application of excess matching contributions if it is carried over and applied to future years' matching liability. The HUD Office of Inspector General found that several participating jurisdictions were not keeping adequate records of matching contributions during its audit of the HOME matching requirement.[58] These participating jurisdictions mistakenly thought that once matching funds were credited that the participating jurisdiction no longer needed to identify the source of the match when some or all

[58] HUD Office of Inspector General, Publication Report Number 2015-KC-0002.

of the matching funds were carried over to the subsequent year. This resulted in participating jurisdictions not being able to adequately identify the source of the carried over matching contribution. The proposed change would require participating jurisdictions to keep records demonstrating compliance with the matching requirements specifically for excess match carried forward from one year to the next.

The proposed rule at § 92.508(a)(3)(iii) would also be revised to add recordkeeping requirements demonstrating that a project complied with one of the comprehensive green building standards established by HUD if the participating jurisdiction used the higher maximum per-unit subsidy limitation permitted for such project under § 92.250(c). HUD proposes to revise the recordkeeping requirement at § 92.508(a)(3)(iv) to reflect that the proposed rule would move the on-site inspection standards and financial review requirements from § 92.504(d) to § 92.251(f).

35. Corrective and remedial actions (24 CFR 92.551).

The proposed rule would add a new paragraph (3) to § 92.551(c). The proposed § 92.551(c)(3) would codify HUD's existing practice to permit a participating jurisdiction to correct a performance deficiency by voluntarily agreeing to a reduction in its HOME grants by an amount equal to the amount of any expenditures that were not in compliance with HOME requirements.

36. Notice and opportunity for hearing; sanctions (24 CFR 92.552).

The proposed rule would add three new paragraphs at § 92.552(a)(1)(v), § 92.552(a)(1)(vi), and § 92.552(a)(1)(vii). These new paragraphs would reflect existing sanctions that HUD has the discretion to impose. The new proposed § 92.552(a)(2)(v) would codify the existing sanction that HUD may reduce a participating jurisdiction's HOME grants by

an amount equal to the amount of any expenditures that were not in compliance with HOME requirements. The proposed rule at § 92.552(a)(2)(vi) would also add that HUD may revoke a jurisdiction's designation as a participating jurisdiction. This addition makes § 92.552 consistent with § 92.107 because that revocation power is already permitted under that section, as authorized by section 216(9) of NAHA (42 U.S.C. 12746(9)). The Department is also revising § 92.552(a)(2) to add paragraph (vii) to make the section consistent with an existing sanction permitted under 2 CFR part 200 that applies to HOME funds. The proposed § 92.552(a)(2)(vii) would provide participating jurisdictions with additional notice that HUD may terminate the assistance in whole or in part in accordance with 2 CFR 200.340 to enforce program requirements.

37. American Dream Downpayment Assistance Initiative (24 CFR part 92, subpart M).

The proposed rule removes subpart M of the HOME regulations, which codified the regulatory requirements for the American Dream Downpayment Initiative (ADDI) program. ADDI was authorized in 2003 and included a sunset provision, which stated that "Secretary shall have no authority to make grants under this Act after December 31, 2007." ADDI funds were last appropriated in 2008. HOME participating jurisdictions used American Dream Downpayment Initiative grants for downpayment assistance to low-income, first-time homebuyers. The Department has closed out all American Dream Downpayment Initiative grants. Definitions applicable to ADDI and not used in the HOME program are also removed. Given that the ADDI program is no longer active, subpart M of the HOME regulations is not necessary.

B. Conforming Changes to 24 CFR parts 91, 570, and 982

1. Change to 24 CFR part 91

The proposed rule would make minor conforming changes to 24 CFR part 91 to update citations consistent with the proposed changes to 24 CFR part 92. HUD would also remove § 91.220(l)(2)(viii) and § 91.320(k)(2)(viii) because those paragraphs are no longer applicable given that the ADDI program is no longer active.

2. Change to 24 CFR 570.200

The proposed rule would address pre-award costs for the annual CDBG program by clarifying the effective date of the grant agreement. The proposed change would fix the effective date of an entitlement grant agreement as of the date HUD executes the grant agreement. The Department has waived § 570.200(h) for pre-award costs of grantees in many of the past Federal fiscal years to allow the effective date of a grantee's grant agreement for a Federal fiscal year with delayed enactment of the appropriation to be the earlier of the grantee's program year start date or the date that the Consolidated Plan (with the grantee's actual allocation amounts) is received by HUD. The proposed change at § 570.200(h) would assist grantees to better prepare for a Federal fiscal year when there is not a timely appropriation and eliminate the need for the Department to issue waivers of the requirements in § 570.200 when a timely appropriation has not been made by Congress.

3. Change to 24 CFR 982.507

The procedure for determining the rent reasonableness standard for tenant-based assistance under the HCV program in units receiving LIHTC or assistance under the HOME program was streamlined by section 2835(a)(2) of HERA. This HERA provision added section 8(o)(10)(F) to the 1937 Act. HUD fully implemented this streamlined process in its regulations

for LIHTC units through the HERA Final Rule.[59] The HERA Final Rule did not fully implement the streamlined process for HOME program units. Instead, as explained in the HERA Final Rule, the HCV rent reasonableness requirements for HOME units would be addressed as part of a separate HOME program rulemaking that would cover HOME rent requirements for both non-voucher families and voucher families. The HERA Final Rule reserved § 982.507(c)(3) to be amended accordingly as part of that future HOME program rulemaking.

This proposed rule would revise § 982.507 to fully implement the HERA streamlined HCV rent reasonableness process for HOME assisted units. In accordance with section 8(o)(10)(F) of the 1937 Act (42 U.S.C. 1437f(o)(10)(F)), § 982.507(c)(3) would provide that if the rent requested by the owner exceeds the HOME rents for non-voucher families, the PHA must determine that the rent to the owner is a reasonable rent and the rent shall not exceed the lesser of (1) the reasonable rent and (2) the payment standard established by the PHA for the unit size involved.

Additionally, HUD is proposing a technical revision to § 982.507(c)(2) to provide greater clarity with respect to the rent reasonableness requirements for LIHTC units. The current regulatory text in § 982.507(c)(2) provides that the PHA must "perform a rent comparability study in accordance with program regulations" if the rent requested by the owner exceeds the LIHTC rents for non-voucher families. This rent comparability determination is the same process the PHA undertakes for non-LIHTC HCV units under § 982.507(b) to determine that the rent to owner is a reasonable rent in comparison to rent for other comparable units. Consequently, HUD proposes to revise the wording of § 982.507(c)(2) to clarify that the PHA is required to determine

[59] 79 FR 36146.

the rent to owner is a reasonable rent in accordance with paragraph (b) of § 982.507 and not some separate process.

III. Findings and Certifications

Regulatory Review – Executive Orders 12866,13563, and 14094

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 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. Executive Order 14094 (Modernizing Regulatory Review) amends section 3(f) of Executive Order 12866, among other things. Updating the HOME program regulation 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 proposed rule would make many changes to the HOME program regulations, which were first promulgated in 1991, and have not been significantly updated since 2013. The proposed rule would: revise CHDO qualification requirements for community-based non-profit housing organizations to access CHDO set-aside funds to own, develop, and sponsor affordable housing; revise HOME rent requirements to implement statutory changes made to the U.S. Housing Act of 1937 by section 2835(a)(2) of HERA; facilitate the use of HOME funds for small

one-to four-unit rental projects; incentivize inclusion of ambitious Green Building standards in new construction, reconstruction and rehabilitation projects; and expand flexibilities for community land trusts to participate in the HOME program. The proposed rule would also provide enhanced flexibility in TBRA programs; strengthen and expand tenant protections; and clarify the resale requirements for homeownership housing. The proposed rule would also include technical amendments or simplifications to certain changes made in the 2013 HOME Final Rule, the HOTMA Final Rule, and the NSPIRE Final Rule. The proposed rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866, as amended (although not an economically significant regulatory action under the order).

HUD prepared a regulatory impact analysis (RIA) that addresses the costs and benefits of the proposed rule. HUD's RIA is part of the docket file for this rule at https://www.regulations.gov. As described in the RIA, HUD anticipates that the economic impact of the proposed rule would be almost entirely within the HOME program. In other words, the proposed changes to the HOME program would affect what participating jurisdictions do with the HOME funds they receive from HUD and how projects that accept this funding source can operate. Many of the proposed policy adjustments would only have a practical impact if participating jurisdictions choose to respond to them by altering how they use HOME funds. HUD strongly encourages the public to view the docket file.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (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 proposed rule aims to improve the HOME

program by making several changes to its Federal regulations that would increase flexibility for grantees in using their HOME grants, streamline administrative requirements, implement statutory changes regarding rent restrictions in HOME rental projects, and enhance tenant protections for HOME-assisted rental households. As described in the RIA that HUD prepared, HUD anticipates that the economic impacts of the proposed rule would be almost entirely within the HOME program. In other words, the proposed changes to the HOME program would affect what participating jurisdictions do with the HOME funds they receive from HUD and how projects that accept this funding source can operate. Many of the proposed policy adjustments would only have a practical impact if participating jurisdictions choose to respond to them by altering how they use HOME funds. For the reasons presented, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available through the Federal eRulemaking Portal at http://www.regulations.gov. The FONSI is also available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about

how to make an accessible telephone call, please visit https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

Executive Order 13132, Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule will be submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). 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.

The proposed rule would change the annual income determination requirement for households assisted with HOME TBRA from annual to bi-annual, which reduces the burden hours. The proposed rule includes a new provision in 24 CFR 92.250 to increase the maximum subsidy limit allowed for HOME projects based on whether the project shall meet a more comprehensive property standard that includes Green Building criteria, which would lead to a slight increase in burden for participating jurisdictions with qualified projects. The proposed rule would amend 24 CFR 92.252 to eliminate the requirement that a participating jurisdiction must submit to HUD a marketing plan for any HOME-assisted rental units that have not achieved initial occupancy within six months of project completion in IDIS, which would reduce the reporting burden on participating jurisdictions with unoccupied HOME-assisted rental units. The proposed rule adds paragraph (g)(i) to 24 CFR 92.252 to permit an owner of small-scale housing to re-examine annual income every three years, rather than annually, therefore reducing burden for income determination. The proposed tenancy lease addendum, described in 24 CFR 92.253, would replace multiple, separate functions, and would result in a decrease in paperwork burden. The proposed changes in 24 CFR 92.300 to define the qualifications for a CHDO would result in increased applications and certification, which may lead to an increase of paperwork burden. Overall, the proposed rule results in a net decrease of burden by 28,852 total estimated annual burden hours.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN					
24 CFR section reference	Number of parties	Frequency of responses	Number of responses per party	Estimated average time for requirements (hours)	Total estimated annual burden (hours)
§ 92.252(g)(i)	2,000	Annual	1	2	4,000

Small scale housing income determination					
§ 92.209(c)(1) Annual income determination for TBRA	72,000	Annual	1	0.75	54,000
§ 92.250 Increase maximum subsidy limits for ambitious green building	188	Annual	1	2	376
§ 92.253 Tenant protections (including lease addendum requirement)	6,667	Annual	1	3	20,001
§ 92.300 Designation of CHDOs	600	Annual	1	1.5	900
§ 92.251 Property standards and inspection requirements	6,000	Annual	1	3	18,000
§ 92.252 6-month marketing plan for unoccupied rental units	60	Annual	1	1	60
§ 92.507 Grant closeout procedures	652	Annual	1	1	652

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from member of the public and affected agencies concerning this collection of information to:

1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

3) Enhance the quality, utility, and clarity of the information to be collected; and,

4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-6144-P-01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395-6947

And

Reports Liaison Officer, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7233, 7th Street SW, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at https://www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the https://www.regulations.gov website can be viewed by other commenters and interested member of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

List of Subjects

24 CFR part 91

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

24 CFR Part 92

Administrative practice and procedure; Low and moderate income housing; Manufactured homes; Rent subsidies; Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure; American Samoa; Community development block grants; Grant programs-education; Grant programs-housing and community development; Guam; Indians; Loan programs-housing and community development; Low and moderate income housing; Northern Mariana Islands; Pacific Islands Trust Territory; Puerto Rico; Reporting and recordkeeping requirements; Student aid; Virgin Islands.

24 CFR Part 982

Grant programs-housing and community development; Grant programs-Indians; Indians; Public housing; Rent subsidies; Reporting and recordkeeping requirements.

For the reasons stated above, HUD proposes to amend 24 CFR parts 91, 92, 570, and 982 as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for part 91 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.

§ 91.220 [Amended]

2. In § 91.220:

a. Amend paragraph (l)(2)(v) by removing the citation to "92.254(a)(2)(iii)" and add, in its place, a citation to "92.254(a)(2)(iv)";

b. Amend paragraph (l)(2)(vii)(D) by removing the citation to "92.253(d)" and add, in its place, a citation to "92.253(e)";

c. Remove paragraph (l)(2)(viii).

§ 91.320 [Amended]

3. In § 91.320:

a. Amend paragraph (k)(2)(v) by removing the citation to "92.254(a)(2)(iii)" and add, in its place, a citation to "92.254(a)(2)(iv)";

b. Amend paragraph (k)(2)(vii)(D) by removing the citation to "92.253(d)" and add, in its place, a citation to "92.253(e)";

c. Remove paragraph (k)(2)(viii).

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

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

Authority: 42 U.S.C. 3535(d) and 12701— 12839; 12 U.S.C. 1701x.

2. In § 92.2:

a. Remove the definition of "ADDI funds";

b. Amend the definition of "Commitment" by removing the word "official" in the introductory text to paragraph (1) and adding, in its place, the word "officials," by removing the word "downpayment" in paragraph (1)(i) and adding, in its place, the word "homeownership," and by removing the words "or subrecipient" throughout paragraph (2)(ii)(A);

c. Amend the definition of "Community housing development organization" by revising paragraphs (4), (5), (8)(i), and (9);

d. Add the definition of “Community land trust,”

e. Remove the definitions of “Displaced homemaker” and “First time homebuyer”;

f. Amend the definition of “Homeownership” by removing the words “or in a” in the introductory text to the definition and adding, in their place, the word “or” and by removing the words “Low Income Housing Tax Credits” in paragraph (4) and adding, in their place, the words “Low-Income Housing Credits (26 U.S.C. 42)”;

g. Add the definition of “Period of affordability”;

h. Amend the definition of “Program income” by revising the introductory text and paragraphs (2) and (3);

i. Amend the definition of “Reconstruction” by revising the last sentence;

j. Amend the definition of “Single family housing” by removing the words “one-to four-family” and adding, in their place, the words “one-to four-unit”;

k. Remove the definition of “Single parent”;

l. Add the definition of “Small-scale housing”;

m. Revise the definition of “State recipient”;

n. Amend the definition of “Subrecipient” by removing the words “public agency” and adding, in their place, the words “governmental entity,” by removing the word “downpayment” and adding, in its place, the word “homeownership,” and by removing the word “solely”; and

o. Amend the definition of “Tenant-based rental assistance” by removing the word “dwelling” and adding, in its place, the word “housing”;

The additions and revisions read as follows:

§ 92.2 Definitions.

* * * * *

Community housing development organization means: * * *

(4) Is tax exempt as follows:

(i) The private nonprofit 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 (26 CFR 1.501(c)(3)-1 or 1.501(c)(4)-1));

(ii) The private nonprofit organization is a subordinate organization that has been included in its 501(c)(3) or (4) central organization's group exemption letter by the Internal Revenue Service; or,

(iii) The private nonprofit organization is wholly owned by the community housing development organization, as defined in this part, and is disregarded as an entity separate from its owner organization for federal tax purposes.

(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, no more than one-third of the board members of the organization may be officials or employees of the participating jurisdiction or governmental entity that created the community housing development organization. Further, no governmental entity may have the right to appoint more than one-third of the organization's board members. The board members appointed by a governmental entity and the board members that are officials or employees of the participating jurisdiction or governmental entity that created the organization may not appoint any of 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;

* * * * *

(8) * * *

(i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, designees of low-income neighborhood organizations, or authorized representatives of nonprofit organizations in the community that address the housing or supportive service needs of residents of low-income neighborhoods, including homeless providers, Fair Housing Initiatives Program providers, Legal Aid, disability rights organizations, and victim service providers. For urban areas, “community” may be a neighborhood or neighborhoods, city, county, or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area; and

* * * * *

(9) Has a demonstrated capacity for carrying out housing projects assisted with Federal funds, Low-Income Housing Credits (26 U.S.C. 42), or local and state affordable housing funds.

(i) To satisfy this requirement and demonstrate capacity as a developer of a HOME-assisted project, the nonprofit organization must have employees or volunteers with housing development experience who will work directly on the HOME-assisted project. If a nonprofit organization is demonstrating capacity using a volunteer’s experience, the volunteer must serve as a board member or officer of the nonprofit organization, and the volunteer may not be compensated by or have their services donated by another organization. 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;

(ii) 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);

(iii) An organization that will sponsor housing must demonstrate capacity as a developer or capacity to act as owner, as described in paragraph (9)(i) and (ii) of this definition; and

* * * * *

Community land trust means a nonprofit organization that:

(1) Has the development and maintenance of housing that is permanently affordable to low- and moderate-income persons as its primary purposes;

(2) Is not sponsored or controlled by a for-profit organization;

(3) Uses a lease, covenant, agreement, or other enforceable mechanisms to require housing and related improvements on land held by the community land trust to be affordable to low- and moderate-income persons for at least 30 years; and

(4) Retains a right of first refusal or preemptive right to purchase the housing and related improvements on land held by the community land trust to maintain long-term affordability.

* * * * *

Period of affordability means the required period, as specified in § 92.252 and § 92.254, that requirements under this part apply to HOME-assisted housing.

* * * * *

Program income means gross income received by the participating jurisdiction, State recipient, or a subrecipient at any time, generated from the use of HOME funds or matching contributions. When program income is generated by housing that is only partially assisted with

HOME funds or matching funds, the program income shall be the amount prorated to reflect the percentage of HOME funds invested in the project. Program income includes, but is not limited to, the following:

* * *

(2) Gross income from the use or rental of real property, owned by the participating jurisdiction or State recipient 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 or developer, unless all or a portion of the income must be paid to the participating jurisdiction, subrecipient, or State recipient, in which case, the amount that must be paid to the participating jurisdiction, subrecipient, or State recipient is program income.);

(3) Payments and repayments on grants, loans (i.e., principal and interest), or investments made using HOME funds or matching contributions, including such payments and repayments made after the period of affordability;

* * * * *

Reconstruction * * * Reconstruction is rehabilitation for purposes of this part, except that the property standards for new construction in § 92.251(a) apply to all reconstruction projects.

* * * * *

Small-scale housing means a rental housing project of no more than four units or a homeownership project with no more than three rental units on the same site.

* * * * *

State recipient means a unit of general local government designated by a State participating jurisdiction to receive HOME funds to administer all or some of the State

participating jurisdiction's HOME programs, own or develop affordable housing, provide homeownership assistance, or provide tenant-based rental assistance.

* * * * *

92.50 [AMENDED]

3. In § 92.50, amend paragraph (c)(3) by removing the words “poor households” and adding, in their place, the words “households below the poverty line.”

4. In § 92.101, revise paragraph (a) introductory text and paragraph (d), and add paragraph (g) to read as follows.

§ 92.101 Consortia.

(a) A consortium of geographically contiguous units of general local government is a unit of general local government for purposes of this part if the requirements of this section are met. A unit of general local government separated by a body of water that is only accessible by the public through a permanent means other than a connecting road, bridge, railway, or highway may be considered geographically contiguous if the consortium demonstrates that the unit of general local government separated by the body of water is part of the same housing market and local commuting area as one or more members of the consortium. A local commuting area is the geographic area that encompasses neighborhoods where people live and are reasonably expected to routinely travel back and forth to a common employment hub, population center, or worksite.

* * * * *

(d) If the representative unit of general local government distributes HOME funds to member units of general local government, the representative unit is responsible for applying to the member units of general local government the same requirements as are applicable to subrecipients, including the written agreement requirements in 24 CFR 92.504(c)(2).

* * * * *

(g) If a consortium changes its representative unit of general local government but retains the same membership, the consortium shall still be considered the same unit of general local government for purposes of this part. If the representative unit of general local government changes and the composition of the consortium changes, either by adding or removing individual members, then the consortium shall be a new unit of general local government for purposes of this part and shall be required to comply with all applicable consolidated plan requirements in 24 CFR part 91.

5. In § 92.201, add a new sentence to the end of paragraph (a)(2) and remove the last sentence of paragraph (b)(2). The addition reads as follows:

§ 92.201 Distribution of assistance.

(a) * * *

(2) * * * A participating jurisdiction may not commit HOME funds to a project outside its jurisdiction and within the boundaries of a contiguous local jurisdiction until it has secured the financial contribution of the jurisdiction in which the project is located.

* * * * *

6. In § 92.203:

a. Revise the introductory text of paragraph (a) and the header of paragraph (b);

b. Amend paragraph (b)(1) introductory text by removing the citation "§ 92.252(h)" and adding, in its place, the citation "§ 92.252(g)";

c. Revise paragraph (b)(1)(ii) and the first sentence of paragraph (b)(1)(iii);

d. Amend the heading of paragraph (c) by removing the words "*Defining income for eligibility*." and adding, in their place, the words "*Definitions of "annual income.""*";

e. Amend paragraph (c)(1) by removing the citation to "§§ 5.609(a) and (b) of this title" and adding, in their place, a citation to "24 CFR 5.609(a) and (b)";

f. Revise paragraph (d);

g. Amend paragraph (e)(1) by removing the citation to "§ 5.618 of this title" and adding, in its place, a citation to "24 CFR 5.618", and by removing the citation to "§ 5.609(a)(2) of this title" and adding, in its place, a citation to "24 CFR 5.609(a)(2)".

h. Amend paragraph (e)(3) by removing the citation to "§ 5.617 of this title" and adding, in its place, a citation to "24 CFR 5.617";

i. Amend paragraph (f)(1)(i) by removing the citation to "§ 5.611(a) of this title" and adding, in its place, a citation to "24 CFR 5.611(a)", and by removing the citation to "§§ 5.611(c) through (e) of this title" and adding, in its place, a citation to "24 CFR 5.611(c) through (e)";

j. Amend paragraph (f)(1)(ii) by removing the citation to "§ 92.252(b)(2)(i)" and adding, in its place, a citation to "§ 92.252(a)(2)(ii) or (iii)", by removing the citation to "§ 5.611(a) of this title" and adding, in its place, a citation to "24 CFR 5.611(a)", and by removing the citation to "§§ 5.611(c) through (e) of this title" and adding, in its place, a citation to "24 CFR 5.611(c) through (e)"; and

k. Amend paragraph (f)(1)(iii) by removing the citation to "§ 5.611(a) of this title" and adding, in its place, a citation to "24 CFR 5.611(a)."

The additions and revisions read as follows:

§ 92.203 Income determinations.

(a) *Income eligibility*. To determine a family is income-eligible, the participating jurisdiction must determine the family's income as follows:

* * * * *

(b) *Determining and documenting annual income*.

(1) * * *

(ii) Obtain from the family a written statement or, where needed due to disability, a statement in another format, of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request. If there is evidence that a tenant's statement and certification provided in accordance with § 92.203(b)(1)(ii) failed to completely and accurately state information about the family's size or income, a tenant's income must be re-examined in accordance with § 92.203(b)(1)(i).

(iii) Obtain a written statement from the administrator of a government program which examines the annual income of the family each year and under which the family receives benefits.

* * * * *

(d) *Use of income definitions*. A participating jurisdiction may use either of the definitions of "annual income" in paragraph (c) of this section, however, the participating jurisdiction may use only one definition of "annual income" for each HOME-assisted program (e.g., downpayment assistance program) that it administers and only one definition for each rental housing project. For rental housing projects containing units assisted by a Federal or State project-based rental subsidy program or tenants receiving Federal tenant-based rental assistance, where a participating jurisdiction is accepting a public housing agency, owner, or rental assistance provider's determination of annual and adjusted income, the participating jurisdiction must calculate annual income in accordance with paragraph (c)(1) of this section so that only one definition of annual income is used in the rental housing project.

* * * * *

7. In § 92.205:

a. Revise paragraph (a)(2);

b. Remove the last sentence of paragraph (b)(1);

c. Add paragraph (b)(3); and

d. Revise the first sentence of paragraph (e)(2).

The addition and revisions read as follows:

§ 92.205 Eligible activities: General.

(a) * * *

(2) Acquisition of vacant land or demolition may only be undertaken for a project that will provide affordable housing and meets the requirements for a specific local project in paragraph (2)(i) of the definition of "commitment" in § 92.2.

* * * * *

(b) * * *

(3) The participating jurisdiction must establish the terms of assistance, subject to the requirements of this part.

* * * * *

(e) * * *

(2) If project completion, as defined in § 92.2, does not occur within 4 years of the date of commitment of funds for a specific local project, 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). * * *

8. In § 92.206:

a. Amend paragraph (a)(1) by removing the citation "§ 92.251" and adding, in its place, the citation "§ 92.251(a)";

b. Amend paragraph (a)(2) by removing the citation "§ 92.251" and adding, in its place, the citation "§ 92.251(b)";

c. Amend paragraph (b)(1) by removing the word "single-family" and adding, in its place, the words "single family";

d. Amend the introductory text to paragraph (b)(2) by removing the words "affordability period" and adding, in their place, the words "period of affordability";

e. Revise paragraphs (b)(2)(ii), (c),(d)(1), and (d)(8).

The revisions read as follows:

§ 92.206 Eligible project costs.

* * * * *

(b) * * *

(2) * * *

(ii) Require a review of management practices to demonstrate that disinvestment in the property has not occurred, that the long term needs of the project can be met, and that the feasibility of serving the targeted population over the minimum period of affordability of 15 years can be demonstrated;

* * * * *

(c) *Acquisition costs*. Costs of acquiring improved or unimproved real property and costs for a long-term ground lease, including costs of acquisition by homebuyers.

(d) * * *

(1) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, work write-ups, or for HUD environmental review or other environmental studies or assessments. 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.

* * * * *

(8) Cost of property insurance during development.

* * * * *

§ 92.207 [Amended]

9. In § 92.207, amend paragraph (e) by removing the words "under a cost allocation plan prepared."

10. In § 92.208, add paragraph (c) to read as follows:

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

* * * * *

(c) An organization that meets the definition of "community housing development organization" in § 92.2, except for the requirements in paragraph (9) of the definition, may receive HOME funds for operating expenses and capacity building costs in accordance with paragraph (a) of this section in order to develop demonstrated capacity and qualify as a community housing development organization.

11. In § 92.209:

a. Amend paragraph (c)(1) by removing the last sentence;

b. Revise paragraphs (c)(2)(iv), (c)(3), (g), (h)(2), (h)(3)(ii), (i), and (j)(5);

c. Amend paragraph (j)(1) by removing the word “dwelling” and adding, in its place, the word “housing.”

d. Add paragraph (j)(6); and

e. Remove paragraph (l).

The addition and revisions read as follows:

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

* * * * *

(c) * * *

(2) * * *

(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 assistance 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, in accordance with the lease-purchase agreement. 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.

* * *

(3) *Existing tenants in projects that will receive HOME assistance.* A participating jurisdiction may select low-income families currently residing in housing units that will be

rehabilitated or acquired with HOME funds under the participating jurisdiction's HOME program. Participating jurisdictions using HOME funds for tenant-based rental assistance programs may establish local preferences for the provision of this assistance. Families so selected may use the tenant-based assistance in the rehabilitated or acquired housing unit or in other qualified housing.

* * * * *

(g) *Tenant protections.* The tenant must have a lease that complies with the requirements in § 92.253(a)-(c) and (d)(2).

(h) * * *

(2) The participating jurisdiction must establish a minimum tenant contribution to rent, except that the participating jurisdiction may establish conditions in its written policies under which a tenant would be relieved of all or a portion of the minimum contribution due to financial hardship.

(3) * * *

(ii) The Section 8 Housing Choice Voucher Program payment standard in 24 CFR 982.503.

(i) *Housing standards.* The participating jurisdiction must require the housing occupied by a family receiving tenant-based rental assistance under this section to meet the participating jurisdiction’s property standards under § 92.251. Initially and annually thereafter, the participating jurisdiction must determine the housing complies with its property standards and is decent, safe, sanitary, and in good repair in accordance with § 92.251(f).

* * * * *

(j) * * *

(5) Paragraphs (b), (c), (d), (f), (g), and (i) of this section are applicable when HOME funds are provided for security deposit assistance, except that income determinations pursuant to paragraph (c)(1) of this section and inspections pursuant to paragraph (i) of this section are required only at the time the security deposit assistance is provided.

(6) Surety bonds or security deposit insurance and similar instruments may not be used in lieu of or in addition to a security deposit in units occupied by tenants receiving tenant-based rental assistance.

* * * * *

12. Revise § 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 or its physical viability has substantively deteriorated due to unforeseen circumstances. For purposes of this section, a HOME-assisted rental project is no longer financially viable if its operating costs significantly exceed its operating revenue, considering project reserves and the owner is unable to pay for necessary capital repair costs. For purposes of this section, physical viability means a project's current or future ability to maintain affordability based on the physical characteristics and factors of the project's site and improvements. HUD may approve 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 the long-term physical and financial viability of the project in preserving affordability.

(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 be necessary to improve the physical and financial viability of the project and may not exceed the per-unit subsidy limit in § 92.250(a) in effect at the time of the additional investment. 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 impose additional conditions, including requiring the participating jurisdiction to extend the period of affordability, increase the number of HOME-assisted units, and change the number or designation of Low HOME rent and High HOME rent units.

(c) HUD may, through written approval, permit the participating jurisdiction to reduce the total number of HOME-assisted units or change the designation of units from Low HOME rent units to High HOME rent units where there are more than the minimum number of Low HOME rent units in the project. 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.

13. In § 92.212:

a. Amend paragraph (a) by removing “may incur costs", and adding, in its place, “may incur costs described in this section”; and

b. Revise paragraph (b) to read as follows:

§ 92.212 Pre-award costs.

* * * * *

(b) *Administrative and planning costs.*

(1) Eligible administrative and planning costs may be incurred as of the beginning of the participating jurisdiction's consolidated program year (see 24 CFR 91.10) or the date HUD receives the consolidated plan describing the HOME allocation to which the costs will be charged, whichever is later.

(2) In any year in which timely Congressional appropriations have not been provided for the HOME program, a participating jurisdiction may incur eligible administrative and planning costs as of the beginning of its program year or the date that HUD receives its consolidated plan describing the HOME allocation to which the costs will be charged, whichever is earlier. An appropriation is not timely if the appropriation was signed into law less than 90 days before a participating jurisdiction’s program year start date.

* * * * *

14. Amend § 92.214 by:

a. Revising paragraphs (a)(6) through (9);

b. Adding paragraph (a)(10);

c. Revising paragraph (b)(3); and

d. Adding paragraph (b)(4).

The revisions and additions read as follows.

§ 92.214 Prohibited activities and fees.

(a) * * *

(6) Provide assistance (other than tenant-based rental assistance, assistance to a homebuyer to acquire housing previously assisted with HOME funds, assistance permitted under § 92.210, or assistance to preserve affordability of homeownership housing in accordance with § 92.254(b)) to a project previously assisted with HOME funds during the period of affordability.

However, additional HOME funds may be committed to a project for up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250 at the time of underwriting;

(7) Pay for the acquisition of property owned by the participating jurisdiction, unless such property is acquired by the participating jurisdiction in anticipation of carrying out a HOME project;

(8) Pay delinquent taxes, fees, or charges on properties to be assisted with HOME funds;

(9) Pay for any cost that is not eligible under §§ 92.206 through 92.209; or

(10) Pay for surety bonds, security deposit insurance, or similar instruments in lieu of or in addition to a security deposit in units occupied by tenants receiving tenant-based rental assistance (including assistance in paying security deposits).

(b) * * *

(3) The participating jurisdiction must prohibit project owners from charging for:

(i) Surety bonds, security deposit insurance, or similar instruments in lieu of or in addition to a security deposit in units;

(ii) Fees that are not customarily charged in rental housing (e.g., laundry room access fees); and

(iii) Fees to inspect units or correct deficiencies in the property condition of units or common areas of the project that were not caused by the tenant.

(4) 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.

§ 92.216 [Amended]

15. In § 92.216, amend paragraphs (a)(2) and (b)(2) by removing the word "dwelling" and adding, in its place, the word "housing."

§ 92.217 [Amended]

16. Amend § 92.217 by removing the word "dwelling" and adding, in its place, the word "housing."

17. Amend § 92.219 by revising the first sentence of paragraphs (b)(2)(ii) and the first sentence of paragraph (b)(2)(iii) to read as follows:

§ 92.219 Recognition of matching contribution.

* * * * *

(b) * * *

(2) * * *

(ii) The participating jurisdiction must execute, with the owner of the housing (or, if the participating jurisdiction is the owner, with the manager or developer), a written agreement that imposes and enumerates all of the affordability requirements in § 92.252 and tenant protection requirements in § 92.253(a)-(c) and (d)(2) or § 92.254, whichever are applicable; the property standards requirements of § 92.251; and income determinations made in accordance with § 92.203. * * *

(iii) A participating jurisdiction must establish a procedure to monitor HOME match-eligible housing to ensure continued compliance with the requirements of § 92.203 (Income determinations), § 92.252 (Qualification as affordable housing: Rental housing), § 92.253(a)-(c)

and (d)(2) (Tenant protections), and § 92.254 (Qualification as affordable housing: Homeownership). * * *

* * * * *

19. In § 92.221, add paragraphs (b)(1) and (2) to read as follows:

§ 92.221 Match credit.

* * * * *

(b) * * *

(1) To apply an excess matching contribution to a future fiscal year's match liability, the participating jurisdiction must have documentation, at the time of application, demonstrating the matching contribution complied with the matching requirements at §§ 92.218-92.221 at the time it was made. Documentation must include project records of the type and amount of the matching contribution.

(2) A participating jurisdiction must maintain the records in paragraph (b)(1) of this section for five years from the date of application of the excess matching contribution to the liability.

* * * * *

20. In § 92.250, revise paragraphs (a) and (b)(3)(i) and add paragraph (c) 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 that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established by HUD in accordance with section 212(e) of the Act. HUD will publish the per-unit dollar limits for the area in which the housing is located annually. HUD

will publish its methodology for determining maximum per-unit dollar limits through a notice in the *Federal Register* with the opportunity for comment.

(b) * * *

(3) * * *

(i) An underwriting analysis of the homeowner's ability to repay the HOME-funded rehabilitation loan is required only if the loan is an amortizing loan; and

* * * * *

(c) A participating jurisdiction may exceed the per-unit dollar limits described in paragraph (a) of this section by up to 5 percent if the project meets one of the green building standards identified by HUD and published in the *Federal Register*.

21. In § 92.251:

a. Revise the section heading and paragraph (a)(2);

b. Add paragraph (a)(3);

c. Revise paragraphs (b)(1)(vi) and (viii);

d. Add paragraphs (b)(1)(xi) and (xii);

e. Amend paragraph (b)(2) by removing the words "The construction documents" and adding, in their place, the words "The construction contract and documents";

f. Revise paragraph (b)(3), the first sentence of paragraph (c)(1), and paragraph (c)(3);

g. Remove and reserve paragraph (d);

h. Revise the introductory text of paragraphs (f);

i. Amend the introductory text of paragraph (f)(1) by removing the words "affordability period" and adding, in their place, the words "period of affordability" and by removing the words "each of the following" and adding, in their place, the words "all of the following";

j. Revise paragraphs (f)(1)(i), (3), (4), and (5); and

k. Add a new paragraph (g).

The revisions and additions read as follows:

§ 92.251 Property standards and inspections.

(a) * * *

(2) *Construction progress and final inspections.* The participating jurisdiction must conduct on-site progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents. Before completing the project in the disbursement and information system established by HUD, the participating jurisdiction must perform an on-site inspection of the project to determine that all contracted work has been completed and that the project complies with the property standards and requirements in paragraph (a) of this section. All inspections performed by the participating jurisdiction must be conducted in accordance with the participating jurisdiction's inspection procedures.

(3) *HUD requirements.* All new construction projects must also meet the following requirements upon project completion, unless an earlier deadline is otherwise required by the applicable statute, regulation, or standard:

(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) *Energy Efficiency Standards.* Newly constructed housing shall qualify as affordable housing under this part only if it meets the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the Cranston–Gonzalez National Affordable Housing Act (42 U.S.C. 12709).

(iii) *Disaster mitigation.* Where relevant, the housing must be constructed to mitigate the impact of future disasters (e.g., earthquakes, hurricanes, flooding, and wildfires) in accordance with State and local codes and ordinances, and such other requirements that 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) *Broadband infrastructure.* For new commitments made after January 19, 2017, for a new construction housing project of a building with more than 4 rental units, the construction must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the participating jurisdiction determines and, in accordance with § 92.508(a)(3)(iv), documents the determination that:

(A) The location of the new construction makes installation of broadband infrastructure infeasible; or

(B) The cost of installing the infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden.

(vi) *Carbon monoxide detection.* The common areas of a project and all units within the project must meet or exceed the carbon monoxide detection standards adopted by HUD through Federal Register notice; and

(vii) *Green building standards.* If a participating jurisdiction is exceeding the maximum per-unit subsidy limit pursuant to § 92.250(c), then upon completion, the housing must meet one of the green building standards established by HUD.

(b) * * *

(1) * * *

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

* * *

(viii) *HUD housing 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. This means that the HOME-assisted project and units will meet the standards in 24 CFR 5.703, except that paragraph (b)(1)(xi) of this section shall apply instead of the carbon monoxide detection requirements at 24 CFR 5.703(b)(2) and (d)(6). For all HOME-assisted projects and units, the requirements at 24 CFR 5.705–5.713 do not apply. At minimum, the participating jurisdiction's rehabilitation standards must require correction of the specific deficiencies published in the *Federal Register* for HOME-assisted projects and units. For SRO housing, 24 CFR 5.703(d) shall only apply to the extent that the SRO unit contains the room or facility referenced in 24 CFR 5.703(d).

(A) The participating jurisdiction may accept a determination made under another HUD program, upon the completion of the rehabilitation, that the HOME-assisted project and units are decent, safe, sanitary, and in good repair in an inspection conducted under the National Standards for the Condition of HUD housing (24 CFR part 5, subpart G) or an alternative inspection standard, which HUD may establish through *Federal Register* notice.

(B) If a participating jurisdiction is accepting a determination pursuant to paragraph (b)(1)(viii)(A), then the participating jurisdiction must document the determination in accordance with § 92.508(a)(3)(iv) and is not required to perform a HOME inspection of the project and units for compliance with 24 CFR 5.703.

* * *

(xi) *Carbon monoxide detection.* The common areas of a project and all units within the project must meet or exceed the carbon monoxide detection standards adopted by HUD through *Federal Register* notice.

(xii) *Green building standards*. If a participating jurisdiction is exceeding the maximum per-unit subsidy limit pursuant to § 92.250(c), then upon completion of the rehabilitation the housing must meet one of the green building standards established by HUD.

* * *

(3) *Frequency of inspections.* The participating jurisdiction must conduct an initial property inspection to identify the deficiencies that must be addressed and must conduct on-site progress and final inspections to determine that work was done in accordance with the construction contract and construction documents. Before completing the project in the disbursement and information system established by HUD, the participating jurisdiction must perform an on-site inspection of the project to determine that all contracted work has been

completed and that the project complies with the property standards and requirements in paragraph (b) of this section. All inspections performed by the participating jurisdiction must be conducted in accordance with the participating jurisdiction's inspection procedures.

(c) * * *

(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 for new construction in paragraph (a) or rehabilitation in paragraph (b) of this section, as applicable. * * *

* * *

(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 established by HUD based on the applicable standards in 24 CFR 5.703 and published in the *Federal Register* for HOME-assisted projects and units. The housing must also meet or exceed the carbon monoxide detection standards adopted by HUD through *Federal Register* notice.

(i) The participating jurisdiction must inspect the housing and document compliance with paragraph (c)(3) of this section 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 paragraph (c)(3) before the acquisition, except as provided in paragraph (c)(3)(ii) of this section.

(ii) If the housing will not be rehabilitated to meet the standards in paragraph (c)(3) of this section before acquisition, then the housing may still be acquired if all of the following conditions are satisfied:

(A) The written agreement between the participating jurisdiction and the homebuyer requires the property to meet the standards within 6 months of acquisition with HOME assistance;

(B) Funding is secured to complete the rehabilitation necessary to comply with the standards; and

(C) The participating jurisdiction conducts a final inspection within six months after acquisition and determines that the property meets the standards.

(iii) All inspections performed by the participating jurisdiction must be conducted in accordance with the participating jurisdiction's inspection procedures.

* * * * *

(f) *Ongoing property condition standards and inspections: Rental housing and housing occupied by tenants receiving HOME tenant-based rental assistance.*

(1) * * *

(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 provide that the property does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the *Federal Register* for HOME rental housing (including manufactured housing) and housing occupied by tenants

receiving HOME tenant-based rental assistance. The participating jurisdiction's property standards are not required to comply with 24 CFR 5.705 through 5.713.

* * *

(3) *Ongoing 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 in paragraph (f)(1) of this section and to verify the information submitted by owners in accordance with the requirements of § 92.252. The participating jurisdiction must perform inspections in accordance with its established inspection procedures. These procedures, at minimum, must include the following requirements:

(i) *Frequency of inspections*. The participating jurisdiction must perform an on-site inspection within 12 months after project completion and complete one of the following every 3 years during the period of affordability:

(A) Perform an on-site inspection in accordance with the participating jurisdiction's inspection procedures to determine compliance with the property standards; or

(B) Accept a determination made under another HUD program, made within the past 12 months, that the HOME-assisted project and units are decent, safe, sanitary, and in good repair in an inspection conducted under the National Standards for the Condition of HUD housing (24 CFR part 5, subpart G) or an alternative inspection standard, which HUD may establish through *Federal Register* notice. If a participating jurisdiction is accepting a determination made under another HUD program, then the participating jurisdiction must document the determination in accordance with § 92.508(a)(3)(iv) and is not required to perform an on-site HOME inspection of the project and the units for compliance with 24 CFR 5.703.

(ii) *Annual certification*. The 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.

(iii) *Units inspected*. Inspections must be based on a random sample of 20 percent of the HOME-assisted units in the project with a mix of unit sizes (e.g., a mix of one-bedroom, two-bedroom, and three-bedroom units). For projects with one-to-four HOME-assisted units, the participating jurisdiction must inspect 100 percent of the HOME-assisted units and the inspectable areas for each building with HOME-assisted units.

(iv) *Financial oversight.* During the period of affordability, the participating jurisdiction must examine at least annually the financial condition of projects with 10 or more HOME-assisted units to determine the continued financial viability of the housing and must take actions to correct problems, to the extent feasible.

(4) *Annual inspections for housing with tenants receiving HOME tenant-based rental assistance*. All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the property standards of paragraph (f)(1) of this section. The participating jurisdiction must annually determine the housing is decent, safe, sanitary, and in good repair through one of the following methods:

(i) An annual on-site inspection in accordance with its inspection procedures for annual inspections to determine the housing meets the property standards in paragraph (f)(1) of this section; or

(ii) An inspection by another HUD program conducted within the past 3 months under the National Standards for the Condition of HUD housing (24 CFR part 5, subpart G) or an