DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 92

[Docket No. FR–5563–P–01]

RIN 2501–AC94

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

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

ACTION: Proposed rule.

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

DATES: *Comment Due Date:* February 14, 2012

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. 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.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://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 them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7164, Washington, DC 20410; telephone number (202) 708–2684 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The HOME Program

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

The HOME program is the largest federal block grant to States and local governments that is designed exclusively to create affordable housing for low-income households. Each year, the program allocates approximately $1 to $2 billion among the states and hundreds of localities nationwide. The program was designed to reinforce several important values and principles of community development. First, the HOME program's flexibility 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-based nonprofit housing groups helps to build the capacity of these partners. 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.

The regulations for the HOME program are codified in 24 CFR part 92 and were last substantively revised by final rule issued on September 16, 1996 (61 FR 48750). In the 15 years since the promulgation of the 1996 final rule, many HOME participating jurisdictions have adopted more complex program designs. They have encountered new challenges in administering their programs and in managing their growing portfolios of older HOME projects. These challenges include reduced availability of states or local funding sources, reduced private lending, changes in housing property standards, and energy codes and reductions in states and local government workforces throughout the Nation. These challenges have been magnified by current housing and credit market conditions. Since establishment of the HOME program, HUD has monitored participating

jurisdictions' use of HOME funds and measured participating jurisdictions' performance. Through such monitoring and audits by HUD's Office of Inspector General (OIG), HUD has identified and corrected compliance problems and has gained a fuller understanding of regulatory provisions that need to be strengthened or clarified to help avoid noncompliance and maximize effectiveness.

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

Accordingly, through this rule, HUD proposes regulatory changes to address many of the operational challenges facing participating jurisdictions, improve understanding of HOME program requirements, update property standards to which housing funded by HOME funds must adhere, and strengthen participating jurisdictions' accountability for both compliance with program requirements and performance.

II. This Proposed Rule

A. Changes to HUD's Consolidated Plan Regulations

Action Plan Amendments (§§ 91.220, 91.320)

This proposed rule would make several changes to the action plan sections of HUD's Consolidated Plan regulations in 24 CFR part 91, as well as those in HUD's HOME program regulations in 24 CFR part 92.

Sections 91.220(l)(i) and (ii) of the Consolidated Plan regulations and §§ 92.205(b) and 92.254(a)(5) of the HOME program regulations would be revised to clarify that HUD's approval (or failure to disapprove) a consolidated plan does not automatically approve forms of investment of HOME funds other than those described in § 92.205(b), or of resale or recapture guidelines submitted by the participating jurisdiction. Because the HOME regulations at § 92.205(b)(1) require that HUD determine that other forms of investment proposed by a participating jurisdiction be consistent with the purposes of 24 CFR part 92, the other forms of investment must be approved in writing by HUD separate from the consolidated plan approval letter. The consistency of other forms of investment with HOME program purposes is not indirectly established simply by HUD's approval of a consolidated plan that proposes such other forms of investment.

This proposed rule also amends § 91.220 to provide participating jurisdictions with some flexibility in determining the maximum purchase price for single family housing assisted with HOME funds for homebuyer assistance or rehabilitation of owner-occupied single family housing. Section 215(b) of NAHA requires that the value of homeownership units assisted with HOME funds not exceed 95 percent of the area median purchase price for single family housing, as determined by HUD. HUD's current regulations at § 92.254(a)(2)(iii) permits participating jurisdictions to use the single family mortgage limits of the Federal Housing Administration (FHA) that are established under section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) to determine the area median purchase price. The proposed rule would provide that a participating jurisdiction that opts not to use the HUD-issued 95 percent of median purchase price for the purpose of determining "modest housing" for homebuyer assistance or rehabilitation of owner-occupied single family properties may instead calculate a limit based upon recent sales within the jurisdiction. The current regulations at 24 CFR 92.254(a)(2)(ii) require these participating jurisdictions to submit the limit and supporting sales price documentation to HUD. However, the regulations do not specify that this information be submitted as part of the consolidated plan annual action plan, making it possible for the participating jurisdiction to submit new limits at any point in its program year. HUD has concluded that it is most appropriate for this calculation to be just prior to the start of, and for the resulting value limit to be made applicable to, a participating jurisdiction's program year. Consequently, HUD proposes to amend §§ 91.220(l)(2)(iv) and 91.320(k)(2)(iv) to require such a participating jurisdiction to include in its action plan its calculation of 95 percent of the median area purchase, in accordance with the criteria and formula provided in § 92.254(a)(2)(iii).

The proposed rule would require participating jurisdictions to include more information about the expenditure of HOME program funds in their action plans. The inclusion of more information about the participating jurisdiction's planned expenditure of HOME funds not only assists HUD in its monitoring of the jurisdiction's expenditure of taxpayers' funds, but allows the citizens of the jurisdiction to weigh in with their views on the proposed expenditures as part of citizens' participation in the development and review of the consolidated plan. For example, the participating jurisdiction would be required under §§ 91.220(l)(2)(v) and 91.320(k)(2)(v) to describe the applicants that are eligible to apply for the HOME program, as well as the jurisdiction's process for soliciting and funding applications or proposals. Sections 91.220(l)(2)(vi) and 91.320(k)(2)(vi) of the proposed rule would also permit the participating jurisdiction to limit the beneficiaries or give preferences in its programs to a particular segment of the low-income population.

Participating jurisdictions have asked if they could limit rental projects to artists or nurses, or if they could limit a homebuyer program to persons in a specific occupation (*e.g.*, artists, police officers, or teachers). Under HUD's authority to determine appropriate categories of persons to be targeted for housing assistance under the HOME program, the proposed rule would expressly permit these limitations. However, a participating jurisdiction would not be permitted to limit participation in a HOME-funded program or occupancy in a HOME-assisted project solely to its own employees of the jurisdiction because doing so would create at least the appearance of a conflict of interest and would require that the participating jurisdiction seek an exception to the conflict-of-interest provisions pursuant to 24 CFR 92.356(d) for every potential beneficiary. A rental project could be limited to a particular subpopulation only if the jurisdiction described the limitation or preference in its action plan, and specifically authorized the project owner to limit tenant selection in its written agreement with the owner, in accordance with the proposed revisions at § 92.253(d). A limitation or preference must not violate such nondiscrimination laws as the Fair Housing Act (42 U.S.C. 3601–19), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d–4) (Nondiscrimination in Federally Assisted Programs), the Age Discrimination Act (42 U.S.C. 6101–6107), section 504 of the Rehabilitation

Act of 1973 (29 U.S.C. 794), and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), and the implementing regulations of these statutes.

B. Changes to the HOME Program Regulations

1. Definitions (§ 92.2)

For the convenience in use of the HOME program regulations, HUD proposes to add cross-references for the definitions of "public housing," "Community Development Block Grant (CDBG) program," and "Consolidated Plan" in § 92.2. These terms are used in the HOME regulations, and HUD determined that it would be helpful to readers to include cross-references to where these terms are defined in HUD regulations.

Commitment. HUD proposes to make several changes to the definition of "commitment" in § 92.2. This term is currently defined to mean, generally, 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.

First, a revision is proposed to include an agreement with a state recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to provide downpayment assistance. Participating jurisdictions commonly fund such entities to produce affordable housing, provide downpayment assistance, or administer a tenant-based rental assistance program, but the regulation did not expressly include them in the definition of "commitment."

Second, the definition of commitment is being revised to remove references to reserving funds to community housing development organizations (CHDOs), so that such reservations, which are not project-specific, would no longer be considered a commitment under the HOME regulation. This change is discussed further below with other proposed changes affecting funding for CHDOs under subpart G of the HOME program regulations.

HUD has encountered situations in which participating jurisdictions have produced agreements without dated signatures as evidence of a commitment before the 24-month deadline. The HOME statute and regulations require HOME funds to be committed within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement. The lack of a dated signature calls into question when the commitment was made, therefore making it difficult to determine whether the funds have been committed within the 24-month deadline. Accordingly, the definition of "commitment" is proposed to be amended to require that the signature of each party to the agreement must be dated. The definition is also proposed to be amended to include a cross-reference to the requirements for written agreements in § 92.504(c), which will help ensure that the agreements evidencing commitment meet the standards for written agreements as provided in § 92.504(c).

HUD further proposes to revise the definition of "commitment" to expressly exclude: (1) An agreement between a participating jurisdiction and a subrecipient that the participating jurisdiction controls, *e.g.,* an agency whose officials or employees are officials or employees of the participating jurisdiction, and (2) an agreement between the jurisdiction that is the lead member of the consortium and local government that is a member of the consortium. The existing definition provides that a commitment is a legally binding agreement between the participating jurisdiction and another entity to provide funds to undertake specified HOME activities. In both of these instances, the participating jurisdiction is essentially entering into an agreement not with a separate entity, but with an entity that is part of the participating jurisdiction, such that a legally binding agreement with another entity is not created.

Community housing development organization. The definition of "community housing development organization" (CHDO) in § 92.2 would be amended to add a reference to the Internal Revenue Service (IRS) regulations that implement section 501(c)(4) of the Internal Revenue Code, which was inadvertently omitted from the regulation.

The CHDO definition is also proposed to be revised to clarify the relationship between the CHDO and the organization that may create the CHDO. New paragraph (3)(iv) of the definition would clarify that if a for-profit entity creates or sponsors a nonprofit entity that seeks designation as a CHDO, the officers and employees of the for-profit entity would be prohibited from serving as officers or employees of the CHDO, and the nonprofit entity would be prohibited from using the office space of the for-profit entity. This requirement would add to the existing regulatory provisions that are intended to prevent the nonprofit entity from being influenced by the profit motive of the for-profit entity.

The proposed rule would also revise paragraph (5) of the definition to clarify that the CHDO must be separate from and not under the control of a governmental entity, in keeping with the statutory requirement that a CHDO maintain accountability to the low-income community it serves through its governing board make-up and otherwise. A governmental entity would still be permitted to create a CHDO, but it would not be permitted to control the CHDO by providing its employees to the CHDO as staff or officers.

Paragraph (9) of the existing definition of CHDO at § 92.2 permits a nonprofit organization to meet the demonstrated capacity requirement for CHDO designation if the organization has engaged a consultant who will carry out activities while also training key CHDO staff. This provision was intended to facilitate capacity building of community-based nonprofit organizations transitioning into the role of housing developer. HUD is concerned that some CHDOs have continued to rely on the use of expert consultants for core development experience and have not developed the internal capacity to function effectively in the developer role. This proposed rule would revise paragraph (9) of the definition to strengthen the requirement that CHDOs must have paid employee staff with housing development experience in order to be designated as a CHDO. Nonprofit organizations would no longer be able to meet the demonstrated capacity requirement through the use of consultants and through a plan for staff to be trained by the consultants.

The proposed rule would also provide that the demonstrated capacity requirement cannot be met through the use of volunteers. The continued use of consultants or volunteers to fill occasional skill gaps or undertake activities that are required only on a periodic basis (*e.g.,* project underwriting) continues to be appropriate, but cannot be the basis of a determination that a CHDO has demonstrated capacity to develop affordable housing.

Homeownership. The proposed rule would rearrange existing provisions in the definition of "homeownership" in § 92.2 for improved organization of the definition. In addition, the revised definition would provide that a right to possession under a contract for deed, installment contract, or land sales contract (pursuant to which the deed is not given until the final payment is made) is not homeownership. These mechanisms, which are common in

certain areas of the country, are financing arrangements through which interested homebuyers enter into a payment arrangement directly with the seller. In most cases, there is no language in the contract protecting the homebuyer in the event of a late or missed payment. Whereas mortgage principal payments increase the homeowner's equity in the property over time, and the title is transferred to the homebuyer at the closing, payments made under a land sales contract arrangement typically do not constitute equity, and the title is not required to be transferred to the homebuyer until the very last payment has been made. Even in states that have statutes recognizing the equitable interest of the homebuyer, the protections given to homebuyers under these financing mechanisms are not equal to those given to homebuyers who receive title to the housing and finance the purchase through a mortgage. For these reasons, land sales contracts are not considered to be an eligible form of homeownership under the HOME program. HUD encourages the use of HOME funds to assist low-income households who have entered into a contract for deed to obtain equitable title to the property.

The definition of "homeownership" would also be revised to make explicit that mutual or cooperative housing that receives assistance through a Low-Income Housing Tax Credit (LIHTC) program is not considered homeownership housing under the HOME program because a project receiving LIHTC is a rental project.

Housing. HUD proposes to amend the definition of "housing" in § 92.2 to exclude all student housing. The current regulations exclude only student dormitories. However, the use of HOME funds for student housing in any configuration, is inconsistent with the statutory purposes of the program. The focus of the HOME program is affordable housing for low-income households, and student housing, regardless of the configuration, does not constitute affordable housing for low-income households as contemplated by the HOME statute. In addition, the proposed rule would amend the definition to clarify that dormitories, including those for farmworkers, do not constitute housing.

With respect to what constitutes housing under the HOME program, HUD has encountered cases where participating jurisdictions have proposed to use HOME funds for buildings considered to be housing by the participating jurisdiction, but that do not constitute housing under the HOME program. Examples of such uses are hospice buildings, nursing homes, foster homes, halfway houses, and residential treatment facilities. HUD emphasizes that the mere fact that a building physically resembles housing or that a person lives in a building for some period of time does not qualify that building as housing for HOME program purposes. The use of HOME funds is statutorily limited to permanent and transitional housing. No HOME funds may be used for any activity that does not qualify as permanent or transitional housing. One indication that the building is a facility, not housing, is the lack of a lease for the residents. All HOME-assisted rental housing units must have leases for the tenants that provide the HOME tenant protections outlined in § 92.253(a).

Low-income families and very low-income families. HUD proposes to revise the definition of "low-income families" and "very low-income families" in § 92.2 to exclude students from qualifying as a low-income or very low-income family. Specifically, the regulation would be revised to be consistent with recent statutory changes to the Housing Choice Voucher program, which prohibit voucher assistance to individuals who are enrolled in an institution of higher learning from qualifying as a low-income family if the individual is under 24 years of age, is not a military veteran, is unmarried, does not have a dependent child, and is not otherwise individually low-income or does not have parents who are low-income.[1] This statutory change was made to the Housing Choice Voucher program in response to incidents of college students who were obtaining federal housing assistance but did not meet the low-income eligibility requirements, and were therefore depriving eligible families from receiving voucher assistance. Adoption, in the HOME program, of the exclusion of assistance to students would achieve the same goals as those for which the prohibition was put in place in the Housing Choice Voucher program. Accordingly, in the HOME program, students would be prohibited from renting HOME-assisted rental units, receiving HOME tenant-based rental assistance, or otherwise participating in the HOME program independent of their families.

Project completion. HUD proposes to amend the definition of "project completion" in § 92.2 to clarify the conditions that must be met for projects to be considered completed. This change is made in response to questions from participating jurisdictions regarding the point at which they can complete a project in the Integrated Disbursement and Information System (IDIS), the HOME data system. For example, the rule will make clear that a rental project may be designated as completed in IDIS once construction or rehabilitation is completed, but before all units are occupied.

Program income. HUD proposes to amend the definition of "program income" in § 92.2 to clarify that program income does not include gross income from the use, rental, or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, subrecipient, or state recipient. The existing regulations provide that program includes "gross income from the use or rental of real property, owned by the participating jurisdiction, state recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income. However, gross income does not constitute program income in the case of the use, rental, or sale of real property when the gross income is that received by the project owner, developer, or sponsor. Owners, developers, and sponsors of housing are not the participating jurisdiction, a state recipient, or a subrecipient administering all or a portion of the participating jurisdiction's HOME program. Consequently, gross income received by these entities is not program income by the terms of the existing definition.

Reconstruction. The definition of "reconstruction" at § 92.2 is proposed to be amended, based on difficulties encountered by participating jurisdictions attempting to rebuild housing after disasters. The current regulations state that housing can be rebuilt under the reconstruction category only if the housing was standing on the site at the time of project commitment. In the case of disasters or fires, the housing may no longer be standing on the site at the time when the opportunity for project commitment arises. Consequently, the current regulations require such reconstructed units to be classified as new construction, resulting in longer periods of affordability for rental projects and the imposition of resale or recapture provisions on displaced owner-occupants.

[1] HUD's Housing Choice Voucher Program regulations were amended by final rule published on December 30, 2005 (70 FR 57743, as subsequently amended on August 21, 2008 at 73 FR 49333), which implemented this prohibition assistance, and which is codified at 24 CFR 5.612.

HUD proposes to provide an exception to the reconstruction requirement that the housing must be standing on a site at the time of project commitment. The exception would permit housing that was destroyed or severely damaged and subsequently demolished to be rebuilt on the same lot under the reconstruction category, if the HOME funds are committed within 12 months of the date of destruction or damage. The one-year period for committing HOME funds to reconstruct a destroyed property by a disaster will provide sufficient flexibility to respond effectively to most natural disasters or fires. This period could be extended by waiver for good cause if the circumstances or scale of a particular disaster make the proposed time frames infeasible.

Single room occupancy. The definition of "single room occupancy (SRO)" housing in § 92.2 is proposed to be revised. The HOME regulations provide participating jurisdictions with flexibility with respect to classifying a property as a SRO project or a group home, depending on the physical configuration of the project. Classifying a project as a SRO results in larger potential subsidies and higher gross rent than could be obtained under a group home designation, because the SRO contains more than one unit and a group home is only one unit. However, some participating jurisdictions fail to take their own zoning and building code classifications into account when making this determination for HOME. This rule proposes to require that a project could be designated as an SRO for HOME purposes only if a project having the characteristics of an SRO would be consistent with the participating jurisdiction's applicable building and zoning code classifications.

Subrecipient. HUD proposes to make minor revisions to the definition of "subrecipient" in § 92.2. Participating jurisdictions have stated that the roles of subrecipients and developers in the HOME program are not always clearly distinguished. Language is therefore proposed to be added to the definition of "subrecipient" that would state that HOME subrecipients receive funds to carry out *programs* (*e.g.,* downpayment assistance programs, owner-occupied rehabilitation programs, etc.), not to undertake specific *projects.*

2. Program Requirements

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

Section 218(a) of the NAHA (42 U.S.C. 12748(a)) prohibits a participating jurisdiction from investing HOME funds in projects outside its boundaries, except for projects located in a contiguous jurisdiction that are joint projects that serve the residents of both jurisdictions. HUD has found that participating jurisdictions would be aided by HUD elaborating on what it means to jointly fund a project. HUD therefore proposes to revise § 92.201 to provide that a jointly funded project is one in which both jurisdictions make a financial contribution to the project. A financial contribution would be permitted to take the form of a grant, loan, or relief of a significant tax or fee (such as waiver of impact fees, property taxes, or other taxes or fees customarily imposed on projects within the jurisdiction) and must contribute to the feasibility of the project.

b. Site and Neighborhood Standards (§ 92.202)

This proposed rule includes a conforming change that would update the citation in § 92.202 to the site and neighborhoods regulations, which were moved to 24 CFR 983.57(e)(2) and (3).

c. Income Determinations (§ 92.203)

HUD proposes several changes related to the calculation of the annual income of a family or household for the purpose of determining the family's or household's eligibility for HOME assistance. HUD proposes to revise § 92.203(a)(1)(i) and (a)(2) to require that, when performing income determinations for potential HOME beneficiaries using source documentation, the participating jurisdiction must examine at least 3 months of earning documentation (*e.g.,* wage statements, interest statements, unemployment compensation). This change would codify the existing standard that is already outlined in the *Technical Guide for Determining Income and Allowances for the HOME Program.* This guide allows participating jurisdictions to calculate income eligibility by examining earnings over a 3-month period or 12-month period. While participating jurisdictions would continue to be allowed to select an earnings examination period of more than 3 months, HUD proposes to codify the 3-month standard as the minimum earnings examination period that participating jurisdictions must utilize. A minimum examination period of 3 months should be sufficient to accurately reflect the income eligibility of applicants for HOME units.

HUD proposes to revise § 92.203(b)(2) to eliminate the option currently available to participating jurisdictions to use the definition of "annual income" that is based on income reported on the Census long form. (See Form D–61B of the U.S. Census Bureau.) This option was rarely used by participating jurisdictions because the other definitions permitted by the regulations—the 24 CFR part 5 "annual income" definition and the Internal Revenue Service (IRS) "adjusted gross income" definition- are broadly used in other housing programs. Further, unlike the other definitions of annual income permitted under the HOME regulations, there is not adequate, accessible guidance available from the U.S. Census Bureau regarding how a wide range of situations that arise for HOME-assisted households should be treated. Participating jurisdictions would continue to have the option of using either the income definition in HUD's regulations at 24 CFR part 5 (often referred to as the Section 8 definition) or the definition of adjusted gross income of the IRS.

HUD is also proposing to revise the definition of annual income that is based on the IRS definition of "adjusted gross income." This definition of annual income would be redesignated as § 92.203(b)(2) and revised to require that federal government cost-of-living allowances that are not included in adjusted gross income (*e.g.,* for a federal civilian employee or a federal court employee who is stationed in Alaska, Hawaii, or outside the United States) be added to the adjusted gross income of applicants for HOME assistance for the purpose of determining income eligibility. Currently, these employees receive substantial cost-of-living allowances that may not be subject to federal tax and may not be included in adjusted gross income. The result is that when participating jurisdictions in these areas use the adjusted gross income definition for their HOME programs, individuals who receive these special federal cost of living allowances may earn an actual income in excess of HUD's income limits and still qualify for HOME assistance, while other potential applicants for HOME assistance who have lower actual incomes are not qualified to participate in the program because their incomes exceed the maximum income limits for HOME. This proposed change would ensure that HOME assistance is targeted to households that are actually low-income and eliminate the potential for disparate treatment of federal and nonfederal workers in these areas.

HUD proposes to revise § 92.203(c) to clarify that a participating jurisdiction must designate and implement only one definition of income for each HOME-

assisted program (*e.g.,* downpayment assistance program, rental housing program) that it administers. For example, a participating jurisdiction may designate the IRS-adjusted gross income definition as the definition for its downpayment assistance program. The participating jurisdiction would be required to use that definition to determine the income-eligibility of each applicant for that program, to ensure equitable treatment of all applicants. The designation of the IRS adjusted gross income definition for its downpayment assistance program would not preclude the participating jurisdiction from designating a different income definition for another of its HOME-funded programs (*e.g.,* the participating jurisdiction could designate the Part 5 annual income definition for its rental housing or tenant-based rental assistance program). The revision would help to ensure that all applicants for a local HOME-funded program are treated equally.

HUD proposes to revise § 92.203(d)(1) to clarify the applicability of annual income determination requirements to households that include nonrelated individuals. The existing regulatory provision requires that the determination of annual income include income from "all family members." Participating jurisdictions have asked HUD how to handle the income determinations for households that are composed of nonrelated individuals or related individuals and one or more nonrelated individuals. HUD therefore proposes to update § 92.203(d)(1) to provide that the determination of annual income includes "all persons in the household."

d. Eligible Activities: General (§ 92.205)

HUD is proposing to revise several provisions of § 92.205.

The proposed rule would add language to paragraph (a)(1) to clarify that activities and costs are eligible for HOME funding only if the housing meets the property standards in § 92.251 upon project completion.

Paragraph (a)(2) of § 92.205 would be revised to specify that the acquisition of vacant land or demolition with HOME funds may be undertaken only with respect to a particular affordable housing project for which construction can reasonably be expected to start within the time frames established in paragraph (2) of the definition of "commitment" in § 92.2. Referring to these time frames for commencement of construction in the paragraph establishing the acquisition of land or demolition of existing structures to facilitate development on land as eligible project costs will improve the clarity of the regulation and emphasize that HOME funds may not be used to acquire property or demolish structures on land for which there is not an immediate planned HOME-eligible use.

HUD is aware of some situations in which a participating jurisdiction determined, after completion of a HOME rental project, that the presence of a live-in manager would improve living conditions in a project or benefit tenants in service-enriched housing. In most rental projects, not all the units in the project are designated as HOME-assisted, so designating a non-HOME unit as a manager's unit is a simple matter. However, the existing HOME regulations do not contemplate a situation in which a participating jurisdiction has designated all the units in a project as HOME-assisted and subsequently determines that there is a need for a live-in manager. To address such situations, HUD proposes to revise paragraph (d) of § 92.205, which addresses cost allocation and the designation of HOME-assisted units in multi-unit projects, to provide that after project completion, the number of HOME-assisted units in a project may be reduced only in accordance with the new regulatory provisions on troubled projects in § 92.210. However, this paragraph, as revised, would permit, in a project consisting of all HOME units, one unit to be converted to an on-site manager's unit if the participating jurisdiction determines the conversion will contribute to the stability of the housing or effectiveness of the housing program and that, notwithstanding the loss of one HOME-assisted unit, the costs charged to the HOME program do not exceed the actual costs of the HOME-assisted units, and the total HOME investment to the project would not exceed the maximum per-unit HOME subsidy limit established in § 92.250(a) for the number of HOME-assisted units.

Costs paid with HOME funds are eligible only if they result in a completed HOME project that meets all applicable HOME requirements (*e.g.,* affordability provisions, income targeting, property standards, etc.). When HOME funds are expended for projects that are not completed, for whatever reason, the project is considered terminated before completion and the participating jurisdiction must repay the HOME funds. HUD proposes to add language to paragraph (e) of § 92.205 regarding terminated projects to better highlight the relationship of the repayment requirements of § 92.503 to terminated projects in § 92.205(e).

In addition, the proposed changes to § 92.205(e) would also provide that projects that are not completed within 4 years from the date of project commitment are deemed terminated and that the participating jurisdiction must repay the funds. When committing HOME funds to a project, the participating jurisdiction must have a reasonable expectation that construction on the project will begin within 12 months. Since large, multi-phase projects are usually funded as several separate projects for HOME purposes, most HOME projects should be completed within 4 years after the date of commitment. HUD's experience is that construction on large multi-unit properties typically is completed within 2 to 3 years, barring unusual circumstances. In the event that a project is not completed within these time frames, the participating jurisdiction may request a 12-month extension of the completion deadline by submitting information about the status of the project, steps being taken to overcome any obstacles to completion, proof of adequate funding to complete the project, and a schedule with milestones for completion of the project for HUD's review and approval.

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

HUD proposes to revise § 92.206(a) to replace the term "housing" with the term "project" in several sections of the HOME program regulations. While NAHA uses "housing" throughout, HUD, participating jurisdictions, and other HOME program practitioners generally use the term "project" or "HOME-assisted project."

HUD also proposes to revise § 92.206(b)(1) to emphasize that it is rehabilitation, rather than refinancing, which is the primary activity that makes refinancing an eligible cost under the HOME program. This rule adds language to § 92.206(b)(1) to condition refinancing as an eligible cost to projects in which the cost of the actual rehabilitation is greater than the amount of debt that is refinanced with HOME funds.

HUD proposes to amend § 92.206(b)(2) to allow that the eligibility of costs of refinancing existing debt under paragraph (b)(2), as well as the requirement for participating jurisdictions to adopt accompanying refinancing guidelines, are intended to cover all rental housing—multifamily and single family. The existing language referenced only multifamily housing, necessitating a waiver of the regulation in one instance when a participating

jurisdiction wanted to provide HOME funds to refinance single family rental housing as part of a rehabilitation project.

HUD proposes to revise § 92.206(d)(1) to permit HOME funds to be used to pay for architectural and engineering costs and other related professional services that were incurred within 18 months of the date that HOME funds were committed to the project, provided that the HOME written agreement with the project owner authorizes such use of funds. Participating jurisdictions frequently have requested clarification on the eligibility of soft costs incurred prior to commitment of HOME funds. Permitting predevelopment costs incurred before commitment of HOME funds will provide increased flexibility to participating jurisdictions and affordable housing developers planning a project that is intended to eventually receive HOME financing. The revision would also permit participating jurisdictions to reimburse these costs for projects that are already under construction when it becomes clear that HOME financing is necessary to complete the project. In addition, HUD revises § 92.206(d)(3) to make clear that energy audits are an eligible project-related soft cost. Note that the environmental review requirements must be met before HOME funds are committed to the project. Pursuant to HUD's regulations in 24 CFR 58.22, in instances where a developer applies for HOME funds after construction has begun, construction activities must cease and may not resume until environmental clearance is obtained. The change would not permit HOME funds to reimburse developers for acquisition or construction costs incurred before HOME funds were committed to the project. HUD is proposing that the reimbursement of soft costs be limited to costs incurred during the 18-month period before commitment of HOME funds to a project, to ensure that the costs are associated with HOME funds and not previously planned activities on the site.

HUD proposes to amend § 92.206(d)(3) to provide that eligible costs of a project audit include the cost of certification of costs performed by a certified public accountant.

HUD proposes to amend §§ 92.206(d)(6) and 92.207(b), both of which address staff and overhead costs, to prohibit participating jurisdictions, state recipients, and subrecipients from charging their administrative costs to low-income beneficiaries. HUD has encountered cases in which low-income families are being charged construction management fees, loan processing fees, loan servicing fees, and underwriting fees. For example, participating jurisdictions have been found to be charging construction management fees as high as several thousand dollars per unit to low-income homeowners participating in owner-occupied rehabilitation programs. These fees are sometimes added to amortizing loans, increasing the monthly payment of low-income beneficiaries. Such costs are administrative costs of the participating jurisdiction, state recipient, or subrecipient and can be charged as either program administrative costs or project-related soft costs, without the costs being passed on to low-income beneficiaries. It is inappropriate to pass such program administration costs along to low-income beneficiaries, and this change would prohibit the practice.

Note, however, that participating jurisdictions, state recipients, and subrecipients would not be prohibited from charging reasonable and customary fees commonly charged to a loan applicant in unassisted real estate transactions, such as the cost of credit reports and appraisals fees that are customarily charged by a lender as part of a home purchase and paid to third parties performing services on behalf of the lender. Program participants, including project owners, would still be permitted to charge nominal application fees to applicants for assistance, pursuant to § 92.214(b).

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

Under § 92.208, as currently codified, a participating jurisdiction may use up to 5 percent of its fiscal year HOME allocation for operating expenses of CHDOs. HUD is proposing to add language to § 92.208 to clarify that CHDO operating funds are separate from and not intended to supplant CHDO set-aside funds provided under § 92.300(a). HUD has found that some participating jurisdictions have awarded operating funds, which the regulation states are to cover general operating costs such as office rents and utilities, staff salaries, and insurance, to CHDOs to pay for project-related soft costs such as architectural or engineering costs or in lieu of developer's fees. Such costs are eligible to be paid with CHDO set-aside funds.

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

HUD proposes several amendments to the tenant-based rental assistance provisions of § 92.209. Language would be added to § 92.209(a) to expressly state that payment of utility deposits is an eligible HOME cost in conjunction with the provision of HOME tenant-based rental assistance or security deposit assistance. HOME funds would not be permitted to be used for programs that provide only utility deposit assistance, since such assistance does not constitute tenant-based rental assistance. This prohibition is consistent with longstanding HUD policy, but the current regulation does not state that utility deposits in connection with rental assistance or security deposit assistance are eligible costs.

HUD proposes to add language to § 92.209(c) to clarify that a participating jurisdiction's tenant selection policies and criteria must be based on local housing needs and priorities consistent with the participating jurisdiction's consolidated plan. This is consistent with the requirement in § 91.325(d)(1) that a participating jurisdiction that plans to use HOME funds for tenant-based rental assistance must certify that the tenant-based rental assistance is an essential part of its consolidated plan.

HUD proposes to revise § 92.209(c)(2) to add provisions on using HOME funds to target tenant-based assistance to special needs populations and to persons with disabilities. The rule would clarify that a participating jurisdiction may establish a preference for individuals with special needs (*e.g.*, homeless persons or elderly persons) or persons with disabilities. In accordance with the existing provision in § 92.209(c)(2)(ii), the participating jurisdiction may provide a preference for a specific category of individuals with disabilities (*e.g.*, persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons. This proposed rule would add a provision at § 92.209(c)(2)(i) to specify that participation may be limited to persons with a specific disability if doing so is necessary to provide housing, aid, benefit, or services that are as effective as those provided to others, in accordance with the provisions in 24 CFR 8.4(b)(1)(iv). A participating jurisdiction may not require participation in medical or disability-related services as a condition of receiving or continuing to receive HOME-funded tenant-based rental assistance.

HUD is also proposing to add new paragraphs (c)(2)(iii) and (iv) to § 92.209

to specifically address the use of HOME tenant-based rental assistance in self-sufficiency and homeownership programs. (Existing paragraph (c)(2)(iii) would be redesignated paragraph (c)(2)(v) and revised as discussed below.) Program policy relating to these types of programs has been part of HUD's administrative guidance on the program for many years, and the proposed provision would not depart from that administrative guidance.

A participating jurisdiction may use HOME tenant-based rental assistance to administer a self-sufficiency program in which the family is required to participate as a condition of selection for tenant-based rental assistance. Participating jurisdictions may not require persons with disabilities to participate in medical or disability-related services as a part of a self-sufficiency program under which HOME funds are provided for tenant-based rental assistance. The family's failure to continue participation in the self-sufficiency program would not be permitted as a basis for terminating the assistance, but renewal of the assistance would be permitted to be conditioned on participation in the program. Most tenant-based rental assistance contracts have a 2-year term. However, shorter terms can be established.

The new paragraphs to be added would provide that the participating jurisdiction may select tenants to participate in a lease-purchase homebuyer program. The HOME tenant-based rental assistance payment would not be permitted to be used to accumulate a downpayment or closing costs for the purchase. The HOME tenant-based rental assistance payment must be used for the monthly rental payment. However, all or a portion of the homebuyer-tenant's own monthly contribution toward rent could be set aside for this purpose.

An additional provision would be added to redesignated § 92.209(c)(2)(v), to specifically prohibit the exclusion of persons who are given preferences for HOME assistance from participating in any other program of the jurisdiction.

Section 92.209(g) would be revised to make explicit that all tenants must have a lease and that the lease must comply with the requirements that are already cross-referenced in the existing provision.

Section § 92.209(h) would be revised to replace the existing description of one alternative for establishing the amount of rent for a unit with a cross-reference to the regulations in 24 CFR part 982, which govern the Section 8 Housing Choice Voucher program.

Finally, a technical change would be made to § 92.209(l) to clarify that the provision applies whenever Section 8 assistance becomes available, rather than just when it becomes available "to a participating jurisdiction."

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

HUD proposes to add a new § 92.210 to the HOME regulations to establish provisions that would be applicable to the efforts of participating jurisdictions to preserve HOME-assisted housing projects that have become financially unviable and, as a result, are at risk of failure or foreclosure. HUD has provided expert work-out technical assistance to a number of participating jurisdictions with projects that became troubled due to excessive debt, unsustainably high operating costs, poor physical conditions, or weak market conditions, and that were then able to avert foreclosure and were returned to financial viability. These workouts involved restructuring of private debt, investment of additional owner equity, and altering the terms of existing HOME financing. Some cases also often required HUD to grant waivers to permit the investment of additional HOME funds during the period of affordability or to permit HOME funds to be used to capitalize operating reserves. These changes resulted in the number of HOME-assisted units in a project being preserved. HUD can foresee circumstances where, to preserve financial viability of a project, it may be necessary to reduce the number of HOME-assisted units in projects in which more than the minimum number of units required under § 92.205(d) were designated as HOME-assisted or to reduce a period of affordability that exceeded the minimum period required pursuant to § 92.252(e).

New § 92.210 would provide participating jurisdictions with flexibility to assist in averting foreclosures and would enable HUD to approve these actions without the process required to grant waivers, which can be time-consuming. However, new § 92.210 would limit total investment in the project to the maximum per-unit subsidy in § 92.250(a), and would provide HUD with the option of requiring an extension of the period of affordability as a condition of permitting the investment of additional HOME funds in the project. New § 92.210 would also permit a reduction in the number of HOME-assisted units, but only if the project contains more than the minimum number of units required to be designated as HOME-assisted units under § 92.205(d). HUD does not anticipate that it would delegate authority to enter into the required memoranda of agreement or to grant the required approval outside of HUD Headquarters.

i. HOME Funds and Public Housing (§ 92.213)

HUD is proposing to add a new § 92.213 to the HOME regulations to address the use of HOME funds with public housing funds. The use of HOME funds in public housing projects, and, in particular, the use of HOME funds in HOPE VI projects is an area that would benefit from further regulatory elaboration, given that HOME funds and public housing funds are each governed by separate statutes.

NAHA prohibits the use of HOME funds to provide assistance authorized under section 9 of the United States Housing Act of 1937 (Public Housing Capital and Operating Funds). This prohibition is reflected in paragraph (a) of § 92.213, which prohibits the use of HOME funds for public housing modernization or operating assistance. This provision also prohibits a HOME-assisted unit from receiving Operating Fund or Capital Fund assistance under Section 9 during the period of affordability. With respect to the development of new public housing, paragraph (a) also makes clear that HOME funds cannot be used for public housing units, whether funded under section 9 or another source.

Paragraph (b) of § 92.213 establishes an exception to this prohibition that permits the use of HOME funds to develop a unit that receives funds for development under section 24 (HOPE VI), so long as no Capital Funds are used to develop the unit.[2] In projects receiving HOME, HOPE VI, and Capital funds for development of public housing units, this separation of HOME- and HOPE VI-funded public housing units from units receiving Capital Funds under section 9 must be accomplished through the cost allocation process for multi-unit HOME projects that is established at § 92.205(d). Participating jurisdictions should note that, when HOME funds are used in a public housing unit, the HOME rent requirements of § 92.252(a) and (b) apply. Consequently, the gross rent (tenant contribution and operating subsidy) for any public housing unit

[2] The exception to the prohibition on use of HOME funds to develop a unit that receives funds under section 24 of the U.S. Housing Act of 1937 (the section that authorizes the HOPE VI programs) was addressed in a 2002 legal opinion by HUD's Office of General Counsel and such opinion is part of the docket file for this rulemaking, which can be found at *http://www.regulations.gov.*

that receives HOME funds that is occupied by a household with an income above 50 percent of area median income may not exceed the High HOME rent established under § 92.252(a).

The use of HOME funds in a project triggers the requirements of § 92.353(e) (Residential anti-displacement and relocation assistance plan), particularly the requirement for one-for-one replacement of lower-income dwelling units. These requirements, commonly referred to as 104(d) (section 104(d) of the Housing and Community Development Act), are applicable to HOME-funded projects that involve demolition, but not to HOPE VI projects. Consequently, the use of HOME funds in a HOPE VI project may trigger the 104(d) requirements for an entire phase of the project or for all phases of the project.

Paragraph (c) of § 92.213 makes clear that HOME funds may be used to develop or rehabilitate affordable housing units that are not public housing units in projects that also contain public housing units funded by Section 9, HOPE VI, or other funds. Again, the units must be separated through the cost allocation process required under § 92.205(d). In such projects, the HOME and public housing units would have separate waiting lists and rent structures. Note, however, that the residential anti-displacement and relocation assistance plan requirements of § 92.353(e) are applicable to the entire project.

Under the proposed provision, HOME funds would be permitted to be used in a project that also contains public housing units if the HOME funds are not used in the public housing units.

j. Prohibited Activities and Fees (§ 92.214)

HUD is proposing several revisions to § 92.214(b), including restructuring paragraph (b) into two distinct subparagraphs, in order to strengthen and clarify the prohibition against participating jurisdictions and other program participants from charging fees to cover their administrative costs, especially fees charged directly to low-income program beneficiaries. HUD has found participating jurisdictions, state recipients, and subrecipients charging construction management, homebuyer counseling, origination, and similar fees to low-income families seeking HOME assistance, often amounting to several thousand dollars per family. The proposed rule would clarify at § 92.214(b)(1) that these practices are prohibited and would require participating jurisdictions to extend the prohibition to recipients, subrecipients, and program participants.

HUD also proposes to eliminate the prohibition against participating jurisdictions charging fees to cover the cost of their ongoing monitoring and physical inspection of HOME-projects during their period of affordability. The rule would add a new subparagraph at § 92.214(b)(1)(i), creating an exception to the prohibition on participating jurisdictions charging fees to cover administrative costs to permit participating jurisdictions to charge owners of rental projects a reasonable annual fee for compliance monitoring during the period of affordability. HUD recognizes that the cost of ongoing monitoring of HOME-assisted rental projects is not insignificant and that many participating jurisdictions with substantial portfolios of HOME-assisted rental projects must find other sources of funding to cover some of these administrative costs. HUD is proposing to permit participating jurisdictions to charge annual monitoring fees to owners of rental housing projects to which a commitment of HOME funds is made on or after the effective date of a final rule. Imposition of such monitoring fees is standard industry practice in other programs that require ongoing inspections, including in LIHTC programs. Permitting these fees will create an incentive for participating jurisdictions to impose periods of affordability on HOME-assisted projects that are longer than the minimum period required by § 92.252(e) by eliminating the increased financial burden of fulfilling the required monitoring requirements.

In addition, HUD is proposing to clarify at § 92.214(b)(1)(ii) the existing exception for application fees charged by a participating jurisdiction. HUD is aware of cases in which application fees charged by project owners for HOME-assisted rental units were prohibitive such that they created an obstacle to low-income families accessing benefits intended for them. The provision would clarify that application fees must not create an undue impediment to the participation in the participating jurisdiction's program by a low-income family, a jurisdiction, or entity.

A new provision at § 92.214(b)(2) would prohibit owners of HOME-assisted rental projects from charging fees to tenants that are not reasonable or customary. An example of such a fee is a monthly fee for access to pay laundry facilities. There are several proposed exceptions to this prohibition, including reasonable application fees, parking fees in neighborhoods where such fees are customary, and the cost of nonmandatory services such as meal or bus service.

k. Match Credit (§ 92.221)

HUD proposes to add a new paragraph (d) to § 92.221 that would require that any contributions to HOME-assisted or HOME-eligible homeownership projects must be valued not at face value, but by the amount by which they reduced the sales price to the homebuyer. This would ensure that match credit is not provided for the value of contributions that are included in the homebuyer's mortgage (*e.g.*, donated land or appliances).

l. Match Reduction (§ 92.222)

HUD is proposing to revise § 92.222(b), which addresses a request for a reduction of matching requirements in the event of major disaster. The revision would require HUD to consider the extent of a disaster's fiscal impact on a participating jurisdiction in determining whether to grant the reduction, as well as the amount and duration of any match reduction. HUD anticipates that it would develop and issue administrative guidance for determining the appropriate extent of match reduction.

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

This proposed rule would revise § 92.250(a) to clarify that the maximum HOME per-unit subsidy may not be increased above 240 percent of the base limits authorized by section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(iii)). This clarification is necessary because section 221 of the General Provisions of Title II, Division K of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, approved December 26, 2007) increased the maximum exceptions that HUD may grant for the 221(d)(3) mortgage insurance program to up to 315 percent of the base limits. However, section 212(e) of NAHA, which establishes the 221(d)(3) mortgage insurance limits as the per-unit cost limits for HOME-assisted units, was not amended. This section of NAHA permits HUD to adjust the HOME subsidy limit to reflect actual costs up to, but not to exceed, 240 percent of the 221(d)(3) mortgage limit. Consequently, a participating jurisdiction's maximum per-unit subsidy limit for HOME can never exceed 240 percent of the base limits for the 221(d)(3) mortgage insurance program even if the 221(d)(3) mortgage limit approved for the area exceeds that amount.

The current HOME regulations require that participating jurisdictions perform a subsidy layering analysis for any project that receives HOME funding in combination with other public funding sources. HUD proposes to amend § 92.250(b) to require participating jurisdictions to evaluate subsidy layering and conduct or examine the underwriting of all projects. Evaluation of subsidy layering is simply a consideration of whether the combination or total amount of subsidies results in an undue or excessive return to the owners; that is, results in more federal assistance than is needed for a project. However, subsidy evaluation and underwriting of all HOME projects are fundamental to sound program administration and will help ensure cost reasonableness and the long-term viability of HOME-assisted projects. The proposed rule would amend this section by requiring subsidy evaluation and underwriting of all HOME projects, whether or not the project is assisted with other governmental assistance, in order to make a determination regarding the long-term viability of the project, as well as the reasonableness of amount of return to the owner. Participating jurisdictions are expected to incorporate sustainable underwriting practices (*e.g.,* reserves for maintenance and replacement, an analysis of costs and vacancy rates of similar projects in the area, etc.).

HUD also proposes to revise § 92.250(b) to require a participating jurisdiction's underwriting and subsidy layering guidelines to include an assessment of, at minimum, the market conditions of the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer, and firm financial commitments for the project. These practices will enable participating jurisdictions to better target HOME funds to neighborhoods in need of additional affordable housing, determine whether homeownership or rental development is more appropriate to specific neighborhoods, and evaluate the amount of subsidy appropriate to all projects seeking HOME funding.

n. Property Standards (§ 92.251)

HUD is proposing several revisions to the property standards applicable to HOME-assisted properties. Given the various building codes and standards that may apply to HOME-assisted projects, HUD has determined that this regulatory section would benefit from further elaboration. HUD is concerned that there is misunderstanding about the applicability of these codes and standards, which has resulted in participating jurisdictions not ensuring an adequate level of improvements to HOME-assisted rental and homebuyer housing, thus threatening the viability of the project. In addition, many of the codes cited in the existing HOME regulations have been superseded and/or updated. HUD also notes that substantial interest has developed in the housing industry in recent years in improving energy and water efficiency to conserve resources and reduce operating costs. Therefore, HUD will propose new standards for energy and water efficiency in a separate proposed rule. The sections that will cover energy standards have been reserved in § 92.251 of this proposed rule.

The proposed changes to § 92.251 would reorganize the section and create separate requirements for projects involving: (1) New construction in § 92.251(a), and (2) rehabilitation in § 92.251(b). The paragraph on new construction, found in § 92.251(a), would be updated to reflect that the three former model code issuing groups (Building Officials and Code Administrators International, Inc., International Conference of Building Officials, and Southern Building Code Congress International, Inc.) created the International Code Council in 1994 to develop a single set of comprehensive and coordinated national model construction codes. The proposed rule would require that, in the absence of an applicable state or local code for new construction, HOME-assisted projects must meet the International Code Council's International Residential Code or International Building Code, whichever is applicable to the type of housing being developed. It would also continue to include requirements for compliance with lead hazard reduction and accessibility requirements. Participating jurisdictions would be required to have written standards for methods and materials to be used, to conduct inspections to ensure that work is performed in compliance with requirements, and to ensure that progress payments are consistent with the amount of work completed.

The property standard requirements for rehabilitation, which would be in § 92.251(b), are also proposed to be substantially revised. HUD has found that many jurisdictions lack specific rehabilitation codes. In jurisdictions that have rehabilitation codes, the codes frequently do not provide a standard for determining what rehabilitation work is needed, but instead set forth the requirements for methods and materials to be used in rehabilitation work being undertaken. Because there is no published rehabilitation standard that fully meets the goals of the HOME program and there is no "one-size-fits-all" standard that is appropriate to all participating jurisdictions, the proposed rule would require at § 92.251(b) that each participating jurisdiction must establish and comply with its own rehabilitation standards.

These rehabilitation standards would provide the basis for determining what work is needed and, and along with the participating jurisdiction's construction requirements (materials and methods), provide the basis for inspecting the project. Further, to ensure that the housing is free of all known health and safety defects and in good repair, the proposed rule would require that each participating jurisdiction's rehabilitation standards, at a minimum, ensure that, upon project completion, all units would pass an inspection that addresses all of the inspectable items included in the **Federal Register** notice setting forth the Physical Condition Scoring Process under HUD's Uniform Physical Condition Standards (UPCS) for public housing, which is published pursuant to 24 CFR 5.705. See Appendix 1 and Appendix 2 of the notice published November 26, 2001 (66 FR 59084), which is available on HUD's Web site at *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_26169.pdf.* The Uniform Physical Condition Standards, set forth in 24 CFR part 5, subpart G, which includes the inspection procedures in 24 CFR 5.701, have been in place and utilized in the majority of HUD's housing programs, as provided in 24 CFR 5.701, since 1998. This is a process well-familiar to HUD housing providers participating in these programs.

The participating jurisdictions would also be required to specify a useful life for each major system (structural support, roofing, cladding, and weatherproofing (*e.g.,* windows, doors, siding, gutters), plumbing, electrical and heating, ventilation, air conditioning) of rental housing. The amount of HOME funding for rehabilitation activities that is typically required for replacement of major systems requires a minimum affordability period of 15 years (see § 92.252). Under the rehabilitation standards for rental housing, the proposed rule would require that the remaining useful life of each major system be, at a minimum, 15 years after project completion, or the major system must be rehabilitated or replaced to have a minimum useful life of 15 years. In addition to establishing rehabilitation standards, when awarding funds for the rehabilitation of multifamily projects,

the participating jurisdiction must require a capital needs assessment for all multifamily rental projects of 26 total units or more. A capital needs assessment would determine the long-term physical needs of the project.

For owner-occupied housing undergoing rehabilitation with HOME funds, the participating jurisdiction would be required to ensure that each major system have a required remaining useful life of at least 5 years at the time the project is completed; major systems with a useful life of less than 5 years after project completion must be rehabilitated or replaced as part of the rehabilitation activity to meet this requirement. Although periods of affordability are not imposed on owner-occupied units receiving HOME-funded rehabilitation, this requirement would help to ensure housing stability for the low-income household for a period at least equal to the shortest period of affordability imposed on HOME-assisted rental housing or homebuyer housing. Lead-based paint requirements would continue to apply.

Where applicable, the housing would be required to be improved to mitigate the impact of disasters such as earthquake, hurricane, flooding, and fires. A new paragraph, § 92.251(b)(2)(viii) is proposed to clarify that discretionary housing improvements beyond those required to meet property standards may include modest amenities and aesthetic features that are in keeping with housing of similar type in the community and must avoid luxury improvements, such as air-jet tubs, saunas, outdoor spas, and granite countertops, to name a few.

HUD is also concerned that some participating jurisdictions may not be properly inspecting HOME-assisted projects to ensure that the projects are in compliance with property standards. HUD's compliance monitoring has shown that some participating jurisdictions are not performing required inspections or developing work write-ups in connection with HOME-funded rehabilitation. Therefore, HUD also proposes to add new paragraphs to § 92.251(b)(3) and (4) to provide additional detail on required inspections and work write-ups. Currently, participating jurisdictions are required to have written standards for rehabilitation work that prescribe the materials and methods to be used. The new regulatory language would make clear that a participating jurisdiction must inspect the property and prepare a work write-up for the project that describes the work needed to bring the project up to the participating jurisdiction's rehabilitation standards. The participating jurisdiction must have written construction progress inspection procedures (including a description of how and by whom the inspections will be carried out) and detailed inspection checklists reflecting all aspects of the property standards.

HUD has become aware of many rental projects acquired with HOME assistance that were not in good repair at the time of their acquisition and subsequently became physically or financially troubled during the period of affordability required by § 92.252(e). When HOME funds are used to purchase existing rental housing, such housing must be in good condition; otherwise, it must be rehabilitated with HOME funds at the time the project is acquired with HOME funds. In accordance with § 92.214(a)(6), during the period of affordability established in § 92.252(e), additional HOME funds may be expended on a HOME-assisted project only during the first year after project completion. Consequently, it is imperative that HOME-assisted affordable housing be in standard condition at the time of project completion so that its financial viability is not jeopardized.

Section 92.251(c) of the proposed rule would set forth property standards for existing housing in standard condition that is acquired using HOME funds. If the housing was newly constructed or rehabilitated less than one year before HOME funds are used to acquire the housing as rental housing, the housing would be required to meet the property standards in § 92.251(a). Builder warranties typically cover deficiencies during the first 12 months of completion in new construction or rehabilitation projects, and should reasonably be expected to meet the established property standards. The participating jurisdiction would be required to document this compliance based upon a review of approved building plans and Certificates of Occupancy, and a current inspection that is conducted no earlier than 30 days before the commitment of HOME assistance. It is a typical and prudent business practice when acquiring any property, be it market-rate or assisted, to obtain a physical inspection.

Other existing housing that is acquired with HOME funds would be required to meet the requirements of § 92.251(b). The participating jurisdiction would be required to document this compliance based upon a current inspection conducted no earlier than 30 days before the date of commitment of HOME assistance, in accordance with the inspection procedures that the participating jurisdiction established pursuant to this section. Existing housing that does not meet these standards would be required to be rehabilitated.

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

HUD proposes to revise § 92.252 to require that HOME-assisted rental units be occupied by an initial tenant within a specified period from the date of project completion. If units have not been leased to an eligible tenant within that time, HUD will require the participating jurisdiction to provide information about current marketing efforts and, if appropriate, a plan for marketing the unit so that it is leased as quickly as possible. If there is adequate market demand for the unit as indicated by the market assessment proposed to be required pursuant to § 92.250(b) and adequate marketing to the eligible population is undertaken, then a unit should be occupied within a specified period of time from the date of project completion. The proposed rule currently includes a placeholder of what this specified time will be. It will be a period that is no less than 90 days but no more than 6 months. As provided below, HUD is specifically seeking comment on what is an appropriate time period within this range set by HUD. HUD seeks to impose a defined period and not a range as the proposed regulatory text now provides. Whatever the time period established for initial occupancy, if efforts to market the unit are unsuccessful and a unit is not occupied by an initial tenant after 18 months, HUD would require repayment of HOME funds invested in the units.

Specific solicitation of comment. HUD specifically seeks comment on the time frames to be established in its proposal that participating jurisdictions be required to ensure that initial occupancy of a HOME-assisted rental unit occurs following project completion and that they repay HOME funds invested in rental units that have not been initially occupied within 18 months.

HUD proposes several other revisions to § 92.252. A sentence would be added to the introductory paragraph to make explicit that leases are required for all HOME-assisted rental units, consistent with the clarification in § 92.209(g) discussed above. The proposed rule would also incorporate the "High HOME rent" (*i.e.*, "maximum HOME rent") and "Low HOME rent" (*i.e.*, "additional requirements") terminology, which is commonly used by HUD, participating jurisdictions, and other HOME program participants including owners, developers, and property

managers, into paragraphs (a) and (b) for clarity.

Paragraph (a) would be revised to specifically state that HOME rent limits include both rent and utilities or utility allowance.

HUD proposes to add language to paragraph (b)(2) to make clear that participating jurisdictions may designate more than the minimum 20 percent of units in a project as Low HOME rent units. HUD has received many questions from participating jurisdictions and potential owners or developers regarding this issue. This is a common practice in HOME projects, particularly in projects that also receive project-based rental assistance, because it permits the owner to charge project-based assistance rents, which typically exceed both the HOME high and low HOME rents, and makes serving extremely low-income households with HOME funds more economically feasible. In such projects, such as Section 202 projects for the elderly or permanent supportive housing for the homeless, the participating jurisdiction may want to designate all HOME-assisted units as low HOME units to take advantage of project-based rental subsidy to serve an extremely low-income population.

The substance of existing paragraph (c), which addresses initial rent schedules and utility allowances, would be moved to paragraph (d), and redesignated paragraph (d) would be revised to outline the applicable rent limits for Single Room Occupancy (SRO) units assisted with HOME. Recognizing that a zero-bedroom rent was not appropriate for all SROs depending on the amenities located within the unit, HUD established these rent limitations in administrative guidance in 1994.

The High HOME rent for a SRO unit with no sanitary or food preparation facilities or only one of the two is based on 75 percent of a zero-bedroom fair market rent (FMR). Because this rent is already very low, HUD did not apply the Low HOME rent provisions to these units, although the income targeting (20 percent of units occupied by persons with incomes at or below 50 percent of area median income, as determined by HUD) does apply to SRO projects with five or more HOME-assisted units. The High HOME rent for a SRO unit that has both sanitary and food preparation facilities is the zero-bedroom FMR for the area. The Low HOME rent provisions of paragraph (b) apply to these units. HUD proposes to codify this longstanding policy, without change, in the HOME regulations.

Redesignated paragraph (d) would also be revised to specifically reference the HUD Utility Schedule Model. This model was developed by HUD and enables the user to calculate utility schedules by housing type after inputting utility rate information. The IRS uses this model to determine utilities for its LIHTC program. The model can be found at: *http://huduser.org/portal/resources/utilmodel.html.* The provisions on nondiscrimination against rental assistance subsidy holders in existing § 92.252(d) would be moved to § 92.253(d)(4).

HUD is proposing to add a sentence to § 92.252(e) specifically stating that the termination of affordability restrictions under paragraph (e) does not relieve a participating jurisdiction of its repayment obligation for housing that did not remain affordable for the required period under § 92.503(b). To increase local administrative flexibility, this paragraph would also be amended to specifically authorize use agreements to impose affordability restrictions, in addition to those currently included in the regulations (*i.e.,* deed restrictions and covenants running with the land). HUD also proposes to add language clarifying that affordability restrictions must be recorded in accordance with state recordation laws.

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

HUD is proposing to add language to § 92.252(j) to specify that the written agreement between the participating jurisdiction and a project owner must state whether HOME rental units will be fixed or floating during the period of affordability. The existing regulations state that the designation of whether units will be fixed or floating must be made at the time of commitment (*i.e.,* the point at which the written agreement is signed). However, HUD has found that participating jurisdictions are not always documenting the determination or including the specific designation in its written agreement, sometimes resulting in uncertainty among owners.

HUD is proposing to add two new paragraphs to § 92.252 to make the regulations more user-friendly for persons attempting to locate requirements related to rental housing. First, a new § 92.252(k) that cross-references the tenant selection requirements located in § 92.253(d) would be added. Second, a new paragraph (l) would be added to § 92.252 that cross-references participating jurisdictions' ongoing responsibilities for on-site inspections, and financial oversight located in § 92.504(d) would also be added.

p. Tenant Protections and Selection (§ 92.253)

The HOME statute provides for mandatory tenant protections for families occupying HOME-assisted rental housing or receiving HOME-funded tenant-based rental assistance and establishes a minimum lease period. These provisions are promulgated at § 92.253(a) of the existing HOME regulations and are required to be integrated into leases used for HOME-assisted unit or leases executed by recipients of HOME-funded tenant-based rental assistance. Similar to other regulatory changes already discussed in the preamble that emphasize the importance of documenting compliance with HOME program requirements, HUD proposes to revise § 92.253(a) to clarify that there must be a written lease for all HOME-assisted rental units and units rented by HOME tenant-based rental assistance recipients.

HUD proposes a new paragraph § 92.253(b)(9) that would clarify that supportive services related to a disability cannot be mandatory for tenants of HOME-assisted units by adding this prohibition to the list of prohibited lease terms for HOME units. This clarification is consistent with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of disability in federally funded programs and activities and HUD's implementing regulations at 24 CFR part 8. In adding this provision, HUD is better integrating the part 8 requirements into the HOME regulations.

Section 92.253(c) would be revised to provide that a tenant's failure to follow a transitional housing services plan is a permissible basis for terminating a tenancy or refusing to renew a lease. The provision is needed in order to ensure that transitional housing can be

made available to individuals who use the transitional housing for its intended purpose. Section 92.253(c) would be revised to make explicit that increase in a tenant's income does not constitute good cause for termination or refusal to renew. This revision will minimize the possibility that a misunderstanding of the HOME regulations will create disincentives for tenants of HOME-assisted units to increase their incomes for fear of losing their housing.

HUD is proposing to revise § 92.253(d) to address the use of HOME funds for special needs populations, including persons with disabilities. One change would provide that the owner's tenant selection policies must comply with requirements governing how and when HOME funds may be used for special needs populations, and that such policies must limit the housing to low- and very low-income families. The new regulatory provisions would also provide that the owner of HOME-assisted rental housing may limit eligibility or give a preference to a particular segment of the population only if permitted in its written agreement with the participating jurisdiction.

Section 92.253(d)(3)(i) would provide that any limitation or preference must not violate nondiscrimination requirements listed in § 92.350, and would clarify that a limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a federal program that limits eligibility to a particular segment of the population. Examples of such programs include the Housing Opportunity for Persons with AIDS program, HUD's homeless programs, HUD's Section 202 supportive housing for the elderly, and HUD's Section 811 housing for persons with disabilities. Section 92.253(d)(3)(ii) would provide that preferences may be given to disabled families who need services offered at a project, if certain conditions are met. In particular, the preference must be limited to the population of families (including individuals) with disabilities that interfere with their ability to obtain and maintain housing; such families will not be able to obtain and maintain themselves in housing without appropriate supportive services; and such services are provided in a nonsegregated setting.

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

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

As discussed earlier in this preamble, section 215(b) of NAHA requires that the initial purchase price of homeownership units assisted with HOME funds not exceed 95 percent of the area median purchase price for single family housing, as determined by HUD. The existing regulation at § 92.254(a)(2)(iii) permits participating jurisdictions to use the FHA Single Family Mortgage Limits under section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) as the 95 percent of median purchase price or after-rehabilitation value limit for HOME-assisted homeownership housing. The regulation also permits a participating jurisdiction to determine its own 95 percent of area median value limit using a prescribed methodology.

Historically, HUD has based the annual FHA Single Family Mortgage Limits on 95 percent of area median purchase prices, except that there are national floor and ceiling loan amounts for low- and high-cost areas, which are percentages of conforming loan limits. Over time, statutory changes have increased the FHA section 203(b) floor, rendering the section 203(b) limits a less reliable surrogate for participating jurisdictions' 95 percent of area median purchase prices. As a consequence of these changes, HUD issued an interim policy in March 2008, permitting participating jurisdictions to use the Single Family Mortgage Limits issued in February 2008, before the passage of the Economic Stimulus Act, as the 95 percent of area median purchase price limit for HOME-assisted homeownership units until HUD could promulgate regulatory changes. (See *http://www.hud.gov/offices/cpd/affordablehousing/library/homefires/volumes/vol9no3.cfm.*) At the same time, HUD posted the actual 95 percent of median purchase price for each Metropolitan Statistical Area (MSA) and county in the country so that participating jurisdictions could become familiar with the true 95 percent figure for their housing market.

HUD is proposing to revise § 92.254(a)(2)(iii) so that participating jurisdictions would no longer be permitted to use the FHA Single Family Mortgage Limit as a surrogate for 95 percent of area median purchase price. Once the proposed regulatory change is effective, HUD will calculate 95 percent of median purchase price for the area and provide the limits to participating jurisdictions annually. A participating jurisdiction would continue to have the option to determine its own 95 percent of area median value limit using the methodology in the regulation, which remains unchanged.

HUD proposes to make an exception to this limitation for new construction homeownership units, in response to concerns expressed by State participating jurisdictions and nonmetropolitan or rural communities. These communities point out that 95 percent of area median purchase price figures in their communities are extremely low, due to the age, size, and poor condition of their housing stock; the relatively small number of sales of existing housing that take place; and the small number of new housing units that are produced and sold annually.

HUD recognizes that the 95 percent of area median purchase price limits in these areas are so low that imposing them would make construction of new, standard single family units economically infeasible with HOME funds. However, HUD's data also show that the actual 95 percent of area median purchase price in many MSAs, primarily in the Midwest and South, while higher than those in many nonmetropolitan areas, are also too low to make the use of HOME funds for new construction of homeownership units economic. For instance, HUD's 2011, 95 percent of median purchase price figures for Omaha, Nebraska-Council Bluffs, Iowa MSA, Saginaw, Michigan MSA, and Kansas City, Kansas-Kansas City, Missouri MSA, are $60,653, $71,250, and $87,673, respectively. Nationally, there are hundreds of communities in which the use of HOME funds for new construction of homeownership units could be accomplished only through the write-off of large HOME development subsidies by participating jurisdictions. Further, imposition of an artificially low purchase price limit in these areas would result in homebuyers realizing large amounts of unrestricted equity attributable to HOME funds, due to the difference between the actual value of the housing and the purchase price cap.

Section 215(b)(1) of NAHA permits HUD to make adjustments to the 95 percent of the area median purchase price, including "for new and old housing" as the Secretary determines to

be appropriate. Consequently, HUD is proposing to amend § 92.254(a)(2)(iii) to provide an exception to the new HUD-issued 95 percent of median purchase price limits to permit participating jurisdictions to use the greater of the HUD-issued 95 percent of area median purchase price limit or the Bureau of the Census's median sales price for single family houses sold outside of MSA. The Census Bureau produces this figure annually. The 2010 figure, which would apply to the HOME program for 2011 if this proposed provision were in effect, is $179,900.

Specific solicitation of comment. HUD specifically requests comment regarding the use of this figure as the sales price limitation for newly constructed HOME units. Additional information regarding how this figure is derived is available at: *http://www.census.gov/const/www/characteristicsdoc.html#source.* The HUD-issued actual 95 percent of median purchase price limits for all MSAs and counties can be found in column L of the spreadsheet posted at: *http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/maxprice.cfm.*)

HUD is proposing to revise § 92.254(a)(3) to specify that the participating jurisdiction must include the income of all persons residing in the housing when determining the income eligibility of the family. The same change would be made in paragraph (b)(2) of this section for purposes of rehabilitation not involving acquisition. The change would also require the housing to be rented to an eligible tenant in accordance with § 92.252 if the housing were not acquired by an eligible homeowner within 6 months of the date of project completion.

In response to the national foreclosure crisis, HUD is proposing to add several new requirements with respect to HOME-assisted homebuyer programs. These changes are intended to ensure that homebuyers are well-prepared for the responsibilities of homeownership and receive financing that optimizes the sustainability of their homeownership, and to prevent them from becoming targets of predatory lenders as part of the initial purchase or a later refinancing of the housing. Specifically, HUD proposes to revise § 92.254(a)(3) to require that all homebuyers receiving HOME assistance or purchasing units developed with HOME funds receive housing counseling.

A 2008 national study of outcomes for HOME-assisted homebuyers found that 83 percent of participating jurisdictions that provide HOME-funded homeownership assistance also provide homebuyer counseling (see *http://www.huduser.org/portal/publications/hsgfin/addi.html.*) This change would ensure that all HOME-assisted homebuyers receive some counseling before purchasing a home. The counseling could be provided by the participating jurisdiction, an organization under contract to participating jurisdiction, or a qualified third party independent of the participating jurisdiction (*e.g.*, a HUD-approved housing counseling agency). The regulation would not specify the extent of the required counseling, but the counseling should be comprehensive by including post-purchase counseling, if feasible. The Dodd-Frank Wall-Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010) in section 1442 requires HUD to ensure that homeownership counseling provided through any HUD-funded program cover specific topics related to the selection, financing, ownership, and resale of a home. HUD will conduct separate rulemaking to establish the minimum requirements for homebuyer counseling provided in connection with HUD-administered or -funded programs.

A new paragraph (f) would be added to this section requiring participating jurisdictions that use HOME funds for homebuyer assistance to develop and follow written policies for: (1) Underwriting standards for homeownership assistance that take into account housing debt, overall household debt, the appropriateness of the amount of assistance, recurring household expenses, assets available to acquire the housing, and financial resources to sustain homeownership; (2) anti-predatory lending measures; and (3) measures that ensure that the terms of any loans that refinance debt to which HOME loans are subordinated are reasonable.

Section 92.254(a)(5) would be revised to require the participating jurisdiction to obtain HUD's specific approval of its resale and recapture requirements. Section 215(b)(3) of NAHA requires HUD to determine that a participating jurisdiction's resale or recapture provisions are "appropriate" or consistent with HOME statute and regulations. These provisions are currently required to be submitted as part of the participating jurisdiction's annual action plan. HUD has found that participating jurisdictions frequently provide insufficient detail about the proposed resale or recapture provisions to permit HUD to make the required determination or to enable interested citizens to obtain a full understanding of the affordability restrictions to be imposed on the homebuyer program. Requiring that HUD issue specific, written approval of resale or recapture provisions, as opposed to an implicit approval as part of the consolidated plan or annual action plan approval, will emphasize that the participating jurisdiction is submitting the provisions for HUD's approval and must provide sufficient detail to enable HUD to assess their appropriateness.

The proposed rule would also amend § 92.254(a)(5)(i) to require the participating jurisdiction's resale requirements to specifically define "fair return on investment" and "affordability to a reasonable range of low-income buyers," and to address how it will make the housing affordable if the resale price that is needed for a fair return on investment is too high to be within the affordable range. Section 215(b)(3)(A) of NAHA specifically requires resale provisions to provide a fair return and remain affordable for a reasonable range of low-income buyers. Requiring participating jurisdictions to develop specific standards for these requirements will improve their ability to design resale requirements that meet statutory and regulatory requirements.

HUD proposes to amend § 92.254(a)(5)(ii) to permit a subsequent low-income purchaser of a HOME-assisted homeownership unit to assume the HOME loan and recapture obligation entered into by the original buyer. The current regulations governing recapture provisions permit the HOME-assisted homebuyer to sell his or her unit during the period of affordability to any willing buyer at the prevailing market price. When a HOME-assisted unit is sold during the period of affordability, the participating jurisdiction exercises its recapture provisions and collects all or a portion of the original HOME subsidy regardless. Sometimes, a subsequent buyer who is low-income may require downpayment or other acquisition assistance to purchase the HOME assisted unit and the participating jurisdiction provides HOME assistance to the subsequent homebuyers and imposes new recapture provisions. To enhance administrative simplicity and encourage the efficient use of funds, some participating jurisdictions have expressed a desire to permit subsequent low-income purchasers of a HOME-assisted homebuyer unit under a recapture agreement to assume the remaining HOME loan and period of affordability. This proposed rule change would establish this as an option when the subsequent homebuyer qualifies as low-income, but would not eliminate the initial homebuyer's right to sell to a willing buyer at any income level.

HUD proposes to amend the HOME regulation at § 92.254(c) to permit rehabilitation assistance to be provided in three different situations to persons whose interest in the housing they occupy does not meet the requirements of "homeownership" as defined in § 92.2. In each case, there have been many instances in which an otherwise eligible low-income household was denied HOME funds for rehabilitation.

The proposed changes are intended to remove regulatory impediments to participation in the HOME program. For each situation, the participating jurisdiction would have the right to establish the terms of assistance. The first of these exceptions is inherited property with multiple owners (often referred to as *heir property*)—housing for which title has been passed to several—heirs by inheritance, but in which not all heirs. (The occupant of the housing has a divided ownership interest.) This most often occurs when siblings inherit a family home that is occupied by one sibling. Rather than sell the home and split the proceeds, the siblings continue to hold the property in divided ownership, but permit a low-income sibling to occupy the property. The regulation would be amended to permit participating jurisdictions to provide rehabilitation assistance to the owner-occupant, if the occupant meets the following conditions: the occupant is low-income, occupies the housing as his or her principal residence, and pays all the costs associated with ownership and maintenance of the housing (*e.g.*, mortgage, taxes, insurance, utilities).

The second exception would address cases involving a *life estate*. Under a life estate, the occupant of the property has the right to live in the housing for the remainder of his or her life and does not pay rent. HUD has encountered situations in which a disabled adult occupies a dwelling owned by another family member under a life estate, or in which a deceased spouse leaves a property to the children of a previous marriage but permits the other spouse to occupy the property for the remainder of his or her life. In the latter situation, the life estate holder is responsible for expenses related to the dwelling (*e.g.*, property taxes, insurance) and for maintenance and upkeep of the property. The regulation would be revised to permit participating jurisdictions to provide rehabilitation assistance to the person holding the life estate, if the person is low-income and occupies the housing as his or her principal residence.

The third exception would address cases involving an *inter vivos trust*, also known as a *living trust*. A living trust is created when the owner of property conveys his or her property to a trust for his or her own benefit or for that of a third party (the beneficiaries). The trust holds legal title and the beneficiary holds equitable title. The person may name himself or herself as the beneficiary. The trustee is under a fiduciary responsibility to hold and manage the trust assets for the beneficiary. HUD has found that this is a very common estate-planning tool, even among the low-income elderly who wish their heirs to avoid probate. Currently, HUD must grant a waiver of the provision that an individual hold title to the property to permit these individuals to receive rehabilitation assistance. The regulation would be revised to permit participating jurisdictions to provide rehabilitation assistance to a property if all beneficiaries of the trust qualify as a low-income family and occupy the property as their principal residence (except that contingent beneficiaries, who receive no benefit from the trust nor have any control over the trust assets until the beneficiary is deceased, need not be low-income). The trust would be required to be valid and enforceable and to ensure that each beneficiary has the legal right to occupy the property for the remainder of his or her life.

HUD recognizes that many participating jurisdictions provide HOME funds to for-profit and nonprofit organizations as a contractor or subrecipient respectively, so that those organizations may provide the homeownership assistance (*e.g.*, downpayment assistance) to eligible families in conjunction with first mortgage financing funded by the same entity. However, HUD is concerned that these organizations may have a financial incentive to provide the first mortgage and, as a result, such organizations could provide HOME assistance to families that are not low-income families or for units that do not meet minimum standards.

In order to put safeguards in place to prevent potential abuses, and to counter the built-in incentives for the lender to provide HOME assistance in such cases, a § 92.254(e) would be added to require the participating jurisdiction to verify that the family is low-income and to inspect the housing for compliance with the property standards in § 92.251. The for-profit or nonprofit organization would not be permitted to charge fees (*e.g.*, origination fees or points) to the family for the HOME homeownership assistance the organization provides, although reasonable administrative costs could be charged to the HOME program as a project cost. In addition, the participating jurisdiction would be required to determine that the fees and other amounts charged to the family by the lender for the first mortgage financing are reasonable, based upon industry practice in the area, in order to ensure that the organization is not effectively charging fees for HOME funds disguised as mortgage-related fees. If a participating jurisdiction requires lenders to pay a fee to participate in the HOME program, the amount would be program income to the HOME program.

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

Section 92.55 permits rental units to be converted to homeownership units for existing tenants. This provision was added to the HOME regulations to facilitate efforts of in-place tenants to purchase the rental unit in which they reside. However, some HOME program participants have interpreted this section to permit conversion of an entire HOME-assisted multifamily rental project to condominium ownership during the period of affordability. HUD has encountered situations in which program participants have attempted to convert existing HOME rental housing into homeownership and sought to evict tenants who were unable or unwilling to buy the units they occupied. HUD proposes to revise this paragraph to provide that tenants' refusal to purchase their rental housing unit does not constitute grounds for eviction or for failure to renew the lease, in order to ensure that the rights of HOME tenants are clearly understood.

s. Set-Aside for CHDOs (§ 92.300)

In this section, HUD proposes changes to redefine "reservation of funds" and to more thoroughly address the standards which a project must meet to qualify for CHDO set-aside funds. In § 92.300(a)(1), HUD would redefine reservation of funds to a CHDO as occurring when a participating jurisdiction enters into a written agreement with the CHDO committing the funds to a specific project to be owned, developed, or sponsored by the CHDO. This change would make participating jurisdictions more accountable for ensuring that CHDOs perform in accordance with the HOME program requirements.

With respect to the CHDO set-aside, NAHA requires participating jurisdictions to provide a minimum of 15 percent of their HOME allocations for housing that is owned, developed, or sponsored by community housing development organizations. In 1994,

HUD first provided guidance for what is considered housing owned, developed, or sponsored by CHDOs. HUD continues to receive questions about whether specific projects may be funded with the CHDO set-aside funds or must be funded with other HOME dollars. Frequently, the proposed projects do not meet standards in established in HUD's administrative guidance for housing that is owned, developed, or sponsored by a CHDO. Generally, such projects did not meet the standards because the role of the CHDO in the development process was too limited or the organization did not meet the definition of a CHDO at § 92.2.

HUD is proposing two changes to the regulations to address these situations. To ensure that participating jurisdictions provide CHDO set-aside funds only to organizations that qualify as CHDOs, HUD is proposing to revise § 92.300 to require participating jurisdictions to certify that the organization meets the definition of "community housing development organization." A participating jurisdiction would also be required to document that the organization has the capacity to own, develop, or sponsor housing, as required by the revised definition of CHDO in § 92.2, each time it commits CHDO funds to an organization. The certification and documentation requirement would apply to commitments of funds to any CHDO after the effective date of the final rule.

As discussed later in this preamble, the proposed rule would also alter minimum requirements for reserving funds to a CHDO. The concept of reservation of CHDO funds would change from being a general agreement to provide funds for a project to be identified at a future time to the execution of a written agreement between the participating jurisdiction and the CHDO committing the funds to a specific local project in accordance with paragraph (2) of the definition of "commitment" in § 92.2.

HUD is proposing to codify definitions of housing that is owned, developed, or sponsored by a CHDO currently established in HUD's administrative guidance into the regulation in § 92.300(a)(2) through (a)(6), with only minimal revisions.

Paragraph (a)(2) of § 92.300 would provide the minimum standard for a project to be considered to be "owned" by the CHDO. Housing meets the "owned" standard if the CHDO is the owner (in fee simple absolute) of multifamily or single housing that will be rented to low-income families in accordance with § 92.252.

Paragraph (a)(3) would provide the minimum standards for a project to be considered to be "developed" by the CHDO. Housing would meet the "developed" standard, if the CHDO is the owner (in fee simple absolute) and developer of: (1) New single family housing that is or will be constructed or (2) existing single family substandard housing that is or will be acquired and rehabilitated for sale to low-income families in accordance with § 92.254.

To be the developer, the CHDO would be required to arrange financing of the project and be in sole charge of construction. The CHDO would be permitted to provide direct homeownership assistance (*e.g.*, downpayment assistance) when the CHDO sells this housing to low-income families without being considered a subrecipient of HOME funds, subject to the condition that the HOME funding for downpayment assistance is not greater than 10 percent of the amount of HOME funds for development of the housing.

The participating jurisdiction would be required to determine and set forth in its written agreement with the CHDO either the actual sales prices or the method by which the sales prices for the housing will be established and whether the proceeds from the sale of the housing must be returned to the participating jurisdiction or may be retained by the CHDO. While the proceeds the participating jurisdiction permits the CHDO to retain would not be subject to the requirements of 24 CFR part 92, the participating jurisdiction would be required to specify in the written agreement with the CHDO whether the proceeds are to be used for HOME-eligible or other housing activities to benefit low-income families. However, funds recaptured because the housing no longer meets the affordability requirements under § 92.254(a)(5)(ii) would then be subject to the requirements of this part in accordance with § 92.503.

Paragraph (a)(4) would provide the minimum standards for a rental project to be considered "sponsored" by the CHDO. Rental housing would meet the "sponsored" standard if it is rental housing that is owned (in fee simple absolute) by a subsidiary of a CHDO, a limited partnership of which the CHDO or its subsidiary is the sole general partner, or a limited liability company of which the CHDO or its subsidiary is the sole managing member. The subsidiary of the CHDO would be permitted to be for-profit or nonprofit organization and would be required to be wholly owned by the CHDO. Paragraph (a)(4) would provide that, if the limited partnership or limited liability company agreement permits the CHDO to be removed as general partner or sole managing member, the agreement would have to require that the removal be "for cause" and that the CHDO must be replaced with another CHDO. In addition, the HOME funds would be required to be provided to the CHDO, its subsidiary, the limited partnership, or the limited liability company.

Paragraph (a)(5) would clarify that HUD also recognizes as "sponsorship" of HOME-assisted rental housing, situations in which the CHDO owns and develops the housing and agrees to convey the housing to a private nonprofit organization (that is not created by a governmental entity) at a predetermined time after completion of the development of the project. Such arrangements typically occur when the CHDO has the development expertise and the nonprofit organization has the capacity to own and operate the housing. Because the CHDO is the owner and developer, the CHDO would be required to own the property before the development phase of the project. The CHDO sponsor would be required to select the nonprofit organization before the CHDO enters into the agreement with the participating jurisdiction that commits HOME funds to the CHDO project. The nonprofit organization would assume the CHDO's HOME obligation (including any repayment of loans) for the project at a specified time after completion of development. If the property is not transferred to the nonprofit organization, the CHDO sponsor would remain liable for the HOME assistance and the HOME project.

Paragraph (a)(6) would be revised to provide that it is the participating jurisdiction that determines the form of assistance (*e.g.*, a grant or loan) to the CHDO.

Finally, minor conforming changes would be made to paragraph (e), in accordance with the proposed requirement for a written agreement between the participating jurisdiction and the CHDO, and paragraph (f) would be revised to clarify that the participating jurisdiction is responsible for ensuring that CHDOs do not receive more than the permitted amount in operating funds.

t. Other Federal Requirements

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

HUD is proposing to revise § 92.351 by removing the provision that affirmative marketing requirements do

not apply to tenants with tenant-based rental assistance. In all cases, HOME-assisted rental housing must be affirmatively marketed without regard to whether the potential tenant has rental assistance. Accordingly, HUD proposes to eliminate this exception to affirmative marketing. In addition, HUD is proposing to expand the applicability to affirmative marketing requirements and procedures to include HOME-funded programs, such as tenant-based rental assistance and down-payment assistance programs.

Corresponding changes would also be made to the provisions on written agreements (§ 92.504) and applicability of affirmative marketing requirements (§ 92.614) for funds remaining under the American Dream Downpayment Initiative.

Finally, § 92.351 would be revised to clarify that participating jurisdictions must not only adopt, but also follow their affirmative marketing procedures, and that the requirements apply to subrecipients as well as owners.

2. Environmental Review (§ 92.352)

HUD proposes to revise § 92.352 to address the applicability of the environmental review regulations in 24 CFR parts 50 and 58. This change would clarify that the applicability of environmental review regulations is based on the type of HOME project (new construction, rehabilitation, acquisition) or activity (tenant-based rental assistance), not the particular cost paid with HOME funds. For example, if the project is a new construction project, but the HOME funds will be used for acquisition of vacant land for the project, the environmental review is based on new construction of housing, as well as the acquisition of the land.

3. Labor (§ 92.352)

Section 92.354(a)(3) would be revised to remove reference to HUD Handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs. The monitoring and oversight responsibilities of participating jurisdictions, which were addressed in the handbook, have been incorporated in the regulations to ensure that it is clear that participating jurisdictions retain these responsibilities. While the procedures and processing provisions of the handbook remain applicable to participating jurisdictions, the regulation's reference to the handbook is not needed.

4. Conflict of Interest (§ 92.356)

While not required by statute, for many years HUD has, by regulation, prohibited conflicts of interest in the use of HOME funds. HUD proposes to revise the conflict of interest provisions of § 92.356(b) by clarifying that the covered conflict involves a financial benefit or interest and that covered familial relationships are limited to immediate family members. Because the existing language of this paragraph differs somewhat from the corresponding regulation for the CDBG program, some program participants have been reading the HOME regulation more broadly than intended.

The HOME regulation currently defines prohibited conflicts to include situations where a covered person may obtain "a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect to a HOME-assisted activity." The regulation provides no further definition of what type of "benefit" or "interest in any contract, subcontract or agreement" is prohibited. This lack of detail led to many questions and ambiguity as to the circumstances that would constitute a prohibited conflict.

One problematic area has been with respect to public officials participating in the affairs of local nonprofit organizations. It is common for state and local governments to designate elected or appointed officials to serve on the boards of nonprofit organizations that may provide affordable housing within their communities. In such situations, the question arises whether the provision of HOME funds to a nonprofit organization constitutes a conflict when a public official serves on the nonprofit group's board. If the public official is not receiving a salary or any other compensation for serving on the board, the official's interest would only be a personal one. However, HUD has found that this kind of public participation often is beneficial and should not be discouraged.

Currently, under the CDBG conflict-of-interest regulations, interests or benefits of a personal nature do not create prohibited conflicts of interest. HUD believes that the HOME conflict rules should also be expressly limited to the prohibition of situations that provide a financial interest or benefit. Accordingly, this rule proposes to add "financial" to qualify the terms "benefit" and "interest." Similar questions have surfaced with respect to the phrase "family or business ties." For some communities with histories of extended family relationships, it could be difficult to avoid a conflict. The proposed rule adds the word "immediate" to be consistent with the phrase "immediate family," as used in the CDBG conflict regulation and the procurement conflict provisions in 24 CFR 85.36.

In addition, HUD proposes to revise § 92.356(f)(1) by prohibiting an immediate family members of an officer, employee, agent, elected or appointed official or consultant of an owner, developer, or sponsor from occupying a HOME-assisted affordable housing unit in a project. A developer or owner (including their employees, agents, consultants, and officers) will generally have a financial interest or benefit from a HOME-assisted activity; for example, developer's fees. To address this situation, the HOME rule established specific conflict provisions in paragraph (f) to guard against owners and developers receiving an unfair advantage in the occupancy of HOME-assisted affordable housing. The range of situations in which a conflict may arise under paragraph (f) includes, for example, a nonprofit group receives HOME funds to construct rental housing as an owner, and then the executive director gives its employees first choice to occupy a rental unit.

While the current regulations prohibit officers or employees of the owner or developer of HOME-assisted housing to reside in or purchase HOME units unless the participating jurisdiction provides a written exception based upon specified regulatory criteria, this prohibition does not extend to their immediate family members. In other words, the executive director of the nonprofit owner in the above example rents the first unit to his child, sibling, or parent. Similar to the employment context, in HUD's view, this situation also conveys an unfair advantage for occupying HOME-assisted affordable housing. While there may be some instances where it is not inappropriate for immediate family members of the owners or developer of HOME-assisted housing to purchase or occupy a HOME unit, to ensure complete transparency these instances should be subject to the same exception process used for employees or officers of the owners or developers themselves.

u. Program Administration

1. The HOME Investment Trust Fund (§ 92.500)

HUD proposes to amend § 92.500(c) to require that participating jurisdictions' local HOME accounts be interest-bearing. NAHA states that participating jurisdictions must expend HOME funds for an eligible project cost within 15 days of the date of drawing HOME funds from the Federal HOME Investment Trust Fund and depositing

them in its local HOME Investment Trust Fund account. Requiring that this local account be interest-bearing will ensure that participating jurisdictions maximize these funds, as well as the accumulation of HOME program income, since, by virtue of being deposited in the local HOME Investment Trust Fund account by ensuring some level of return on the funds in the account.

NAHA requires each participating jurisdiction to reserve 15 percent of their HOME allocations to CHDOs. However, some participating jurisdictions encounter challenges in finding CHDOs with the adequate capacity to plan, undertake, and complete development of affordable housing, or to improve the capacity of existing CHDOs. To avoid losing CHDO set-aside funds to deobligation at the end of 24 months, many participating jurisdictions reserve funds to CHDOs. In some cases, these reservations never result in project commitments, expenditures, or completed projects. The reserved funds remain reserved to nonperforming organizations—in many cases for years—but the low-income communities the CHDOs are intended to serve never realize any benefit in the form of standard, affordable housing units. As long as the participating jurisdiction's rate of expenditure for other HOME funds is adequate, the unspent CHDO funds are not subject to deobligation until they expire at the end of 8 years under the provisions of the National Defense Authorization Act.

To provide an incentive for participating jurisdictions to proactively manage CHDO set-aside funds by moving them from nonperforming CHDOs to performing CHDOs before they expire, this proposed rule would add a new paragraph at § 92.502(d)(1)(C) that establishes a separate 5-year expenditure deadline for community housing development organization set-aside funds. The 5-year deadline for expending CHDO set-aside funds parallels the existing regulatory 5-year deadline for expenditure of other HOME funds.

2. Program Disbursement and Information System (§ 92.502)

HUD proposes to add a provision to § 92.502(a) that would clarify that participating jurisdictions are required to report all program income earned on HOME funds in the Integrated Disbursement and Information System (IDIS). HUD has found that some participating jurisdictions are not consistently reporting program income they earn in IDIS and are not always expending program income before drawing down additional HOME funds from their HOME Treasury Accounts.

Additionally, § 92.502(e) would clarify that even though other participants may be permitted to access HUD's disbursement and information system, only participating jurisdictions and State recipients (if permitted by the State) may request disbursement. This change would codify HUD's longstanding IDIS administrative guidance.

3. Repayments (§ 92.503)

Section 92.503 would be revised to provide that when repayment of HOME funds is required, HUD will instruct a participating jurisdiction whether to repay funds to the HOME Investment Trust Fund Treasury account or the local account.

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

HUD is proposing several revisions to § 92.504 to reflect programmatic changes proposed by this rule to strengthen the performance of participating jurisdictions, and help ensure that participating jurisdictions are able to require other HOME program participants to comply with applicable requirements.

Specifically, § 92.504(a) would be revised to require participating jurisdictions to develop and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities, to ensure that the requirements of this part are met. While the existence of such written policies and procedures does not guarantee that a participating jurisdiction's program will be compliant and efficient, HUD's monitoring has shown that the absence of or failure to follow systemic program procedures for assessing risk and monitoring participating entities is strongly correlated with poor performance and noncompliance with HOME regulations.

The proposed rule would also make explicit that State recipients are included in the entities that must be evaluated annually, and it would clarify that the evaluation must include a review of each entity's compliance with HOME program requirements.

Many participating jurisdictions have requested HUD's assistance in improving the written agreements that they use when awarding HOME funds to program participants, so that the agreements are comprehensive with respect to compliance with all aspects of HOME regulations and effective management and enforcement tools. HUD shares this interest in making HOME written agreements better compliance, management, and enforcement tools for participating jurisdictions.

The proposed rule would make several revisions to § 92.504(c), which sets forth the provisions that are required to be contained in participating jurisdictions' written agreements with participants in their HOME programs, including state recipients, subrecipients, owners, developers, sponsors, contractors, and CHDOs. The proposed changes would require the inclusion of provisions in order to ensure that participating jurisdictions are able to meet their obligations to ensure participants' compliance with existing requirements, as well as requirements that would be added under this proposed rule.

Under § 92.504(c)(1), agreements between state participating jurisdictions and state recipients would include a provision to carry out the existing requirement in § 92.201(b)(3)(i). Under the existing requirement, states must require the state recipient to comply with either requirements established by the State or, alternatively, may require the state recipient to establish and comply with its own requirements to comply with part 92. The proposed revision would specify that under either alternative, the requirements must include provisions for income determinations, underwriting and subsidy layering review, rehabilitation standards, refinancing standards, homebuyer program policies, and affordability.

Section 92.504(c)(1)(i) would be revised to require agreements with state recipients to include greater detail about the state recipients' use of HOME funds, including amounts and uses for specific programs and activities, the number of housing projects to be funded, and any requirements for matching contributions. Under § 92.504(c)(1), the agreement would be required to specify whether repaid and recaptured HOME funds must be returned to the state or retained by the state recipient and expended on eligible activities.

Section 92.504(c)(1)(xi) would be revised to clarify that the written agreement required under that paragraph as a condition of providing HOME funds to other entities and persons must be in place before the HOME funds are provided, and new § 92.504(c)(1)(xiii) would require inclusion of a provision to implement the prohibition on charging fees in § 92.214(b), as proposed to be revised under this rule.

Section 92.504(c)(2) would be revised to include requirements in agreements with subrecipients reflecting those that this rule would require in agreements with state recipients, as described above. In addition, agreements with subrecipients would be required to provide requirements that they must follow to enable participating jurisdictions to carry out their environmental review responsibilities before HOME funds are committed to a project.

HUD further proposes to revise § 92.504(c)(3), which enumerates the requirements for written agreements between participating jurisdictions and project owners, developers, and sponsors, clarifying that the preliminary award of HOME funds (*i.e.,* early awards of HOME funds before other necessary sources of financing have been secured) does not constitute a "commitment" pursuant to the definition at § 92.2 and may not be entered into IDIS until a legally binding written agreement containing all required provisions is executed.

Section 92.504(c)(3)(i) would specify that the agreements must also include the address of the project and other information specific to the project that is the subject of the agreement.

Section 92.504(c)(3)(ii) would be revised to specify that affordability requirements must be imposed by legal restrictions and mechanisms under which the participating jurisdiction may require and seek specific performance under state law. For homeownership projects, agreements would have to specify sales prices and the required disposition of sales proceeds.

Agreements would also be required to specify the number and size of HOME assistance units, to provide whether the units are to be fixed or "floating," and to require provision of the address of each unit to the participating jurisdiction by the time of project completion. Such agreements would be required under revised § 92.504(c)(3)(v) to specify that owners of rental housing must report annually information on rents, occupancy, the status of floating units, and the financial condition of the rental project.

Revised § 92.504(c)(3)(xi) would require inclusion of a provision to implement the prohibition on charging fees in § 92.214(b), as proposed to be revised under this rule. If a nonprofit owner is a CHDO, the agreement would also have to require compliance with § 92.303, which governs tenant grievances and tenant participation in management decisions.

A new paragraph (c)(6) would be added to § 92.504 that would enumerate the required provisions for written agreements providing operating expense funds to CHDOs, pursuant to § 92.208. The new paragraph would require the agreement to describe the uses of operating funds and, if the CHDO is not also receiving HOME funds for a project that it is to own, develop, or sponsor, also to state the expectation that such funds will be provided to the CHDO within 24 months, as also required in § 92.300(e).

HUD is proposing to revise § 92.504(d) to make clear that the participating jurisdiction must inspect each HOME project at the time of completion and during the period of affordability to determine compliance with the property standards applicable under § 92.251. Several participating jurisdictions have told HUD that they can effectively monitor their HOME rental projects through risk-based on-site monitoring plans that they use for rental housing developed through other funding sources. HUD is proposing changes to the inspection schedule and sample of inspected HOME-assisted units that will provide flexibility to participating jurisdictions with respect to the frequency of inspections.

Specific solicitation of comment. HUD specifically requests public comment from states and other affected members of the public about the criteria used in and characteristics of an effective risk-based system for on-site monitoring by states.

HUD is also proposing to add a new paragraph at § 92.504(d)(2) to require participating jurisdictions to examine, at least annually during the HOME period of affordability, the financial condition of rental projects with at least 10 HOME-assisted units. These provisions would be added to increase the likelihood that participating jurisdictions become aware to financial problems early enough to attempt to successfully correct problems or conduct a financial workout to sustain the viability of the project. HUD proposes to require this review to projects with 10 or more HOME-assisted units, so as to reduce the financial and administrative burden of these reviews on participating jurisdictions and to focus attention on projects which have large HOME investments. HUD recommends that participating jurisdictions perform such reviews periodically on smaller projects.

Specific solicitation of comment. HUD specifically seeks comment on its proposal that participating jurisdictions perform such reviews regularly. HUD is particularly interested in input regarding the unit-threshold for triggering annual reviews and whether it would be appropriate to establish a regulatory requirement for less frequent financial reviews of smaller projects.

HUD's proposed addition of a new section on troubled projects at § 92.210 is a companion to this new requirement and is intended to facilitate participating jurisdictions' efforts to return financially troubled projects to viability.

5. Applicability of Uniform Administrative Requirements (§ 92.505)

Section 92.505(a) and (b) would be revised to add a reference to the regulations implementing OMB Circular No. A–87 (2 CFR part 225) and OMB Circular No. A–122 (2 CFR part 230). Circular A–87 is entitled "Cost Principles for States, Local, and Indian Tribal Governments." Circular A–122 is entitled "Cost Principles for Non-Profit Organizations." The provisions of these cost principle circulates are codified in the governmentwide regulations found at 2 CFR part 225 and 2 CFR part 230, respectively. The circulars can also be found on OMB's Web site at *http://www.whitehouse.gov/omb/circulars/index.html.*

6. Recordkeeping (§ 92.508)

HUD is proposing to make revisions throughout § 92.508 to require participating jurisdictions to maintain records pertaining to new requirements that would be established in this rule.

7. Corrective and Remedial Actions (§ 92.551)

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

Two new remedial actions, which—are establishing procedures to ensure compliance with HOME requirements, and forming a consortium with the urban county—would also be added. The existing provision under which HUD may change the method of payment from advance to reimbursement would be expanded to require submission of supporting documentation before payment is made. Finally, the proposed change would provide that HUD may determine the participating jurisdiction to be high risk and impose special conditions or restrictions in accordance with 24 CFR 85.12.

8. Hearing Proceedings (§ 92.552)

Section 92.552(b) would be revised to remove the reference that it is specifically subpart B of 24 CFR part 26 that governs hearing proceedings.

9. Other Federal Requirements (§ 92.614)

HUD makes a minor technical change to § 92.614. HUD moves the reference to the affirmative marketing requirements in § 92.351(a) from § 92.614(b) to § 92.614(b).

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. This rule was determined to be a "significant regulatory action", as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Paperwork Reduction Act

The information collection requirements contained in this rule have been 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 burden of the information collections in this rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
§ 91.320 (Action Plan)	645	1	1	1	645
§ 92.205(e) (Terminated Projects)	180	1	1	5	900
§ 92.252 (Qualification as affordable housing: Rental Housing)	50	1	1	5	250
§ 92.254(f) (Homeownership)	600	1	1	5	3,000
§ 92.351 (Affirmative Marketing)	1,290	1	1	5	6,450
§ 92.504 (Participating Jurisdiction Inspection)	645	1	1	1	645
§ 92.508 (Recordkeeping—Subsidy Layering and Underwriting—§ 92.250)	13,032	1	1	4	52,128
Total	16,442	1	1	26	64, 018

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members 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 the 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–5563) 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, 451 7th Street SW., Room 7233, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://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 them immediately available to the public. Comments submitted electronically through *http://www.regulations.gov* can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the allocation and use of formula grant funds by state and local jurisdictions (participating jurisdictions) under the HOME program. As discussed in the preamble, this proposed rule updates the regulations governing the HOME program, which have not been updated in 15 years. The proposed rule does not alter the allocation of funds under the HOME program, but is directed to revising the HOME program regulations to reflect changes in the housing market that have occurred over the last 15 years, to clarify and enhance the roles and responsibilities and accountability of participating jurisdictions, and strengthen HUD's own oversight of the program. The

program is a voluntary grant program and the regulations are designed to ensure the use of HOME program grant funds by participating jurisdictions and their subrecipients in a manner consistent with statutory requirement and objectives, and with HUD's mission. Accordingly, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

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

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects

24 CFR Part 91

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

24 CFR Part 92

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

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

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

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

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

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

§ 91.220 Action plan.

* * * * *

(l) * * *

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

(ii) If the participating jurisdiction intends to use HOME funds for homebuyers, it must set forth the guidelines for resale or recapture, and obtain HUD's specific, written approval, as required in § 92.254. Approval of the consolidated plan or action plan under § 91.500 or the failure to disapprove the consolidated plan or action does not satisfy the requirement for specific HUD approval for other forms of investment.

* * * * *

(iv) If the participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single family housing and does not use the Single Family 95 percent Median Area Purchase Price Limit for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with § 92.254(a)(2)(iii).

(v) The jurisdiction must describe eligible applicants and describe its process for soliciting and funding applications or proposals.

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

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

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

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

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

* * * * *

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

§ 91.320 Action plan.

* * * * *

(k) * * *

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

(ii) If the State intends to use HOME funds for homebuyers, it must set forth the guidelines for resale or recapture, and obtain HUD's specific, written approval, as required in 24 CFR 92.254. Approval of the consolidated plan or action plan under § 91.500 or the failure to disapprove the consolidated plan or action does not satisfy the requirement for specific HUD approval for other forms of investment.

* * * * *

(iv) If the participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single family housing and does not use the Single Family Median Area Purchase Price Limit for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with § 92.254(a)(2)(iii).

(v) The State must describe eligible applicants and describe its process for soliciting and funding applications or proposals.

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

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

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

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

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

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

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

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

5. In § 92.2:

a. Revise the introductory text;

b. Add, in alphabetical order, the definition of *CDBG program;*

c. Revise paragraph (1) of the definition of *Commitment;*

d. Revise paragraphs (3)(ii) and (iii); add paragraph (3)(iv); and revise paragraphs (4), (5), and (9) of the definition of *Community housing development organization;*

e. Add, in alphabetical order, the definition of *Consolidated plan;*

f. Revise the definitions of *Homeownership, Housing,* and *Low-income families;*

g. Add a definition of *Observed deficiency (OD);*

h. Revise paragraph (2) of the definition of *Program income;* and

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

j. Add a definition of *Uniform Physical Condition Standards (UPCS);* and

k. Revise the definition of *Very low-income families.*

The revisions and additions read as follows:

§ 92.2 Definitions.

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

* * * * *

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

* * * * *

Commitment * * *

(1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with a State recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance; or has met the requirements to commit to a specific local project, as defined in paragraph (2) of this definition. (See § 92.504(c) for minimum requirements for a written agreement.) An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (*e.g.,* an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment. An agreement between the representative unit and a member unit of general local government of a consortium does not constitute a commitment.

* * * * *

Community housing development organization * * *

(3) * * *

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

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

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

(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)–1 or 1.501(c)(4)–1));

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

* * * * *

(9) Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. An organization satisfies this requirement by having paid employees with housing development experience. A nonprofit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization; and

* * * * *

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

* * * * *

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

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

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

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

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

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

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

* * * * *

Housing includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories).

* * * * *

Low-income families means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a low-income family if the individual is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002); is under 24 years of age; is not a veteran of the United States military; is unmarried; does not have a dependent child; and is not otherwise individually low-income or does not have parents who qualify as low-income.

* * * * *

Observed deficiency (OD) means any deficiency identified during an on-site inspection of each inspectable item for each inspected area. The participating jurisdiction may establish its own standards for an observed deficiency for each inspectable item, except that at a minimum, the participating jurisdiction's standards must identify each deficiency (regardless of the level of severity) for each inspectable item and inspected area included in the most recent Uniform Physical Condition Standards (UPCS) Dictionary of Definitions established by HUD pursuant to 24 CFR 5.703 and 5.705, or such other requirements that HUD may establish.

* * * * *

Program income * * *

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

* * * * *

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

Reconstruction means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment, except that housing that was destroyed may be rebuilt on the same lot if HOME funds are committed within 6 months of the date of destruction. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is rehabilitation for purposes of this part.

* * * * *

Single room occupancy (SRO) housing means housing (consisting of single-room dwelling units) that is the primary residence of its occupant or occupants. The unit must contain either food preparation or sanitary facilities (and may contain both) if the project consists of new construction, conversion of nonresidential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants. A project's designation as an SRO must be consistent with the building's zoning and building code classification.

* * * * *

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

* * * * *

Uniform Physical Condition Standards (UPCS) means uniform

national standards established by HUD pursuant to § 5.703 of this title for housing that is decent, safe, sanitary, and in good repair. Standards are established for inspectable items for each of the following areas: site, building exterior, building systems, dwelling units, and common areas.

* * * * *

Very low-income families means low-income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a very low-income family if the individual is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002); is under 24 years of age; is not a veteran of the United States military; is unmarried; does not have a dependent child; and is not otherwise individually very low-income or does not have parents who qualify as very low-income.

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

§ 92.201 Distribution of assistance.

(a) * * *

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

* * * * *

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

§ 92.202 Site and neighborhood standards.

* * * * *

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

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

§ 92.203 Income determinations.

(a) * * *

(1) * * *

(i) Examine at least 3 months of source documents evidencing annual income (*e.g.,* wage statement, interest statement, unemployment compensation statement) for the family.

* * * * *

(2) For all other families (*i.e.,* homeowners receiving rehabilitation assistance, homebuyers, and recipients of HOME tenant-based rental assistance), the participating jurisdiction must determine annual income by examining at least 3 months of source documents evidencing annual income (*e.g.,* wage statement, interest statement, unemployment compensation statement) for the family.

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

(1) *Annual income* as defined at 24 CFR 5.609 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR 5.603); or

(2) *Adjusted gross income* as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual Federal annual income tax purposes, except that government cost-of-living allowances that not are included in income (*e.g.,* for a Federal civilian employee or a federal court employee who is stationed in Alaska, Hawaii, or outside the United States) must be added to adjusted gross income.

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

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

* * * * *

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

§ 92.205 Eligible activities: General.

(a) * * *

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

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

* * * * *

(b) * * *

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

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

* * * * *

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

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

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

(e) *Terminated projects.* A HOME assisted project that is terminated before completion, either voluntarily or involuntary, constitutes an ineligible activity, and any HOME funds invested in the project must be repaid to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b) (except for project-specific assistance to community housing development organizations as provided in § 92.301(a)(3) and (b)(3)).

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

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

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

§ 92.206 Eligible project costs.

* * * * *

(a) * * *

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

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

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

* * * * *

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

* * * * *

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

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

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

* * * * *

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

* * * * *

(d) * * *

(1) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups. The costs may be paid if they were incurred not more than 18 months before the date that HOME funds are committed to the project and the participating jurisdiction expressly permits HOME funds to be used to pay the costs in the written agreement committing the funds.

* * * * *

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

* * * * *

(6) Staff and overhead costs of the participating jurisdiction directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers, *e.g.,* housing counseling, may be charged to project costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project. For multi-unit projects, such costs must be allocated among HOME-assisted units in a reasonable manner and documented. Although these costs may be charged as project costs, they must not be charged to or paid by low-income families.

* * * * *

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

§ 92.207 Eligible administrative and planning costs.

* * * * *

(b) *Staff and overhead.* Staff and overhead costs of the participating jurisdiction directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, lead-based paint inspections (visual assessments, inspections, and risk assessments) and other services related to assisting potential owners, tenants, and homebuyers (*e.g.,* housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced

by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 92.206(d)(6) and (f)(2), at the discretion of the participating jurisdiction; however, these costs cannot be charged to or paid by the low-income families.

* * * * *

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

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

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

* * * * *

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

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

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

* * * * *

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

* * * * *

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

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

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

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

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

* * * * *

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

(h) * * *

(3) * * *

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

* * * * *

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

14. Add § 92.210 to read as follows:

§ 92.210 Troubled HOME-assisted rental housing projects.

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

(b) Notwithstanding § 92.214, HUD may permit, pursuant to a written memorandum of agreement, a

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

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

15. Add § 92.213 to read as follows:

§ 92.213 HOME Funds and Public Housing.

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

(b) *Exception.* HOME funds may be used for the development of public housing units, if the units are developed under section 24 of the 1937 Act (HOPE VI) and no Capital Fund assistance under section 9(d) of the Act is used for the development of the unit. Units developed with both HOME and HOPE VI may receive operating assistance under section 9 of the 1937 Act. Units developed with HOME and HOPE VI funds under this paragraph may subsequently receive Capital Funds for rehabilitation or modernization.

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

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

§ 92.214 Prohibited activities and fees.

(a) * * *

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

* * * * *

(b)(1) Participating jurisdictions may not charge (and must prohibit State recipients, subrecipients, and other program participants from charging) servicing, origination, or other fees for the purpose of covering costs of administering the HOME program (*e.g.,* fees on low-income families for construction management or for inspections for compliance with property standards) (see § 92.206(d)(6) and § 92.207), except that participating jurisdictions:

(i) May charge owners of rental projects reasonable annual fees for compliance monitoring during the period of affordability; and

(ii) May charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. The amount of application fees must be appropriate to the type of application and may not create an undue impediment to a low-income family's, subrecipient's, State recipient's, or other entity's participation in the participating jurisdiction's program. All such fees are applicable credits under 2 CFR 225 (OMB Circular A–87, entitled "Cost Principles for State, Local, and Indian Tribal Governments").

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

(i) Charge reasonable application fees to prospective tenants;

(ii) May charge parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and

(iii) May charge fees for services such as bus transportation or meals, as long as such services are voluntary.

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

§ 92.221 Match credit.

* * * * *

(d) *Match credit for affordable homeownership housing.* Contributions to homeownership housing may be credited as a match only to the extent that the sales price of the housing is reduced by the amount of the contribution.

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

§ 92.222 Reduction of matching contribution requirement.

* * * * *

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

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

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

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

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

19. Revise § 92.250 to read as follows:

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

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

(b) *Underwriting and subsidy layering.* Before committing funds to a project, the participating jurisdiction must evaluate the project in accordance with guidelines that it has adopted for determining a reasonable level of profit

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

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

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

20. Revise § 92.251 to read as follows:

§ 92.251 Property standards.

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

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

(i) *Lead-based paint.* The housing must meet the lead-based paint requirements at 24 CFR part 35.

(ii) *Accessibility.* The housing must meet the accessibility requirements of part 8 of this title, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). 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).

(iii) [Reserved.]

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

(v) *Written standards for methods and materials, plans, specifications, work write-ups, and cost estimates.* The participating jurisdiction must establish written standards for methods and materials to be used for new construction. The participating jurisdiction must ensure that plans and specifications for new construction that describe the work to be undertaken are in compliance with State and local codes, ordinances, requirements, and the participating jurisdiction's standards for methods and materials. The participating jurisdiction must review and approve a written cost estimate for construction after a determination that costs are reasonable.

(vi) *Construction progress inspections.* The participating jurisdiction must conduct progress and final inspections of construction to ensure that work is done in accordance with approved standards for methods and materials, plans, specifications, and work write-ups. The participating jurisdiction must establish written procedures for initial, progress, and final inspections of construction, including the following: Detailed inspection checklists, description of how and by whom inspections will be carried out, procedures for training and certifying qualified inspectors, and frequency of inspections.

(vii) *Payment schedule.* The participating jurisdiction must have procedures to ensure that progress payments are consistent with the amount of work performed and that final payment does not occur until project completion.

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

(1) *State and local codes, ordinances, and zoning requirements.* Housing that is rehabilitated with HOME funds must meet all applicable State and local codes, ordinances, and requirements. The housing must meet the applicable requirements upon project completion.

(2) *Rehabilitation standards.* The participating jurisdiction must establish rehabilitation standards for all HOME-assisted housing rehabilitation activities. The housing must meet the participating jurisdiction's rehabilitation standards upon project completion. The participating jurisdiction's description of its standards must be in sufficient detail to establish the basis for a uniform inspection of the property. At a minimum, the standards of the participating jurisdictions must be such that, upon completion, the HUD-assisted project and units will have no observed deficiencies, using the most recent physical inspection procedures prescribed by HUD pursuant to 24 CFR 5.705 for public housing under the Uniform Physical Condition Standards. For multifamily housing projects of 26 or more total units, the participating jurisdiction must determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the project through a capital needs assessment of the project. The rehabilitation standards must address each of the following:

(i) *Written standards for methods and materials.* The participating jurisdiction must establish written standards for methods and materials to be used for rehabilitation work, whether or not there are applicable State or local rehabilitation codes.

(ii) *Health and safety.* The housing must be free of all health and safety defects. The participating jurisdiction's standards must identify life-threatening deficiencies that must be addressed immediately.

(iii) *Major systems.* For rental housing, upon project completion, each of the following major systems must have a remaining useful life for a minimum of 15 years or for such longer period specified by the participating jurisdiction, or the major systems must be rehabilitated or replaced as part of the rehabilitation work: structural support; roofing; cladding and weatherproofing (*e.g.,* windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For multifamily housing projects of 26 units or more, the participating jurisdiction must determine the useful life of major systems through a capital needs assessment of the project. For owner-occupied housing, upon project completion, each of the following major systems must have a remaining useful life for a minimum of 5 years or for such longer period specified by the participating jurisdiction, or the major systems must be rehabilitated or replaced as part of the rehabilitation work: Structural support; roofing; cladding and weatherproofing (*e.g.,* windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning.

(iv) *Lead-based paint.* The housing must meet the lead-based paint requirements at 24 CFR part 35.

(v) *Accessibility.* The housing must meet the accessibility requirements in 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619). Rehabilitation may include improvements that are not required by regulation or statute that permit use by a person with disabilities.

(vi) [Reserved]

(vii) *Disaster mitigation.* Where relevant, the housing must be improved to mitigate the impact of potential disasters (*e.g.,* earthquake, hurricanes, flooding, wildfires) in accordance with State and local codes, ordinances, and requirements.

(viii) *Other improvements.* Discretionary housing improvements beyond those described in paragraphs (b)(2)(i) through (vii) of this section may include modest amenities and aesthetic features that are in keeping with housing of similar type in the community and must avoid luxury improvements, as defined by the participating jurisdiction.

(3) *Work write-ups and cost estimates.* The participating jurisdiction must ensure that a work write-up that describes the work to be undertaken is in compliance with State and local codes, ordinances, requirements, and the participating jurisdiction's standards for methods and materials. The participating jurisdiction must review and approve a written cost estimate for construction after a determination that costs are reasonable.

(4) *Construction progress inspections.* The participating jurisdiction must establish written inspection procedures for initial, progress, and final inspections during construction (see § 92.504(d) for the participating jurisdiction's ongoing responsibilities for on-site inspections during the affordability period), including detailed inspection checklists, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors.

(5) *Frequency of inspections.* The participating jurisdiction must conduct an initial property inspection to identify the deficiencies that must be addressed. The participating jurisdiction must conduct progress and final inspections to ensure that work is done in accordance with approved standards for methods and materials, and with work write-ups. In accordance with § 92.504(d), the participating jurisdiction must comply with ongoing responsibilities for on-site inspections during the affordability period.

(6) *Payment schedule.* The participating jurisdiction must have procedures to ensure that progress payments are consistent with the amount of work performed and that final payment does not occur until all of the required work is completed.

(c) *Acquisition of standard housing.* (1) Existing housing that is acquired with HOME assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HOME funds, must meet the property standards of paragraph (a) or paragraph (b) of this section, as applicable, of this section for new construction and rehabilitation projects. The participating jurisdiction must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and an inspection that is conducted no earlier than 30 days before the commitment of HOME assistance.

(2) All other existing housing that is acquired with HOME assistance for rental housing must meet the rehabilitation property standards requirements of paragraph (b) of this section. The participating jurisdiction must document this compliance based upon an inspection that is conducted no earlier than 30 days before the commitment of HOME assistance, in accordance with the inspection procedures that the participating jurisdiction established pursuant to this section. If the property does not meet these standards, the property must be rehabilitated to meet the standards of paragraph (b) of this section.

(3) For acquisition projects that are homebuyer projects, before the transfer of the housing to the homebuyer, the participating jurisdiction must inspect the housing and notify the prospective homebuyer of the work needed to cure any defects, and the time by which defects must be cured and applicable property standards met. The housing must be free from all health and safety defects before occupancy and must meet the property standards of this section not later than 6 months after the date of transfer of ownership. The participating jurisdiction must inspect the housing to verify that the defects were corrected and the standards are met.

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

(e) *Manufactured housing.* Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes covering the same aspects of performance for such housing. Participating jurisdictions providing HOME assistance to install manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing must be on a permanent foundation. Manufactured housing that is rehabilitated using HOME funds must meet the property standards requirements in paragraph (b) of this section, as applicable. The participating jurisdiction must document this compliance in accordance with the inspection procedures that the participating jurisdiction has established pursuant to § 92.251, as applicable.

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

(i) *Compliance with State and local codes, ordinances, and requirements.* The housing must meet all applicable State and local code requirements and ordinances. At a minimum, the participating jurisdiction's ongoing property standards must include all inspectable items in the most recent notice setting forth the physical inspection procedures prescribed by HUD pursuant to 24 CFR 5.705 for public housing under the Uniform Physical Condition Standards. The participating jurisdiction's property standards are not required to use any scoring, item weight, or level of criticality in the notice.

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

(iii) *Lead-based paint.* The housing must meet the lead-based paint requirements in 24 CFR part 35.

(2) *Inspection procedures.* The participating jurisdiction must have written inspection procedures for ongoing property inspections, in accordance with § 92.504(d). These procedures must include: Detailed inspection checklists, description of how frequently the property inspections will be undertaken, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors.

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

21. In § 92.252:

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

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

The revisions and additions read as follows:

§ 92.252 Qualification as affordable housing: Rental housing.

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

(a) *Rent limitation.* HUD provides the following maximum HOME rent limits. The rent limits apply to the rent plus the utilities or the utility allowance. The maximum HOME rents (High HOME Rents) are the lesser of:

* * * * *

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

* * * * *

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

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

(d) *Initial rent schedule and utility allowances.* (1) The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. The participating jurisdiction must use the HUD Utility Schedule Model or otherwise determine the utility allowance for the project based on the type of utilities used at the project.

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

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

(1) The affordability requirements:

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

(ii) Must be imposed by deed restrictions, use restrictions, covenants running with the land, or other mechanisms approved by HUD and under which the participating jurisdiction may require specific performance, except that the participating jurisdiction may provide that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure; and

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

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

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

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

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

(f) * * *

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

* * * * *

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

* * * * *

(j) *Fixed and floating HOME units.* In a project containing HOME-assisted and other units, the participating jurisdiction may designate fixed or floating HOME units. This designation

must be made at the time of project commitment in the written agreement between the participating jurisdiction and the owner, and the HOME units must be identified not later than the time of project completion. Fixed units remain the same throughout the period of affordability. Floating units are changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

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

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

22. In § 92.253, revise the section heading and paragraphs (a), (c), and (d), and add paragraph (b)(9), to read as follows:

§ 92.253 Tenant protections and selection.

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

(b) * * *

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

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

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

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

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

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

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

(ii) A project may have a limitation or preference for persons with disabilities who need services offered at a project only if:

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

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

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

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

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

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

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

§ 92.254 Qualification as affordable housing: Homeownership.

(a) * * *

(2) * * *

(iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for the rehabilitation of owner-occupied single-family properties, the participating jurisdiction must use the HOME affordable homeownership limits provided by HUD ((*i.e.,* 95 percent of the median purchase price for the area, except that the affordable homeownership limit for newly constructed HOME-assisted housing need not be lower than the 95th percentile of the U.S. median purchase price for new construction for nonmetropolitan areas, as provided by HUD) or it may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows. The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. The participating jurisdiction may determine separate limits for existing housing and newly constructed housing. For housing located outside of metropolitan areas, a State may aggregate sales data from more than one county, if the counties are contiguous and similarly situated. The following information must be included in the annual action plan of the Consolidated Plan submitted to HUD for review and updated in each action plan.

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

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

period. The data must be listed in ascending order of sales price.

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

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

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

(3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family, and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section. If the housing is not acquired by an eligible homebuyer within 6 months of the date of project completion, the housing must be rented to an eligible tenant in accordance with § 92.252. In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing. The homebuyer must receive housing counseling.

* * * * *

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

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

* * * * *

(ii) *Recapture.* Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. The period of affordability is based upon the total amount of HOME funds subject to recapture described in paragraph (a)(5)(ii)(A)(5) of this section. Recapture provisions may permit the subsequent homebuyer to assume the HOME assistance (subject to the HOME requirements for the remainder of the period of affordability) if the subsequent homebuyer is low-income.

* * * * *

(b) * * *

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

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

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

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

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

* * * * *

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

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

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

(3) No fees (*e.g.,* origination fees or points) may be charged to a family for the HOME homeownership assistance provided pursuant to this paragraph (e),

and the participating jurisdiction must determine that the fees and other amounts charged to the family by the lender for the first mortgage financing are reasonable. Reasonable administrative costs may be charged to the HOME program as a project cost. If the participating jurisdiction requires lenders to pay a fee to participate in the HOME program, the fee is program income to the HOME program.

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

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

(2) Anti-predatory lending, and

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

24. Revise § 92.255 to read as follows:

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

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

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

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

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

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

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

(2) Housing is "owned" by the community housing development organization if the community housing development organization is the owner in fee simple absolute of multifamily or single family housing that is or will be rented to low-income families in accordance with § 92.252.

(3) Housing is "developed" by the community development housing organization if the community housing development organization is the owner (in fee simple absolute) and developer of new housing that is or will be constructed or existing substandard housing that is or will be acquired and rehabilitated for sale to low-income families in accordance with § 92.254.

(i) To be the "developer," the community development housing organization must arrange financing of the project and be in sole charge of construction. The community housing development organization may provide direct homeownership assistance (*e.g.,* downpayment assistance) when it sells the housing to low-income families and the community housing development organization will not be considered a subrecipient, provided that the HOME funds for downpayment assistance are not greater than 10 percent of the amount of HOME funds for development of the housing.

(ii) The participating jurisdiction must determine and set forth in its written agreement with the community housing development organization the actual sales prices of the housing or the method by which the sales prices for the housing will be established and whether the proceeds must be returned to the participating jurisdiction or may be retained by the community housing development organization.

(A) While proceeds that the participating jurisdiction permits the community housing development organization to retain are not subject to the requirements of this part, the participating jurisdiction must specify in the written agreement with the community housing development organization whether the proceeds are to be used for HOME-eligible activities or other housing activities to benefit low-income families.

(B) Funds that are recaptured because the housing no longer meets the affordability requirements under § 92.254(a)(5)(ii) are subject to the requirements of this part in accordance with § 92.503.

(4) Housing is "sponsored" by the community development housing organization if it is rental housing owned (in fee simple absolute) by a subsidiary of a community housing development organization, a limited partnership of which the community housing development organization or its subsidiary is the sole general partner, or a limited liability company of which the community housing development organization or its subsidiary is the sole managing member.

(i) The subsidiary of the community housing development organization may be a for-profit or nonprofit organization and must be wholly owned by the community housing development organization. If the limited partnership or limited liability company agreement permits the community housing development organization to be removed as general partner or sole managing member, the applicable agreement must provide that the removal must be for cause and that the community housing development organization must be replaced with another community housing development organization.

(ii) The HOME funds must be provided to the entity that owns the project.

(5) HOME-assisted rental housing is also "sponsored" by a community housing development organization if the community housing development organization owns and develops the rental housing project that it agrees to convey to a private nonprofit organization at a predetermined time after completion of the development of the project. Sponsored rental housing, as provided in this paragraph (a)(5), is subject to the following requirements:

(i) The private nonprofit organization may not be created by a governmental entity.

(ii) The HOME funds must be invested in the project that is owned by the community housing development organization.

(iii) Because the community housing development organization owns and develops the housing, the community housing development organization must own the property before the development phase of the project.

(iv) Before commitment of HOME funds, the community housing development organization sponsor must select the nonprofit organization that will obtain ownership of the property.

(A) The nonprofit organization assumes the community housing development organization's HOME obligations (including any repayment of loans) for the project at a specified time after completion of development.

(B) If the housing is not transferred to the nonprofit organization, the community housing development organization sponsor remains liable for the HOME assistance and the HOME project.

(6) The participating jurisdiction determines the form of assistance (*e.g.*, grant or loan) that the community housing development organization receives.

* * * * *

(e) If funds for operating expenses are provided under § 92.208 to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be developed, sponsored, or owned by the community housing development organization, the participating jurisdiction's written agreement with the community housing development organization must provide that the community housing development organization is expected to receive funds under paragraph (a) of this section for a project within 24 months of the date of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

(f) The participating jurisdiction must ensure that a community housing development organization does not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or $50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under § 92.208.

26. In § 92.351, revise paragraphs (a)(1) and (a)(2)(ii) through (iv) to read as follows:

§ 92.351 Affirmative marketing; minority outreach program.

(a) *Affirmative marketing.* (1) Each participating jurisdiction must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME-funded programs, including, but not limited to, tenant-based rental assistance and downpayment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability

(2) * * *

(ii) Requirements and practices each subrecipient and owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (*e.g.*, use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (*e.g.*, through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the participating jurisdiction and by subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions; and

* * * * *

27. In § 92.352, revise paragraph (a) to read as follows:

§ 92.352 Environmental review.

(a) *General.* The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. The applicability of the provisions of 24 CFR part 50 or part 58 is based on the HOME project (new construction, rehabilitation, acquisition) or activity (tenant-based rental assistance) as a whole, not on the type of the cost paid with HOME funds.

* * * * *

28. In § 92.354, paragraphs (a)(1) and (3) are revised to read as follows:

§ 92.354 Labor.

(a) * * *

(1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

* * * * *

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards, as applicable. Participating jurisdictions shall be responsible for ensuring compliance by contractors and subcontractors with labor standards described in this section. In accordance with procedures specified by HUD, participating jurisdictions shall:

(i) Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations;

(ii) Conduct on-site inspections and employee interviews;

(iii) Collect and review certified weekly payroll reports;

(iv) Correct all labor standards violations promptly;

(v) Maintain documentation of administrative and enforcement activities; and

(vi) Require certification as to compliance with the provisions of this section before making any payment under such contracts.

* * * * *

29. In § 92.356, paragraphs (b) and (f)(1) are revised to read as follows:

§ 92.356 Conflict of interest.

* * * * *

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process

or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

* * * * *

(f) * * *

(1) No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

* * * * *

30. In § 92.500, paragraphs (c)(1) and (d)(1)(A) and (C) are revised to read as follows:

§ 92.500 The HOME Investment Trust Fund.

* * * * *

(c) * * *

(1) The local account of the HOME Investment Trust Fund includes deposits of HOME funds disbursed from the Treasury account; the deposit of any State funds (other than HOME funds transferred pursuant to § 92.102(b)(2)) or local funds that enable the jurisdiction to meet the participating threshold amount in § 92.102, any program income (from both the allocated funds and matching contributions in accordance with the definition of program income), and any repayments or recaptured funds as required by § 92.503. The local account must be interest-bearing.

* * * * *

(d)(1) * * *

(A) Any funds in the United States Treasury account that are required to be reserved (*i.e.,* 15 percent of the funds) by a participating jurisdiction under § 92.300 that are not committed to a community housing development organization project within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;

* * * * *

(C) Any funds in the United States Treasury account that are not expended within 5 years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement and any funds in the United States Treasury account that were committed to community housing development organization projects that are not expended within 5 years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement; and

* * * * *

31. In § 92.502, paragraphs (a), (b)(2), and (e) are revised to read as follows:

§ 92.502 Program disbursement and information system.

(a) *General.* The HOME Investment Trust Fund account established in the United States Treasury is managed through a computerized disbursement and information system established by HUD. The system disburses HOME funds that are allocated or reallocated, and collects and reports information on the use of HOME funds in the United States Treasury account. (For purposes of reporting in the Integrated Disbursement and Information System, a HOME project is an activity.) The participating jurisdiction must report all program income in HUD's computerized disbursement and information system.

(b) * * *

(2) If the project set-up information is not completed within 20 days of the project set-up, the project may be cancelled by the system. In addition, a project that has been committed in the system for 12 months without an initial disbursement of funds may be cancelled by the system.

* * * * *

(e) *Access by other participants.* Access to the disbursement and information system by other entities participating in the HOME program (*e.g.,* State recipients) will be governed by procedures established by HUD. Only participating jurisdictions and State recipients (if permitted by the State) may request disbursement.

32. In § 92.503, paragraph (b)(3) is revised to read as follows:

§ 92.503 Program income, repayments, and recaptured funds.

* * * * *

(b) * * *

(3) HUD will instruct the participating jurisdiction to either repay the funds to the HOME Investment Trust Fund Treasury account or the local account. Generally, if the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund Treasury account, they must be repaid to the Treasury account. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund local account, they must be repaid to the local account. If the jurisdiction is not a participating jurisdiction at the time the repayment is made, the funds must be remitted to HUD, and reallocated in accordance with § 92.454.

* * * * *

33. In § 92.504:

a. Paragraph (a) is revised;

b. Paragraphs (c)(1) introductory text, (c)(1)(i), (ii), (vii), and (xi) are revised;

c. Paragraph (c)(1)(xiii) is added;

d. Paragraphs (c)(2) introductory text, (c)(2)(i), (iv), (v), and (x) are revised;

e. Paragraph (c)(2)(xi) is added;

f. Paragraphs (c)(3) introductory text, (c)(3)(i) through (iv), (c)(3)(v)(A), (vi), (vii), and (x) are revised;

g. Paragraph (c)(3)(xi) is added;

h. Paragraph (c)(4) introductory text is revised;

i. Paragraph (c)(6) is added and

j. Paragraph (d) is revised.

The revisions and additions read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

(a) *Responsibilities.* The participating jurisdiction is responsible for managing the day-to-day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance and compliance of each contractor, State recipient, and subrecipient must be reviewed at least annually. The participating jurisdiction must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

* * * * *

(c) * * *

(1) *State recipient.* The provisions in the written agreement between the State and a State recipient will depend on the program functions that the State specifies the State recipient will carry out in accordance with § 92.201(b). In accordance with § 92.201, the written agreement must either require the State recipient to comply with the requirements established by the State or require the State recipient to establish its own requirements to comply with this part, including requirements for income determinations and underwriting subsidy layering guidelines, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability.

(i) *Use of the HOME funds.* The agreement must describe the amount and use of the HOME funds to administer one or more programs to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance, including the type and number of housing projects to be funded (*e.g.* the number of single-family homeowner loans to be made or number of homebuyers to receive downpayment assistance), tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects), a budget for each program, and any requirement for matching contributions. These items must be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. The agreement must state if repayment of HOME funds or recaptured HOME funds must be remitted to the State or retained by the State recipient for additional eligible activities.

* * * * *

(vii) *Affirmative marketing.* The agreement must specify the State recipient's affirmative marketing responsibilities in accordance with § 92.351.

* * * * *

(xi) *Written agreement.* Before the State recipient provides funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants (or landlords) receiving tenant-based rental assistance, or contractors who are providing services to the State recipient, the State recipient must have a written agreement with such entities that meets the requirements of this section.

* * * * *

(xiii) *Fees.* The agreement must prohibit the State recipient and subrecipients from charging servicing, origination, processing, inspection, or other fees for the costs of administering a HOME program.

(2) *Subrecipient.* A subrecipient is a public agency or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME programs to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance. The agreement must set forth and require the subrecipient to follow the participating jurisdiction's requirements, including requirements for income determinations, underwriting and subsidy layering guidelines, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability requirements. The agreement between the participating jurisdiction and the subrecipient must include:

(i) *Use of the HOME funds.* The agreement must describe the amount and use of the HOME funds for one or more programs, including the type and number of housing projects to be funded (*e.g.,* the number of single-family homeowners loans to be made or the number of homebuyers to receive downpayment assistance), tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects), a budget, any requirement for matching contributions and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement.

* * * * *

(iv) *Other program requirements.* The agreement must require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the subrecipient does not assume the participating jurisdiction's responsibilities for environmental review under § 92.352 and the intergovernmental review process in § 92.357 does not apply. The agreement must set forth the requirements the subrecipient must follow to enable the participating jurisdiction to carry environmental review responsibilities before HOME funds are committed to a project.

(v) *Affirmative marketing.* The agreement must specify the subrecipient's affirmative marketing responsibilities in accordance with § 92.351.

* * * * *

(x) *Written agreement.* Before the subrecipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers or sponsors, subrecipients, homeowners, homebuyers, tenants (or landlords) receiving tenant-based rental assistance, or contractors, the subrecipient must have a written agreement that meets the requirements of this section. The agreement must state if repayment of HOME funds or recaptured HOME funds must be remitted to the participating jurisdiction or retained by the subrecipient for additional eligible activities.

(xi) *Fees.* The agreement must prohibit the subrecipient from charging servicing, origination, or other fees for the costs of administering the HOME program.

(3) *For-profit or nonprofit housing owner, sponsor, or developer (other than single-family owner-occupant).* The participating jurisdiction may preliminarily award HOME funds for a proposed project, contingent on conditions such as obtaining other financing for the project. This preliminary award is not a commitment to a project. The written agreement committing the HOME funds to the project must meet the requirements of "commit to a specific local project" in the definition of "commitment" in § 92.2 and contain the following:

(i) *Use of the HOME funds.* The agreement between the participating jurisdiction and a for-profit or nonprofit housing owner, sponsor, or developer must describe the address of the project, the use of the HOME funds and other funds for the project, including the tasks to be performed for the project, a schedule for completing the tasks and the project, and a complete budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement to achieve project completion and compliance with the HOME requirements.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. The affordability requirements in § 92.252

must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the participating jurisdiction may require specific performance.

(A) If the owner or developer is undertaking rental projects, the agreement must establish the initial rents and the procedures for rent increases the number of HOME units, the size of the HOME units, and the designation of the HOME units as fixed or floating, and the requirement to provide the address (*e.g.,* street address and apartment number) of each HOME unit no later than the time of project completion.

(B) If the owner or developer is undertaking a homeownership project for sale to homebuyers in accordance with § 92.254(a), the agreement must set forth the resale or recapture requirements that must be imposed on the housing, the sales price or the basis upon which the sales price will be determined, and the disposition of the sales proceeds. Recaptured funds must be returned to the participating jurisdiction.

(iii) *Project requirements.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted. The agreement may permit the owner to limit eligibility or give a preference to a particular segment of the population in accordance with § 92.253(d).

(iv) *Property standards.* The agreement must require the housing to meet the property standards in § 92.251, upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing compliance with § 92.251 for the duration of the affordability period.

(v) * * *

(A) The agreement must specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.

* * * * *

(vi) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements. The owner of rental housing must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with § 92.252. If the rental housing project has floating HOME units, the owner must provide the participating jurisdiction with information regarding unit substitution and filling vacancies so that the project remains in compliance with HOME rental occupancy requirements. The agreement must specify the reporting requirements (including copies of financial statements) to enable the participating jurisdiction to determine the financial condition (and continued financial viability) of the rental project.

(vii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the participating jurisdiction and the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The affordability requirements in § 92.252 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the participating jurisdiction may require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

* * * * *

(x) *Community housing development organization provisions.* If the nonprofit owner or developer is a community housing development organization and is using set-aside funds under § 92.300, the agreement must include the appropriate provisions under §§ 92.300, 92.301, and 92.303. If the community development organization is receiving HOME funds as a developer of homeownership housing, the agreement must specify if the organization may retain proceeds from the sale of the housing and whether the proceeds are to be used for HOME-eligible or other housing activities to benefit low-income families. Recaptured funds are subject to the requirements of § 92.503. If the community housing development organization is receiving assistance for operating expenses, see paragraph (c)(6) of this section.

(xi) *Fees.* The agreement must prohibit project owners from charging origination fees, parking fees, laundry room access fees, and other fees; however, rental project owners may charge reasonable application fees to prospective tenants.

(4) *Contractor.* The participating jurisdiction selects a contractor through applicable procurement procedures and requirements. The contractor provides goods or services in accordance with a written agreement (the contract). For contractors who are administering all or some of the participating jurisdiction's HOME programs or specific services for one or more programs, the contract must include at a minimum the following provisions:

* * * * *

(6) *Community housing development organization receiving assistance for operating expenses.* The agreement must describe the use of HOME funds for operating expenses; *e.g.,* salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; and materials and supplies. If the community housing development organization is not also receiving funds for a housing project to be developed, sponsored, or owned by the community housing development organization, the agreement must provide that the community housing development organization is expected to receive funds for a project within 24 months of the date of receiving the funds for operating expenses, and must specify the terms and conditions upon which this expectation is based and the consequences of failure to receive funding for a project.

(d) *On-site inspections and financial oversight.* (1) *Inspections.* The participating jurisdiction must inspect each project at project completion and during the period of affordability to determine that the project meets the property standards of § 92.251.

(i) *Completion inspections.* At completion of the project, the participating jurisdiction must perform an on-site inspection of HOME-assisted housing to determine that all contracted work has been completed and that the project complies with the property standards of § 92.251.

(ii) *Ongoing periodic inspections of HOME-assisted rental housing.* During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards of § 92.251 and to verify the information submitted by the owners in accordance with the requirements of § 92.252. The inspections must be in accordance with the inspection procedures that the participating jurisdiction establishes to meet the inspection requirements of § 92.251.

(A) The on-site inspections must occur 12 months after project completion and at least once every 3 years thereafter during the period of affordability.

(B) If there are observed deficiencies for any of the inspectable items in the

property standards established by the participating jurisdiction, in accordance with the inspection requirements of § 92.251, a follow-up on-site inspection to verify that deficiencies are corrected must occur within 12 months, or within a reasonable time frames established by the participating jurisdiction depending on the severity of the deficiency. Health and safety deficiencies must be corrected immediately, in accordance with § 92.251. The participating jurisdiction must adopt a more frequent inspection schedule for properties that have been found to have health and safety deficiencies.

(C) The property owner must annually certify to the participating jurisdiction that each building and all HOME-assisted units in the project is suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the participating jurisdiction to meet the requirements of § 92.251.

(D) Inspections must be based on a statistically valid sample of units. The participating jurisdiction must select the sample. For projects with one to four HOME-assisted units, the inspectable items (site, building exterior, building systems, and common areas) for each building with HOME-assisted units and 100 percent of the HOME-assisted units must be inspected. For projects with more than four HOME-assisted units, the inspectable items (site, building exterior, building systems, and common areas) for each building with HOME-assisted units and at least 20 percent of the HOME-assisted units in each building, but not less than four HOME-assisted units in each project and one HOME-assisted unit in each building, must be inspected.

(iii) *Annual inspections: Tenant-based rental assistance (TBRA).* All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards in § 982.401 of this title. The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to determine compliance with these standards.

(2) *Financial oversight.* During the period of affordability, the participating jurisdiction must examine regularly (at least annually) the financial condition of HOME-assisted rental housing to determine the continued financial viability of the housing and must take actions to correct problems, to the extent feasible.

34. Revise § 92.505 to read as follows:

§ 92.505 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of 2 CFR part 225 (OMB Circular No. A–87) and the following requirements of 24 CFR part 85 apply to the participating jurisdictions, State recipients, and governmental subrecipients receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32 through 85.34, 85.36, 85.44, 85.51, and 85.52.

(b) *Nonprofit organizations.* The requirements of 2 CFR part 230 (OMB Circular No. A–122) and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are nonprofit organizations that are not governmental subrecipients: §§ 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73.

34. In § 92.508:

a. Paragraphs (a)(2)(ii), (iii), and (viii) are revised;

b. Paragraphs (a)(3)(i), (ii), (iii), (iv), (vi), and (xiii) are revised;

c. Paragraph (a)(3)(xiv) is added; and

d. Paragraphs (a)(4)(i) and (iii) and (a)(6)(i) are revised.

The revisions and addition read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(2) * * *

(ii) The forms of HOME assistance used in the program, including any forms of investment described in the Consolidated Plan under 24 CFR part 91 that are not identified in § 92.205(b), and which are specifically approved by HUD.

(iii) The underwriting and subsidy layering guidelines adopted in accordance with § 92.250 that support the participating jurisdiction's Consolidated Plan certification.

* * * * *

(viii) If HOME funds are used for acquisition of housing for homeownership, the resale or recapture guidelines established in accordance with § 92.254(a)(5), as set forth in the Consolidated Plan.

* * * * *

(3) * * *

(i) A full description of each project assisted with HOME funds, including the location (address of each unit), form of HOME assistance, and the units or tenants assisted with HOME funds.

(ii) The source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20; and records to document the eligibility and permissibility of the project costs, including the documentation of the actual HOME-eligible development costs of each HOME-assisted unit (through allocation of costs, if permissible under § 92.205(d)) where HOME funds are used to assist less than all of the units in a multi-unit project.

(iii) Records demonstrating that each rental housing or homeownership project meets the minimum per-unit subsidy amount of § 92.205(c), the maximum per-unit subsidy amount of § 92.250(a), and the subsidy layering and underwriting evaluation adopted in accordance with § 92.250(b).

(iv) Records (*e.g.,* inspection reports) demonstrating that each project meets the property standards of § 92.251 at project completion. In addition, during the period of affordability, records for rental projects demonstrating compliance with the property standards and financial reviews and actions pursuant to § 92.504(d).

* * * * *

(vi) Records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of § 92.209(c), including any targeting requirements, the rent reasonableness requirements of § 92.209(f), the maximum subsidy provisions of § 92.209(h), HQS inspection reports, and calculation of the HOME subsidy.

* * * * *

(xiii) Records demonstrating that a site and neighborhood standards review was conducted for each project which includes new construction of rental housing assisted under this part to determine that the site meets the requirements of 24 CFR 983.57(e)(2) and (e)(3), in accordance with § 92.202.

(xiv) Records (written agreements) demonstrating compliance with the written agreements requirements in § 92.504.

(4) * * *

(i) Written agreements committing HOME funds to CHDO projects in accordance with § 92.300(a).

* * * * *

(iii) The name and qualifications of each CHDO and amount of HOME CHDO set-aside funds committed.

* * * * *

(6) *Program administration records.* (i) Written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

* * * * *

36. In § 92.551, paragraph (c)(1)(vii) is redesignated paragraph (c)(1)(viii) and revised, new paragraphs (c)(1)(vii) and (c)(1)(ix) are added, and paragraph (c)(2) is revised to read as follows:

§ 92.551 Corrective and remedial actions.

* * * * *

(c) * * *

(1) * * *

(vii) Establishing procedures to ensure compliance with HOME requirements;

(viii) Making matching contributions as draws are made from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account and establishing a remedial plan to make up the matching contributions deficit; and

(ix) If the participating jurisdiction is a metropolitan city, forming a consortium with the urban county if the urban county is willing to carry out the HOME program in the metropolitan city.

(2) HUD may also change the method of payment from an advance to reimbursement basis and may require supporting documentation to be submitted for HUD review for each payment request before payment is made; determine the participating jurisdiction to be high risk and impose special conditions or restrictions on the next year's allocation in accordance with 24 CFR 85.12; and take other remedies that may be legally available.

37. In § 92.552, paragraph (b) is revised to read as follows:

§ 92.552 Notice and opportunity for hearing; sanctions.

* * * * *

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the participating jurisdiction or, at HUD's option, the State recipient. Proceedings will be conducted in accordance with 24 CFR part 26.

38. 38. In § 92.614:

a. Paragraphs (a)(3) through (6) are redesignated as paragraphs (a)(5) through (7), respectively;

b. New paragraph (a)(3) is added;

c. Paragraph (b)(1) is removed; and

d. Paragraphs (b)(2) and (3) are redesignated paragraphs (b)(1) and (2), respectively.

The addition reads as follows:

§ 92.614 Other Federal requirements.

(a) * * *

(3) *Affirmative marketing.* The affirmative marketing requirements contained in § 92.351(a).

* * * * *

Dated: November 30, 2011.

Shaun Donovan,

Secretary.

[FR Doc. 2011–31778 Filed 12–15–11; 8:45 am]

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