DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91, 92, 570, and 982

[Docket No. FR–6144–F–03]

RIN 2506–AC50

HOME Investment Partnerships Program: Program Updates and Streamlining

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

ACTION: Final rule.

SUMMARY: HUD's HOME Investment Partnerships Program (HOME program or HOME) provides formula grants to States and units of general local government to fund a wide range of activities to produce and maintain affordable rental and homeownership housing and provides tenant-based rental assistance for low-income and very low-income households. This final rule revises the current HOME regulations to update, simplify, or streamline requirements, better align the program with other Federal housing programs, and implement recent amendments to the HOME statute. This final rule also includes minor revisions to the regulations for the Community Development Block Grant and Section 8 Housing Choice Voucher Programs consistent with the implementation of the changes to the HOME program. This final rule follows the publication of a proposed rule on May 29, 2024, and takes into consideration the comments received in response to that proposed rule.

DATES: Effective February 5, 2025.

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

SUPPLEMENTARY INFORMATION:

I. Background

The HOME program is authorized by title II of the Cranston-Gonzalez National Affordable Housing Act [1] (''NAHA'' or the ''Act'') and has been in operation since 1992. The HOME program provides grants to States, local jurisdictions, and consortia of local jurisdictions (collectively, participating jurisdictions or PJs) and is used, often in partnership with local nonprofit groups, to fund a wide range of activities to build, buy, or rehabilitate affordable housing for rent or homeownership or to fund direct rental assistance to low-income people.[2] HOME program funds are awarded annually as formula grants to PJs. After the Department obligates funds to a PJ, the Department establishes a HOME Investment Trust Fund [3] for each PJ, providing a line of credit that a PJ may draw upon as needed.

The HOME program is the largest Federal block grant to States and local governments designed exclusively to create affordable housing for low-income households. Each year, the HOME program allocates approximately $1.5 billion among States and approximately 600 localities nationwide. In fiscal year 2023, PJs completed 6,848 rental housing units and 4,051 homebuyer units, assisted 2,717 low-income homeowners to repair their homes, and provided tenant-based rental assistance to 13,016 low-income households. HOME funds are most often used as gap financing for rental projects, particularly for projects that have been awarded Low-Income Housing Credits (LIHTC).[4] As of late 2024, there are 237,767 HOME-assisted rental units operating in their periods of affordability (*i.e.,* subject to ongoing HOME income and rent requirements).

The HOME program is designed to reinforce several important values and principles of community development. First, the HOME program's flexibility empowers people and communities to design and implement strategies tailored to their own needs and priorities. Second, the HOME program's emphasis on consolidated planning expands and strengthens partnerships among all levels of government and the relationship with the private sector in the development of affordable housing. Third, the HOME program's technical assistance activities and set-aside for qualified Community Housing Development Organizations (CHDOs) help to build the capacity of, and partnerships, with these community-based nonprofit organizations. Fourth, the HOME program's requirement that PJs match 25 cents of every dollar in program funds helps mobilize community resources in support of affordable housing.

II. The Proposed Rule

On May 29, 2024, HUD published the ''HOME Investment Partnerships Program: Program Updates and Streamlining'' proposed rule (the proposed rule) in the **Federal Register**, available at 89 FR 46618. In the proposed rule, HUD proposed numerous changes to 24 CFR part 92. The proposed changes included significant revisions to the CHDO requirements, a change in the approach to HOME rents, simplified requirements for small-scale rental projects, enhanced flexibility in HOME tenant-based rental assistance (TBRA) programs, and simplified provisions and new flexibilities for community land trusts (CLTs). The proposed rule also proposed to significantly strengthen and expand tenant protections by requiring that a HOME tenancy addendum with a set of uniform tenant protections be appended to the leases of all tenants of HOME-assisted rental housing units. HUD also proposed requiring that a HOME tenancy addendum with a streamlined set of uniform tenant protections be appended to the leases of all tenants receiving TBRA. Additionally, HUD proposed to create incentives for meeting a more advanced property standard that incorporates green building standards, higher levels of energy efficiency, and innovative building techniques in new construction, reconstruction, and rehabilitation of housing. The proposed rule also sought to clarify the resale requirements for homeownership housing and proposed technical amendments and simplifications to conform provisions to certain changes made in the 2013 HOME Final Rule.[5]

The proposed rule also included changes made by the Housing Opportunity Through Modernization Act of 2016: Implementation of Sections 102, 103, and 104 final rule, published in the **Federal Register** on February 14, 2023 (88 FR 9600) (the HOTMA Final Rule) and the Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE) final rule, published in the **Federal Register**

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

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

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

[4] See 26 U.S.C. 42.

[5] HOME Investment Partnerships Program: Improving Performance and Accountability; Updating Property Standards, (78 FR 44628, July 24, 2013).

on May 11, 2023 (88 FR 30442) (the NSPIRE Final Rule). The proposed rule also proposed further revisions to the changes made to 24 CFR part 92 by the HOTMA and NSPIRE Final Rules. In addition, the proposed rule proposed updates to citations, in paragraphs where other changes are being made, to conform with recent changes to the Office of Management and Budget (OMB) regulations at 2 CFR part 200.

See the proposed rule for a full description of all the HOME program proposed regulation changes associated with this rulemaking.

III. This Final Rule

HUD reviewed and considered all public comments submitted in response to the proposed rule, which are summarized and addressed in the next section of this final rule. After considering the public comments received in response to the proposed rule, this final rule incorporates a majority of the proposed regulatory changes described in the proposed rule; however, in response to public comments received, HUD is making certain revisions to the HOME program regulations from those described in the proposed rule at this final rule stage. HUD is also making certain non-substantive revisions to the proposed regulatory text at this final rule stage.

In response to comments received during the proposed rule stage of this rulemaking, HUD is making the following revisions to the final rule:

24 CFR Part 91—Technical Revisions

HUD is making certain technical revisions in 24 CFR part 91 to replace the term ''affordability period'' with ''period of affordability.'' These revisions are consistent with the technical revision proposed in 24 CFR part 92 to make the same terminology replacement. Further, these revisions are consistent with public comments HUD received noting that these revisions are appropriate.

24 CFR Part 92—Technical Revisions

HUD is making certain technical revisions in 24 CFR part 92 to improve clarity and readability of certain language throughout the part. While HUD is not summarizing each of these technical changes because the changes are minor and non-substantive, a sampling of these revisions are described in the paragraphs that follow.

The Department received comments indicating that it had not fully revised all references from ''downpayment assistance'' to ''homeownership assistance.'' The Department is revising §§ 92.203(d), 92.209(c)(2)(iv), 92.250(b)(4), 92.251(c)(3), 92.254(b)(1)(ii), 92.300(a)(6)(i), 92.351(a)(1), 92.504(c)(1)(i), and 92.504(c)(2)(i) accordingly. The Department declined to revise certain references in the regulation that were specific to the downpayment provided by a homebuyer (*e.g.,* for purposes of the resale or recapture methods used in § 92.254).

Commenters noted that there were a number of areas where the term ''dwelling'' had not been replaced by ''housing.'' Accordingly, the Department is revising §§ 92.219(a)(4), 92.254(a)(5)(ii)(A), and 92.258(a) to standardize the use of ''housing.''

The Department noted several instances where it had not corrected the term ''single-family'' to read ''single family.'' Accordingly, the Department is revising §§ 92.220(a)(5)(ii), 92.254(a)(6), 92.504(c)(1)(i), and 92.504(c)(2)(i) to include the standardized term ''single family.''

Several commenters noted that the Department failed to change all the references from ''affordability period'' to ''period of affordability.'' The Department has further revised the term for consistency in §§ 92.251(f), 92.252(d)(3), 92.254(a)(5)(ii)(B)(2), 92.258(c) and (d)(3), 92.359(f), and 92.508(c)(1) and (2).

The Department is also revising the first sentence of § 92.201(b)(3)(i) to clarify that States must require that State recipients use HOME funds in accordance with 24 CFR part 92. This is also stated in the written agreement section in § 92.504 and is a revision for consistency.

24 CFR 92.2 Definitions

A. Commitment

As explained in greater detail in the preamble describing the revisions in § 92.209, the rental assistance contract requirements in the HOME tenant-based rental assistance program are being revised to require that the PJ enter into a rental assistance contract with the owner and the tenant, either as separate agreements or a single tri-party agreement. The Department is therefore revising the definition of *Commit to a specific local project* in paragraph (2)(iii) of the definition of *Commitment* to accurately state that the rental assistance contract, which is the committing document for HOME tenant-based rental assistance, is the contract with the ''owner and the tenant'' instead of the contract with the ''owner or the tenant.''

A new paragraph (2)(ii)(C) was added under *Commit to a specific local project* in the definition of *Commitment* to provide the requirements for commitments to a family to acquire single family housing for homeownership that does not meet the PJ's property standards, as described in § 92.251(c)(3). The requirements include the same requirements for standard housing, *i.e.,* that the PJ (or State recipient or subrecipient) and the family must have executed a written agreement under which HOME assistance will be provided for the purchase of the single family housing, which requires the property title to be transferred to the family within six months of the agreement date. In addition, the paragraph will also require that the written agreement require the property to meet the standards in accordance with § 92.251(c)(3). This revision is being made because the current definition of Commit to a specific local project only contemplates that the homebuyer will be purchasing housing in standard condition and not housing that requires rehabilitation. This allows the written agreement to count as a commitment when it complies with the requirements in § 92.251(c)(3), thereby providing consistent application of the new rules permitting homebuyers to rehabilitate their units to meet property standards post-acquisition.

B. Community Housing Development Organizations

In response to public comments received, HUD is making multiple changes to paragraph (8)(i) of the definition of community housing development organization in § 92.2. Paragraph (8)(i) of the CHDO definition describes board membership requirements to maintain accountability to low-income community residents. Many commenters were concerned that the language of the proposed rule would reduce the accountability of CHDO boards. As described further in the following paragraphs, HUD is addressing the concerns expressed in the comments by strengthening the accountability structures.

HUD is revising paragraph (8)(i) of the CHDO definition to add ''low-income beneficiaries of HUD programs'' as an explicitly named group of eligible board members to meet the accountability to low-income community residents board requirement. HUD recognizes that 42 U.S.C. 12704(6)(B) requires that a CHDO ''maintain[], through significant representation on the organization's governing board and otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries with regard to decisions on the design, siting, development, and management of

affordable housing . . . .'' By adding ''low-income beneficiaries of HUD programs'' to the regulation, HUD believes it is more closely matching the intent of the statute and emphasizing that, whenever possible, board members of CHDOs should include low-income beneficiaries of HUD programs.

HUD is also revising paragraph (8)(i) of the CHDO definition to use the term ''designees of nonprofit organizations'' instead of ''authorized representatives of nonprofit organizations.'' This revision of the term ''designee'' is being made because of confusion expressed by commenters regarding when a person is considered an ''authorized representative.'' HUD recognizes that the inconsistent terminology is confusing and believes that using a consistent term to describe individuals representing ''low-income neighborhood organizations'' and the ''nonprofit organizations'' described in paragraph (8)(i) brings additional clarity to paragraph (8)(i) of the CHDO definition.

HUD is further revising paragraph (8)(i) of the CHDO definition to specifically reference the designees of nonprofit organizations in the community that address the housing or supportive service needs of ''low-income residents or residents of low-income neighborhoods.'' This revision is in response to commenters who stated that HUD had not sufficiently connected the term ''nonprofit organizations'' to low-income residents of the community in paragraph (8)(i) of the CHDO definition. The commenters urged HUD to use clearer language to show that individuals representing organizations serving low-income persons, even if those persons do not live in low-income neighborhoods, should be able to meet the requirement that the CHDO board is accountable to low-income community residents. HUD believes this revision will better enable designees that directly serve low-income residents to be CHDO board members. In response to significant comment from the public, the Department is revising paragraph (8)(i) to prohibit an organization from being considered a CHDO if its service area is the entire State. Though the Department had proposed removing this restriction from the current regulation to better enable rural PJs and states to use their CHDO set-aside funds, the public comments were quite clear that allowing an organization to have a statewide service area was not the solution to addressing the shortage of CHDOs with capacity in rural areas.

In response to public comments received, HUD is also making multiple changes to paragraph (9) of the definition of community housing development organization in § 92.2. These specific changes are described in the paragraphs that follow.

HUD is revising the introductory text of paragraph (9) of the CHDO definition to add ''Federal Home Loan Bank Affordable Housing Program (12 U.S.C. 1430) funds'' to the list of housing programs that demonstrate a CHDO's capacity to carry out a housing project. This change is made in response to public comments to provide clarity because these grant funds are frequently layered with HOME funds in housing development projects.

HUD is revising paragraph (9)(i) of the CHDO definition by changing the first sentence of the paragraph to require that a CHDO have ''paid employees'' with housing development experience who will work directly on the HOME-assisted project. HUD is making this revision in response to public comments that correctly noted that the way the proposed rule phrased this portion of paragraph (9)(i) of the CHDO definition allowed a CHDO to have no paid employees at all and still meet the capacity requirement. HUD's intent with the proposed rule was to allow volunteers to supplement the capacity of paid employees, not to allow a CHDO to meet the capacity requirements while having no paid employees. HUD is making a similar revision in the last sentence of paragraph (9)(i) of the CHDO definition to read as ''key, paid staff of the organization'' for the same reasons.

HUD is further revising paragraph (9)(i) of the CHDO definition to add an additional sentence to clarify that where the paid employees of a CHDO alone do not demonstrate capacity, that experience can be supplemented with volunteer board members or officers. For additional clarity, HUD is also making minor revisions to paragraph (9)(i) of the CHDO definition to more directly state the requirement that a volunteer board member or officer may not be compensated by or have their services donated by another organization.

C. Community Land Trust

In response to public comments received, HUD is making multiple changes from the proposed rule to the definition of CLT in § 92.2. These specific changes are described in the paragraphs that follow.

HUD is revising paragraph (1) of the CLT definition to read ''[h]as as its primary purposes acquiring, developing, or holding land to provide housing that is permanently affordable to low-income persons.'' Commenters noted that CLT ownership models vary nationwide and, while some CLTs do develop and maintain their properties, other CLTs acquire and hold properties as affordable housing in perpetuity but are not otherwise involved in maintenance or development work. HUD recognizes that its proposed definition was too narrow to consider many of these organizations as CLTs and is revising it accordingly. In addition, HUD's proposed rule stated that a CLT must have a primary purpose of serving both low- and moderate-income persons. After reviewing the comments and the various CLT models provided by commenters, HUD is revising the CLT definition to recognize that the primary purpose of a CLT participating in the HOME program must be to serve low-income persons. HUD is also making a similar change to remove ''moderate-income'' from paragraph (3) of the CLT definition.

D. Homeownership

In response to public comments received, HUD is making certain changes to the definition of homeownership in § 92.2. Public commenters noted that the Department had not changed the term ''dwelling'' in the definition of homeownership in § 92.2. After considering the best way to clarify the requirement, the Department determined that it would be easier to replace to term ''1–4 unit dwelling or in a condominium unit'' with the term ''single family housing,'' which is defined as ''a one-to four- unit residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.'' The final rule text is clearer and uses a common term that is also defined in the regulation. It also provides additional clarity for homeownership projects involving manufactured homes, which are more explicitly referenced in the definition of single family housing. HUD believes that this clarifying change is therefore also responsive to comments requesting that HUD clarify the treatment of manufactured homes in HOME homeownership projects.

HUD notes that in its review of the public comments, the Department identified significant confusion by some commenters about the time periods in the definition of CLT and homeownership in § 92.2 and the housing education and organizational support requirements in § 92.302. HUD is committed to better addressing the needs of CLTs and its revisions to the homeownership definition in § 92.2 clarify the intent of the definition and how it is meant to apply to HOME homeownership projects. The specific changes to the definition of

homeownership are described in the paragraphs that follow.

HUD is revising paragraph (1) of the definition of homeownership to further clarify the explanatory text to state that the land upon which housing is located may be owned in fee simple or through a ground lease if the housing was owned in fee simple. The paragraph was also revised to give a rule of construction so that PJs and homeowners understand that the minimum term of a ground lease is the lowest time period if more than one condition applies. For example, if a ground lease was part of a CLT-developed project, the minimum term for the ground lease to be considered homeownership is 50 years, but if that CLT-developed project was in an insular area, the minimum term for the ground lease to be considered homeownership would be 40 years because the minimum term for a ground lease to be considered homeownership in insular areas is 40 years (See § 92.2(1)(ii)).

HUD is further revising paragraph (1) of the definition of homeownership to remove the latter portion of the introductory text of paragraph (1) that addressed 99-year ground leases. Paragraph (1) is instead being revised to create a new paragraph (1)(i) to make clear that a 99-year ground lease is one of multiple options for ground lease length. The original paragraphs (1)(i), (1)(ii), and (1)(iii) are being redesignated as (1)(ii), (1)(iii), (1)(iv), respectively.

HUD is also making other minor, non-substantive revisions to the introductory text and paragraph (1) to the definition of homeownership to improve the readability of the text.

E. Housing

HUD is revising the definition of housing in § 92.2 to replace the term ''dwellings'' with ''housing units.'' Commenters noted that there were certain areas in the proposed rule where ''dwelling'' had not been replaced with the updated term. HUD is updating the housing definition to correct this issue.

F. Single Room Occupancy (SRO) Housing

HUD is revising the definition of *single room occupancy* (SRO) housing in § 92.2 to replace the term ''dwelling'' with ''housing.'' Commenters noted that there were certain areas in the proposed rule where ''dwelling'' had not been replaced with the updated term. HUD is updating the SRO housing definition to correct this issue.

G. American Dream Downpayment Initiative References

The Department intended to remove all American Dream Downpayment Initiative (ADDI) regulations as part of this rulemaking. Unfortunately, the Department inadvertently retained language in the definition of ''State'' that described deviations between the term ''State'' in the HOME program and in the ADDI program. The Department is revising the definition of ''State'' to remove all ADDI-related language in this final rule.

24 CFR 92.3—Applicability of 2025 Regulatory Changes

In response to the proposed rule, HUD received comments requesting that the Department specify the effective date of the regulatory changes associated with this final rule. To address these comments, HUD is revising § 92.3 to provide the applicable effective dates for the regulatory changes associated with this final rule instead of the applicable effective dates associated with the 2013 regulatory revisions. The header is being revised to describe the applicability of 2025 regulatory changes.

The introductory language of § 92.3 is being replaced by a provision explaining that the regulations in 24 CFR part 92 apply based on when an income determination is made or when the HOME funds for the project were committed. The provision goes on to explain that projects where the HOME funds were committed before a certain date may be subject to previous versions of these regulations. The provision also explains that the intent of § 92.3 is to provide instruction regarding which version of these regulations applies to which project based on when the funds were committed.

Paragraph § 92.3(a) is being replaced with a new paragraph (a). Paragraph (a) establishes the effective date for the 2025 final rule. The paragraph explains that the final rule is applicable to projects for which HOME funds are committed on or after February 5, 2025. The paragraph goes on to state that a PJ must perform income determinations in accordance with § 92.203 after February 5, 2025.

Paragraph § 92.3(b) is being revised to explain that while the effective date of the rule is 30 days after publication, PJs are permitted to continue to comply with the HOME regulations as they existed immediately before the effective date for commitments made up to one year after the rule's effective date. This allows PJs time to change their policies and procedures, forms, and systems, so that they can effectively implement the provisions of the final rule.

Paragraph (c) describes how the income regulations will be implemented for existing tenants and new projects that are coming online. This is because the income requirements of § 92.203 are applied to tenants of existing projects pursuant to their written agreements. The Department wants to clarify that for up to one year after the effective date of the rule, PJs may calculate income in accordance the income requirements that the PJs was implementing immediately prior to the publication of the final rule. This allows PJs to transition to determining income in accordance with the new requirements, as many income reexaminations may be underway when the rule becomes effective.

In some cases, PJs may wish to amend existing written agreements to take advantage of certain flexibilities or impose new requirements. While most of the rule may be applied immediately on the effective date, the Department is clarifying that certain provisions may not be implemented when a commitment has already been issued for a project. These relevant provisions are listed in § 92.3(d)(1) through (5).

Section 92.3(d)(1) explains that the written agreement cannot be revised to allow for certain predevelopment costs as well as certain project related soft costs currently contained in § 92.206(d)(2) to be reimbursed in accordance with the newly revised § 92.206(d)(1) if the HOME funds were committed to the project prior to the effective date of the final rule. Commitments were made after underwriting the project with assumptions that these costs were not going to be paid with HOME funds and the Department determined that the written agreements should not be amended to include those costs as payable from HOME when it was not the source that had already been identified to pay for the cost.

Similarly, § 92.3(d)(2) states that the new flexibility to obtain a higher maximum per-unit subsidy increase should only be included for projects where funds were committed to the project after the effective date of the final rule. While the Department fully supports green building requirements, the Department determined that projects with current commitments should not undergo additional underwriting and cost allocation. When a PJ committed HOME funds to projects before the effective date of the rule, they underwrote and sized the assistance based on the assumption that the maximum per-unit subsidy was the

limit in effect. The Department believes that this should continue to be the case and that current projects should not be amended. If a PJ were to amend its written agreement with an owner to add the new requirements at a later time, it can be disruptive, cause delays in production of badly needed affordable housing units and is not the behavior that the Department is attempting to incentivize by providing the increase in maximum per-unit subsidy.

Section 92.3(d)(3) states that the revised dollar thresholds for periods of affordability in § 92.252 and § 92.254 will not apply to projects where the PJs had already committed HOME funds. Similar to paragraphs (d)(1) and (2), a PJ already agreed with an owner on the applicable periods of affordability, just like they had agreed to a maximum per-unit subsidy, or which type of funds were used to pay which costs. To allow the owner and PJ the ability to reduce the period of affordability for a project that has already been agreed upon through amending the written agreement would be perverse and counter to the purposes of the Act.

Section 92.3(d)(4) states that the new tenant protection provisions cannot be imposed upon owners that are already under a current written agreement or tenants and owners under a current rental assistance contract or receiving security deposit assistance. Owners should have appropriate notice before imposing substantial changes in landlord-tenant relations. The HOME program provides development subsidies to owners to build affordable housing but does not provide ongoing operations assistance. Owners must consider the costs of compliance in determining whether to participate in the HOME program. This includes the costs of complying with tenant protections. Moreover, the Department received numerous comments indicating that imposing the tenant protections on current owners would amount to a regulatory taking. While the Department does not believe that this is the case and would strenuously object to any characterization of improving tenant protections as a form of taking or violation of an owner's due process rights, the Department does believe it is important to establish clear compliance requirements within the written agreement between the PJ and the owner, and to allow those requirements to remain consistent for the life of the agreement. To prevent potential litigation and loss of affordable housing, the Department is requiring that the new and revised tenant protections provided in § 92.253 only be effective for projects with commitments of up to one year after the effective date of the rule and not be applied to projects with commitments prior to the effective date of the rule.

Finally, § 92.3(d)(5) was added to state that the revisions to the role of CHDOs in owning, developing, and sponsoring affordable housing in § 92.300 only apply to projects where the PJ committed CHDO set-aside funds on or after the effective date of the final rule. The new flexibilities in § 92.300 should be used for new projects. If a PJ has already entered into an agreement with a CHDO to own, develop, or sponsor a project, then it is inappropriate for the PJ to amend the agreement and enter into an agreement with a new party because of the new flexibilities provided in § 92.300. The Department is expanding the way in which CHDOs can be involved in a HOME project but is not encouraging PJs to terminate or significantly restructure existing CHDO projects.

The Department also believes that it may be helpful to place the date and the triggering action into a chart to better assist PJs, owners, and the public in understanding when the 2025 final rule's requirements are applicable.

24 CFR 92.201 Distribution of Assistance

The Department is also revising the first sentence of § 92.201(b)(3)(i) to clarify that States must require State recipients use HOME funds in accordance with part 92. This is also stated in the written agreement section in § 92.504 and is a revision for consistency.

24 CFR 92.203 Income Determinations

The Department is making a technical revision to the first sentence of § 92.203(a) to remove the dash between ''income'' and ''eligible'' to maintain consistent usage of the term. The Department is revising the ''must'' to a ''may'' in § 92.203(a)(1) in response to public comments recommending that HUD allow PJs to always retain the right to determine annual income in accordance with the process described in paragraphs (b)–(e). This change will allow PJs the choice of accepting the income determinations made in Federal or State project-based rental subsidy programs instead of requiring PJs to accept those determinations.

In response to public comments, the Department is revising the language in § 92.203(a) to create a new paragraph (a)(3) and redesignate the current paragraph (a)(3) as paragraph (a)(4). The new paragraph (a)(3) provides additional burden relief for PJs and owners by expanding a safe harbor that is currently located in § 92.203(b)(1)(iii). The current safe harbor in § 92.203(b)(1)(iii) is limited to government programs and not forms of public assistance, which is a broader term that encompasses tax credits and other forms of assistance that are not ''programs.'' The Department uses this broader term ''public assistance'' in the safe harbor provisions in 24 CFR 5.609(c)(3) for 1937 Act programs but does not use this term in the current HOME regulations. The current safe harbor in HOME regulations cannot be used for initial annual income and eligibility determinations, or in calculating annual income for a family in years 6, 12, and 18 of a HOME rental housing project's period of affordability. The safe harbor also cannot be used for individuals applying for or renewing tenant-based rental assistance.

Public commenters recommended that PJs be able to accept income determinations made under other forms of public assistance, including LIHTC income determinations for families living in tax credit units. The Department recognizes the utility in expanding the safe harbor to include other forms of government assistance and allowing its use for initial annual income determinations or annual income determinations made in years 6, 12, and 18 of a HOME rental housing project's period of affordability as well as for individuals entering into or renewing a new rental assistance contract for tenant-based rental assistance. Therefore, the Department is moving the safe harbor into paragraph (a) as a new paragraph (a)(3) to enable a PJ to use the information for initial annual income and subsequent income determinations for HOME rental housing tenants as well as for tenant-based rental assistance. The Department is also expanding the applicability of the safe harbor to include an annual income determination made under another form of Federal, State, or local public assistance. Accordingly, the Department is also removing § 92.203(b)(1)(iii) and revising the last sentence in paragraph (b)(1) to indicate that there are only two methods of determining income under paragraph (b)(1).

The Department provides several examples to enhance the public's understanding of the types of assistance that could be accepted under the new paragraph (a)(3). These examples include TANF, Medicaid, LIHTC, and local rental subsidy programs. These programs all calculate annual income but do not make the adjustments that are made in HUD programs that are subject to 24 CFR 5.611.

To obtain the relief of the safe harbor under new § 92.203(a)(3), the PJ must be able to obtain a statement that indicates the family size and income. This can be provided by an administrator of a Federal, State, or local form of public assistance, even if that administrator is not the administrator at the Federal or State level. The Department considered whether to allow, as the current safe harbor provision in § 92.203(b)(1)(iii) does, a government administrator to provide a PJ with a statement indicating that the family's income does not exceed the current dollar limit for very low-income or low-income families for the family size of the tenant. The Department decided against including this language.

The Department drafted this safe harbor partly in response to public comments requesting that the Department accept a statement made by an administrator of public assistance without further review of income documentation for the tenant. The Department agrees that it is possible to use a statement from a government administrator to determine income, though verification is left to PJ policies and procedures. However, the Department decided that if it was expanding the safe harbor to enable PJs to accept a statement, then the statement must contain a statement of family size and income and not just a statement that the family was below the applicable income limit for the family's size. This is especially true because, in many cases, the PJ must still calculate adjusted income in accordance with paragraph (f). To provide the maximum amount of burden relief to both the PJs and tenant, and best address the concerns of the commenter, the statement must have the family's annual income on it so that the PJ need only adjust the income (if applicable) from a known amount of annual income. Accordingly, the Department is also removing § 92.203(b)(1)(iii) and revising the last sentence in paragraph (b)(1) to indicate that there are only two methods of determining income under paragraph (b)(1).

The Department is requiring in the new § 92.203(a)(3) that the statement accepted by the PJ must be for an income determination made within the previous 12-month period. This aligns with how similar safe harbor provisions are used in other HUD programs, such as the safe harbor in 24 CFR 5.609(c)(3) that is used for certain programs governed under the U.S. Housing Act of 1937. The Department considered whether to provide a shorter period, such as the 6-month requirement under § 92.203(e)(2) for income determinations made prior to providing homeownership or tenant-based rental assistance to a family. However, after consideration of the comment and how to align this safe harbor with other safe harbors in HUD regulations, HUD has determined that 6 months is inappropriate. When a family applies to a PJ for assistance and the PJ determines the family's income, there is a reasonable expectation that this income examination is close in time to when the family will receive the HOME assistance from the PJ. When a person was determined income eligible with these other forms of public assistance, it may not be at the same time as when the PJ's tenant-based rental assistance program waiting list opens up for the public to apply or when a person is next up on an owner's waiting list. To establish a shorter period in which the income determination will remain valid for purposes of the new safe harbor would therefore disadvantage those families and PJs and so the Department chose to allow income determinations made within a 12-month period to qualify for purposes of the safe harbor at § 92.203(a)(3).

As part of the revisions made to lift and expand the safe harbor in § 92.203(a)(3), the Department is making conforming changes to paragraph (b)(2) and adding paragraph (b)(3) to explain that only families applying for homeownership activities must calculate income using 2 months of source documents. Before paragraph (a)(3) was added, both families applying for homeownership assistance and families applying for or receiving tenant-based rental assistance were required to solely use source documents. However, with the expansion of the safe harbor to tenants applying for, renewing, or for assisted families required to enter into a new rental assistance contract, the Department had to make conforming changes to explain how income is calculated for tenant-based rental assistance. The new paragraph (b)(3) does this by explaining that, for families applying for or receiving tenant-based rental assistance, the PJ may determine annual income in accordance with the new safe harbor provision or through the use of source documents. The paragraph also clarifies that income will be calculated at the times specified in § 92.209(e)(3), which provides explicit instructions on when income must be determined for a family applying for or receiving tenant-based rental assistance.

The Department received negative comments on § 92.203(e)(2). While the Department is declining to revise the six-month limit on when income is valid, the Department recognizes that the provision itself could be clearer. The Department is therefore clarifying that a PJ is not required to redetermine income for a family unless 6 months have elapsed since the PJ determined the family is income eligible. The term ''re-examine'' is confusing given that the provision is about determining a family's income eligibility in advance of being provided assistance. This is different than when income is reexamined for families living in a rental housing project or families entering into or renewing a rental assistance contract. As the Department is revising income reexamination provisions for small-scale rental housing and in the context of tenant-based rental assistance, the Department believes it is important to remain consistent and is therefore revising this provision as well.

Paragraph 92.203(e)(2) is also being clarified to explain that when the regulation refers to ''HOME assistance,'' the regulation means homeownership assistance and tenant-based rental assistance. In the HOME regulations, the term ''HOME assistance'' is used in a variety of contexts. The term means the assistance provided to a subrecipient, State recipient, or contractor to run all or a portion of a PJ's HOME program; the assistance provided to a developer, owner, or sponsor to develop a HOME rental or homeownership project; assistance provided to a family for tenant-based rental assistance; homeownership assistance provided to a family to purchase and/or rehabilitate a home; or assistance provided to a CHDO. The Department believed it was important to clarify which type of assistance is meant in the provision given the various ways in which the term is used. Paragraph (e)(2) was also revised with a clarifying edit to say that a family ''is income eligible'' instead of ''qualifying as income eligible.'' This is a non-substantive revision for readability.

The Department is revising § 92.203(f)(1)(ii) to remove two references to § 92.252(a)(2)(iii), which is being removed by this rulemaking. The Department is also revising § 92.203(f)(2) to make corresponding revisions now that PJs are given the option of accepting a public housing agency, owner, or rental subsidy provider's determination of the family's adjusted income under that program's rules instead of being required to do so under § 92.203(a)(1). This change is in response to public comments, as described earlier in this preamble.

24 CFR 92.206 Eligible Project Costs

In response to public comments, HUD is making certain changes to § 92.206(d) regarding related soft costs that may be considered eligible project costs. The Department proposed and received comments requesting that HUD allow environmental reviews or other environmental studies or assessments to be reimbursable costs incurred prior to the commitment of funds to a project. Commenters requested that the provision be expanded to also include environmental fees, which the Department agrees can be included in the provision. The comments urged the Department to also consider expanding the types of costs that would be allowed to be incurred to include ''pre-development'' and other related soft costs.

In response to the comments, HUD is making changes to paragraph (d)(1) to expand the project soft costs that may be incurred prior to a commitment. The final rule moves certain soft costs from paragraph (d)(2) into paragraph (d)(1), including costs to process and settle financing for the project, such as private lender origination fees, credit reports, fees for title evidence, legal fees, private appraisal fees, and fees for independent cost estimates. By moving these soft costs into paragraph (d)(1), HUD is allowing the costs to be paid so long as they were incurred no more than 24 months before the date of commitment and included in the written agreement committing the funds. Note that ''legal fees'' is a more expansive term than the current term ''attorney's fees'' and the Department is intentionally expanding the term to be more inclusive of the different legal costs that are associated with a project in response to public comment.

The Department determined that soft costs contained in the other provisions in paragraph (d) could not be moved into paragraph (d)(1) as there is no reasonable expectation that such costs would occur prior to commitment of HOME funds. Those provisions include building permits, which can only be obtained after completion of the HUD environmental review; fees for recordation and filing of legal documents, as recordation of documents related to an acquisition, rehabilitation, or new construction contract should occur after commitment of HOME funds; and building or developer fees, as those fees should not be earned or chargeable to the HOME grant for work performed prior to the environmental review and commitment of the HOME funds to a project.

In response to public comment, HUD is also revising § 92.206 to add ''accounting fees'', ''filing fees for zoning or planning review and approval'', and ''other lender-required third-party reporting fees'' to paragraph (d)(1). The Department added these fees, as recommended by the commenter, because the Department agrees that these fees, which are generally incurred prior to applying to a PJ for HOME assistance, are directly related to meeting underwriting and construction feasibility criteria that are required in the definition of § 92.2 *Commitment.* They may be payable with HOME funds if a PJ agrees to pay these costs in the written agreement.

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

The public comments indicated confusion over the proposed use of capacity building funds for CHDOs. The new § 92.208(c) describes how PJs may provide HOME assistance to CHDOs for operating costs under § 92.300(a). The paragraph is not intended to describe the use of capacity building funds, which is described in the previous paragraph at § 92.208(b). HUD inadvertently included reference to ''capacity building costs'' in the proposed § 92.208(c) and understands that this may have led to confusion for commenters. Consequently, HUD is removing the reference to ''capacity building costs'' in § 92.208(c) to eliminate this confusion.

24 CFR 92.209 Tenant-Based Rental Assistance: Eligible Costs and Requirements

The Department revised § 92.209(c)(3) to correct the term ''tenant-based rental assistance'' in the third sentence of the paragraph. The regulation had previously read ''tenant-based assistance.'' This is a non-substantive change.

The Department made several revisions to § 92.209(e) in response to public comment. The Department redesignated § 92.209(e) as § 92.209(e)(2) and revised the provision as described below. The Department also revised the header for paragraph (e) to describe the rental assistance contract more broadly and not just the term rental assistance contract. The Department then made four new subsections.

The first subsection, § 92.209(e)(1), defines the parties to the rental assistance contract, which is also the header for this provision. Based on public comment to specific solicitation of comment #10, the Department is requiring the PJ to have a rental assistance contract with both the owner and the tenant. This can take the form of a single tri-party agreement or two separate agreements. There is precedent for this model in HUD programs. In the Housing Choice Voucher program, the tenant has an agreement with the public housing agency where the tenant agrees to the rules of the program (See Form HUD–52646), and the owner has an agreement with the public housing where the owner agrees to the terms of the housing assistance payments agency (See Form HUD–52641). The Department also believes that this is the best method for the PJ to enforce HOME requirements on tenant and owner alike.

The Department revised the redesignated § 92.209(e)(2) to provide that a rental assistance contract does not need to start on the first day of the lease so long as the contract commences at the beginning of the first month in which tenant-based rental assistance is provided. The Department revised the provision to decouple the execution of the rental assistance contract from the tenant lease because with the imposition of the tenancy addendum, which must be executed and attached to the tenant lease, the need for the rental assistance contract to begin on the first day of the lease is significantly lessened. This is because the terms of the HOME tenant-based rental assistance tenancy addendum will control in the event of a conflict between the preexisting lease and the tenancy addendum, and therefore the risk that the lease would contain prohibited lease terms or would otherwise not comply with the HOME program requirements is eliminated. The Department is also revising this requirement in response to public comments that stated that it disadvantages families to require that the rental assistance contract begin on the first day of the lease because current very low-income tenants would have to break their lease to obtain rental assistance, which is not always possible. The Department does not wish to disadvantage tenants that are housing insecure or rent burdened by requiring they enter a new lease in order to receive tenant-based rental assistance under HOME.

The Department also revised the redesignated § 92.209(e)(2) to explain that a rental assistance contract can be amended subject to the availability of funds. This revision is made in response to a public commenter that requested HUD explain whether an amendment to a rental assistance contract would require a new income determination. The Department is drawing a distinction

between new contracts, amendments, and renewals of rental assistance contracts first in paragraph (e)(2) and then further in the new paragraphs (e)(3) and (e)(4).

The new § 92.209(e)(3) explains under what conditions a contract may be amended or renewed. The new § 92.209(e)(3)(i) explains that all parties must consent to an amendment to the rental assistance contract. The new § 92.209(e)(3)(i)(A) explains that a rental assistance contract may be amended because the lease between the family and owner has been amended or renewed, as long as the lease term or amount charged under the lease are the only terms of the contract being changed. The new § 92.209(e)(3)(i)(B) explains that amendments to the rental assistance contract may extend the original term of the rental assistance contract up to 24 months from the original date of execution, which is the maximum term allowable under § 92.209(e)(2). The new § 92.209(e)(3)(i)(C) also allows for the amendment of the rental assistance contract when a family is moving within the same building or development, but the parties to the lease, family size, and the number of bedrooms are all the same. With respect to § 92.209(e)(3)(i)(C), the Department believes these are reasonable restrictions on tenants and owners, as changes to the parties to a lease, family size, and the number of bedrooms in a unit are all significant enough such that allowing a PJ to amend an existing rental assistance contract is not appropriate, and the PJ should instead be required to enter into a new rental assistance contract with the family and owner.

The new § 92.209(e)(3)(ii) explains that, subject to the availability of HOME funds, a rental assistance contract may be renewed after the expiration of its initial term. The new § 92.209(e)(3)(iii) explains that in all other instances, the PJ must enter a new rental assistance contract with the family and owner in accordance with § 92.209(e). This includes when family size changes, when the family moves to a different address with a different owner, or when the number of bedrooms in the unit changes.

The Department explains the differences between when a new contract must be entered, when a contract can be amended, or when a contract can be renewed primarily to provide greater clarity in tenant-based rental assistance requirements as well as to explain when an income determination must be performed. The new paragraph (e)(4) whose header is ''initial and subsequent income determinations'' explains that a PJ must perform an income examination each time a new rental assistance contract is entered into (see § 92.209(e)(4)(i)) or renewed (see § 92.209(e)(4)(iii)). The Department believes that this change is appropriate because it permits PJs to amend current rental assistance contracts to extend their term to the maximum 24-month period without requiring additional income examination, providing burden relief to tenants receiving tenant-based rental assistance. The Department declines to extend this burden relief to new rental assistance contracts or renewals as material terms of the lease or the number of persons in the housing are changing (in the case of new rental assistance contracts) or the rental assistance contract is being extended for more than twenty-four months (in the case of renewals). In these situations, income should be redetermined because it factors so heavily into the sizing of the rental assistance.

The Department is adding a new § 92.209(e)(4)(iv) to explain that if a family is participating in a HOME lease-purchase program and receiving tenant-based rental assistance, then the family's income will only be determined at the time of execution of the lease purchase agreement. This is because the statute states that a family must be income-eligible at the time the lease-purchase agreement is signed,[6] and because this will better enable tenants to save up for the purchase of the housing in accordance with the lease-purchase agreement and the HOME lease-purchase program. This type of treatment is only when the family is participating in a HOME lease-purchase program and not for other non-HOME lease-purchase programs because those programs may have different rules and restrictions, and their program design may vary significantly from HOME requirements. In those instances where a family is receiving tenant-based rental assistance and participating in a lease-purchase program, the family's income will be examined when the family enters into the rental assistance contract and again if the family's assistance is renewed.

The Department is revising § 92.209(g) to refer to § 92.253 instead of specific paragraphs within § 92.253. This is because § 92.253 has been revised to directly state its applicability to tenant-based rental assistance and the requirements of the HOME tenant-based rental assistance tenancy addendum. The Department is also revising § 92.209(h)(3)(ii) to better identify the Section 8 Housing Choice Voucher Program payment standard that may be used by a PJ, which is the payment standard established in 24 CFR 982.503(a) through (c) and not the exception payment standard established in 24 CFR 982.503(d). The exception payment standard is, by its nature, an exception to the rule and the Department has not allowed its use in HOME in the past. This change is therefore just a clarification of HUD's existing interpretation of the HOME and Section 8 regulations.

The Department also made clarifying revisions to § 92.209(j)(6) to use the language ''[s]urety bonds, security deposit insurance, or instruments similar to surety bonds or security deposit insurance . . .'' instead of the proposed phrasing of ''[s]urety bonds or security deposit insurance and similar instruments . . . .'' HUD believes that this revision improves the clarity and readability of the paragraph.

Consistent with changes made throughout the section, the Department is revising the last two sentences of paragraph (k) to reference paragraph (e) and making technical revisions. The current provision requires that a PJ enter into an agreement with either the owner or the family. The final rule will require that the PJ enter into an agreement with the owner and the family.

24 CFR 92.210 Troubled HOME-Assisted Rental Housing Projects

In response to public comment that suggested the Department was establishing an unreasonably high bar to evidence that a HOME project is no longer financially viable and able to obtain the relief in § 92.210, the Department has revised and reorganized § 92.210(a).

The first sentence in the paragraph remains unchanged from the proposed rule. Revised § 92.210(a)(1) now states that a project is not financially viable through the period of affordability if one of the conditions in § 92.210(a)(1)(i)–(iii) exists.

In response to public comments, the Department provides in § 92.210(a)(1)(i) that a project is no longer financially viable through the period of affordability if the project's operating costs exceed its operating revenue considering project reserves. The Department has revised this sentence to remove the term ''significantly'' and to make this and the other conditions listed in § 92.210(a)(1)(i)–(iii) be independent conditions. In § 92.210(a)(1)(ii), the Department is creating a new condition that the project is no longer financially viable through the period of affordability if an owner is

[6] See 42 U.S.C. 12745(b)(2)(B).

unable to pay for necessary capital repair costs or ongoing expenses for the project. In the proposed rule, the owner being unable to pay for necessary capital repair costs was another condition that needed to be satisfied instead of an independent condition. However, given the comments, the Department believed it was best to expand the ground to include inability to pay operating expenses and to make the ground an independent ground for demonstrating that a project is no longer financially viable through the period of affordability.

Lastly, if project reserves are insufficient to operate the project, then the Department also believes that the project is no longer financially viable through the period of affordability and is therefore making that a separate ground for relief under § 92.210(a)(1)(iii). The Department also revised § 92.210(a)(3) to clarify that HUD may approve the actions in § 92.210(b) and (c) to ''strategically preserve the affordability of a rental project.'' The Department had proposed to add the modifier ''in preserving affordability'' at the end of the sentence in the proposed rule but believes it is better for readability to move the language to describe the type of preservation action that is occurring for troubled housing rental housing projects under § 92.210. Similarly, the Department is revising § 92.210 to explain that the PJ may be permitted to reduce the ''total'' number of HOME-assisted units or change the designation of the units. This is a non-substantive clarifying change.

24 CFR 92.212 Pre-Award Costs

The Department revised § 92.212(b)(2) to clarify the provision. The provision, as proposed, had initially stated that, if a given year's appropriation were not timely, then a PJ may incur administrative and planning costs as of the earlier of the beginning of their program year or the date that HUD receives the PJ's consolidated plan. The provision then defined when an appropriation was not timely as when it occurs less than ninety days before a PJ's program year start date.

After further consideration, the Department decided that it is inappropriate to characterize appropriations as timely or not timely in a regulation. The Department also believed this language detracted from the overall clarity of the provision. Instead, the last sentence is being deleted and the first sentence is being revised to state that in any year in which an appropriation is less than 90 days from a PJ's program start date, the PJ may incur administrative and planning costs as of the earlier of the beginning of their program year or the date that HUD receives the PJ's consolidated plan. This is a clearer sentence that doesn't characterize the timeliness of appropriations and it aligns with the related final rule text in § 570.200(h)(3).

24 CFR 92.214 Prohibited Activities and Fees

For certain paragraphs in § 92.214, HUD made clarifying revisions to use the language ''[s]urety bonds, security deposit insurance, or instruments similar to surety bonds or security deposit insurance . . .'' instead of the proposed phrasing of ''[s]urety bonds or security deposit insurance and similar instruments . . . .'' HUD believes that this revision improves the clarity and readability of the paragraph. In response to public comment, HUD also clarified that HOME rental housing project owners may not charge tenants fees for normal wear and tear.

24 CFR 92.219 Recognition of Matching Contribution

HUD is revising § 92.219(a)(4) to replace the term ''dwelling'' with the term ''housing.'' HUD is making this revision to standardize the use of the term ''housing'' in part 92 and in response to commenters that noted that the Department failed to make this terminology replacement in the proposed rule. The Department also made technical revisions to § 92.221(b)(1) to remove a dash, add section symbols, and add the word ''through'' when citing §§ 92.218 through 92.221.

The Department is making conforming regulatory revisions to § 92.219(b)(2)(ii) and (iii) to remove the pinpoint citations to § 92.253(a)–(c) and (d)(2) and replace them with more general citations to the tenant protection provisions, as the provisions have moved and are now contained in the applicable tenancy addendum (HOME rental housing tenancy addendum, HOME TBRA tenancy addendum, and HOME security deposit assistance tenancy addendum). The Department also made non-substantive revisions to § 92.253(b)(2)(ii) for readability and to reduce confusion. The revised provision explains that the written agreement must impose and enumerate all requirements applicable to the project, including affordability requirements in §§ 92.252 or 92.254 (as applicable based on the type of project being carried out), any applicable tenant protections due to operation of a rental housing project (or lease-purchase project), any applicable property standards based on the type of project (*e.g.,* new construction, rehabilitation, acquisition, etc.), and income determination requirements that apply to the family through § 92.203. The revisions of the section should make it easier for PJs to know what items are necessary for the written agreement, but no substantive changes were made from the current requirements.

24 CFR 92.250 Maximum Per-Unit Subsidy Amount, Underwriting, and Subsidy Layering

The Department received comments stating that a five percent increase in the maximum per-unit subsidy was insufficient to cover the associated costs with meeting nationally recognized green building standards. In response, the Department is increasing the percentage in the final rule up to ten percent in § 92.250(c). The Department understands that many commenters requested increases that were significantly higher, especially in the context of rehabilitation. The estimates provided by commenters ranged significantly from ten percent to well over twenty-five percent depending upon the market, the standard the project owner is attempting to meet, and whether the project was new construction or rehabilitation. The Department understands that rehabilitation of existing housing units and meeting significantly higher energy efficiency thresholds than what is required under section 212(e) of the Act can add significantly higher costs. However, the Department must balance the benefits from more sustainable, energy-efficient housing against the potential that fewer units will be created or fewer families served if the subsidy increased beyond ten percent. Given the level of annual appropriations that the HOME program receives, the Department believes it can only move to ten percent at this time but will reevaluate in the future.

24 CFR 92.251 Property Standards and Inspections

A. Carbon Monoxide and Smoke Detection

In response to public comments on carbon monoxide and smoke detection, including comments received in response to specific solicitation of comment #3, which requested comment from the public on new requirements for smoke alarms, the Department is making revisions to § 92.251(a)(3)(vi), § 92.251(b)(1)(xi), § 92.251(c)(3), and § 92.251(f)(1)(iv).

First, the Department is adding the carbon monoxide requirement applicable to the Section 8 voucher program as a new requirement for the HOME program at § 92.251(a)(3)(vi)(A), § 92.251(b)(1)(xi)(A), and § 92.251(f)(1)(iv)(A), which HUD will more fully describe through a publication in the **Federal Register**. The Department is also revising § 92.251(c)(3) to reference the requirement at § 92.251(b)(1)(xi)(A) and revising § 92.251(f)(1)(i) to clarify that the carbon monoxide requirements in 24 CFR 5.703 do not apply because the ones in § 92.251(f)(1)(iv)(A) apply instead.

Second, the Department is adding smoke detection requirements to § 92.251(a)(3)(vi)(B), § 92.251(b)(1)(xi)(B), and § 92.251(f)(1)(iv)(B). The Department is also revising § 92.251(c)(3) to reference the requirement in § 92.251(b)(1)(xi)(B). The revised smoke detection requirements are tailored to the type of HOME activity and work being performed, based on public comments and informed by implementation considerations.

For new construction projects under § 92.251(a)(3)(vi)(B)(*1*), a hardwired smoke detector must be installed on each level of each housing unit, in or near each sleeping area in each housing unit, in the basement of each housing unit, and in each common area of a project. However, a hardwired smoke alarm is not required in crawl spaces or unfinished attics of housing units. In addition, a hardwired smoke detector must also be installed within 21 feet of any door to a sleeping area measured along a path of travel and, where a smoke alarm installed outside a sleeping area is separated from an adjacent living area by a door, a smoke alarm must also be installed on the living area side of the door. The Department believes that it is appropriate to require that the smoke alarm be hardwired, as HOME funds are being used in the new construction of the projects and therefore the building designs and electrical systems can be tailored to meet the HOME requirements.

In response to HUD's consideration of public comments, the Department added § 92.251(a)(3)(vi)(B)(*4*) to establish that following the relevant specifications of either the International Code Council (ICC) or the National Fire Protection Association (NFPA) Standard 72 satisfies the requirements of § 92.251(a)(3)(vi)(B). Originally, the Department considered only codifying installation in accordance with the NFPA Standard 72 but received comments urging the Department to make its revisions consistent with the U.S. Housing Act of 1937, as amended by the Consolidated Appropriations Act, 2023 (Pub. L. 117–328, div. AA, title VI, § 601)). The Consolidated Appropriations Act, 2023 requires that units occupied by tenants living in public housing, living in units and receiving Section 8 Housing Choice Vouchers, or living in unit that receives project-based assistance comply with the applicable codes and standards published by the International Code Council or the National Fire Protection Association and the requirements of the National Fire Protection Association Standard 72 or any successor standard. Therefore, the Department is codifying § 92.251(a)(3)(vi)(B)(*4*) to allow property compliance with either standard for new construction in the HOME program which is consistent with other HUD programs.

The Department also added paragraph (a)(3)(vi)(B)(*2*) to require that smoke alarms have an alarm system designed for hearing-impaired persons. The Department is adding this language to ensure that individuals with hearing impairments are adequately warned in the event of smoke or a fire. The addition of this paragraph also makes the requirements of this section more consistent with the requirements contained in the Consolidated Appropriations Act, 2023.

The Department also added paragraph (a)(3)(vi)(B)(*3*) to describe that the Secretary may establish additional standards related to § 92.251(a)(3)(vi)(B) through a publication in the **Federal Register**.

Additionally, the Department considered requiring hardwired smoke detectors for rehabilitation projects but understood that rehabilitation projects may require different considerations. As a result, while the Department is adopting the same requirements from § 92.251(a)(3)(vi)(B) for § 92.251(b)(1)(xi)(B). In addition, the Department is also adding § 92.251(b)(1)(xi)(B)(4), which will allow a PJ to provide a written exception to an owner to allow the owner to install a smoke detector that uses 10-year non rechargeable, nonreplaceable primary batteries as long as the smoke detector is sealed, tamper-resistant, contains a means to silence the alarm, and otherwise complies with the requirements of this section. This relief may only be provided where the use of hardwired smoke detectors places an undue financial burden on the owner or is infeasible. It is the PJ's responsibility for making and documenting this determination for their records. The Department is declining to define the terms ''undue financial burden'' or ''infeasible'' because it believes that PJs should have the flexibility to develop their own standards and to make their own determinations based on the fact-specific circumstances.

For homeownership activities, the Department is revising § 92.251(c)(3) to require that housing acquired for homeownership meet the same carbon monoxide and smoke detection requirements required under § 92.251(b)(1)(xi). And, similar to the exception that the Department is allowing at § 92.251(b)(1)(xi)(B), the Department is allowing a PJ to provide a written exception to an owner to allow the owner to install a smoke detector that uses 10-year non rechargeable, nonreplaceable primary batteries as long as the smoke detector is sealed, tamper-resistant, contains a means to silence the alarm, and otherwise complies with the requirements of this section. The Department is also requiring that the same grounds which justify an exemption from being required to use hardwired smoke detectors, *i.e.,* undue financial burden, be the applicable grounds in § 92.251(c)(3).

Finally, as for the ongoing property standards for existing rental housing projects and the property standards for tenant-based rental assistance, the Department is creating new requirements in § 92.251(f)(1)(iv)(B), which will mandate that smoke detectors meet the standards in 24 CFR 5.703(b) and (d). These are the NSPIRE smoke detection standards that apply to the Section 8 program and elsewhere. The Department believes it is appropriate to treat existing rental housing and units with tenants receiving tenant-based rental assistance the same as those receiving Section 8 HCV assistance or project-based Section 8 assistance, as these programs are sufficiently similar.

For these existing rental housing units and units with tenants receiving tenant-based rental assistance, the inside area must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the property. For the unit, there must be at least one battery-operated or hard-wired smoke detector, in proper working condition on each level of the unit, inside each bedroom, within 21 feet of any door to a bedroom measured along a path of travel, and where a smoke detector installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed on the living area side of the door. Additionally, if the unit is occupied by any hearing-

impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons. For both the inside area of the building and the unit, the Secretary is able to establish additional standards through **Federal Register** publication.

B. Accepting NSPIRE Inspections

The Department is revising § 92.251(b)(1)(viii)(A), § 92.251(f)(3)(i)(B), and § 92.251(f)(4)(ii) in response to commenters that stated HUD should not restrict the acceptance of NSPIRE inspections to only those made under another HUD program. The Department understands that there are other projects using non-HUD funding, such as LIHTC projects, that may use inspections to the NSPIRE standards to demonstrate compliance with the requirements for those funding sources. The Department will allow a PJ to accept inspections to the NSPIRE standards or another alternative inspection standard HUD may establish through **Federal Register** publication. The inspections must be in satisfaction of another funding source's requirements and conducted within the timeframes established for the applicable regulations.

C. Meeting Property Standards After Acquisition of Homeownership Housing

In response to comment, the Department is revising § 92.251(c)(3)(ii)(C) and adding § 92.251(c)(3)(ii)(D) to give PJs the ability to provide homebuyers an extension of the six-month deadline for bringing a substandard homeownership unit into compliance with the PJ's property standards.

While the Department strongly encourages PJs to provide homeownership assistance to homebuyers purchasing housing that already meets their property standards, this is not always possible. Because there will be times where homebuyers wish to purchase properties that do not meet the PJ's property standards, the Department is revising its regulations to be flexible enough to allow PJs and homebuyers to bring a unit up to the PJ's property standards after purchase.

The Department continues to believe that six months is the appropriate amount of time to provide a homebuyer to comply with a PJ's property standards. However, every construction project is different, and each jurisdiction has local requirements for permitting. In the past, due to national emergencies or disasters, homebuyers have also been affected by materials shortages. Therefore, in light of the variety of factors that can affect even minor repairs needed to bring a unit up to a PJ's property standards, the Department's revisions to § 92.251(c)(3)(ii)(C) and addition of § 92.251(c)(3)(ii)(D) will allow PJs to provide homebuyers an extension lasting up to 12 months from the date of acquisition with HOME funds to bring their unit up to the PJ's property standards. If an extension is granted, the PJ must inspect the unit within 12 months of acquisition and determine that it meets the PJ's property standards.

D. Clarifying the Application of Property Standards

In response to public comments requesting clear requirements for when a unit must be inspected under the new construction property standards and when a unit must be inspected under the PJ's rehabilitation standards, the Department is adding a new § 92.251(d) that explains that if a project includes both rehabilitation of housing units and either new construction or reconstruction of housing units, then the PJ must apply the rehabilitation standards to the housing units that are rehabilitated and the new construction requirements to housing that is either newly constructed or reconstructed.

E. Sample Size for Property Inspections

The Department solicited comment on the correct sample size for HOME project inspections in specific solicitation #4 of the proposed rule. After considering the comments received in response to this solicitation, the Department developed a chart that will provide greater clarity on how many units must be inspected in a project based on the number of HOME-assisted units within the project. Accordingly, the Department is revising § 92.251(f)(3)(iii) to require that inspections be performed in accordance with the chart. The Department is also adding clarifying text to indicate that the PJ must inspect the inspectable areas for each building containing HOME-assisted units and not just the units themselves.

To determine the appropriate sample size for each project, the Department started with its minimum requirement that four units be inspected for all projects that have up to twenty units. This is because all units in small-scale housing (1–4 unit projects) must be inspected once every three years, and projects of a larger size should not be required to inspect fewer units than a small-scale housing project. This is counter to the statutory intent of the monitoring flexibilities provided for small-scale housing projects.[7] Additionally, the Department examined other sampling techniques in response to public comment, including the LIHTC and NSPIRE sampling methods (see 26 CFR 1.42–5 for LIHTC and 88 FR 43379 and 43380 for NSPIRE). The Department found that even with the four-unit minimum sample size requirement for projects with up to twenty units, HOME was still less burdensome than other programs and required fewer units to be inspected than did other programs.

The Department has therefore adopted its proposal for a 20 percent sample for projects containing between twenty and one hundred and thirty HOME units. Then, in response to comments requesting that the Department provide burden relief similar to that provided in LIHTC or HUD programs subject to NSPIRE, the Department adopted the sampling method that it uses under NSPIRE for projects containing greater than one hundred and thirty units. The Department believes that this approach strikes the correct balance by providing burden relief for smaller and larger projects while still requiring an appropriate amount of unit inspections occur. It also provides a clearer standard for PJs because the unit sampling for the inspection is not required to be based on a statistically valid sample.

F. Miscellaneous Revisions to § 92.251

The Department is adding State and local requirements back into § 92.251(a)(3)(iii), which lists the various standards that housing must, where relevant, meet with respect to disaster mitigation. The Department believed it had provided clarifying technical revisions to this section, but did not mean to remove any additional requirements not contained in State and local codes or ordinances from the list of applicable standards. The Department also did not intend to change the meaning of that provision in any other way.

The Department is revising paragraph (a)(3)(iv) to make the requirement described in that paragraph more consistent with the requirements in § 92.504(c). Instead of requiring that a PJ ensure construction contracts and documents describe the work to be undertaken, the PJ must require this to be the case. This non-substantive change will increase clarity and will make the language in paragraph (a)(3)(iv) consistent with that of the monitoring requirements provided in the written agreement provisions in

[7] See 42 U.S.C. 12756(c).

§ 92.504 and of the cost principles contained in 2 CFR part 200, subpart E.

The Department is revising § 92.251(a)(3)(vii) to state that the green building standards will be published through a **Federal Register** publication.

Similar to how the Department is revising § 92.251(a)(3)(iv) to make the requirements in this section more consistent with the requirements in § 92.504(c), the Department is also revising § 92.251(b)(2). Instead of requiring a PJ to ''ensure'' that construction meet the PJ's rehabilitation standards, the PJ must ''require'' this to be the case. This is already required in other regulations including the monitoring requirements provided in the written agreement provisions in § 92.504 and the cost principles contained in 2 CFR part 200, subpart E, and so is a non-substantive change made to increase clarity.

§ 92.251(b)(1)(vi) is being revised to align the language with the same language contained in § 92.251(a)(2)(iii).

24 CFR 92.252 Qualification as Affordable Housing: Rental Housing

In response to public comment, the Department has determined that the rent limits do not apply to Federal, State, or local rental assistance or subsidy payments and is revising the third sentence of § 92.252(a) accordingly. The Department also revised the first sentence of § 92.252(a)(1) to state that if a family is participating in a program where the person pays thirty percent of their monthly adjusted income or ten percent of their monthly income as a contribution to rent, then the maximum rent due from the family is the family's contribution under that program. Commenters requested clarity on whether an owner could accept the full contract rent for a tenant in a HOME-assisted rental housing unit that was also receiving Section 8 or other forms of rental assistance even if the tenant was low-income and governed by the High HOME Rent provisions of § 92.252(a)(1).

After careful consideration, the Department determined that the changes in the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, 122 Stat. 2654, approved July 30, 2008) not only revised the Section 8 statute, but fundamentally changed the relationship between the two programs. It is clear from HERA that the HOME Rent Limits were not meant to apply to recipients of Section 8 assistance or similar recipients of rental assistance or living in subsidized units. Prior to the passage of HERA, the only way that the Secretary was permitted to increase the rent limits was provided by 42 U.S.C. 12745(a)(1)(A). After passage of HERA, HUD determined the Secretary could also make such determination based upon misalignment between HOME rent requirements and the rent requirements of Section 8 and other similar rental assistance or subsidy programs. The Secretary determined that this change is appropriate and promotes greater alignment between the HOME program and HUD's other rental assistance programs and is revising § 92.252(a)(1) and § 92.252(a)(2) accordingly. Where a family is participating in a program where the family pays as a contribution toward rent no more than thirty percent of the family's monthly adjusted income or ten percent of the family's monthly income, then the maximum rent due from the family is the family's contribution, regardless of whether the family is occupying a High or Low HOME Rent unit. Thus, under the HOME program as changed by HERA, the HOME-assisted rental housing project owner may now accept the rent due from the tenant and the assistance or subsidy payment made under the applicable assistance or subsidy program.

The Department is revising § 92.252(a)(2)(i) to clearly reference the fair market rent being described in § 92.252(a)(1)(i) and to revise the term ''fair market value'' to ''fair market rent'' to more accurately describe the rent. § 92.252(a)(2)(ii) is also being revised to more accurately state that the rent contribution of the family in a Low HOME rent unit is 30 percent of the family's adjusted income. This is not a substantive change from the proposed rule or the current regulatory text, but it is a more accurate description of the Low HOME rent applicable to a family.

In response to comments about aligning with LIHTC on income and rents, the Department is adding the statutory language contained in 42 U.S.C. 12745(a)(1)(B)(ii) into the new § 92.252(a)(2)(iii). The provision will state that if a HOME-assisted unit ''is a LIHTC unit and has rents not greater than the gross rent for rent-restricted residential units as determined under section 42(g)(2) of title 26'' then it shall be a Low HOME Rent unit.

The Department is revising § 92.252(a)(3)(i) and (ii) to add explicit reference to how the zero-bedroom fair market rent is determined. This rent is established under 24 CFR part 888. In revising the rent limits, the Department also realized the requirement in § 92.252(a)(3)(ii), which currently requires that SRO units without sanitary or food preparation facilities meet the occupancy requirements of Low HOME rent units, could be identified in plain language. Instead of referring to the occupancy requirements, the provision is being revised to explain that the units are to be occupied by very low-income tenants. This is a non-substantive change to provide a clearer regulation.

In response to public comments received, HUD is clarifying in § 92.252(b) that ''cable and broadband'' are not included in utility allowances. Commentors asked for clarity regarding whether broadband is a utility and whether tenants can be required to pay for cable and broadband as a condition of occupying a HOME-assisted rental housing unit. The Department agrees the regulation could be clearer and included language in § 92.252(b) to clarify that in addition to telephone, ''cable and broadband'' are not included in utility allowances.

Paragraph § 92.252(b) was also revised to add the term ''applicable'' when describing local public housing authority utility allowances. The Department understands multiple public housing authorities may serve a particular geographic location (*e.g.,* State, county, city, etc.) and the Department believes that the public housing authority providing Section 8 project-based voucher assistance (if the project is assisted) or the one serving the jurisdiction that the PJ believes is most reflective of the utility consumption in the community in which the project is located should be the one used for the HOME project.

The Department is making a non-substantive change to replace the word ''ensure'' with ''require'' in § 92.252(c). This change better explains the requirement that PJs must not allow owners to charge tenants in excess of the rents in § 92.252.

The Department is revising the dollar thresholds that define the periods of affordability in § 92.252(d) in response to public comments. Commenters stated that the thresholds had not been adjusted for inflation and the increase in the cost of construction. The Department agrees that the thresholds have not been revised since 1991 and must be revised to account for the increase in costs.[8] *See* 42 U.S.C. 12745(a)(1)(E) of the Act. requires that HOME projects ''will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property, as determined by the Secretary, without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time

[8] The HOME thresholds came into effect in 1991 (see 56 FR 65312–01).

consistent with sound economics and the purposes of this Act . . .'' The Department cannot adjust the thresholds to fully account for the differences in inflation [9] because the Department must balance the need for adjusting the periods of affordability to account for the increase in costs (*i.e.,* sound economics) with the purposes of the Act, which are to produce and maintain affordable housing units.[10] Given the significant decrease in appropriations that the HOME program has had in both real and inflation-adjusted dollars since the inception of the current dollar thresholds, the Department can only revise the thresholds to partially account for the increase of costs.[11]

Accordingly, the Department will revise the initial threshold for rehabilitation or acquisition of existing housing per-unit amount of HOME funds from $15,000 to $25,000. If the per-unit cost of rehabilitation and/or acquisition of existing housing is below $25,000, then the minimum period of affordability for each HOME-assisted housing unit is five years. The Department is revising the second threshold from $40,000 to $50,000. If the per-unit cost of rehabilitation and/or acquisition of existing housing is from $25,000 to $50,000, then the minimum period of affordability shall be ten years for each HOME-assisted rental housing unit. For rehabilitation and/or acquisition of existing housing, if the per-unit cost is over $50,000 for each HOME-assisted rental housing unit, then the minimum period of affordability is fifteen years.

While the Department is revising the dollar thresholds for the periods of affordability involving rehabilitation and/or acquisition, the Department has chosen to maintain the period of affordability for new construction and for rehabilitation involving refinancing. The Department believes that the useful life of the property or the longest feasible period of time is consistent with sound economics and the purposes of this Act is still twenty years for HOME rental housing projects involving new construction. Similarly, the Department believes that properties where rehabilitation involves refinancing should also continue to be subject to a period of affordability of fifteen years, as the refinancing and rehabilitation of the property to the PJ's rehabilitation standards should adequately extend its useful life to a period of fifteen years. If the rehabilitation and refinancing action cannot ensure that the property remains capable of operating as affordable housing for a period of fifteen years, then the project is not feasible or furthering the purposes of the Act.

The Department is revising the first sentence of § 92.252(g) and § 92.252(g)(3) to include reference to the new safe harbor in § 92.203(a)(3). This revision allows a PJ to use the safe harbor in § 92.203(a)(3) in the calculation of both initial and annual income determinations instead of using source documents, as required in § 92.203(b)(1)(i). The Department is also revising the first sentence of § 92.252(g) to reference income provisions for HOME tenant-based rental assistance tenants, which have been moved to § 92.203(b)(3) from § 92.203(b)(2).

The Department is revising § 92.252(g)(1) to provide a chart clarifying the alternative income reexamination cycle for small-scale rental projects that a PJ may permit. The Department is also revising § 92.252(g)(2) to specify that rental projects, including small-scale projects, must reexamine tenant income using source documentation every sixth year of the period of affordability.

The Department is revising § 92.252(h)(2)(i) for readability by striking ''section 42'' and instead stating that over-income tenants subject to the rent restrictions under section 42 of the Internal Revenue Code of 1986 must pay a rent that complies ''with that section.'' This is clearer and less wordy. The Department is adding a new paragraph § 92.252(h)(2)(iii) that will explain that rent limits do not apply to rental assistance or subsidy payments under any Federal, State, or local rental assistance or subsidy program. This is because when tenants become over-income in certain rental assistance programs, such as the Housing Choice Voucher program, the tenant still pays a percentage of their rent, such as thirty percent of their rent, up to the contract rent for the housing unit. This means that there may still be subsidy or assistance from the rental assistance provider until the tenant is paying the full contract rent. If owners were unable to accept this rent, then it would undermine the purposes of HERA, as explained earlier for High and Low HOME Rents. As such, the Department providing the same clarification it did in paragraph § 92.252(a), which is that the rent does not include the rental assistance provided by the rental assistance or subsidy provider.

Paragraph § 92.252(i) was revised similar to other provisions to state that surety bonds, security deposit insurance, or instruments similar to surety bonds and security deposit insurance may not be used in lieu of or in addition to a security deposit in HOME-assisted units. This is a clarifying change for readability and not a substantive change from the proposed rule.

24 CFR 92.253 Tenant Protections and Selection

The Department is making significant changes to its tenant protection provisions in response to public comment. Based on comments received as part of the specific solicitation of comment #10, the Department has chosen to create three tenancy addenda for the HOME program, one for each type of HOME rental activity (rental housing, tenant-based rental assistance, security deposit assistance only). The requirements for each addendum shall be provided in paragraphs (b)–(d) accordingly. The Department is also reorganizing the tenant protections regulations by removing the current security deposit and termination of tenancy provisions found in paragraphs (c) and (d) and instead placing them directly into the applicable tenancy addendum. The Department believes these changes allow HUD to tailor the protections to the form of assistance being received under the HOME program and should decrease any potential chilling effects that an addendum may have on private owners accepting tenants with HOME tenant-based rental or security deposit assistance.

The Department also believes reorganizing the tenant protections to include the security deposit requirements and termination of tenancy provisions into the applicable tenancy addenda for rental housing and tenant-based rental assistance is more legally supportable and consistent with other HUD programs. Section 42 U.S.C. 12755(a)(1) provides an explicit congressional delegation of authority to the Secretary to determine the terms and conditions of leases in the HOME program. Security deposit requirements and termination of tenancy provisions are material terms to a lease and other

[9] By one measure, the Consumer Price Index, the dollar has increased by over 200% since the establishment of the dollar thresholds used to determine the period of affordability for the HOME program. See the CPI Inflation Calculator at *https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=1%2C000%2C000.00&year1=199201&year2=202310.*

[10] See 42 U.S.C. 12722(1) and (7).

[11] In 1992, the Department was appropriated $1,500,000,000 for HOME, the first year of annual appropriations for the program. (See 105 STAT. 744 for Pub. L. 102–139). For Fiscal Year 2024, the Department received $1,250,000,000 for HOME. In current dollars, this is a decrease in investment in affordable housing of only $250,000,000 but when using the Consumer Price Index to calculate the inflation-adjusted decrease, it is a decrease of over 50% of the initial investment made in affordable housing.

HUD programs include specific provisions addressing each in their tenancy addenda, including in the Section 8 voucher programs.[12] The Department believes this is the most legally sound way of requiring PJs and owners to comply with the tenant protections and that it will better enable beneficiaries of HUD programs to assert their legal rights and defenses. Commenters had also specifically requested that the Department add the security deposit provisions within the tenancy addendum, as those are traditionally contained in a lease, and the Department agrees.

Accordingly, the Department is revising paragraph § 92.253(a) by adding a ''(1)'' after lease contents and redesignating § 92.253(a)(1)–(4) as § 92.253(a)(1)(i)–(iv). Paragraph § 92.253(a)(1)(iv)(A) shall also be revised to require that a lease of a tenant in HOME rental housing include the HOME rental housing tenancy addendum described in § 92.253(b). Paragraph § 92.253(a)(1)(iv)(B) is being added and shall require that a lease of a tenant in HOME tenant-based rental assistance include the HOME tenant-based rental assistance tenancy addendum described in paragraph § 92.253(c).

A separate paragraph § 92.253(a)(2) is being added and shall provide the lease requirements for security deposit assistance only recipients. After reviewing the comments received as part of the solicitation of public comment, the Department determined that it was not appropriate to require that tenants and owners use the HOME tenant-based rental assistance tenancy addendum. Security deposit assistance is fundamentally different than other forms of assistance under the HOME program. It is a one-time form of assistance that is inherently short-term in nature. The assistance is primarily intended as a form of emergency assistance for families whose primary barrier to obtaining housing is the security deposit. Many times, this assistance is also paired with long-term assistance in other programs that comes with their own protections. The HOME tenant-based rental assistance tenancy addendum contemplates a contractual relationship between the PJ and the owner because of the updated rental assistance contract requirements contained in § 92.209(e). Security deposit assistance, in contrast, is of limited duration, lasting only the issuance of the initial assistance.

Instead of requiring the HOME tenant-based rental assistance tenancy addendum, the Department is requiring a security deposit assistance tenancy addendum. Paragraph § 92.253(a)(2) shall require a written lease between the tenant and the owner that is for a period of not less than 1 year, unless by mutual agreement between the tenant and the owner, a shorter period is specified. This mirrors the requirements for both rental housing and tenant-based rental assistance. Likewise, to determine that the HOME security deposit assistance tenancy addendum is included in the lease, the owner must also provide the PJ with a written lease before security deposit assistance is provided. This mirrors the new requirements for both rental housing and tenant-based rental assistance. Then, the paragraph requires that the lease contain the HOME security deposit assistance tenancy addendum in paragraph (d) of this section.

The Department received a significant amount of comment on its proposed tenant protections that represented a spectrum of participants in the HOME program including PJs, owners, CHDOs, tenant rights and advocacy organizations, fair housing and civil rights organizations, and associations. These comments ranged from unqualified support to complete opposition. The Department considered the comments and determined that the vast majority of its proposed text was appropriate for a rental housing tenancy addendum. However, based on public comment and the reorganization of the regulation, the Department did make a number of revisions since the proposed rule stage.

The introductory text in § 92.253(b) has been clarified to indicate that the tenancy addendum being described is the HOME ''rental housing'' tenancy addendum. The second sentence was also revised to include addenda from local affordable housing programs in addition to other Federal or State affordable housing programs. The Department did not intend to inadvertently exclude HOME-assisted tenants from receiving other forms of local affordable housing assistance and believes this revision is responsive to public comments that warned HUD not to create conflicts with local programs. Paragraph (b)(1)(ii)(A) is being revised to clarify that with respect to maintenance and repairs to a housing unit, the owner shall provide tenants with written expected timeframes for maintaining or repairing units as soon as practicable. A written record is more protective of a participating jurisdiction, owner, and tenant alike, as it provides each clear evidence of when work is expected to occur.

The Department is revising paragraph (b)(2)(i) because while it is true that a family may reside in the unit with a foster child, foster adult, or live-in aide, the family must still comply with all applicable occupancy requirements when living in HOME-assisted rental housing. The Department did not intend to preempt or override State or local occupancy laws or HUD's own occupancy restrictions in other programs whose assistance may be combined with HOME assistance, such as Section 8 project-based rental assistance. The Department notes that any reasonable accommodations must still be made in accordance with all applicable laws regarding nondiscrimination and accessibility. In § 92.253(b)(5), the owner is separately agreeing not to interfere with or retaliate against the tenant for asserting their rights, which include the right to request a reasonable accommodation for a live-in aide. In § 92.253(b)(8), the owner is also agreeing to operate HOME rental housing in accordance with all applicable nondiscrimination and equal opportunity requirements pursuant to § 92.350. As a result, the Department does not believe that this revision will negatively impact tenant protections. This revision was made in response to public comments that requested HUD reexamine the tenant protections to determine that they did not conflict with State or local law or with other Federal programs.

The Department is revising the term ''dwelling'' to ''housing'' in § 92.253(b)(2)(iii), (b)(2)(iii)(A), and (b)(2)(iii)(C). The Department is also revising § 92.253(b)(2)(iii)(C) in response to public comment urging HUD to require that owners provide tenants with written notice of the date, time, and purpose of the owner's entry if the owner must enter the housing without advance notification when there is reasonable cause to believe that an emergency requiring entry to the unit exists. The commenter was supportive of this approach and believed it would be protective for the tenant. The Department agrees and believes this provision will improve communication between owners and tenants of HOME-rental housing.

In response to public comment, the Department is revising § 92.253(b)(3)(i) to require that owners provide tenants with written accessible notice of the specific grounds for proposed adverse actions by the owner against the tenant before taking such actions. The

[12] See HUD Form 52641A for the Housing Choice Voucher Program Tenancy Addendum and Form HUD 52530.c for the Section 8 Project-based Voucher Program Tenancy Addendum.

Department had proposed to provide this as simply a notification requirement. One commenter recommended that instead, the Department revise the provision to make the adverse action itself contingent upon providing the tenant notice. The Department believes this is a sensible approach and that it may enable tenants to assert any rights or protections prior to the imposition of any charges or other adverse actions. In revising § 92.253(b)(3)(i), the Department is also clarifying that the notification of the adverse action must be translated if required for the tenant to understand the notice. Tenants and owners have an existing landlord-tenant relationship and so it should not be overly burdensome to ensure that tenants are able to read the written notice in a language they can understand. Similar changes were made to § 92.253(c)(3)(i).

The Department is also revising § 92.253(b)(3)(ii) to more clearly state when tenants must be notified of changes in the ownership and management of the rental housing project. Paragraph § 92.253(b)(3)(ii)(A) will specify that an owner must notify tenants within 30 calendar days of the impending sale or foreclosure of a rental housing project. Paragraph § 92.253(b)(3)(ii)(B) specifies that owners must notify tenants within five business days of a change in ownership. These requirements were both in the proposed rule. The Department added as a new requirement that owners not only notify tenants within five business days of any changes in ownership but also any changes in property management companies managing the property as § 92.253(b)(3)(ii)(C). This change, being made to was in response to public comments that believed that such notification should include property managers and not just owners. Property managers have significant involvement in the operation of the property and are agents or employees acting on behalf of HOME rental housing owners. When an owner obtains a different property management company, it can have significant impacts on the daily life of tenants. The Department believes it is important to keep tenants informed in advance of such impacts and that this improved communication may help both owners and tenants. Similar additions are made to § 92.253(c)(3)(ii).

The Department is revising § 92.253(b)(4)(v) to narrow the instances in which a tenant must pay an owner's attorney fees or other legal costs as part of a court proceeding. In the proposed rule, the Department proposed language to allow payment of such costs if the tenant loses the court proceeding. In response to public comment stating that the Department should examine local and State laws to determine that the tenant protections in § 92.253 are not in conflict with such requirements, the Department determined that this provision may conflict with State or local laws that would not permit payment of attorney's fees or other legal costs, even if the tenant were to lose the matter. Moreover, as courts hearing landlord-tenant disputes are making findings of fact and law based on the individual circumstances of each case, it should be up to those courts to determine whether tenants should pay these costs. Therefore, the revised requirement will state that a tenant is only required to pay the owner's attorney fees or other legal costs if the tenant loses the court proceeding and the court orders the tenant to pay those costs.

The Department is significantly revising § 92.253(b)(5) to address a number of comments received about the effectiveness of the provisions in protecting tenants. First, the heading for the section is being revised to explicitly include ''unreasonable interference'' to be clear that unreasonable interference with the tenant's safety or peaceful enjoyment of their property is a subject of the provision and that the provision is not only prohibiting retaliation. Commenters reasonably believed that the section was only describing retaliation because the heading did not specify otherwise. Similarly, unreasonable interference is now being separately prohibited in § 92.253(b)(5)(i). The terminology is also being revised from the proposed rule to remove the term ''comfort'' and instead state ''tenant's safety or peaceful enjoyment of a rental unit or the common areas of the rental housing project.'' The Department recognizes that there is significant landlord-tenant case law on the term ''peaceful enjoyment'' and that it is a far more recognized term than ''enjoyment.'' The Department believes this change will improve the ability for courts to determine the meaning of the provision in relation to their jurisdictions and governing law. The revision to address common areas also reflects consistency with protections in § 92.253 that allow tenants reasonable access to and use of the common areas of the project (see § 92.253(b)(2)(iv)).

The Department then revised § 92.253(b)(5)(ii) to prohibit an owner from retaliating against a tenant for taking any action allowable under the lease and applicable law. The rule provides a variety of actions that a tenant may take under a lease and the Department believes that retaliating against a tenant for using any of these protections is a breach of the lease and of the owner's written agreement with the participating jurisdiction. Section 92.253(b)(5)(iii) provides a list of actions that evidence unreasonable interference or retaliation against a tenant. The Department stresses that this language is providing examples and that it is not a limited list. The actions taken are the same actions that were prohibited in the proposed rule, but the list has been redesignated § 92.253(b)(5)(iii)(A)–(E), and § 92.253(b)(5)(iii)(B) has been revised to add a parenthetical to give an example of what it means to be increasing obligations of a tenant in a manner that is not in accordance with 24 CFR part 92. The example given is of new or increased monetary obligations, such as the addition of new or increased fees. This is just an example of monetary obligations but nonmonetary obligations like new property rules could also be considered retaliatory acts under this regulation under the right circumstances.

In response to public comments requesting that the Department specify the consequences of unreasonably interfering with a tenant's safety or peaceful enjoyment or retaliating against a tenant for exercising a right under their lease or the law, the Department has added a new § 92.253(b)(5)(iv). This new provision explains that if an owner unreasonably interferes or retaliates against a tenant, then the owner is violating the lease, the HOME program requirements, and their written agreement with the participating jurisdiction. While the Department has no authority to require that a participating jurisdiction establish a grievance process, the participating jurisdiction is required to address any regulatory violations in accordance with the applicable provisions contained in § 92.504(a) and (c). This applicability is made clearer by adding explicit cross references.

The Department is also revising § 92.253(b)(5)(ii) of the proposed rule, which is being revised and redesignated as § 92.253(b)(6). The new § 92.253(b)(6) has a revised header that explains that the section is describing the exercise of rights under tenancy. The revised first sentence explains that the tenant can exercise any right of tenancy or protection under their lease and other applicable Federal, State, or local tenant protections. Then the Department redesignated § 92.253(b)(5)(ii)(A)(C) as § 92.253(b)(6)(i) through (iii) and revised § 92.253(b)(6)(ii) to also allow for a tenant to report lease violations in

addition to requesting enforcement of the lease or any tenant protections. The Department believes that reporting such lease violations are inherent in requesting enforcement but believes that it is best to be explicit, given that the provision is also contained in the lease addendum.

The Department redesignated the proposed § 92.253(b)(6) and (7) as § 92.253(b)(7) and (8). In response to public comments, the Department also redesignated § 92.253(c) as § 92.253(b)(9). The same provision will also be included in § 92.253(c)(9). This provision, which provides the requirements for security deposits, should be contained in the tenancy addenda and not contained in a standalone regulation. As explained earlier in this preamble, the Department has clear authority to specify the terms and conditions of the lease under 42 U.S.C. 12755 and security deposits are a material term of the lease. Therefore, the Department is moving the security deposit provisions from a standalone section of the regulation and instead making the language a part of each HOME tenancy addendum. The Department is also revising § 92.253(b)(9) to state that ''Surety bonds, security deposit insurance, and instruments similar to surety bonds or security deposit insurance may not be used in lieu of or in addition to a security deposit.'' This is a non-substantive clarification of the text.

Similarly, one of the most important provisions of a lease concerns termination of tenancy. The Department understands how central these terms are to a lease and is also including termination of tenancy provisions in the lease addendum. Section 92.253(d)(1) of the proposed rule and all its contents are being redesignated as § 92.523(b)(10)(i)–(v) and being revised.

Section 92.253(b)(10)(i) is being revised from the proposed rule to clarify that good cause includes serious or repeated violation of the ''material'' terms and conditions of the lease. The Department adds the word ''material'' because good cause is a higher standard and minor lease violations, especially when easily curable or already cured, should not provide the basis for a termination of tenancy or refusal to renew tenancy in a HOME rental housing project. The Department still believes that serious or repeated violations of the material terms of the lease, such as nonpayment of rent or intentionally damaging the project, can form the basis of a termination of tenancy or refusal to renew.

Section 92.253(b)(10)(i) is also being revised to add a provision that states that an owner is permitted to terminate the tenancy of any tenant or household member or refuse to renew the lease of a tenant of rental housing assisted with HOME funds if the owner is permitted to do so pursuant to the provisions contained in 24 CFR part 5, subpart I; 24 CFR 882.511; or 24 CFR 982.310. This change is in response to public comments and to maintain consistency across HUD programs. Owners with tenants assisted under programs that are subject to these lease provisions must be allowed to terminate tenancy in accordance with the U.S. Housing Act of 1937 (42 U.S.C. 1437f) and the Department is allowing for a consistent approach for termination of tenancy under the HOME program for those assisted tenants.

Section 92.253(b)(10)(i)(A) is being revised from the proposed rule. The provision will state that refusal to purchase a HOME rental housing unit is not good cause to terminate a tenancy. The provision will provide an exception for when a family fails to purchase housing pursuant to a lease-purchase agreement. This was in response to public comment, which pointed out that owners must be able to sell units when the tenant fails to purchase the home in accordance with their lease-purchase agreement. The Department agrees and allows for this to be good cause to terminate a tenancy.

Section 92.253(b)(10)(i)(B) is being restructured to specify other good cause and then list each ground individually. This was done to improve readability of this section. Two grounds for good cause were added and one was significantly revised.

The first form of good cause being added to § 92.253(b)(10)(i)(B)(*1*) is when a tenant or household member is a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the property, which is a statutory ground that commenters requested be considered in the termination of tenancy or refusal to renew.[13] The Department agrees that owners should be able to terminate tenancy for this reason and is adding this as a specific ground. The Department requires owners to maintain records to demonstrate that they complied with the tenant protections provisions, including records demonstrating there is a reasonable basis to determine that a person constituted a direct threat to safety of the tenants or employees of the housing or an imminent and serious threat to the property. This could include specific threats or acts that took place on the project site, against other families living in the project, or against any employees or staff of the owner. The Department believes that posing a direct threat to the safety of tenants or employees is a high bar and not satisfied easily. Similarly, forming the basis for an imminent and serious threat to the property is a higher bar than just describing past negligent acts alone, and brings with it an expectation that there is a specific or credible threat or act made by the tenant or household member against the property.

The second form of good cause added to § 92.253(b)(10)(i)(B)(*5*) allows an owner to terminate a tenant's tenancy terminated if the tenant fails to purchase the housing within the timeframes listed in the tenant's lease-purchase agreement. The intent of a lease-purchase program is for the tenant to purchase the unit. If the unit cannot be purchased pursuant to the lease-purchase agreement within 36 months, then the owner must be able to sell the unit to an eligible homebuyer to effectuate the intent of the homeownership development project. The Department has revised § 92.254(a)(7) to further enable owners to sell homeownership units that fail to be purchased pursuant to their lease-purchase agreement and though those changes are not interdependent with the tenant protections provisions contained in § 92.253, the Department is maintaining consistency between the requirements.

One form of good cause was substantively revised since the proposed rule is contained in the newly redesignated § 92.253(b)(10)(i)(B)(*2*). This form of good cause was revised to state that other good cause includes when a tenant unreasonably refuses to provide the owner access to the unit to allow the owner to repair the unit. The provision originally contained language permitting termination of tenancy or refusal to renew tenancy if the tenant creates a documented nuisance under applicable State or local law. The comments received for that provision were decidedly negative and there were significant concerns that this provision

[13] 42 U.S.C. 12755(b) states: ''An owner shall not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted under this subchapter except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action. Such 30-day waiting period is not required if the grounds for the termination or refusal to renew involve a direct threat to the safety of the tenants or employees of the housing, or an imminent and serious threat to the property (and the termination or refusal to renew is in accordance with the requirements of State or local law).''

was not only inconsistent with the rest of the tenant protections but counterproductive to the overall tenant protection scheme by providing an often-used avenue for discrimination. The Department agrees with commenters and is removing the provision, thereby clarifying that owners may not justify termination of tenancy on outdated or discriminatory concepts of nuisance but instead must rely upon good cause.

Section 92.253(d)(1)(i)(D) is being redesignated and revised as § 92.253(b)(10)(i)(C). The provision is also being revised directly in response to public comment. The public was concerned that the meaning of a record of conviction of a crime that bears directly on the tenant's continued tenancy was too vague to be an appropriate legal standard to apply to landlord-tenant relationships. The commenters believed that the Department should be more specific to ensure the regulation and protections are applied correctly. The Department agrees. Based on the public comment, the Department is revising the language to specify that the violations of applicable Federal, State, or local law must be for convictions of a crime that directly threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants in the project. The Department continues to believe that termination of tenancy is a fact-specific matter and that it is impossible to provide an exhaustive list of all the grounds or considerations that one must consider prior to termination. Criminal convictions may impact continued tenancy but only to the extent that such convictions interfere with the rights of others who live in the project. Minor violations of law that do not impact people living in the housing should not form the basis for terminating tenancy or refusing to renew a lease in the HOME program.

Paragraph § 92.253(d)(1)(ii) is being redesignated as § 92.253(b)(10)(ii) and revised. The first and second sentence are revised to only provide 30 days' notice prior to termination of tenancy or refusal to renew, and to specify that the 30-day requirement does not apply to the statutory grounds for termination relating to tenants that are a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the property. The Department received overwhelmingly negative comments from the public on the negative effects of requiring a longer notice period before termination or refusal to renew. Some commenters explained the variation of eviction timeframes across the country. Others explained how adding an additional 30 days to the notice period impacted the average eviction process and the average owner in their jurisdiction. Organizations that represented owners and affordable housing managers described how these changes negatively impact the financial feasibility of current and future HOME projects. There were commenters who supported the change, and most indicated that it would better assist tenants in curing or preventing termination of tenancy. The Department also considered what it had done in other programs and the effort to make a consistent 30 day notice standard. On the whole, when the Department considered the potential negative ramifications and how the extension to 60 days was inconsistent with other Departmental efforts, the Department decided to withdraw the proposal to extend the notice period to 60 days and is revising the paragraph accordingly. Paragraphs § 92.253(d)(1)(iii) through (v) are redesignated as § 92.253(b)(10)(iii) through (v). Paragraph § 92.253(d)(1)(v) is also being revised to specify that an owner may not create a hostile living environment or refuse to provide a reasonable accommodation to cause a tenant to terminate their tenancy. The proposed rule had initially just stated that the owner cannot refuse to make a reasonable accommodation, but changes are now being made to cover situations where an owner refuses to permit a lawful reasonable accommodation with the intent of constructively evicting a person.

A new paragraph (c) is being added to § 92.253. This section will provide the tenancy addendum requirements for the HOME tenant-based rental assistance program. The opening paragraph mirrors the opening paragraph for § 92.253(b) and specifies that the terms of the HOME tenant-based rental assistance tenancy addendum shall prevail over any conflicting provisions of the lease. The terms and conditions of the written lease, the HOME tenant-based rental assistance tenancy addendum, the VAWA addendum listed in § 92.253(a), and any addendum required by another Federal, State, or local affordable housing program are the sole and entire agreement between the owner and the tenant and no prior or contemporaneous oral or written representation or agreement between the owner or tenant shall have legal effect. This is the same as the new rental housing requirements and provides sufficient protections to ensure that the owner does not later claim that the tenant agreed to something that would be prohibited under the tenant protections or applicable law. Paragraph § 92.253(c) also states that the HOME tenant-based rental assistance tenancy addendum shall terminate upon termination of the rental assistance contract. Initially, the Department had proposed that the lease terminate upon termination of the rental assistance contract but determined that it was best left to the owner and tenant as to when the lease shall terminate. Instead, the tenancy addendum shall terminate, as the tenant is no longer being assisted with HOME tenant-based rental assistance. Then the paragraph provides the same list of tenant protections contained in the HOME rental housing tenancy addendum paragraph (b) except for:

1. The provision in § 92.253(b)(1)(iii) which requires an owner to repair a life-threatening deficiency impacting the tenant, and requires, if the repairs cannot be completed on the day the life-threatening deficiency is identified, the owner to promptly relocate the tenant into housing that is decent, safe, sanitary, and in good repair and that provides the same or a greater level of accessibility, or other physically suitable lodging, at no additional cost to the tenant, until the repairs are completed. The Department recognizes that this type of provision may have a chilling effect on owner participation in the tenant-based rental assistance program and is removing the requirement. If participating jurisdictions wish to provide this requirement as part of the rental assistance contract, then they still retain discretion to do so.

2. Section 92.253(b)(2)(v) allowing tenants to organize, create tenant associations, convene meetings, distribute literature, and post information. This provision may have a chilling effect on owners and may deter participation in the tenant-based rental assistance program. Though the Department believes that tenants should have the right to organize tenant associations, rental assistance provided through HOME tenant-based rental assistance is not of the same durable nature as development subsidies provided to owners and developers producing HOME rental housing. Requiring that owners allow organizing activities when the participating jurisdiction has far fewer incentives to encourage owners to comply disadvantages tenants and participating jurisdictions who are already contending with source of income discrimination in many jurisdictions.

3. Paragraph § 92.253(c)(9)(iii) will permit tenants that are already in a lease

before they enter into a rental assistance contract to have fulfilled the security deposit requirements of paragraph § 92.253(c)(9) even if the family used an instrument prohibited under paragraph (c)(9)(i). This was due to comment that rightly explained that tenants under a lease may have already used surety bonds, security deposit insurance, or instruments similar to surety bonds and security deposit insurance before they ever received HOME tenant-based rental assistance. While the Department does not encourage the use of these instruments and has determined that they are neither legally security deposits nor is their use advantageous to either owners or tenants, the Department does not want to penalize tenants or place obstacles in the way of tenants attempting to use tenant-based rental assistance.

Other than the above-described protections, § 92.253(c)(1)–(9) is substantively the same as § 92.253(b)(1)–(9). The Department believes that this is appropriate. Recipients of tenant-based rental assistance should have substantively the same protections as tenants in HOME-assisted rental housing.

The Department did want to highlight that for the retaliation provision contained in § 92.253(c)(5)(iv), the Department understands that participating jurisdictions may have limited leverage to require that owners unreasonably interfering with or retaliating against individuals with HOME tenant-based rental assistance stop their actions. The participating jurisdiction must use their best judgment about how to address such circumstances, including balancing the needs of the tenant to the continued tenant-based rental assistance and the participating jurisdiction's obligation to enforce compliance with the owner's rental assistance contract with the participating jurisdiction. However, the Department is declining to remove this protection, as it is a meaningful and necessary tenant protection for all the reasons given in the proposed rule.

The termination of tenancy provisions that were contained in paragraph § 92.253(d)(2) are being revised and redesignated from the proposed rule to be included in § 92.253(c)(10). First, just as in the HOME rental housing termination provisions in § 92.253(b)(10)(i), the tenant-based rental assistance provisions are being included in a new paragraph § 92.253(c)(10)(i) that states that an owner may not terminate the tenancy of any tenant or household member or refuse to renew the lease of a tenant with tenant-based rental assistance, except for serious or repeated violation of the material terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. This mirrors the HOME rental housing section but does not include the additional specific grounds that allows owners to terminate the tenancy of any tenant or household member or refuse to renew the lease of a tenant of rental housing assisted with HOME funds if the owner is permitted to do so pursuant to the provisions contained in 24 CFR part 5, subpart I; 24 CFR 882.511; or 24 CFR 982.310. This is because the Department has determined that this is not applicable to the recipients of HOME tenant-based rental assistance, who would not be living in units receiving subsidy or assistance under the Section 8 program.

Similar to § 92.253(b)(10)(i)(A), § 92.253(c)(10)(i)(A) also states that an increase in the tenant's income or assets, the amount or type of income or assets the tenant possesses does not constitute good cause. The section also states that except in the case of a lease-purchase agreement, other good cause also does not include refusal of the tenant to purchase the housing. These protections are substantively the same as the HOME rental housing protections.

The provisions on good cause in § 92.253(c)(10)(i)(B) differ from the proposed rule in several respects. Section 92.253(d)(2)(i)(A) and (B) of the proposed rule are being redesignated as § 92.253(c)(10)(i)(B)(*2*) and (*3*). Section 92.253(c)(10)(i)(B)(*1*) is added and is substantively the same as the statutory grounds for termination of tenancy and refusal to renew that were added to § 92.253(b)(10)(i)(B)(*1*). If a tenant or household member constitutes a direct threat to the safety of tenants or employees of the housing or an imminent and serious threat to the property, an owner must have the ability to terminate the tenancy or refuse to renew the lease. For the reasons given earlier in this preamble, this is a high standard to meet, and the owner must be able to document how they arrived at this determination. Section 92.253(d)(2)(i)(C) is being revised and redesignated as § 92.253(c)(10)(i)(B)(*4*). The sentence shall now only describe when a tenant unreasonably refuses to provide an owner with access to repair the unit. Section 92.253(d)(2)(i)(D) of the proposed rule is being redesignated as § 92.253(c)(10)(i)(B)(*5*). Section 92.253(d)(2)(i)(E) of the proposed rule, which provided the termination of the rental assistance contract as grounds for termination of the tenant lease is being removed. The Department received negative comments on this provision and recognizes that this is a decision best left to the owner and the tenant. After the rental assistance contract expires, the tenancy addendum will also terminate. The owner may continue to lease the unit to the tenant under the terms of the tenant lease. Section 92.253(d)(2)(i)(F) introductory text and (d)(2)(i)(F)(*1*) of the proposed rule are being combined and redesignated as § 92.253(c)(10)(i)(B)(*6*). Section 92.253(d)(2)(i)(F)(*2*) is likewise being revised for readability and redesignated as § 92.253(c)(10)(i)(B)(*7*).

The Department added a new ground for good cause in response to public comment. Section 92.253(c)(10)(i)(B)(*8*) states that if a tenant fails to purchase a housing unit within the timeframes of a tenant's lease purchase agreement, then this shall be good cause to terminate the tenancy. Commenters requested that this be a ground for termination because otherwise, the owner would be required to continue to rent to the family, even though the family would be in breach of their lease purchase agreement. This would disadvantage owners who wished to sell the homeownership units after a tenant fails to purchase the housing and would disincentivize lease-purchases.

Section 92.253(d)(2)(ii) is being redesignated as § 92.253(c)(10)(ii) and revised to remove the 5-business day requirement for the owner to notify the participating jurisdiction that it has served a notice to vacate to a tenant. This is because the new tenant-based rental assistance rental assistance requirements require the owner and participating jurisdiction to have a rental assistance contract (see § 92.209(e)). Therefore, instead of requiring a time period in the regulation, the regulation will defer to the rental assistance contract or the participating jurisdiction's policies and procedures to govern the issuance of notice to the participating jurisdiction. The citation in the last sentence was also revised because of the redesignation of the paragraph.

Paragraphs § 92.253(d)(2)(iii) and (iv) are being redesignated as § 92.253(c)(10)(iii) and (iv) without change. Paragraph § 92.253(d) is being added to add security deposit assistance tenancy addendum requirements. The addendum shall prevail over conflicting terms of the lease. The terms and conditions of the written lease, the HOME security deposit assistance tenancy addendum, and any addendum required by another Federal, State, or

local affordable housing program shall constitute and contain the sole and entire agreement between the owner and the tenant. The security deposit assistance tenancy addendum shall prohibit the prohibited lease terms that are currently contained in § 92.253(b)(1)–(9), except that § 92.253(d)(8) shall be revised to state that a tenant is only obligated to pay costs if the tenant loses and the court so orders, consistent with the revisions made in § 92.253(b)(4)(v) and § 92.253(c)(4)(v).

Paragraph § 92.253(e)(4) is being revised to specify that participating jurisdictions must not exclude an applicant with Federal, State, or local tenant-based rental assistance. The proposed rule did not prohibit discriminating against a person because they were receiving local rental assistance, just State and Federal tenant-based rental assistance. In response to comment and consistent with HUD's position that source of income discrimination must end, the Department is adding this prohibition to the tenant selection regulations.

Paragraph § 92.253(e)(5) is being revised to remove the requirement that HUD approve alternative waiting list procedures for small-scale housing projects. The Department believes that this is best left to participating jurisdictions. The Department reminds participating jurisdictions and owners that all Federal, State, and local nondiscrimination requirements, including the Violence Against Women Act (VAWA), continue to apply to tenant selection, and any approved waiting list procedures must comply with all applicable requirements.

Paragraph § 92.253(f) is being revised to require that the notification of an environmental, health, or safety hazard be in writing. The paragraph is also being revised to require that when an owner becomes aware of such hazards, the owner must notify both the participating jurisdiction and the tenants instead of just the tenants. This was requested by commenters and will allow tenants to find out as quickly as possible if a hazard is affecting their unit or project. The paragraph is also being revised to add a sentence to explain that when an owner or participating jurisdiction has notified the tenants, this satisfies the requirement for the other party.

24 CFR 92.254 Qualification as Affordable Housing: Homeownership

A. Allowing Over-Income In-Place Tenants To Purchase Their Homes

The Department has determined that the Secretary may permit the period of affordability for a project to be terminated earlier than the time periods specified in § 92.252 under the circumstances described in detail below. The Department is revising § 92.254, which currently prohibits over-income in-place tenants from purchasing their units. This is in response to public comment requesting that in-place HOME tenants who are no longer income eligible be permitted to purchase their housing units, including when former tax credit projects are converting to homeownership housing units.

It is consistent with the statutory language of the Act, as well as the purposes of the Act, to allow in-place HOME tenants who have saved up for a downpayment to use that downpayment to purchase the unit that they are currently occupying. Developing stable homeownership models where tenants can live in a housing unit, work towards increasing their income from very-low income to moderate-income, and eventually purchase their unit is not only consistent with the intent of the drafter of the Act but in furtherance of it. As such, the Department is revising § 92.254(a)(3) to add a sentence s allowing HOME-assisted housing to be purchased by an in-place tenant pursuant to § 92.255 if the homebuyer's family was low-income at the time the homebuyer's family began occupying the HOME rental housing unit. This is similar to how families that entered into lease-purchase agreements may purchase their housing so long as they were income-eligible when they entered into their lease-purchase agreement. The Department believes this is in furtherance of the purposes of the Act and will increase homeownership opportunities for HOME-assisted tenants.

B. Meeting Property Standards Post-Acquisition

The Department is revising § 92.254(a)(3) to provide clearer language that explicitly authorizes a participating jurisdiction to assist a family even if the homeownership unit does not meet the property standards at acquisition, provided that the written agreement between the participating jurisdiction and the homebuyer requires the property to meet the standards within the period specified in § 92.251(c)(3)(ii) and funding is secured to complete the rehabilitation necessary to comply with the standards. This ensures consistency between the requirements in § 92.251(c)(3) and § 92.254.

C. Change in Start of Period of Affordability

The Department revised § 92.254(a)(4) in response to public comments. Commenters had objected to beginning the period of affordability upon project completion. For homeownership projects, project completion means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under § 92.251); the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD.[14]

The Department understands that requiring that a homebuyer's resale or recapture period only begin to run after the participating jurisdiction completes all the information in the disbursement and information system can disadvantage homebuyers, especially for multiple address projects where completion of the information in the disbursement and information system can only occur after all housing units in the project meet the requirements in 24 CFR part 92. The Department is changing the provision to instead require the period of affordability begin after execution of the instrument that requires recapture of the HOME investment or recordation of the resale restrictions against the property. The Department is further conditioning the execution of the instrument that requires recapture of the HOME investment or recordation of the resale restrictions against the property upon both meeting the property standards in § 92.251(c)(3) and the transfer of the property title to the homebuyer. The Department believes these are reasonable restrictions because the property must meet the property standards at the time of purchase, or within 6 months after purchase, if permitted by the participating jurisdiction (with the ability to extend up to 12 months after purchase). If the property does not meet the standards within the required time period under § 92.251(c)(3), then the participating jurisdiction would have to repay the investment, and the housing would not be a HOME-assisted homeownership

[14] See 24 CFR 92.2 *project completion.*

unit (and thus should not have resale or recapture provisions applied to it).

D. Change in Period of Affordability for Homeownership

The Department revised the threshold for the periods of affordability in the table § 92.254(a)(4) consistent with the periods of affordability in § 92.252(d)(4). When the homeownership assistance provided on a per-unit basis is under $25,000, the period of affordability shall be for a minimum of 5 years. When the homeownership assistance is $25,000 to $50,000, then the minimum period of affordability shall be 10 years. If the amount of homeownership assistance is above $50,000, the minimum period of affordability shall be 15 years.

The Department believes that it is important to increase the thresholds for the periods of affordability for the reasons given earlier. The Department considered that since 1990, the House Price Index has increased by over 300%.[15] The need for HOME homeownership assistance outpaced inflation, as measured by the Consumer Price Index, and has been a driver in increasing the amount of HOME homeownership assistance that is provided per family assisted over the course of the HOME program's history. However, given that the appropriations for the HOME program have decreased by over 50% in inflation-adjusted dollars since the 1992 HOME appropriation of $1,500,000,000,[16] and the need to maintain affordable homeownership units in accordance with the purposes of the Act,[17] the Department adjusted the thresholds to be consistent with the revisions made in § 92.252.

E. Edit for Consistency in 92.504

Consistent with § 92.504, the Department is revising the first sentence of § 92.254(a)(5)(ii)(A) to state that recapture provisions must ''require'' that the PJ 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 Department states this as a requirement in other parts of the rule and is clarifying the provision here for consistency. A similar revision is made in § 92.254(g)(3).

F. Revising Lease-Purchase Provisions of 24 CFR 92.254(a)(7)

The Department considered a variety of comments on its revisions to lease-purchase regulations in § 92.254(a)(7). After careful consideration of the challenges owners encounter when the family fails to purchase the property pursuant to the lease-purchase agreement, the Department is substantially revising § 92.254(a)(7). The Department is revising the introductory sentence of the provision to explain that acquisition, rehabilitation or new construction of housing to be sold to eligible low-income homebuyers for lease-purchase is allowable.

The next provision § 92.254(a)(7)(i) explains the statutory requirement of 42 U.S.C. 12745(b)(2)(B) that a homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed. The regulation is being revised to provide standalone requirements for lease-purchases within the section. As a result, HUD revised the regulation to clarify that the current regulation's requirements that income determinations be made based on the income of all people living in the homeownership unit are applicable to lease-purchases.[18] The Department is also clarifying in § 92.254(a)(7)(i) that if a family is also receiving HOME tenant-based rental assistance, the PJ is not required to reexamine the family's income during the term of the lease-purchase agreement. The Department has received comments that it should reduce income examination when it is not necessary, and that the Department should move to triennial income examination. While the Department declined to move to such an income cycle for the reasons given in the preamble to § 92.209 and in the applicable responses to public comment, the Department realized that HOME lease-purchase programs are different. The Act clearly states that a family's income is to be determined at the signing of the HOME lease-purchase agreement [19] and does not require that income be reexamined prior to the purchase. When a PJ pairs their tenant-based rental assistance with a HOME-assisted lease-purchase program, the aim is to allow the family to accumulate money for a downpayment and to better position themselves for sustainable homeownership when they acquire the housing. By eliminating the requirement that the family's income be reexamined during the term of the lease-purchase agreement, the requirement is more consistent with the Act, the rule better enables families to save up for the purchase of the home, and it provides burden relief to PJs that would otherwise be required to reexamine the tenant's income after 24 months from the date of execution of the rental assistance contract.

Paragraph § 92.254(a)(7)(ii) explains that the owner and homebuyer must execute a lease-purchase agreement prior to the family occupying the unit and that the lease-purchase program must require the family to purchase the housing within 36 months of the execution of the lease-purchase agreement. The provision also retains language from the proposed rule explaining that owners and homebuyers that have entered into a lease-purchase agreement are subject to the affordability requirements in the homeownership section unless the housing is not purchased within the timeframes described in § 92.254(a)(7) in accordance with the lease-purchase agreement.

The Department is adding § 92.254(a)(7)(iii) in response to public comments that requested that owners be able to sell units to an eligible homebuyer if the family that entered into the lease-purchase agreement fails to purchase the housing pursuant to the agreement. The new § 92.254(a)(7)(iii) provides that if the first homebuyer does not acquire the housing, then the owner may sell the housing to an eligible low-income homebuyer within 48 months of execution of the lease-purchase agreement. This provides owners 12 months from the expiration of a 36-month lease-purchase agreement to find another eligible low-income homebuyer and sell the homeownership unit. The regulation also permits the PJ to provide homeownership assistance to the next homebuyer identified for the unit but prohibits the owner from entering into another lease-purchase agreement for the housing.

The Department has concluded that owners should have another chance to sell the unit as a homeownership unit instead of being required to operate the housing as rental housing if the lease-purchase agreement fails to end in the sale of the housing. However, since the lease-purchase did not succeed the first time, the Department is prohibiting owners from using the lease-purchase model on a second attempt to sell the housing. The owner must default to the rules that apply in a typical homeownership development project.

[15] See U.S. Developmental Index; Not Seasonally Adjusted, which is an excel sheet within the Federal Housing Finance Agency Housing Price Index Datasets: *https://www.fhfa.gov/data/hpi/datasets?tab=additional-data.*

[16] By one measure, the Consumer Price Index, the dollar has increased by over 200% since the establishment of the dollar thresholds used to determine the period of affordability for the HOME program. See the CPI Inflation Calculator at *https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=1%2C000%2C000.00&year1=199201&year2=202310.*

[17] See 42 U.S.C. 12722(1) and (7).

[18] See 24 CFR 92.254(a)(3).

[19] See 42 U.S.C. 12745(b)(1)(B).

Section 92.254(a)(7)(iv) has been amended accordingly to provide owners with additional time to sell the housing once it has failed to be sold through a lease-purchase agreement by allowing owners 48 months to complete the sale and transfer the title to an eligible low-income homebuyer (*i.e.,* 36 months for lease-purchase under a lease-purchase agreement and 12 months to sell the housing from the expiration of the 36-month lease-purchase agreement). This change to allow 12 months to sell the housing from the expiration of the 36-month lease-purchase agreement is consistent with the Department's extension of the period in which an owner may sell homeownership housing from 9 months to 12 months (see § 92.254(a)(3)).

The Department inadvertently omitted paragraph (a)(8) in the publication of the proposed rule. It was not the Department's intent to delete paragraph (a)(8), and the Department noted some confusion over the use of this provision in the public comments. In the final rule, the Department is retaining the language from § 92.254(a)(8) from the current rule without change.

In response to public comment explaining that it is very difficult to purchase housing with a right of first refusal, bring the property into compliance with the PJ's property standards, and resell it to an eligible homebuyer within 6 months, the Department is revising § 92.254(b)(1)(i) and § 92.254(b)(3)(ii) to allow PJs and CLTs with up to 12 months to sell the housing to the next eligible low-income homebuyer.

G. Preserving Affordability of HOME Projects

The Department is adding an additional clarifying sentence to § 92.254(b)(2)(v) to explain that while sales proceeds can be used to reimburse up to one-hundred percent of the administrative funds used by a PJ to preserve the affordability, any sales proceeds exceeding that amount shall be program income for the PJ.

H. Assisting Homebuyers in Projects Developed by Community Land Trusts

In response to public comments requesting that CLTs or PJs be allowed to assist homebuyers when a CLT exercises a right of first refusal or preemptive purchase rights in accordance with § 92.254(b)(3), the Department is revising § 92.254(b)(3)(iv) to explicitly permit the PJ to provide homeownership assistance to the next eligible homebuyer. PJ always has the flexibility to assist a homebuyer through a homeownership assistance program, regardless of whether the unit the homebuyer wishes to purchase was originally purchased by another HOME-assisted homebuyer. Since the Department is revising § 92.254(b)(3)(iv) to explicitly permit PJs to assist the next homebuyer, the Department is also clarifying both § 92.254(b)(3)(iii) and (iv) to state that if a homebuyer is provided assistance by the PJ, the period of affordability shall be calculated in accordance with § 92.254(b)(1)(iii) and § 92.254(b)(1)(iv), and if no additional assistance is provided to the homebuyer, then the period of affordability shall be equal to remaining period of affordability on the property.

However, the Department does not believe the statute permits the PJ to award HOME funds to the CLT to provide homeownership assistance to the next eligible homebuyer. The statute specifically states that when HOME ''funds provided in prior and subsequent appropriations acts that were or are used by community land trusts for the development of affordable homeownership housing pursuant to section 215(b) of such Act,'' then the community land trusts could retain the right to purchase the housing without violating the period of affordability requirements contained in section 215(b)(3)(A). This type of relief was to allow for a unit to temporarily cease to be used as affordable housing, as long as the housing was rededicated to that purpose shortly thereafter. It did not establish a new eligible activity or new eligible costs but gave CLTs the ability to exercise their purchase rights without violating the affordability requirements and triggering repayment of the HOME investment by the PJ. As such, the Department is revising the regulation to allow the PJ to assist the next eligible homebuyer.

24 CFR 92.255 Purchase of HOME Units by In-Place Tenants

The Department received public comments requesting that in-place HOME tenants who are no longer income eligible still be permitted to purchase their housing units. While regulations currently do not permit over-income in-place tenants to purchase their units, the Department has determined that the Secretary may permit the period of affordability for a project to be terminated earlier under certain circumstances. *See* 42 U.S.C. 12742(a)(1)(E) (noting that rental housing qualifies as affordable housing under this subchapter only if the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property).

The Department believes that it is consistent with the purposes of the Act to allow in-place HOME tenants who have saved up for a downpayment to use that downpayment to purchase the unit that they are currently occupying. Developing stable homeownership models where tenants can live in a housing unit, work towards increasing their income from very-low income to moderate-income, and eventually purchase their unit is not only consistent with the intent of the Act but in furtherance of it.

As such, the Department is revising § 92.255(b) to state that if the tenant's family is no longer low-income at the time of the purchase, then the family may still purchase the home. The provision is also being revised to state that the family must occupy the housing as their principal residence in accordance with § 92.254(a)(3) and must agree to the imposition of resale restrictions on the housing, in accordance with § 92.254(a)(5), for the remaining period of affordability of the housing unit. By adding these requirements, it ensures that the intent of the Act is fulfilled because the family, which began their participation in the HOME program as low- or very low-income, must own and occupy the housing for the full period of affordability or be subject to the very same resale restrictions that all other income-eligible families must comply with in the event that the family sells or transfers the property within the housing's original period of affordability.

Paragraph § 92.255(c) is similarly revised to explain that though an in-place HOME tenant may purchase their unit even if the tenant's family is no longer low-income, additional HOME funds cannot be provided to assist that family because the family is not income eligible for homeownership assistance.

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

In the proposed rule, HUD proposed to revise the text of § 92.300. The Department is making further revisions to § 92.300(a)(2) to clarify that rental housing owned by a CHDO is rental housing if it is ''leased'' to low-income tenants. The Department had inadvertently removed necessary words from the provision in the proposed rule and is clarifying text. HUD also determined that it is necessary to further revise the text of § 92.300(a)(2) and (3) in order to clarify when a community housing development organization is

considered to be an owner of rental housing. The Department is clarifying that if a community housing development organization has site control of a project through a long-term ground lease, such lease must run for the full period of affordability in § 92.252. If an owner does not have site control for the entire period of affordability, then they do not really own the housing for the full period of affordability and cannot enforce 24 CFR part 92 requirements in accordance with this section. Accordingly, § 92.300(a)(2) and (3) are being revised to more clearly explain the ground lease requirements that must be met for a community housing development organization to be considered an owner of rental housing.

In response to public comments, HUD is also making additional changes to § 92.300(a)(3). HUD received public comments requesting that 92.300(a)(3) more clearly describe how a community housing development organization is intended to be in charge of the development process when it acts as a ''developer'' under that provision. The Department is adding a clarifying sentence that explains that the requirement that a CHDO be in charge of all aspects of the development must be evidenced by an enforceable written agreement between the CHDO and the other entities sharing responsibility in the development of the housing. The Department also provided examples of different types of written agreements that may meet the requirements, including joint venture agreements and master development agreements.

Additionally, multiple commenters questioned whether the Department's removal of the requirement that rental housing developed by a CHDO be owned by the CHDO during development and for the full period of the affordability would allow a loophole for CHDOs to sell CHDO developed units to for-profit organizations. The Department recognized that this provision could inadvertently be used for that purpose. As a result, the Department revised § 92.300(a)(3) to require that the housing be owned by a CHDO unless the PJ documents that that the CHDO no longer has the capacity to own and manage the housing for the full period of affordability and there are no other CHDOs with capacity to own and manage the project for the full period of affordability. If the PJ authorizes the transfer of the housing, then it may only be sold to a nonprofit. By requiring that the PJ attempt to find another CHDO to own the housing unless the PJ cannot identify a CHDO that is capable of owning and managing the housing in accordance with the requirements of part 92 for the full period of affordability, the regulation is more consistent with the purposes of the Act and the intent of the CHDO set-aside. It also provides adequate safeguards to ensure that the CHDO set-aside is not being used for the enrichment of private for-profit businesses.

The Department is withdrawing its proposed language for the first sentence of § 92.300(a)(4)(i), which would have barred wholly-owned for-profit CHDO subsidiaries from being considered a CHDO or valid CHDO subsidiary for purposes of meeting the CHDO project set-aside requirements. The Department recognizes that this is a model that CHDOs may be using and does not wish to reduce the ways CHDOs can participate in HOME projects.

Commenters welcomed changing the term ''downpayment assistance'' to ''homeownership assistance'' in § 92.300(a)(6)(i) and elsewhere. Many commenters noted that the new term is broader and could include assistance for closing costs and mortgage rate buy-downs. The Department believes that it in addition to changing the term ''downpayment assistance'' to ''homeownership assistance,'' it will also be helpful to revise § 92.300(a)(6)(i) to provide additional examples of the kinds of homeownership assistance that CHDOs can provide.

24 CFR 92.353 Displacement, Relocation, and Acquisition

The Department is revising the reference to § 92.253(d) in § 92.353(c)(2)(ii)(A) to remove the pinpoint citation, as the termination of tenancy provisions are now contained in § 92.253(b)(10) and § 92.253(c)(10).

24 CFR 92.356 Conflict of Interest

HUD is clarifying language in § 92.356(d)(1). The Department recognizes that there may be some confusion over what constitutes a ''combination'' of conflict of interest disclosure methods provided in the proposed rule. The Department is clarifying in the final rule that a disclosure of a conflict of interest is a combination of ''at least two'' of the communication methods provided in paragraph (d)(1).

24 CFR 92.504 Participating Jurisdiction Responsibilities; Written Agreements

The Department made revisions to § 92.504(c)(1)(v) and § 92.504(c)(2)(xii) to revise the written agreement requirements to require that for projects involving rental housing, tenant-based rental assistance, or security deposit assistance, the written agreement between the PJ and the State Recipient or Subrecipient, as applicable, must require that the HOME tenancy addendum that applies to the type of project is used for all HOME-assisted units or tenants. The Department is also making technical revisions to § 92.504(c)(3)(ii)(A) to revise the first sentence to read in the singular instead of the plural. This was done to be consistent with the rest of the surrounding provisions.

The Department is revising § 92.504(c)(3)(i) to add the requirement contained in § 92.206(d)(1) into the written agreement between the PJ and the owner of HOME rental housing. Paragraph § 92.206(d)(1) requires that if HOME funds will be reimbursing expenses that were incurred no more than twenty-four months before the date of the commitment, the written agreement must explicitly permit the use of the funds for those purposes.

The Department is making technical corrections to § 92.504(c)(3)(ii)(A) to read in the singular instead of the plural, consistent with how the rest of § 92.504(c)(3) is written. The Department is also adding a new sentence to the end of the paragraph that explicitly requires that the written agreement contain the option the PJ selected for calculating income in accordance with § 92.203(b)(1). This information should already have been included in the written agreement pursuant to § 92.203 but the Department is now including this language in the written agreement provisions for consistency.

The Department is making technical edits to § 92.504(c)(5)(i)(A) to add parenthesis around examples of allowable forms of assistance that a PJ may provide a homebuyer, homeowner, or tenant or owner receiving tenant-based rental assistance.

The Department made technical revisions to § 92.504(c)(5)(iii) to add the word ''assistance'' after ''security deposit'' to align with provisions in § 9.253(d) that describe security deposit assistance. The Department is also making a minor technical edit to § 92.504(c)(6)(i)(A) to add a comma after the regulatory citation to § 92.300(a)(2)–(5).

The Department is revising § 92.504(c)(6)(i)(B) in response to public comments questioning whether the Department was proposing to change the treatment of recaptured funds in CHDO homeownership projects. The Department is clarifying that PJs may permit CHDOs to retain recaptured funds for additional HOME projects pursuant to the written agreement. The Department is also adding a descriptive

header to the section *Retaining proceeds and recaptured funds.*

The Department recognized that it permits CHDOs to provide homeownership assistance to families as part of HOME homeownership housing developed by the CHDO. This amount of assistance is limited to 10 percent of the overall amount of HOME funds provided to the project. The Department is adding § 92.504(c)(6)(i)(B)(*2*) to more clearly establish the written agreement requirements for the provision of this assistance. The agreement must provide the amount of funds for homeownership assistance, the number of homebuyers to receive the assistance, any matching contributions, and the period of the agreement. The 10 percent limitation is also added, as is the requirement that the CHDO's agreement with the homebuyer meet the written agreement requirements in § 92.504(c)(5)(i) that apply to agreements providing HOME homeownership assistance to eligible homebuyers.

24 CFR 92.505 Applicability of Uniform Administrative Requirements

The Department revised § 92.505 to explain that 2 CFR 200.344 is applicable to HOME as provided in § 92.507. Originally, the Department had said that 2 CFR 200.344 was not applicable to HOME PJs, State recipients, and subrecipients but this is confusing because § 92.507 does make most of 2 CFR 200.344 applicable to them. By adding the caveat that 2 CFR 200.344 is not applicable, except as provided in § 92.507, this clarifies that it is applicable and that § 92.507 will explain how.

24 CFR 92.507 Closeout

In the proposed rule, HUD proposed to revise § 92.507 in order to specify the procedures and actions that must be completed by a PJ and HUD to close out a grant. In this final rule, the Department is further revising § 92.507 for clarity and consistency with 2 CFR part 200. The Department is adding a second sentence to the introductory provision in § 92.507. This explains that the requirements of 2 CFR 200.344 apply to closeouts in the HOME program, with the exception where such requirements conflict with the requirements in § 92.507. The Department was concerned that its language was confusing because in various parts of § 92.507, such as in § 92.507(b)(10)(v) and (vi), the regulation requires that PJs comply with 2 CFR 200.344. By adding this sentence, the Department is clarifying that PJs must follow 2 CFR 200.344 unless it conflicts with the HOME regulations.

The Department is revising § 92.507(a)(1) to clarify that HUD will close out a grant after the period of performance has ended instead of when HUD determines that PJ has completed all required activities and closeout actions. HUD is not limiting its discretion here, given under separate legal authorities (including the Act, individual appropriations laws, and provisions within 2 CFR part 200) to close out a HOME grant. Additional clarification is also being added to specify that the PJ must complete all required activities and closeout activities for the grant, as required by HUD. The revised provision directly states the PJ's closeout responsibilities under the HOME program.

The Department is revising § 92.507(a)(2) to explain that to prepare for closeout, before the end of the budget period of the grant, the PJ shall review all eligible activities under the grant and reconcile its accounts by drawing funds down in a timely manner and refunding the proper accounts of any previously disbursed balances of unobligated cash paid in advance. This is clearer language that is more legally accurate than the proposed rule, which did not explain that these actions were to prepare for closeout, did not condition each provision on being taken during the budget period, and did not specify how refunds would be performed in sufficient detail.

The Department is redesignating § 92.507(a)(2)(ii) of the proposed rule by redesignating it as paragraph (a)(3) and by explaining that after the end of the grant budget period, no additional activities may be undertaken with that particular HOME grant and that there are no additional eligible costs incurred after the budget period. The provision also explains that unused funds shall be returned to the U.S. Treasury by HUD, and that the PJ must promptly refund any unused grant funds not authorized to be retained in accordance with HUD's instructions. These clarifications more directly state the requirements and the conditions without using problematic terminology like ''recapture'' which has a different statutory meaning in the HOME program than in appropriations law.

The Department is revising § 92.507(a)(4)(ii) in order to remove a reference to FAPIIS and instead add a reference to *SAM.gov*, the current system being used for reporting. The Department is revising § 92.507(b)(2) to state that a PJ must demonstrate that it has fulfilled all programmatic and administrative requirements for the project (*i.e.,* property inspections, obtaining certificates of occupancy, *etc.*) within the period of performance in accordance with 2 CFR 200.344(a). The proposed rule's provision stated that the PJ must complete all activities for which the funds were expended. This may have been confusing to the PJs as HOME funds are not to be used after the budget period. As such, HUD revised the language to appropriately characterize the PJ's actions as providing HUD with information demonstrating it has completed all the programmatic and administrative requirements within the period of performance and not that HUD was allowing for completion of activities after the budget period had expired.

The Department is revising § 92.507(b)(3) to remove the word ''remaining'' when characterizing the data to be entered into the computerized disbursement and information system established by HUD. This was for clarity. Similarly, the Department is revising both paragraph (b)(5) and (b)(10) to improve the grammatical structure of each provision by removing ''the participating jurisdiction must.'' This is because the lead-in sentence in § 92.507(b) already states that the PJ must take the following actions to close out a grant and therefore it is unnecessary to repeat the words in those provisions.

The Department is revising § 92.507(b)(10)(i) to specify that instead of cancelling the unused grant funds, those funds shall be returned to the U.S. Treasury. This is clearer language and more directly states the mechanics of what is occurring during closeout. Paragraph § 92.507(b)(10)(iv) and § 92.507(c)(6) are both being revised to include both a State and a consortium in the list of entities that qualify as a PJ. If a jurisdiction is not a PJ as a metropolitan city, urban county, State, consortium, or consortium member when it receives program income, recaptured funds, or repayments in accordance with § 92.503, then the funds are not subject to the requirements of 24 CFR part 92. The proposed rule inadvertently excluded States and consortia, both of which are types of PJs. The Department is also revising § 92.507(c)(8) to remove the parenthetical citation at the end because it was unnecessary and confusing.

The Department is making a technical revision to § 92.507(b)(10)(viii) to specify that the PJ's certification acknowledges that future monitoring by HUD will occur, ''including'' that findings of noncompliance may be taken into account by HUD as unsatisfactory performance of the PJ and in any risk-based assessment of any future grant

award under the HOME program in the future.

The Department also revised the reference to recordkeeping requirements in 2 CFR part 200 that are applicable to PJs to ''2 CFR 200.345, as applicable.'' The provision references applicable provisions in 2 CFR 200.337 through 2 CFR 200.345, as had been provided in the proposed rule, and therefore is a non-substantive change.

24 CFR 92.508 Recordkeeping

The Department is revising the first sentence to § 92.508(a)(3)(vii) to state that PJs must maintain records demonstrating that each rental housing project met the affordability and income targeting requirements of § 92.252 for the required period or met the requirements in § 92.255 for conversion to homeownership for in-place tenants. This aligns with changes made to § 92.254(a) and § 92.255(b) and provides a recordkeeping requirement that contemplates conversion of rental housing units to homeownership units for in-place tenants in accordance with § 92.255.

Consistent with changes made by the Department to other sections requiring that there be a minimum level of tenant protections for families receiving security deposit assistance, HUD is adding ''security deposit assistance'' to § 92.508(a)(3)(ix) to require that the PJ maintain records demonstrating that each family receiving such assistance had a lease that included a HOME security deposit assistance addendum in accordance with § 92.253(d).

24 CFR 570.200 General Policies

In the proposed rule, HUD proposed to revise the introductory text of § 570.200(h). However, HUD's proposed revisions would have decoupled the effective date of a grant agreement from a grantee's program year start date and would have subjected many grantees to pre-award costs on an annual basis. After considering public comments, HUD has determined the need to maintain the connection between the grant agreement effective date and program year start dates to reserve pre-award costs to those incurred before a program year start date and, therefore, is retaining the existing introductory text to § 570.200(h). Instead, HUD is adding a new § 570.200(h)(3) to make the effective date of the grant agreement, in a year when an annual appropriation occurs less than ninety days before a grant recipient's program year start date, the earlier of either the program year start date or the date that the consolidated plan is received by HUD. This change better aligns CDBG with the new HOME program regulation at § 91.212(b)(2) and continues practices implemented through annual waivers.

IV. Public Comments

General Comments

A. Comments in Support for the Proposed Rule

Multiple commenters expressed general support for the regulatory proposals described in the proposed rule. Commenters stated that they support the regulatory proposals described in the proposed rule because they will simplify and align programs to create more affordable housing for persons needing housing assistance. One commenter stated that the proposed rule's changes would improve housing stability of low-income households. Another said it would promote program flexibility, HUD's mission, and clarity and alignment with other Federal programs. One commenter expressed support for the proposed rule because it will make the HOME program more accessible and user-friendly in rural places. One commenter stated that they support the proposed changes because they may lead to shorter waiting periods to receive housing. Another commenter stated that the proposed rule would help to more effectively use resources to narrow the racial homeownership and wealth gaps.

HUD Response: HUD thanks the commenters for reviewing and is moving forward with a final rule.

B. The Rule Increases Program Alignment

Commenters supported HUD's proposed changes to streamline HOME program requirements to align with the CDBG and Section 8 programs because the commenter believes it would ensure consistency with the implementation of changes to the HOME program.

HUD Response: HUD thanks the commenters for reviewing the proposed rule. The Department further aligned the HOME regulations with the CDBG and Section 8 programs in this final rule.

C. The Rule Should Be Revised To Account for Manufactured Housing

One commenter urged HUD to explicitly address manufactured homes and manufactured home communities in the rule and guidance. The commenter's suggestions included explicitly clarifying that manufactured homes are a permissible HOME housing type, that manufactured housing titled as real property or personal property are eligible for HOME assistance, that permissible land tenure types include manufactured home on land that is owned by the homeowner or leased in manufactured home communities, that manufactured home communities are explicitly named as permissible for affordable housing preservation, that non-profit shared-equity cooperatives are explicitly named as being eligible for HOME funding as is the water and sewer infrastructure they own.

HUD Response: Manufactured homes and lots are explicitly included in the definition of ''housing'' in § 92.2. To be considered a homeowner for purposes of the HOME program, a manufactured homeowner must only have a ground lease as long as the period of affordability required in accordance with § 92.254.[20] This is more flexible than the 50-year ground lease required to constitute homeownership on Indian trust lands and land held by CLTs, and is the most flexible definition of homeownership in the HOME program.

While the Department is not explicitly revising its regulations to change the definition of homeownership for manufactured homeowners, HUD notes that if manufactured home communities structure their ground leases or ownership in accordance with the HOME homeownership requirements, then purchasers may be eligible under the HOME regulations. When designing their HOME programs, participating jurisdictions are required to consider the housing needs within their jurisdiction, including the needs of those who own or wish to purchase a manufactured home.

D. The Rule Is More Burdensome

Another commenter stated that, while supportive of some of the rule's proposed changes, the proposed rule would increase administrative burden and that this adds to other administrative costs from Section 3, BABA, and VAWA.

HUD Response: The Department believes that the requirements contained in this final rule will reduce burden and compliance will be less costly than the current requirements. The Department understands that Section 3; Build America, Buy America; and Violence Against Women Act requirements each may add different requirements on HUD grantees. These requirements may change the way that the participating jurisdiction contracts for goods and services, or how the participating jurisdiction assist survivors of domestic violence, dating violence, sexual assault, stalking, or human trafficking. However, these requirements are not within the scope of this rulemaking. The

[20] See paragraph (1) of the definition of homeownership in 24 CFR 92.2.

Department will continue to assess ways to further reduce the burdens of compliance with various independent statutory requirements.

E. HUD Should Further Streamline the Requirements of the HOME Program

A commenter stated that HUD's rulemaking should seek to further streamline the HOME program and reduce regulatory and compliance burdens because these burdens detract from the value of limited resources provided to HOME-assisted projects.

HUD Response: The Department agrees with the commenter and engaged in further streamlining of HOME requirements including but not limited to income examinations, physical condition inspections, and rent determinations.

F. Legislative Reform Necessary

Commenters supported legislative reform of modernization of the HOME program overall or particular statutory provisions. One commenter recommended that HUD continue to work with Congress to develop and pass legislation to reauthorize and further modernize the HOME program.

HUD Response: The Department thanks the commenters for sharing their view and notes that it also has called for legislative reform of HOME in recent HUD Budget Requests.

G. Technical Assistance, Training, and Guidance

Several commenters requested technical assistance, guidance, or training on various topics in the regulation.

HUD Response: The Department agrees with commenters that it must provide significant training, guidance, and technical assistance on this final rule to assist participating jurisdictions and other program participants comply with new requirements and exercise new flexibilities.

Streamlining Terminology

A. Replacing ''Downpayment Assistance'' With ''Homeownership Assistance''

Commenters supported HUD's proposal to change the definition of ''downpayment assistance'' to ''homeownership assistance.'' Two commenters said this change would provide participating jurisdictions and HUD regional offices with the clarity needed to understand the full breadth of homeownership-related activities that are allowable using HOME funding in addition to downpayment assistance. One commenter said that this change would increase affordable housing supply by facilitating the use of HOME funds by developers to construct or rehabilitate owner-occupied housing. One commenter suggested that a clear assertion that HOME covers more than downpayment assistance alone will more easily allow affordable housing developers to use these funds to construct or rehabilitate more owner-occupied housing, adding more units to a dwindling affordable supply.

One commenter stated that HUD has several instances where the term ''downpayment assistance'' is used instead of ''homeowner assistance'' despite the noted substitution, which has resulted in confusion. The commenter noted the following instances of ''downpayment assistance'' appearing in several other locations within the text of the rule including §§ 92.203(d); 92.209(c)(2)(iv); 92.250(b)(4); § 92.251(c)(3); 92.300(a)(6)(i); 92.351(a)(1); 92.504(c)(1)(i); 92.504(c)(2)(i).

HUD Response: HUD thanks the commenters for reviewing and is moving forward with this change. In examining the regulation and comments, the Department determined that there were numerous instances where the term ''downpayment assistance'' persisted and has made revisions to the term in §§ 92.203, 92.209, 92.250, 92.251, 92.300, 92.351, and 92.504.

B. Replacing ''Dwelling'' With ''Housing''

A commenter stated that they support the proposed change of replacing the term ''dwelling'' with ''housing'' for the HOME program, TBRA program, and income targeting for homeownership.

HUD Response: HUD thanks the commenters for reviewing. HUD will move forward with replacing the term ''dwelling'' with ''housing'' where the Department determines that this is accurate terminology. The Department did note that in relation to HOME regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) (42 U.S.C. 4601 *et seq.*), and its regulations at 49 CFR part 24, as amended, and Section 104(d) of the Housing and Community Development Act (42 U.S.C. 5304(d)) and its regulations at 24 CFR part 42, the term ''dwelling'' is more consistent with the underlying statutory and regulatory terminology and will be maintaining the usage of the term in that area of the HOME regulations. Similarly, the Department will be retaining the use of this terminology in relation to accessibility requirements, which refer to applicable definitions outside of 24 CFR part 92. In performing its review, the Department determined there were additional areas whether the term ''housing'' was more appropriate than ''dwelling'' including in §§ 92.2, 92.219, 92.253, 92.254, and 92.258. The Department is revising these regulations accordingly.

C. Replacing ''Affordability Period'' With ''Period of Affordability''

Commenters supported HUD's proposed definition of ''period of affordability.'' One commenter supported the consistent use of the term but noted that the old term persists in certain places in the regulation.

HUD Response: HUD thanks the commenters for reviewing and is moving forward with the revised term ''period of affordability.'' The Department has also revised the remaining references to ''affordability period'' to read as ''period of affordability'' to maintain consistent terminology.

D. Replacing ''Single-Family'' With ''Single Family''

One commenter thanked the Department for streamlining the term single family while another commenter noted places where certain terminology was not corrected.

HUD Response: The Department noted that there were instances in which the term was not corrected and is making changes to § 92.2. and § 92.220.

§ 92.2—Commitment Definition

A. General Support

One commenter supported changing the language of the definition of ''commitment'' from ''official'' to ''officials'' And from ''downpayment assistance'' to homeownership assistance.

HUD Response: HUD appreciates the commenter's support and will move forward with these changes.

B. Paragraph (2) of the Commitment Definition—Commit to a Specific Local Project—Opposition to Requirement To Secure All Project Financing Before Commitment

One commenter stated that HUD should consider revising paragraph (2)(i) of the definition of ''commitment'' in § 92.2 because requiring applicants to secure all project funding before receiving a commitment of HOME funds is overly burdensome, particularly for nonprofit developers. The commenter explained that this upfront secured funding requirement could result in fewer applications for HOME funding and should be removed. The commenter also suggested expanding the meaning

of construction to include incurring typical pre-development costs such as architectural and engineering costs.

HUD Response: Commenters urged HUD to revise the definition of *commit to a specific local project* by removing the requirement that all project financing be secured before commitment. The Department did not propose a change to these requirements and declines to make these proposed changes at the final rule stage. HUD believes these requirements to be essential to ensuring that HOME funds are not committed to and used for projects that have not secured all the financing necessary to enable the project to be successfully and timely completed. The Department is not defining construction or expanding the meaning of construction to include pre-development activities such as architectural and engineering costs. The type of costs that the commenter is describing are project-related soft costs.

Under the current regulation, project related soft costs, which include architectural and engineering costs, may be reimbursed if they are incurred not more than 24 months before the date that HOME funds are committed to the project and the participating jurisdiction expressly permits HOME funds to be used to pay these costs in the written agreement committing the funds to the project. The proposed rule added the cost of environmental reviews and studies to this provision.

The Department received several comments on HUD's revision to § 92.206(d)(1) to allow HUD environmental review or other environmental studies or assessments to be reimbursable costs incurred prior to when funds were committed to a project. Those commenters urged the Department to consider expanding the types of costs that would be allowed to be incurred to include ''pre-development'' or other related soft costs. The Department agrees with the commenters and is expanding the project soft costs that may be incurred prior to a commitment to include costs to process and settle financing for the project, including private lender origination fees, credit reports, fees for title evidence, legal fees, private appraisal fees, and fees for independent cost estimates. These were all contained in paragraph (d)(2) but will now be deleted from paragraph (d)(2) and added to paragraph (d)(1). While the Department is moving these provisions to paragraph (d)(2), the Department determined that several provisions could not be moved because there is no reasonable expectation that they should occur prior to commitment. These provisions include obtaining building permits, which require HUD environmental review; fees for recordation and filing of legal documents, as recorded documents relating to an acquisition, rehabilitation, or new construction project should occur after commitment of HOME funds; and builders or developers fees, as those fees should not be earned and chargeable to the HOME grant for work performed prior to the environmental review and commitment of the HOME funds to the project.

Additionally, because of specific public comment, the Department also added ''accounting fees'', ''filing fees for zoning or planning review and approval'', and ''other lender-required third-party reporting fees'' to paragraph (d)(1). By moving or adding the soft costs into paragraph (d)(1), HUD is allowing the above-described costs to be paid as long as they were incurred no more than 24 months before the date of commitment, and they were included in the written agreement committing the funds.

C. Paragraph (2) of the Commitment Definition—Commit to a Specific Local Project—Opposition to Requirement That Construction Must Be Scheduled To Start Within Twelve Months of the Agreement Date

Commenters urged HUD to lengthen the time between commitment and the start of construction from the current 12 months. One commenter proposed extending the timeframe to 24 months because of the extensive backlog of construction work and the loss of available and qualified contractors. Another commenter stated that HUD's 12-month timeline could be challenging if the construction cycle is tied to hard costs or providing additional guidance for circumstances in which the 12-month deadline is missed.

HUD Response: HUD appreciates the commenter's review of the proposed rule and this recommendation. The Department did not propose a change to the 12-month time period between the date of the written agreement and the start of construction on a HOME-assisted project. The 12-month requirement has been in the commitment definition since 1991 and ensures that HOME funds are not prematurely committed to projects that are not ready to move to construction. HUD declines to adopt the suggested change. In addition, HUD notes that the 12 months is not a deadline; the current rule states that a participating jurisdiction must have a reasonable expectation that construction will begin within 12 months when committing HOME funds to a specific local project. This expectation can be demonstrated by the construction schedule appended to the written agreement committing the funds.

§ 92.2—Community Housing Development Organization Definition

A. General Comments

Many commenters supported the changes and stated that the proposed rule would create more opportunities for nonprofits to become CHDOs, expand the nonprofit affordable housing delivery system, expand the capacity of CHDOs, and make it easier for participating jurisdictions to use their CHDO set-aside funds. Other comments expressed concern about or opposition to HUD's proposed changes, particularly changes aimed at increasing eligible CHDOs in rural areas. One commenter stated that, despite having concerns about certain HUD proposals, it appreciates HUD's efforts to make CHDO designation easier to attain and retain particularly in areas with few or no CHDOs. Another commenter stated that while the commenter is supportive of the proposed changes that would create opportunities for organizations to participate in housing development and build their own capacity, HUD should consider additional policy safeguards to preserve the purpose of the set-aside and ensure that unintended consequences, such as bad actors meeting the letter of the requirements but ''not the spirit of the designation,'' do not outweigh the benefits. One commenter stated that it appreciates HUD's effort to expand options for meeting the low-income board requirement but does not believe it will make a significant difference in the number of organizations that will seek the CHDO designation. The commenter stated that meeting the 15 percent CHDO set-aside requirement will continue to be a challenge for many participating jurisdictions irrespective of the proposed changes.

HUD Response: HUD believes that there are appropriate safeguards in place in the final rule because the designees of nonprofit organizations that may serve on the board only count towards the one-third board representation requirement if they represent organizations that ''address the housing or supportive service needs of low-income residents or residents of low-income neighborhoods.'' This connection to the community, and the list of examples HUD provides to further elaborate on the types of groups and the role they must play within the community, demonstrate that the intent

is not to water down a CHDO's ties to the community but to strengthen them. Promoting board representation for victim service providers, homeless providers, organizations involved in promoting or defending civil rights, disability advocates, and other organizations that directly serve the community will serve to strengthen CHDOs' boards and provide needed input from hard-to-reach groups.

B. Include Cooperatives as Eligible for CHDOs

One commenter suggested that HUD expand CHDO eligibility to affordable housing cooperative corporations because affordable housing cooperatives, including resident owned manufactured housing community cooperatives, meet the goals of CHDOs to advance resident and community engagement as cooperative boards are made up of their resident owners who govern and manage the cooperative. The commenter further explained that cooperatives would benefit from eligibility as CHDOs by gaining greater access to CHDO sponsors. The commenter stated that if affordable housing cooperatives are not granted status as CHDOs directly, then it is imperative that they are granted access to work with a CHDO nonprofit 501(c)(3) sponsor to access set-aside funds that can create lasting affordable housing.

HUD Response: HUD appreciates the comments and notes that nothing in the existing HOME regulations or in the proposed rule would prohibit a cooperative housing corporation from being designated as a CHDO as long as the organization can meet the definition of CHDO. The Department has also significantly changed the ways that CHDOs can be involved in a development project in § 92.300 and believes that it provides additional opportunities for affordable housing cooperatives to partner with CHDOs on CHDO set-aside projects.

C. Paragraph (4) of CHDO Definition—Align Definition of CHDO in 24 CFR 92.2 and the Definition of Community-Based Development Organization in 24 CFR 570.204

One commenter recommended that the regulations relating to CHDOs align more closely with the community-based development organization regulations through the CDBG program.

HUD Response: The Department is limited by statute in how closely it can align the definitions of CHDO and community-based development organization. By regulation, a CHDO qualifies as a community-based development organization if it is designated as a CHDO by the participating jurisdiction, has a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e) (See 24 CFR 570.204(c)(2)). This safe harbor is provided in recognition that if an organization meets all the requirements of *community housing development organization* in § 92.2, then the organization will have met the statutory requirements in 42 U.S.C. 5305(a)(15). This is because the statutory definition of CHDO is more restrictive than the statutory and regulatory definition of a community-based development organization. It is because of these statutory and programmatic differences that a community-based development organization cannot automatically qualify as a CHDO.

Under the HCDA statute and CDBG regulations, community-based development organizations include local development corporations, which can be for-profit entities (See 42 U.S.C. 5305(a)(15)) and 24 CFR 570.204(c)(1)(iii)). Under NAHA, CHDOs must be nonprofit organizations (42 U.S.C. 12704(6)). Community-based development organizations can also perform economic development activities under the CDBG program, and thus the organizations will have more expansive purposes and scopes than CHDOs, which are required to have among their purposes the provision of affordable housing. The difference in eligible activities also means that community-based development organizations can have different types of representation on their boards, including businesses serving low-income communities (24 CFR 570.204(c)(1)(iv)). Thus, after a careful examination of the two sets of statutory and regulatory requirements, the Department has determined that no change to further align the definitions should be made at this time.

D. Paragraph (4) of CHDO Definition—Tax Exempt Status

One commenter supported the change to the CHDO definition that clarifies the options for meeting the requirement that a CHDO must be exempt from taxation.

HUD Response: The Department appreciates the comment and is adopting the language in paragraph 4 of the CHDO definition at § 92.2 without change.

E. Paragraph (5) of CHDO Definition—General Support for Changes to Limitations on Public Officials on a CHDO's Governing Board

Commenters were broadly supportive of the proposed change narrowing the individuals who would count toward the one-third limitation on governing board membership from ''any governmental entity'' to ''officials or employees of the participating jurisdiction or governmental entity that created the community housing development organization.'' Commenters stated that the proposed change would provide more flexibility to nonprofit organizations in meeting the board requirements while maintaining the freedom from governmental control of CHDOs intended by statute. One commenter stated that the change would help CHDOs create boards with expertise in the field of affordable housing, while appropriately addressing conflict of interest considerations that may arise. Another commenter stated that the change will facilitate resource-sharing between CHDOs and governmental entities such as councils of governments, Tribal entities, and regional planning commissions in rural communities.

Commenters also supported the proposal to clarify that no governmental entity, not only the one that created the CHDO, may appoint more than one-third of the CHDO's board members, as well as the language clarifying that not only may the board members appointed by a government entity not appoint the remaining two-thirds of a CHDO's board members, the board members who are officials or employees of the governmental entity that created the CHDO may not appoint any of the remaining two-thirds board members.

One commenter recommended that HUD emphasize that the one-third public official restriction on board membership does not apply to all CHDOs, only those CHDOs that were created by a governmental entity. The commenter stated that this would involve promulgating a Notice clarifying the new and correct interpretation of this paragraph, and an intense training and communication plan to educate participating jurisdictions across the country.

HUD Response: HUD thanks the commenters for sharing their views. HUD is adopting the proposed rule language without change. The Department also agrees that its guidance should be clearer that, while all CHDOs must be free from governmental control, the one-third limitation on public

officials only applies to CHDOs that were created by the participating jurisdiction or another governmental entity. For CHDOs not created by a governmental entity, the participating jurisdiction must determine that the CHDO is not a governmental entity and is not controlled by a governmental entity.

F. Paragraph (5) of CHDO Definition—Opposition to Public Officials on a CHDO's Governing Board

A commenter questioned why HUD would require a CHDO to include elected officials on the CHDO board. The commenter stated that requiring CHDOs to include elected officials on the CHDO board would constitute a conflict of interest because elected officials approve the funding for HOME projects. The commenter stated that a CHDO would have to turn to neighboring communities to select elected officials for the CHDO board to avoid any conflict.

HUD Response: The commenter incorrectly believes that HUD is requiring CHDOs to include elected public officials on the CHDO governing board. HUD revised paragraph (5) of the *Community Housing Development Organization* definition in § 92.2 to make the existing limitation on public officials and employees of a governmental entity on the CHDO governing board less restrictive should a CHDO choose to include public officials on the governing board.

G. Paragraph (5) of CHDO Definition—Limitation on Public Officials on a CHDO's Governing Board—Volunteer Members Planning or Zoning Commissions

One commenter recommended that HUD allow volunteer members of planning or zoning commissions or other local advisory boards to serve as CHDO board members and not count against the public sector limit.

HUD Response: HUD is not adopting this recommendation. Whether a volunteer member of a planning or zoning commission or other local advisory board may count towards the public sector limit depends upon a variety of factors including whether the organization the person is volunteering for created the CHDO, whether the person is considered an employee or official, whether the entity is considered part of the participating jurisdiction, *etc.* It is likely that many volunteer members of planning or zoning commissions or other local advisory boards may not count towards the limits described in paragraph (5) of the definition of *community housing development organization* contained in § 92.2.

H. Paragraph (5) of CHDO Definition—Statutory Basis for Limitation on Public Officials on a CHDO's Governing Board

One commenter was supportive of changes to the CHDO board but also encouraged HUD to go further and fully address the ''public officials'' issue. The commenter disputed that there was a statutory basis for limiting participation of public officials or employees of governmental entities from being board members of CHDOs. The commenter believed that it was entirely at HUD's discretion whether to include this language in its regulations, or not, and how to interpret it.

HUD Response: When the Act was created, CHDOs, which had existed prior to the Act, were nonprofit, private sector organizations that had deep ties to the community. The Congressional findings of the Act explicitly stated that CHDOs are nonprofit organizations acting in the private sector.[21] If a governmental entity creates a CHDO, then it is consistent with the purposes and findings of the Act to place a reasonable limitation on the public sector board membership of the CHDO. This limitation is necessary to ensure that the CHDO is not simply an affiliate or an alter ego of a governmental entity but a robust community-based nonprofit organization with capacity to develop, sponsor, and own affordable housing in the jurisdiction. The Department is moving forward with its revisions to paragraph (5).

I. Paragraph (5) of CHDO Definition—Further Narrow Limitation on Public Officials on a CHDO's Governing Board

Another commenter suggested that HUD could further reduce barriers to meeting low-income representation and public official requirements by counting only elected or appointed officials toward the public official limitation and permit civil service employees to serve on CHDO boards, subject to a conflict of interest policy.

HUD Response: The Department believes that it has struck the correct balance in its new final rule requirements and is not adopting this recommendation. The limits in paragraph (5) of the definition of *community housing development organization* only apply when the CHDO was created by a governmental entity and the civil service employee is working for the governmental entity that created the organization or the participating jurisdiction that is funding the organization. This is already a narrow subset of all cases. Even when the limit in paragraph (5) of the definition of *community housing development organization* applies, HUD regulations are not barring the person's representation but stating that the person counts towards the limit and cannot be an officer or employee of the organization in order to consider the organization a CHDO.

J. Paragraph (5) of CHDO Definition—Low-Income Public Officials on a CHDO's Governing Board

Commenters suggested that HUD should revise the rule to state that if an appointed official or employee of a participating jurisdictions lives in a low-income community and is themselves low-income, they will be allowed to be counted toward the low-income representation on the board of the CHDO and not count as a public official. One commenter stated the regulation should explicitly state that this applies in rural areas or areas where significant low-income representation does not exist.

HUD Response: If a person meets the definition of low-income under § 92.2 or lives within a low-income community, then under paragraph (8)(i) of § 92.2 *Community housing development organization,* the person would be included in the one-third representation requirement. If a CHDO is created by a governmental entity, no more than one-third of its board may be officials or employees of the participating jurisdiction providing HOME funds to the CHDO or the governmental entity that created the CHDO. In the commenter's example, if the CHDO was created by a governmental entity, and the person was an employee or official of the participating jurisdiction funding the CHDO or the governmental entity that created it, then the person would also count towards the one-third limitation under paragraph (5) of the definition of *community housing development organization* in § 92.2. These are independent requirements and serve to prevent potential abuses. The Department would also note that under the commenter's recommended approach, the entire board of an organization created by a governmental entity could be employees or officials so long as they were low-income or lived in low-income neighborhoods. This is not the intent of the drafters of the Act in creating the set-aside requirement and the Department is declining the commenters' recommendations.

[21] 42 U.S.C. 12721.

K. Paragraph (5) of CHDO Definition—Further Limit Public Officials on a CHDO's Governing Board to Officials or Employees Administering HOME Assistance

One commenter that is a State participating jurisdiction stated that it supports the proposal to narrow public officials to the participating jurisdiction but questioned what unit of government is considered the participating jurisdiction. The commenter asked whether all State employees would be considered part of the participating jurisdiction or whether the limitation would apply to the lead agency, the consolidated planning partners or the administrator of the HOME grant. The commenter recommended that the language be updated to apply the limitation only to employees of the entity that administers the HOME funding.

HUD Response: In the scenario raised by this commenter, the participating jurisdiction is the State, and the limitation would apply to officials and employees of any State agencies, not solely officials and employees of the agency that administers the State's HOME grants. HUD declines to change the regulation so that only employees of the agency that administers the HOME funds for the participating jurisdiction count towards the one-third limitation or the prohibition against being an officer or employee of a CHDO. This change would be inconsistent with the statutory intent that CHDOs not be controlled by the participating jurisdiction. An official or employee of a participating jurisdiction, even when not affiliated with the specific agency administering HOME assistance, is still potentially subject to the influence of that participating jurisdiction. Consequently, when they serve on a CHDO board, HUD believes that they should count toward the one-third limitation on public sector participation on the board of a CHDO created by a participating jurisdiction.

L. Paragraph (8) of CHDO Definition—Support for Inclusion of ''Designees'' of Low-Income Neighborhood Organizations

Several commenters supported the proposed change to expand the CHDO low-income board representation requirement under paragraph (8)(i) of the definition of *community housing development organization* to include ''designees'' of low-income neighborhood organizations rather than only the elected representatives of such organization, stating that the change is helpful and will widen the pool from which CHDOs may find board members. A commenter who supported the proposed changes stated that they would be particularly helpful for communities with rising incomes where board members who previously qualified as residents of a low-income neighborhood may now be residents of a middle-income neighborhood.

HUD Response: The Department appreciates the comments and is adopting this change.

M. Paragraph (8) of CHDO Definition—Difference Between ''Designee'' and ''Authorized Representative''

Multiple commenters asked that HUD clarify or provide examples in the final rule of the difference between a ''designee'' and an ''authorized representative,'' as used in paragraph (8)(i) of its proposals regarding nonprofit representatives on CHDO boards because the proposed rule implies a difference that is not explained. Another commenter noted that there is some ambiguity in the term ''authorized representatives'' in paragraph (8)(i) and encouraged HUD to broaden the scope of the language as it could be construed to mean only individuals who have legal authority to bind the nonprofit.

HUD Response: The Department recognizes that using two different terms ''designee'' and ''authorized representative'' created confusion because low-income neighborhood organizations and nonprofit organizations that address housing or supportive services needs of residents of low-income-neighborhoods may have similar corporate structures and organizational requirements. The Department believes that the term ''designee'' is the appropriate term. A low-income neighborhood organization or a nonprofit organization that addresses the housing or supportive service needs of low-income residents or residents of low-income-neighborhoods can designate one or more persons to serve on the board of a CHDO. Accordingly, the Department has revised paragraph (8)(i) of the definition of CHDO to read ''designees of nonprofit organizations in the community that address the housing or supportive service needs of low-income residents or residents of low-income neighborhoods . . . .''

N. Paragraph (8) of CHDO Definition—Support for Inclusion of Authorized Representatives of Nonprofit Organizations in the Community That Address the Housing or Supportive Service Needs of Residents of Low-Income Neighborhoods

Many commenters stated that they support the proposals to permit authorized representatives of local nonprofit organizations and members of low-income neighborhood organizations to meet the CHDO board requirements for low-income residents. One commenter stated that representatives from organizations who serve low-income persons, even when an organization's focus is on a topic other than housing, should count towards the low-income representation. Other commenters objected to the proposed rule's addition of ''authorized representatives of nonprofit organizations'' to the definition of CHDOs in § 92.2, citing concerns about accountability and connection of a CHDO board to the low-income neighborhood. One commenter stated that relaxing the requirement for direct community involvement on CHDO boards would dilute the intended impact of the designation as a means for maintaining accountability to low-income community residents because authorized representatives from nonprofit organizations are not required to reside in the neighborhood nor be low-income themselves. The commenter recommended that HUD remove the ''authorized representative'' option for meeting the CHDO board member eligibility requirement. Another commenter stated that the expanded definition is not community-centered and does not truly connect the governance of the CHDO to the community.

One commenter stated that although they were not firmly opposed to the change, they were concerned about the potential of the proposed changes to water down the representation of low-income people in CHDO governance, which is an important source of accountability. The commenter urged the Department to consider the possibility of layering using a tandem requirement to preserve the opportunities for low-income people to participate in this process.

HUD Response: The Department is moving forward with language allowing for designees of nonprofit organizations in the community that address the housing or supportive service needs of low-income community residents or residents of low-income neighborhoods to count towards the one-third board

membership requirement in paragraph (8)(i) of the definition of *community housing development organization* in § 92.2.[22] The Department believes that designees of nonprofit organizations that house or provide supportive services to low-income residents or residents of low-income neighborhoods are accountable to the people they serve, understand the challenges they face, and are in a position to represent the beneficiaries of their services in making decisions on the design, siting, development, and management of affordable housing, in accordance with 42 U.S.C. 12704(6)(B).

Designees of nonprofit organizations that address the housing or supportive service needs of low-income community residents or residents of low-income neighborhoods may not always live in low-income neighborhoods or be low-income, but they directly serve those that are, including persons with disabilities, victims of domestic violence, homeless persons, people suffering from food insecurity, and victims of civil rights violations. Their participation strengthens the board of CHDOs because these organizations have deep ties to the community and the people they serve. Far from watering down the requirements for board members, the Department believes that this better enables CHDOs to retain subject matter experts that better understand the community being served by the CHDO.

O. Paragraph (8) of CHDO Definition—Building More Equity Into Governing Boards

One commenter stated that it was concerned about recruitment and retention of low-income residents for board membership and understands HUD's proposal to relax board member restrictions, but would appreciate further consideration/guidance toward instilling equity in board member criteria requirements because this impacts board member representativeness. The commenter stated that this relaxation may eventually have potentially negative effects on low-income tenants residing in the affordable housing development. The commenter further stated that a board that is technically allowed per HUD requirements may not be representative of the community it serves.

HUD Response: The Department appreciates the comment and recognizes the tension inherent in simplifying qualification requirements to increase the number of organizations that can qualify as CHDOs and maintaining accountability to the low-income neighborhood where a project is located. HUD believes that the requirement in paragraph (8)(ii) that a CHDO have a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing helps maintain accountability to low-income tenants residing in projects. HUD is attempting to build equity in this by including ''designees of nonprofit organizations in the community that address the housing or supportive service needs of low-income residents or residents of low-income neighborhoods, including homeless providers, Fair Housing Initiatives Program (FHIP) providers, Legal Aid, disability rights organizations, and victim service providers.''

HUD has determined that the entities used as examples in this section each assist protected classes including persons with disabilities; survivors of domestic violence, dating violence, stalking, sexual assault, and human trafficking; and persons suffering from various forms of discrimination. By clarifying how FHIPs, Legal Aid organizations, and other civil rights organizations can count towards representation, HUD is advancing equity in CHDO board composition. Moreover, the Department believes that each hold a connection to the community and will make CHDOs more representative of the community and the needs of low-income residents within the community.

P. Paragraph (8) of CHDO Definition—Examples of Nonprofit Organizations That Address the Housing or Supportive Service Needs of Residents of Low-Income Neighborhoods

Commenters requested that HUD clarify in the final rule or supplemental guidance whether the list of community serving organizations included in the proposed rule is organizations from which authorized representatives can qualify for the low-income portion of the CHDO board is exhaustive or illustrative in nature. Some commenters urged HUD to be as expansive as possible in identifying the types of organizations included in this provision. Some commenters suggested other types of organizations that should be specifically listed in the regulation, including health and behavioral healthcare providers, healthcare organizations, food pantries, workforce development organizations, Native American- and Tribal-serving organizations, and faith-based organizations. Commenters stated that the inclusion of faith-based institutions could further HUD's goals of supporting CHDOs in rural areas. One commenter cited the historically significant relationship between faith-based organizations and housing development organizations, especially in rural areas.

One commenter recommended against the HOME program rule listing out specific organizations that meet the low-income representative requirement for CHDO boards. The commenter stated that if HUD wishes to include a specific list of organizations, then HUD should make sure the list explicitly states that the listed organizations are just examples of organizations that qualify to meet the low-income representative requirement for CHDO boards.

HUD Response: The Department appreciates the recommendations made by the commenters. The Department believes the current list of examples of nonprofit organizations that address housing or supportive service needs of low-income residents or residents of low-income-neighborhoods in paragraph (8)(i) of the definition of CHDO in § 92.2 is sufficient for the public to understand what type of organizations meet this requirement. Some of the commenters' recommendations, like faith-based organizations, are already explicitly mentioned in HOME regulations.[23] Many of the other organizations that commenters mention will qualify if they meet the nonprofit requirements and provide needed housing or supportive services to community residents. The Department will provide additional implementation guidance on the new CHDO requirements.

Q. Paragraph (8) of CHDO Definition—Reduce Low-Income Board Membership Requirements

Commenters encouraged HUD to reduce the low-income board requirement below the current one-third or eliminate the low-income representation requirement altogether. One commenter stated that expanding low-income board eligibility to include ''designees of low-income neighborhood organizations'' will not increase nonprofit interest in becoming CHDOs because nonprofit organizations do not want to make significant changes to their board composition. One commenter who supported the proposed changes also recommended reducing the low-income board representation from

[22] See earlier preamble discussion on why the Department is using the term ''designee.''

[23] See paragraph (10) of the definition of *community housing development organization* in 24 CFR 92.2.

one-third to 10 or 15 percent, stating that this would still constitute significant representation by low-income community residents.

HUD Response: The Department believes that the one-third board representation requirement is consistent with the statutory intent in 42 U.S.C. 12704(6)(B), which requires that CHDOs maintain accountability to low-income community residents through ''significant'' representation on the organization's governing board and ''to the extent practicable, to low-income beneficiaries with regard to decisions on the design, siting, development, and management of affordable housing.'' Reducing the percentage or eliminating the requirement would not be consistent with the intent of the Act and would decrease the CHDO's connection with the people they serve. The Department is declining to change the one-third board representation requirement.

R. Paragraph (8) of CHDO Definition—Meeting the Low-Income Representation Requirement in Rural Communities

A commenter stated that in their rural service area there are no low-income neighborhood organizations and that one of their board members works at a nonprofit as the school district's homeless liaison and family support specialist. The commenter stated that because there are no low-income neighborhoods in the school district, the noted board member would not count toward the one-third low-income representation. The commenter suggested that HUD consider using tandem requirements to preserve the opportunities for low-income people to participate in this process. Another commenter with a rural service area suggested that the language in paragraph (8)(i) of § 92.2 be changed to ''. . . authorized representatives of nonprofit organizations in the community that address the housing or supportive service needs of low-income residents of the CHDO's service area . . . .''

HUD Response: The Department recognizes the challenges in rural communities where nonprofit organizations may be providing supportive services to low-income individuals but may not be serving in a low-income community. The Department believes that it has sufficiently broadened paragraph (8) to account for designees of nonprofit organizations that serve low-income residents within the community that the CHDO serves. This should address the commenter's concerns and better enable people who serve low-income community residents to represent their interests on the board of a CHDO.

S. Paragraph (8) of CHDO Definition—The Use of the Term ''Residents of Low-Income Neighborhoods'' Is Too Limiting

Another commenter also suggested that HUD reconsider the phrasing ''residents of low-income neighborhoods'' because it suggests that service organizations who are regional or whose clients are not defined by the clients' neighborhood of residence are not eligible. The commenter stated that agencies that are included in this criterion necessarily have regional footprints, and the residents they serve are defined by some income or other ''need'' characteristic, not the income level of the neighborhood in which the client lives.

HUD Response: The Department agrees that the phrasing of ''residents of low-income neighborhoods'' could be read as too narrow and does not fully capture the statutory intent of the definition contained in 42 U.S.C. 12704(6). 42 U.S.C. 12704(6)(B) requires that a CHDO be a nonprofit organization that ''maintains, through significant representation on the organization's governing board and otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries with regard to decisions on the design, siting, development, and management of affordable housing . . .'' HUD has determined that adding ''low-income beneficiaries of HUD programs,'' to the list of individuals that may count towards the one-third board membership requirement contained in paragraph (8)(i) of the definition of CHDO in § 92.2 can partly address the commenter's concern while also being more consistent with the statutory requirement. HUD believes this will address the commenter's concerns because status as a low-income beneficiary of HUD programs is not connected to the immediate geography of the person served. HUD encourages CHDOs, to the greatest extent practicable, to include low-income beneficiaries of HUD programs because their inclusion will lead to increased accountability. HUD recognizes that not all HOME rental projects and not all people served by HUD programs reside in low-income communities and believes that this addition will make this representation more inclusive. HUD encourages siting projects outside of areas of concentrated poverty but still wants accountability to the beneficiaries of the program served. Therefore, HUD believes this change is a meaningful revision. HUD would note that while HUD is proposing this revision to make it clearer that beneficiaries of HUD programs can count towards the representation requirements, the Department would like to clarify that the term ''other low-income community residents'' is already part of the regulation and the term ''community'' can be considered a multi-county area. So, it is very possible that many of the people the commenter described may already be eligible to count towards the one-third board representation requirement contained in paragraph (8)(i) of the definition of CHDO in § 92.2.

The Department is also addressing the commenter's concerns by expanding the type of designees of nonprofit organizations to include nonprofit organizations that serve ''low-income residents'' instead of organizations serving ''residents of low-income neighborhoods.'' Therefore, in the example the commenter gave, if the person was a designee of a nonprofit organization that provided services to a low-income resident of the CHDO's community, then the person would be able to count towards the one-third board representation requirement in paragraph (8) of the definition of CHDO.

T. Paragraph (8) of CHDO Definition—Lived Experience Should Count Towards Low-Income Board Representation Requirements

Commenters stated that HUD should consider individuals who are not low-income but have previous lived experience as a low-income person or a homeless person to qualify as a low-income community resident for the purposes of meeting the requirement for one-third low-income representation on the CHDO governing board. These commenters stated that the changes in circumstance, such as increases in income, do not eliminate such a board member's lived experience, which make them a valuable representative of the interests of low-income people and places.

Other commenters recommended that HUD revise the regulation to permit individuals who joined the board as a low-income community resident to retain that designation even if their income rises above the low-income level. Some commenters stated that HUD should provide a grace period in such cases because it is difficult for CHDOs to replace board members when their eligibility as a low-income representative unexpectedly ends. Similarly, a commenter suggested that if a board member moves or has their home address re-designated into a different census tract, HUD should allow a grace period not to exceed the lesser of their board term or five years

for that board member to continue to qualify as living in a low-income community. Commenters suggested grace periods of varying length, including three years and 10 years.

HUD Response: The Department agrees that current lived experience should count towards board representation requirement and has expanded the list of people that can count towards the one-third board representation requirement in paragraph (8) of the definition of CHDO to include low-income beneficiaries of HUD programs. HUD also considered whether persons with former lived experience of being low-income or homeless should qualify towards the requirement that an organization's governing board maintain accountability to low-income community residents and low-income beneficiaries. Unfortunately, the Department believes that this does not satisfy the statutory requirement that board members be connected and answerable to low-income community residents because they might not appropriately account for the present challenges impacting low-income persons in the community being served. The Department also considered providing a set time period in which a person could qualify as a low-income board member regardless of whether the board member's income increased. The Department believed that doing so could lead to a result where individuals who were not low-income, no longer lived in low-income communities, and had no ties or accountability structures to the low-income community would be counted towards the board representation requirement. This is not consistent with the intent of the Act and does not provide accountability to the people that the CHDO serves. As a result, the Department has declined to make the commenters' recommended revisions.

U. Paragraph (8) of CHDO Definition—Expanding the Definition of ''Community'' To Be Statewide

Some commenters supported the proposed change to allow the definition of the community to include the entire State because it would address challenges rural communities face in meeting the governing board and staff capacity requirements and increase the usage of CHDO set-aside funds in rural areas. One commenter stated that HUD's proposed rule would benefit rural organizations that have experienced negative impacts from the existing high standards in the definition of CHDO in HUD's regulations.

Many commenters raised concerns or strongly objected to expanding community to mean the entire State. These commenters believed it would weaken the connection of a CHDO to the low-income community being served. One commenter noted that the proposed change would disincentivize State participating jurisdictions from working to build the capacity of local groups, which is antithetical to the intent of the CHDO set-aside requirement. One commenter expressed concern regarding the change to allow Statewide CHDOs, particularly for very large and geographically diverse States such as California, and recommended HUD allow State participating jurisdictions the flexibility to evaluate the capacity of CHDOs to serve the entire State, especially rural and underserved areas of the State. Commenters stated that the proposed change went too far in permitting rural CHDOs to qualify based on board representation from the areas being served. Several commenters stated the proposed change would inappropriately characterize all rural areas as equal for purposes of low-income representation. One commenter stated that under the proposed regulation, a Statewide CHDO could develop a board with no low-income presence, accountability, or connection with the community served. Another commenter asked HUD to consider the tension between the need to drive more CHDO dollars to rural communities and the need to build capacity and provide opportunities for smaller rural-serving CHDOs when moving forward with the consideration of Statewide CHDOs.

Commenters stated that while they recognized the critical need for more CHDOs in rural areas, they were concerned that the proposed change would result in small community-based organizations having to compete for CHDO set-aside funds with large, high-capacity Statewide organizations. One commenter stated that small, rural CHDOs would be disadvantaged by their greater need for capacity building funding. Commenters stated that if HUD adopts the proposed change, it should also implement mechanisms to ensure that Statewide CHDOs consider local community input and priorities in the rural communities they serve and consider how to ensure smaller organizations are not wholly cut out from accessing CHDO resources.

Some commenters recommended that HUD allow CHDOs with Statewide service areas to be eligible as CHDOs but only award project dollars to CHDOs (located anywhere in the State) with at least three years of service to the community in which the project is located, as opposed to one year of service anywhere in the State.

Commenters noted that the regulations already allow for rural communities to be defined as a multi-county area. One such commenter stated that 42 U.S.C. 12704 prohibits participating jurisdictions from requiring such a CHDO with such a community to have board representation from each of its counties. The commenter stated that there is currently no regulatory barrier for a CHDO to claim as its community every county in a State with the exception of areas within a Metropolitan Statistical Area; the barrier that exists is participating jurisdictions' interpretation of ''multi-county.'' The commenter suggested that a better proposal would be for HUD to direct the most expansive interpretation of ''multi-county'', and to allow individual Statewide participating jurisdictions to apply for waivers from the existing regulation to create Statewide CHDOs only if needed.

HUD Response: The Department appreciates the many thoughtful comments submitted by many commenters on both sides of this difficult issue. While HUD remains concerned about the challenges many participating jurisdictions have in identifying and sustaining CHDOs that serve rural areas, it has decided not to adopt the change to the definition of community in paragraph (8) of the CHDO definition. The Department is persuaded by commenters that adopting this proposal would impair or eliminate the accountability of CHDOs to the low-income communities being served with CHDO set-aside funds and would negatively affect small rural CHDOs by putting them in competition with larger Statewide organizations with more capacity but less connection to the low-income community being served.

HUD appreciates commenter suggestions that if the proposal were to be adopted, the Department should impose mechanisms to help ensure that Statewide CHDOs consider local community input, require a longer history of serving a specific rural community, or mitigate the disadvantage that smaller rural CHDOs would have in comparison to Statewide organizations in competing for CHDO set-aside funds. However, the Department recognizes that the qualification of nonprofit organizations as CHDOs is already substantially regulated and believes that additional regulation would be counterproductive. Instead, HUD considers the adoption of other proposed changes to the CHDO definition in paragraphs (8) and (9) of § 92.2, to the developer and sponsor roles at § 92.300(a)(2) and (3), and the elimination of the proposed revision of

the definition of community in § 92.2 to be a middle ground that will hopefully increase the availability of CHDOs to serve rural areas without diminishing the accountability of those CHDOs to the low-income communities being served.

In response to the commenter that stated that 42 U.S.C. 12704 prohibits a participating jurisdiction from requiring a CHDO serving rural areas to have board representation from each of its counties, HUD notes that this interpretation of the Act is incorrect. The Act prohibits HUD, not participating jurisdictions, from requiring that an organization must have representation from each county in its service area to be designated as a CHDO. Because HOME is a block grant program, participating jurisdictions have discretion to establish requirements for their programs and select projects as they choose through requests for proposals or other legally permissible methods. Consequently, participating jurisdictions can establish their own requirements for designating or awarding funds to CHDOs that are more stringent and take into account these types of considerations.

V. Paragraph (9) of CHDO Definition—Using Volunteers To Demonstrate Capacity

Some commenters supported the proposed change in paragraph (9)(i) that would permit the capacity and experience of volunteers who will work directly on a HOME-assisted project and are officers or board members to be considered as part of demonstrated capacity. Commenters stated that the proposed change would make it easier for organizations to qualify as CHDOs.

One commenter suggested that HUD not limit volunteers to board members as they considered this limitation unnecessary. The commenter noted that if there are concerns about dependability or ongoing capacity, then the standard should be broadened to also include ''contracted volunteers.''

Other commenters that supported the proposed change suggested that HUD consider imposing guardrails on volunteer capacity such as applying a limit on the period that the experience of a volunteer official or board member may be counted toward a CHDO's capacity. Some commenters recommended a three-year limit. One commenter stated that prolonged reliance on officials and board members will harm an organization when it comes to meeting development capacity requirements, especially because nonprofits have high staff turnover. The commenter stated that this will affect the ability of nonprofits to train new staff on HOME requirements and place the burden of such education on the participating jurisdiction.

One commenter stated that they had serious concerns about volunteers serving on a board in meeting the capacity requirements for an organization. The commenter stated they had these concerns because a volunteer will generally not dedicate the same time and effort as an employee. The commenter also stated that the proposed change would allow for people to create shell organizations that have a representative board who are also real estate professionals and have that qualify as a CHDO organization.

A commenter noted that the definition of CHDO in § 92.2(9) states that ''the nonprofit organization must have employees or volunteers,'' which appears to allow an organization with volunteers and no employees to be designated as a CHDO. The commenter requested that HUD clarify whether this language was intentional or unintentional. The commenter stated further that HUD could refine the language to add clarity on the relationship between ''employees'' and the nonprofit seeking CHDO designation.

HUD Response: The Department thanks the commenters for reviewing the rule. The Department especially thanks the commenter that informed the Department that the provision as drafted in the proposed rule could have allowed a CHDO to meet the capacity requirement without paid staff. This was not what the Department intended. The Department is revising paragraph (9)(i) of the definition of CHDO. The Department believes that requiring paid staff and then allowing their capacity to be supplemented by volunteers strikes an appropriate balance. The Department also believes this addresses commenters who requested that there be guardrails or time limitations.

Under the final rule, CHDOs must maintain paid staff that will manage the development process. CHDOs can also rely upon board members and officers of the organization with significant development experience because those board members and officers have more lasting ties to the organization than typical volunteers, who may only be volunteering for individual projects or for a limited time.

The Department is also declining to allow the use of a ''contracted volunteer,'' which is an amorphous term that could lead to abuse or indirect control of a CHDO by a for-profit entity, or lead to determining that an organization lacks the capacity when the person demonstrating capacity is not contracted for the full development cycle. Even if the volunteer is contracted for the amount of time overlaps with the development cycle for a particular project, the ties of contracted volunteer service are not nearly as strong or as binding as paid staff, board members, or officers. Typically, the consequences are far less significant if a contracted volunteer ends their volunteer term early, while volunteer board members and officers have terms of office, and the organization generally has mechanisms for replacement of former officers or board members written into their organizational documents to ensure proper governance.

W. Paragraph (9) of CHDO Definition—Experience With Other Funding Sources and Programs

Commenters stated that they support the proposed rule language that would broaden the requirement that an organization have demonstrated staff capacity for carrying out projects assisted with HOME funds to include housing projects funded with other Federal funds, LIHTC, or local and State affordable housing programs. One commenter expressed support because the proposed change would help small rural CHDOs meet organizational capacity requirements.

Commenters also requested that HUD explicitly include experience with the New Markets Tax Credits and Federal Home Loan Bank Affordable Housing Program.

HUD Response: The Department agrees with commenters that the list of types of programs or forms of assistance could be broadened and that experience in the Federal Home Loan Bank Affordable Housing Program is sufficient to demonstrate capacity. The Department is therefore adding this program to this list of programs that demonstrate capacity in paragraph (9) of the definition of CHDO in § 92.2. The Department is declining to add experience with the New Market Tax Credits as these credits are exclusively for non-residential uses and experience in commercial development alone is not sufficient to demonstrate experience with the challenges of housing development.

X. Paragraph (9) of CHDO Definition—Use of Donated Labor, Consultants, and Others

Commenters made suggestions regarding other individuals whose experience should be counted toward a CHDO's capacity. Commenters recommended that the final rule permit

the experience of staff from affiliated entities, parent companies, for-profit developers, public housing authorities, and regional planning commissions whose services are donated to the CHDO be considered as capacity of a CHDO. One commenter stated that HUD should clarify the difference between donated time and volunteer time. Several commenters also recommended that CHDOs be allowed to demonstrate capacity and experience through the use of consultants and non-employee compensation.

HUD Response: The Department does not believe that donated labor is sufficient to meet the statutory requirement in 42 U.S.C. 12704(6)(C) that a CHDO have staff with demonstrated capacity to own, develop, or sponsor a HOME project. The CHDO itself must be capable of participating in the housing development process. When an organization relies upon the expertise of donated labor or individuals who work for affiliated organizations, those individuals lack lasting ties to the organization and may only be donated for individual projects or for a limited time. The donated labor also may lead to situations where organizations that are not CHDOs exercise outsized influence over CHDO projects, thereby potentially undermining the purposes of the Act.

The Department does allow the use of a consultant in the first year that a CHDO is provided HOME funds; paragraph (9)(i) reads as follows: ''[f]or its first year of funding as a community housing development organization, an organization may satisfy [the capacity] requirement through a contract with a consultant who has housing development experience to train appropriate key paid staff of the organization.'' The Department believes that it is appropriate to retain this provision but is adding clarification that the staff that are to be trained must be paid staff, as per the Department's earlier comment response on the importance of paid staff in demonstrating capacity to develop HOME projects.

Y. Revise the CHDO Definition To Enable Participation of More Resident-Owned Communities

One commenter who supported the flexibility provided to CHDOs in the proposed rule stated that the changes do not allow resident-owned communities to qualify as CHDOs. The commenter stated that such communities cannot meet the 501(c)(3) status and demonstrated capacity requirements, even though they fully meet the intent of CHDOs. The commenter stated that resident-owned manufactured housing communities are owned by predominantly low-income community members organized to govern and preserve their communities and have flourished for 40 years due to a system of professional technical assistance, training, and ongoing business coaching. The commenter urged HUD to support capacity building systems for resident-owned communities and other eligible manufactured housing communities.

HUD Response: The Department appreciates the comments and agrees that using HOME funds, including CHDO set-aside funds, for manufactured housing communities presents some challenges. The Act requires that to qualify as a CHDO, an organization must be a non-profit organization. The regulations implement that statutory provision through a requirement that a CHDO have tax-exempt status evidenced by a 501(c)(3), 501(c)(4), or section 905 designation from the Internal Revenue Service. In addition, the Act and the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. 112–55) and the Consolidated and Further Continuing Appropriations Act of 2013 (Pub. L. 113–6) require that a CHDO have staff with demonstrated capacity to undertake HOME-assisted housing activities. These requirements do not apply to HOME funds outside of the CHDO set-aside making those funds possibly a better fit for such projects. The Department provides a broad range of technical assistance through its Community Compass demand-response system, which can be of assistance in developing approaches to use HOME funds to assist manufactured home communities.

§ 92.2—Community Land Trust Definition

A. General Comments on the Definition

Several commenters expressed support for HUD's proposed definition of the term ''community land trust'' with many commenters noting that the proposed definition allows for flexibility in the composition of the organizational board and governance of community land trusts across the country. One commenter specifically noted that the proposed definition does not specify the structure of the community land trust's governing board yet retains the nonprofit purpose, the centrality of land, the lasting affordability, and codifies the preemptive purchase rights of community land trusts to prevent the loss of units to the open market.

Two commenters support the elevation of the term ''community land trust'' to the definition section of the regulation noting that the placement makes it clear that the definition applies throughout the HOME program.

Two commenters noted the importance of community land trusts to the affordable housing market noting that community land trusts help families bridge the gap between rental housing and homeownership, benefit residents of color in communities facing displacement, increase resilience against climate extremes, pass lower property taxes through to the project or end user, and are a dedicated partner for local government funding for affordable housing. Several commenters also stated that the proposed definition will enable more community land trusts to participate in the HOME program, while two commenters noted that rural community land trusts in particular would be encouraged to participate in the HOME program. Two commenters also added that the proposed changes would allow community land trusts to fully realize the benefits of the HOME program and the right to a preemptive purchase option provided in 2016.

Several commenters expressed concern about or opposition to HUD's proposed definition of community land trust.

HUD Response: The Department is moving forward with including a definition of community land trust in § 92.2. The definition of community land trust better enables these organizations to participate in the HOME program in the manner envisioned by the Act and the drafters of the Consolidated Appropriations Act, 2016.[24]

B. Opposition to the Definition Over Concerns of Conflict With Environmental Requirements

One commenter asked if HUD's proposal regarding community land trusts would violate other HUD requirements, including the environmental review process requirement that prevents proposed projects from being built too close to other low-income housing.

HUD Response: The commenter is mistaken. There are no low-income

[24] The Consolidated Appropriations Act, 2016 Public Law 114–113, div. L, title II, Dec. 18, 2015, 129 Stat. 2878 said that notwithstanding the affordability requirements contained in section 215(b)(3)(A) of the Act [42 U.S.C. 12745(b)(3)(A)], community land trusts may ''hold and exercise purchase options, rights of first refusal or other preemptive rights to purchase the housing to preserve affordability, including but not limited to the right to purchase the housing in lieu of foreclosure.''

housing concentration requirements as part of the HOME environmental review process. Section 92.202(b) requires that new rental housing meet the site and neighborhood requirements contained in 24 CFR 983.57(e)(2) and (3) but those requirements are not applicable to homeownership projects that are developed by community land trusts.

C. Add ''Membership'' or ''Community-Governed'' to the Organizational Requirements of Community Land Trusts

Two commenters objected to the proposed definition noting that HUD should add the phrase ''membership or community-governed'' to the definition to reflect the community governance structure inherent in community land trusts. The commenters added that HUD should address the underlying concerns about participating jurisdictions' difficulty determining the legitimacy of the governing models through education.

HUD Response: The Department understands the commenter's concern but does not believe that adding additional community governance structures to the definition of community land trusts in § 92.2 is appropriate at this time. Community land trusts may also attempt to meet the definition of CHDO in § 92.2, and own, develop, or sponsor HOME projects in accordance with § 92.300. Adding additional community governance requirements in addition to those contained in § 92.2 or § 92.300 may create too high of a bar for participation in the HOME program.

Moreover, community land trust governance structures vary from State to State, based upon State laws and local models. In the materials that various commenters provided and in the State laws that were reviewed in the preparation of the proposed rule text, the board requirements and best practices varied significantly. Given the wide variety of community land trust models operating over a significant period of time throughout the nation, the Department does not wish to inadvertently narrow the definition or eliminate consideration of an organization that would have met the intent of the drafters of the Act or the Consolidated Appropriations Act, 2016.[25]

The Department is committed to making it easier for participating jurisdictions to support CHDOs and better implement statutory provisions that enable community land trusts to participate in the HOME program.

D. The Definition of Community Land Trusts Is Too Restrictive

Another commentor objected to HUD's proposed definition of community land trust as too restrictive, stating that the proposed definition could disqualify many community land trusts from using the additional tools that the revised rule would provide. The commenter stated that the use of the phrase ''development and maintenance'' would exclude community land trusts that carry out non-development activities such as land acquisition and noted that few community land trusts provide maintenance services, which are generally the responsibility of the owner. The commenter suggested replacing the phrase ''development and maintenance'' with the word ''provision,'' as in ''the provision of housing that is permanently affordable to low- and moderate-income persons,'' thereby aligning the proposed community land trust definition with the HOME definition of a CHDO as ''[having] among its purposes, the provision of decent housing.''

HUD Response: The Department agrees with the commenter that many community land trusts do not develop or maintain housing. As models vary nationwide, the Department recognizes that the wording of the definition was too narrow to permit community land trusts that acquire and hold existing housing to be considered land trusts. Likewise, the use of the term maintenance was confusing for some community land trusts that do not have the responsibility of maintaining the housing during the term of the ground lease. The Department would note that in order to exercise a right of first refusal, the housing must have been developed by a community land trust using HOME funds.[26] Therefore, while a community land trust may have, as its purposes, ''acquiring'' or ''holding'' land, in order to exercise rights of first refusal, the housing must have been developed by the community land trust.

E. Revise Organizational Requirements of Community Land Trusts To Allow New Smaller Community Land Trusts

One commenter stated that HUD should consider amending the community land trust board requirements to allow flexibility for new community land trusts with small portfolios of homes that do not have sufficient lessees to comply with the requirements.

HUD Response: The definition of community land trusts in § 92.2 does not have strict board requirements other than the community land trust not be sponsored by a for-profit entity. A new organization is a community land trust once it meets all of the requirements of the definition. If a new organization meets the requirements in the definition, even if it was only for a small portfolio, it is a community land trust for the purposes of the HOME program definition. The Department would like to remind the public that to exercise the right of first refusal described in § 92.254, which is what the definition of community land trust is used for, the new community land trust must develop HOME homeownership housing in accordance with the requirements of 24 CFR part 92.

F. Conflicts Between the Definition of Community Land Trust in § 92.2 and § 92.302

One commenter stated there is an internal conflict between the proposed definition of a ''community land trust'' in § 92.2 and the proposed housing education and organization support language at § 92.302(b)(3)(i). Specifically, the commenter stated there is a conflict between the language of the proposed community land trust definition, which allows a combination of a deed restrictions and a preemptive purchase right at a formula price in lieu of a ground lease, and § 92.302(b)(3)(i), which is limited to community land trusts that retain title and convey it via a ''long-term ground lease.'' The commenter noted there is no easy solution because allowing non-ground lease approaches may inadvertently expand the definition of a community land trust in a manner HUD may not have anticipated.

HUD Response: The Department acknowledges that the community land trust requirements established in § 92.203(b)(3)(i) differ from the definition of community land trust proposed by the Department in § 92.2. Under NAHA, to receive housing education and organizational support

[25] The Consolidated Appropriations Act, 2016 Public Law 114–113, div. L, title II, Dec. 18, 2015, 129 Stat. 2878 said that notwithstanding the affordability requirements contained in section 215(b)(3)(A) of the Act [42 U.S.C. 12745(b)(3)(A)], community land trusts may ''hold and exercise purchase options, rights of first refusal or other preemptive rights to purchase the housing to preserve affordability, including but not limited to the right to purchase the housing in lieu of foreclosure.''

[26] The Consolidated Appropriations Act, 2016 only allows community land trusts to exercises purchase rights for ''funds provided in prior and subsequent appropriations acts that were or are used by community land trusts for the development of affordable homeownership housing pursuant to section 215(b) of such Act.'' Public Law 114–113, div. L, title II, Dec. 18, 2015, 129 Stat. 2878.

funds, a community land trust must meet the requirements established in the statute, including but not limited to the requirement that a community land trust acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground lease. The Department codified these requirements in the regulations at § 92.302(b)(3)(i).

The Consolidated Appropriations Act, 2016, which for the first time permitted community land trusts to exercise preemptive purchase rights for HOME-assisted homeownership units, required that HUD establish a revised definition of community land trust for this purpose that did not limit program participation to the narrower definition of community land trusts that solely enforce restrictions through a ground lease, as is required for housing education and organizational support funds under NAHA. The proposed definition of community land trust in § 92.2 is reflective of how community land trusts enforce restrictions nationwide, including in the HOME program. The requirements of homeownership in § 92.2, as revised, still apply, as do the period of affordability requirements in § 92.254. The Department understands that there are different dates and different definitions for related requirements and will provide additional implementation guidance on the definitions of community land trust in § 92.2 and § 92.302, how to meet the requirements for homeownership, and preserving affordability when a community land trust exercises a purchase right.

The Department will continue to use the definition of community land trust established in the Act and promulgated at § 92.302(b)(3)(i) should the Department receive funds for housing education and organizational support in the future. The Department is moving forward with the separate regulatory definition of community land trust in § 92.2 for those community land trusts that will be eligible to exercise preemptive purchase rights pursuant to the Consolidated Appropriations Act, 2016, as codified in § 92.254(b)(3).

G. Concern Regarding 30-Year Ground Lease Term and Conflicts Between the Definition of Community Land Trust in § 92.2 and the Definition of Homeownership in § 92.2

Several commenters expressed concern or opposition to the proposed regulatory definition that would, in part, require community land trust housing and related improvements to be affordable for at least 30-years. Two commenters noted that community land trusts typically impose ground leases of 90-plus years and are concerned about the reduced 30-year ground lease included in the community land trust definition. One commenter recommended that HUD increase the ground lease for community land trusts to 90-plus years. The commenter stated that it dilutes the mission of community land trusts to reduce the ground lease to 30 years. The commenter stated that the community land trust movement internationally is focused on permanent-affordability with 98- and 99-year ground leases or land use restrictions. In support of their comments, the commenter included additional information regarding community land trusts, including the: (1) Grounded Solutions Network, 2011 Model Ground Lease & Commentary (2018); (2) National League of Cities, Community Land Trusts: A Guide for Local Governments (2021); and (3) Burlington Associates in Community Development, Frequently Asked Questions about Community Land Trusts (2007). Another commenter stated that community land trust ground leases typically restrict resale of a home to an income eligible buyer at an affordable price for 99 years, and typically require that the buyer enter into a new 99-year ground lease upon purchase. The commenter referred HUD to Grounded Solutions Network Model Declaration of Affordability Covenants and Model Ground Lease (Article 10).

One commenter stated that there is an internal conflict within the definitions of a ''community land trust'' and ''homeownership.'' The commenter noted that the definition of community land trust includes organizations that provide ground leases of at least 30 years while the definition of homeownership requires that community land trust ground leases be for at least 50 years. The commenter stated that these definitions could allow organizations to qualify as a community land trust by offering ground leases of only 30 years but make said community land trusts ineligible to receive HOME funds unless the HOME-assisted units were accompanied by 50-year ground leases.

HUD Response: The definition of community land trust at § 92.2 establishes the minimum requirements an organization must meet to qualify to hold a preemptive purchase option on a HOME-funded homebuyer unit, including but not limited to the requirement that a community land trust must use a lease, covenant, agreement, or other enforcement mechanism to require housing and related improvements on land held by the community land trust to be affordable to low- and moderate-income persons for *at least* 30 years. Organizations that meet these minimum requirements may exercise the purchase option, right of first refusal, or other preemptive rights afforded to community land trusts by the Continuing Appropriations Act, 2016 (Pub. L. 114–113) and codified in § 92.254(b)(3). Community land trusts that do not meet this definition are not precluded from receiving HOME funds for projects; however, if they exercise a preemptive purchase right within the period of affordability, then the housing will cease to be considered affordable housing under the Act and the participating jurisdiction will be required to repay the HOME investment associated with that housing unit pursuant to 42 U.S.C. 12745(b)(3)(A) and 42 U.S.C. 12749(b).

The Department understands that community land trust models throughout the country often impose a 90 or 99-plus-year ground lease. Because the definition of community land trust at § 92.2 only establishes a minimum ground lease term for the purposes of determining an organization's eligibility to hold or exercise a preemptive purchase right on a HOME-assisted unit without violating the Act and requiring repayment of the HOME investment, community land trusts imposing longer ground lease terms are still permitted.

The Department also acknowledges that it is using different minimum terms for ground leases in the definition of community land trust and the definition of homeownership in § 92.2. The definition of homeownership at § 92.2 defines homeownership under a community land trust as fee simple ownership of a dwelling, or equivalent form of ownership approved by HUD, on land with a ground lease that meets one of the requirements in § 92.2. Under this definition, if a ground lease is provided by a community land trust and is not in an insular area, the minimum required ground lease for the unit to be considered a homeownership unit under the HOME program is 50 years. As noted above, the definition of community land trust only requires that an organization impose a minimum 30-year ground lease for the organization to be considered a community land trust for purposes of exercising a right of first refusal to preserve affordability under § 92.254(b). The Department understands that this establishes a higher threshold for the term of a ground lease to be considered homeownership under the HOME program than it does for an organization providing that ground lease to be

considered a community land trust, but the Department also wanted to remain consistent with State laws and community land trust models that may require ground leases of fewer years when considering whether an organization meets the definition of community land trust.

H. Opposition to Community Land Trust Model

One commenter opposed the use of governments subsidies for homeownership projects under the community land trusts model. The commenter stated that government subsidies for community land trusts should be reserved for affordable rental housing. The commenter also stated that downpayment assistance is a better method for building financial security and generational wealth through homeownership because community land trusts are closer to rental housing than homeownership. The commenter submitted a study conducted by the National League of Cities comparing the results of community land trust and downpayment assistance models. The commenter supported greater use of the HUD's 203(k) Loan Program to create accessory dwelling units and tax exemptions to encourage homeownership.

HUD Response: HUD thanks the commenter for reviewing the proposed rule and notes that by statute, community land trusts may participate in the HOME program and HOME homeownership activities.[27] Congress explicitly authorized their participation, and the Department must faithfully adopt the language of the Consolidated Appropriations Act, 2016 and the provisions of 42 U.S.C. 12773 of the Act.

§ 92.2—Homeownership Definition

A. Require That Long-Term Ground Leases to HOME-Assisted Manufactured Homeowners Are Affordable

One commenter recommended requiring participating jurisdictions to remove barriers to manufactured home homebuyers and homeowners to access HOME programs regardless of the manufactured home being on owned-land, leased-land, Tribal land, or in manufactured home communities. The commenter also specifically urged HUD to ensure that HOME-funded manufactured home communities offer homeowners a standard, long-term lease with predictable rent provisions that support affordable ''home-only'' financing, notice of sale and opportunity to purchase the community, and require that projects with HOME funding for 30 years or more include shared-equity affordability provisions of resident-owned communities and rent limitations. The commenter urged HUD to issue guidance and education for participating jurisdictions, subrecipients, and developers.

HUD Response: While the definition of homeownership in § 92.2 requires that manufactured housing ground leases be for at least the period of affordability in § 92.254, the Department has not specified the amount that may be charged under such ground leases. The Department believes that adding such restrictions could have the unintended effect of reducing the amount of manufactured home purchasers that can be assisted with HOME funds and defers to participating jurisdictions in designing their programs. The Department also believes that it provided insufficient information the public to appropriately place the public on notice of any changes to the ground lease requirements for manufactured housing owners and that doing so without additional comment would be unwise.

B. Explicitly Include Cooperative Owners as Owners for Purposes of the Definition of Homeownership in Paragraph (4)

One commenter suggested that to ensure eligibility status for affordable housing cooperatives, HUD should consider revising its definition of homeownership to include housing cooperative members as homeowners directly. The commenter explained that designating co-op member-owners as homeowners will grant additional flexibility to participating jurisdictions, creating another tool to be utilized to create affordable homeownership for low-income households and to reduce persistent wealth inequities.

HUD Response: Unfortunately, HUD cannot always draw bright line rules in this area. Much of what the commenter is requesting depends upon State law and is a fact-sensitive inquiry that must be engaged in by the participating jurisdiction. Paragraph (4) of the definition of Homeownership in § 92.2 states that 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 Credits (26 U.S.C. 42), the ownership or membership does not constitute homeownership.'' The Department believes these are the correct considerations. The Department defers to State law on whether membership within a cooperative or being a shareholder of a cooperative constitutes homeownership. It also defers to the participating jurisdiction to determine whether the cooperative's governing documents provide the necessary rights to the member or shareholder to constitute homeownership. Under many State laws and cooperative governing documents, the commenter may be right that a member or shareholder is an owner. However, this is a fact-sensitive inquiry and HUD is declining to state that as a rule a member or shareholder of a cooperative is an owner of the housing. HUD also continues to maintain that where a cooperative is receiving LIHTC and is within its compliance period, it is not engaging in a homeownership activity.

§ 92.2—Period of Affordability Definition

Commenters supported HUD's proposed definition of ''period of affordability.'' One commenter noted that distinguishing between the Federal period of affordability and any participating jurisdiction-imposed additional period will be useful and follows a similar model to the LIHTC compliance period. One commenter noted that it was an important clarification that addressed confusion about whether this term applied to time periods beyond 20 years.

One commenter stated they supported the proposal because it would clarify that this term is different from an extended period of affordability or an additional compliance period. The commenter explained that this clarification would permit States and localities to continue to prioritize long-term affordability.

HUD Response: HUD thanks the commenters and is moving forward with the revised definition of period of affordability without change.

§ 92.2—Program Income Definition

Commenters stated that they oppose changing the definition of program income to include the phrase ''at any time.'' The commenters stated that this change would extend the participating jurisdiction's monitoring obligations, potentially in perpetuity, which would strain limited participating jurisdiction resources.

[27] See 42 U.S.C. 12773(a)(2), expressly permitting housing education and support to community land trusts to assist them in developing HOME community housing development organization projects, and see and Public Law 114–113, div. L, title II, Dec. 18, 2015, 129 Stat. 2878 permitting community land trusts to hold and exercise certain purchase rights without violating the affordability requirements contained in the homeownership provisions of Section 215 of NAHA.

One commenter opposed HUD's proposal to clarify that program income is gross income received ''at any time'' by the participating jurisdiction, State recipient, or subrecipient. The commenter stated that defining program income as going beyond the period of affordability or the closeout of the grant puts an administrative burden on participating jurisdictions, subrecipients, and developers. The commenter recommended that HUD limit repayment of program income to either the duration of the period of affordability for housing supported by HOME funds or to the closeout of the grant.

Two commenters suggested limiting repayment of program income to the duration of the period of affordability for homes supported by HOME funds or at the close out of the grant in order to ease the administrative burden on participating jurisdictions, subrecipients and developers. One of these commenters asked that HUD provide more clarity to participating jurisdictions and program participants on how any final changes would be operationalized if HUD determines to move forward on this question.

HUD Response: The addition of ''at any time'' to the definition of program income was a clarification of the existing requirement. The Department is aware that there is an administrative burden associated with tracking and spending program income. However, 10 percent of program income received may be used to administer the HOME program. A participating jurisdiction is also capable of providing Subrecipients and State recipients with the ability to retain program income if it is specified in the written agreement (see § 92.504(c)(1)(iii), § 92.504(c)(2)(ii)). The Department is concerned that limiting the reporting and use of program income to the period of affordability or to the time period before grant closeout will result in participating jurisdictions waiting until the end of those timeframes to require the collection of program income to avoid reporting on the source and avoid the restrictions on the use of program income. This might also result in participating jurisdictions misunderstanding program income requirements and using such funds for purposes not eligible under the Act and regulations in 24 CFR part 92. The Department declines to make a change and is moving forward with the language clarifying existing requirements.

§ 92.2—Reconstruction Definition

One commenter stated that it supports applying new construction standards in § 92.251 to newly constructed units within reconstruction projects. However, the commenter noted that some projects involve reconstruction of some units and rehabilitation of others. The commenter objected to applying new construction standards to these rehabilitated units, noting that it would not be a prudent use of resources. The commenter opposed the revised definition of ''reconstruction'' but supported applying new construction standards in § 92.251 to newly constructed units within reconstruction projects.

HUD Response: The Department understands there is confusion over how to apply a participating jurisdiction's property standards when a project consists of a combination of rehabilitation, reconstruction, and new construction. In projects where there is a combination of types of development, units that are rehabilitated but not reconstructed may be inspected to the participating jurisdiction's rehabilitation standards. Units that are newly constructed or reconstructed will be subject to the participating jurisdiction's new construction standards. Accordingly, the Department has revised the regulations at § 92.251(d) to address the commenter's concerns and provide clarity on this issue.

§ 92.2—Single Family Housing Definition

Commenters stated that they support the proposal to amend the definition of ''single family housing'' to refer to units.

HUD Response: The Department thanks the commenters and is moving forward with the changes to the ''single family housing'' definition.

§ 92.2—Small-Scale Housing Definition

A. General Comments on Definition

One commenter supported the proposed new definition of ''small-scale housing'' because it would reduce administrative burden and would, according to the commenter, benefit areas with little development like small rural towns and Tribal areas because smaller projects that are not 30–50 units cannot attract LIHTC or other program investors and become financially infeasible.

One commenter stated their support for the addition of the definition of ''small-scale housing'' because it could help spur development in rural communities.

HUD Response: The Department thanks the commenters for reviewing the proposed rule and agree that the reduced ongoing monitoring requirements for small-scale housing projects will make using HOME funds more feasible nationwide. The Department is moving forward with the definition of ''small-scale housing'' without change.

B. Expanding Definition To Include Projects With More Units or Scattered Site Projects

One commenter suggested that HUD consider expanding the definition of ''small-scale housing'' to apply to rental projects with up to 10 units (rather than 4) to allow the benefits of HUD's proposed streamlined procedures to apply to projects with up to 10 units, which would be especially helpful in rural areas. One commenter stated that for compliance monitoring, further clarification on the definition of ''small-scale housing'' and the applicability to both the rental housing projects and homeownership funded projects is requested. That same commenter believed that as written, it is unclear whether scattered-site rental housing projects would be considered small-scale housing or not.

One commenter stated that HUD's proposed definition of ''small-scale housing'' to mean 1–4 units is not in line with the housing industry's use of the term. The commenter recommended that HUD revise the definition of ''small-scale housing'' to be more consistent with the industry's definition.

HUD Response: The purpose of the small-scale housing definition is primarily to provide relief to participating jurisdictions and small landlords in the management of small or scattered site housing projects. Consequently, the Department has determined that a 1–4-unit project, either managed on the same site or on multiple sites (*i.e.,* scattered site housing) shall constitute a small-scale housing project. The Department considered larger project sizes, as the commenter requested. However, in HUD's experience, 5–10-unit projects can be more difficult to manage than 1–4-unit projects, especially when they are managed as scattered site projects.

The Department did note that there is confusion over whether small-scale projects must all be on contiguous sites or be single family housing. While the Department is not revising the definition of ''small-scale housing,'' the Department is clarifying in this preamble and will clarify again in guidance that small-scale housing projects can be on either contiguous sites or scattered sites and still constitute small-scale housing projects

as long as they meet the definition of ''small-scale housing'' in § 92.2.

§ 92.2—Subrecipient Definition

A. Opposition to Change in Definition To Prohibit a Governmental Entity or Nonprofit From Being a Subrecipient if it Uses HOME Funds as a Developer or Owner of a Housing Project

One commenter does not support the removal of a subrecipient's ability to acquire and temporarily own standard housing, as subrecipients are often partners in locating and purchasing housing.

HUD Response: HUD appreciates the comment but is declining to make the change. In the HOME program, a subrecipient administers an activity or entire program on behalf of the participating jurisdiction. An organization that partners with other entities to locate and purchase housing is not a subrecipient as an organization cannot oversee an activity in which it also functions as an owner, developer, or sponsor as there is an inherent conflict of interest. HUD believes the approach described by the commenter is ineligible for HOME assistance.

B. Comment in Support of the Revised Definition of Subrecipient Because it Allows Greater Flexibility in Income Determinations

A commenter stated that the proposed update to the definition of ''subrecipient'' is helpful because this updated definition allows HOME funds to be more readily used with rental housing based on the program's own income determination guidelines for eligibility.

HUD Response: The commenter is incorrect. Income determinations in the HOME program must be made in accordance with § 92.203. The definition of subrecipient does not allow a subrecipient to use a different set of income requirements than the participating jurisdiction uses when determining income under § 92.203.

§ 92.2—Unit of General Local Government Definition

One commenter pointed out that the proposed rule does not address eligibility of Tribes nor adds new mentions of Tribes even though the definition of CHDO in § 92.2 includes Tribes in the definition of ''governmental entity'' in paragraph (5). The commenter requested that HUD add clarifying language through the proposed regulations to clarify that Tribes are eligible, including Indian Tribes, Indian Housing authorities, and Tribally Designated Housing Entities as defined at 25 U.S.C. 4103(22), and requested that HUD clarify that these entities may be project owners anywhere that the terms are not synonymous with State recipient. The commenter suggested such changes in § 92.2 Definitions, State recipient; § 92.2 Definitions, Subrecipient; §§ 92.220(a)(1)(iii)(A) and 92.220(a)(1)(iii)(B) regarding matching funds provided by an Indian Tribe, Indian Housing Authority, or Tribally Designated Housing Entity.

HUD Response: Each of the definitions of State Recipient and subrecipient uses the term ''unit of general local government'' and not ''governmental entity.'' The Department is not changing its interpretation of the term unit of general local government. Indian Tribes, Indian Housing Authorities, and Tribally Designated Housing Entities may participate in the HOME program in a variety of capacities, including as developers, owners, or contractors. Indian Housing Authorities or Tribally Designated Housing Entities, if established as nonprofits, may be eligible to be Subrecipients in HOME as well. HUD will provide additional information on how HOME funds can be used by Indian Tribes, Indian Housing Authorities, and Tribally Designated Housing Entities in future guidance.

Below-market interest rate loans originated by Tribally Designated Housing Entities and Indian Tribes that are legally constituted as corporations are already eligible as match under the current regulation. HUD will clarify this in guidance.

§ 92.3—Effective Date and Applicability of This Final Rule

One commenter requested that HUD clarify which provisions are applicable to all HOME-funded developments and which changes are applicable only to properties that received commitments of HOME funds after the effective date of the final rule. Another commenter requested that HUD provide phased implementation and permit permissive compliance for a set period of time before mandating required compliance, to allow participating jurisdictions time to update information systems, inform partners and ensure proper policies and procedures are in place. One commenter said that because the changes in the rule will require a significant effort to educate stakeholders and ensure a smooth transition to the new regulatory framework, HUD should dedicate adequate technical assistance resources to this effort. Another commenter stated that HUD should expand training for participating jurisdictions and HUD field officials on implementation of this rule to ensure uniform application, particularly for homeownership projects, because of uncertainty about interpretation of HOME regulations among participating jurisdictions.

HUD Response: The Department agrees with the commenters that it will take time for participating jurisdictions to prepare to comply with certain provisions of this final rule. HUD has carefully considered the appropriate timeframes for compliance with each provision and has established effective dates in § 92.3. HUD shall provide participating jurisdictions up to one year to perform income determinations and reexaminations under the final rule's § 92.203. HUD shall also allow participating jurisdictions, subrecipients, state recipients, and owners to comply with the HOME requirements as they existed immediately prior to the effective date of the final rule for HOME commitments made up to one year after the effective date of the final rule.

§ 92.50—Formula Allocation

One commenter suggested that one way to target funding to rural CHDOs would be to increase the awards for State-wide participating jurisdictions via a change to HUD's formula allocation regulations. Instead of measuring the number of families living in poverty, which as an absolute measure disadvantages rural areas, the commenter said the metric could instead measure either the percentage of families living in poverty or the percentage of counties in a State that are designated as Persistent Poverty Counties. The commenter stated that either of these approaches would be consistent with the statute, which directs that the formula reflects ''poverty, and the relative fiscal incapacity of the jurisdiction to carry out housing activities eligible under section 12742 of this title without Federal assistance.'' Another commenter also noted that the HOME program does not proportionately serve rural areas because the smallest and least-resourced places must compete for the balance of State funds, while larger communities receive guaranteed funding.

HUD Response: HUD appreciates the commenters' contributions and notes that changes to the calculation of HOME program formula allocations are outside the scope of this rulemaking. The Department was making minor revisions to clarify that ''rental units built before 1950 occupied by poor households'' meant ''rental units built before 1950 occupied by households below the poverty line'' but was otherwise not

changing the actual data that is used in the calculation. The Department does not believe it has provided sufficient notice to the public of a possible change in formula elements and declines to change any data elements included in the HOME formula in this rulemaking.

§ 92.203—Income Determinations

A. General Support

Commenters stated that they support the proposed changes to income determination for HOME because participating jurisdictions can use income determinations made by other Federal agencies.

HUD Response: The Department agrees with commenters that providing additional flexibilities to comply with income requirements for HOME-assisted rental housing will further reduce the administrative burden on participating jurisdictions, project owners, and on low-income families. Therefore, in this Final Rule, HUD streamlines income procedures, reduces the frequency of income determinations for HOME-assisted small-scale rental projects and for families receiving HOME tenant-based rental assistance, and expands a safe harbor to permit participating jurisdictions to rely upon the income determinations made under the rules of other Federal programs or forms of public assistance for HOME-assisted rental units and for tenant-based rental assistance programs.

B. Reducing the Frequency of Income Determinations

Commenters said they support reducing the frequency of income determinations. One commenter asked for clarification if the proposed change to income recertification from annual to every two years applied to Federally funded projects such as housing developed with LIHTC. Another commenter supported the proposal and encouraged HUD to consider triennial income recertifications for all HOME programs, not just small-scale housing, because it would help families experience the intended benefits of the program, help families build wealth, and not inadvertently punish them for increasing their income.

HUD Response: HUD reduced the frequency of income determinations for HOME-assisted small-scale rental projects and tenants receiving tenant-based rental assistance. Triennial income examinations do not apply to HOME-assisted rental projects or to tenant-based rental assistance programs.

For HOME-assisted rental housing, HUD expanded an income safe harbor which permits a participating jurisdiction to rely upon the income determination conducted under the rules of another form of public assistance for HOME-assisted rental units where Federal funds overlap. This safe harbor significantly reduces instances of when the annual income of a family must be calculated in HOME-assisted units that are also assisted with Federal or State project based rental subsidy programs, developed with LIHTC, or occupied by a family that receives Federal tenant-based rental assistance or another form of public assistance such as SNAP or TANF. This means that if the HOME-assisted unit or a family is applying for or occupying an assisted unit that is covered by any of these safe harbors, then a participating jurisdiction may apply these flexibilities to all income determinations performed, including at initial occupancy and subsequent income determinations during the HOME period of affordability. HUD is also clarifying in § 92.252(g)(3) that an owner is not required to examine source documents under § 92.203(b)(1)(i) if the participating jurisdiction is accepting an annual income determination pursuant to § 92.203(a)(1), § 92.203(a)(2), or § 92.203(a)(3).

For HOME tenant-based rental assistance, the income determination is aligned with the term of the rental assistance contract, which can have a term of up to 24 months. HUD declines to apply a triennial income determination to HOME tenant-based rental assistance programs because it could not be implemented given the 24-month statutory limitation on the term of the rental assistance contract. HUD considered many scenarios that would trigger a new income examination and how reliant participating jurisdictions are on calculation of adjusted income in determining the amount of assistance for a tenant receiving tenant-based rental assistance and believes that tying the income examination to the rental assistance contract is the best policy. HUD also believes that reducing the frequency of income determinations in HOME-assisted rental units and aligning income determination to the terms of the tenant-based rental assistance contract will encourage families to increase income without fear of losing their assistance or ability to occupy an assisted unit.

C. Change the Requirement in § 92.203(a)(1) That a Participating Jurisdiction ''Must'' Accept the Income Determination Made Under a Project-Based Program

One commenter objected to requiring participating jurisdictions to use the income determinations made by owners and program administrators in Federal and State project-based rental assistance programs, including both the Section 8 project-based voucher and project-based rental assistance programs. The commenter believes that requiring the use of the income determinations is too strong of a stance and that HUD should provide participating jurisdictions with discretion to choose whether to accept an income determination made under a Federal or State project-based rental assistance program. In the commenter's experience monitoring personnel, they have determined that program administrators may overlook income sources or fail to properly verify income and assets.

HUD Response: The Department recognizes the commenters' concerns that HUD created an income safe harbor as a requirement rather than a choice in the HOTMA Final Rule, published in the **Federal Register** on February 14, 2023. Under HOTMA, HUD required a participating jurisdiction to accept a public housing agency, owner, or rental subsidy provider's determination of a family's annual and adjusted income for each HOME-assisted unit that is assisted by a Federal or State project-based rental subsidy program. HUD's intent was to create alignment in HUD rental programs and to reduce the administrative burden on participating jurisdictions and owners of having to meet two sets of income requirements for the same unit. HUD agrees with the commenter that participating jurisdictions should be provided the choice, as a matter of program design, of whether to accept an income determination made under a Federal or State project-based rental assistance program. Therefore, HUD is revising the ''must'' to a ''may'' in §§ 92.203(a)(1) and 92.203(f)(2) and permitting a participating jurisdiction to decide whether to apply this safe harbor. HUD recommends that when making this decision, a participating jurisdiction undertakes an assessment of staff capacity, size and scope of its HOME-assisted rental portfolio, annual monitoring schedules, and the availability of trained and knowledgeable housing partners. HUD reminds participating jurisdictions that whatever choice they make should be explicitly described in the HOME written agreement with project owners to reduce instances of noncompliance with the HOME program income requirements.

D. Opposition to 2-Month Source Documentation Requirements in Paragraph (b) of the Definition

One commenter suggested that HUD remove the 2 month source of income documentation requirement in § 92.203(b)(1)(i) and (b)(2) and instead follow the HUD 4350.3 Chapter 5 requirement for all HOME activities which considers circumstances when 2 months of documentation are not available, allows for third party verification, and would allow participating jurisdictions to establish a uniform income review process across HOME and HTF.

HUD Response: The Department recognizes the commenters' concerns that HOME's income documentation and verification process is different than the processes in other HUD rental programs, but HUD is not revising § 92.203(b)(1)(ii) to remove the requirement to examine 2 months of source documents when determining annual income. The Department has required source documents since the 1996 HOME regulations [28] and believes that examination of source documents provides needed safeguards to ensure that tenants meet the income requirements of the Act. Notwithstanding that fact, the Department has also identified other forms of documentation that may also satisfy the requirements, including documentation required to use the safe harbors in § 92.203(a)(1)–(3).

Moreover, HUD disagrees that adopting the income documentation and verification procedures in Chapter 5 of HUD Handbook 4350.3 would establish a uniform income review process across all HOME and the Housing Trust Fund activities. The requirements explained in Chapter 5 of HUD Handbook 4350.3, including the mandatory use of source documents for a period beyond 2 months and the required use of the Enterprise Income Verification (EIV) System, are more burdensome than HOME's current income requirements. Under the HOTMA regulations in 24 CFR 5.609, annual reexaminations must consider all income made in the previous 12 months (See 24 CFR 5.609(c)). HOME regulations at § 92.203(b)(1)(ii) only require an examination of 2 months of income to project the prevailing rate of income for the upcoming 12 months. This is a less burdensome process than what is required in 24 CFR 5.609. HUD's Technical Guide for Determining Income and Allowances for the HOME program (income guidebook), which will be updated to provide guidance related to this Final Rule, already provides participating jurisdictions with the flexibility to establish their own verification procedures or to implement verification procedures consistent with the Housing Choice Voucher Program.

E. Accepting Determinations by Other Federal Assistance Providers in § 92.203(b)

A commenter stated that the policy should be extremely clear that a certification by another Federal assistance provider is sufficient to document income eligibility and no additional documentation would be needed outside of a certification to the owner or participating jurisdiction.

Other commenters stated that HUD should expand HOME reciprocity with other Federal agency programs and harmonize income eligibility standards. The commenters requested that HUD engage in reciprocity with the USDA Rural Home Development 502 Direct Mortgage program in a manner similar to how it honored income eligibility under its Self-Help Opportunity Program (SHOP). Specifically, the commenter urged that HUD adopt the USDA Rural Development 502 Direct mortgage program's ''income banding'' approach to eligibility that the commenter said has been beneficial in rural areas around the country and was a direct response to the lack of access for broad swaths of persistent poverty areas of the country.

HUD Response: In the HOTMA Final Rule, HUD aligned the HOME income regulations with those of other Federal or State rental subsidy programs and with those of other Federal tenant-based rental assistance programs that determine income eligibility consistent with the HOME program to facilitate the layering of funds in a HOME-assisted project and to reduce the administrative burden on participating jurisdictions and project owners. While the HOTMA safe harbor expanded the number of rental programs that a participating jurisdiction may accept income determinations from, HUD agrees that it can expand this safe harbor to include additional Federal agency programs and other forms of public assistance that are compatible with the HOME program.

To accomplish this, HUD is broadening an existing income safe harbor in § 92.203(b)(1)(iii) which permits a participating jurisdiction to determine the annual income of a family by obtaining a written statement from the administrator of a government program under which the family receives benefits, and which examines each year the annual income of the family. The expansion of this safe harbor includes additional forms of public assistance provided under other Federal agencies such as Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Medicaid, as well as LIHTC income determinations for families living in tax credit units. This means that instead of calculating the annual income of a family, a participating jurisdiction may rely on the annual income determination made by the administrators of those programs or forms of public assistance without having to take additional steps to verify the income calculation or determination.

To implement this new safe harbor provision, the participating jurisdiction must obtain a written statement from the administrator of the assistance which contains the amount of annual income and household composition (*e.g.,* two-person household). A participating jurisdiction can then implement this safe harbor for all rental housing income determinations including but not limited to those performed at initial occupancy and every sixth year of the period of affordability. This relieves the participating jurisdictions of the requirement to calculate the annual income of a family by using 2 months of source documents if the family is receiving one of these forms of public assistance and the participating jurisdiction is able to obtain a statement fulfilling the requirements of the new safe harbor in § 92.203(a)(3).

With respect to granting reciprocity with the United States Department of Agriculture's (USDA) ''income banding'' approach for determining income eligibility for the Rural HOME Development 502 Direct Mortgage program, HUD declines to adopt this approach of determining income eligibility for HOME-assisted homeownership programs. HUD has determined that the USDA's method for defining a low-income family is not compatible with HOME's program definition of a low-income family. Under the HOME program, a low-income family means a family 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

[28] See 61 FR 48769.

not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612. In contrast, the USDA uses two categories of income structure: one category is for one-to-four person households and a second category is for five-to eight-person households. The USDA's two-tier income structure is significantly different than the HOME program's income structure and does not take into account other disqualifying factors under the HOME regulations and statute. Creating a safe harbor for the USDA's two-tier income structure is too significant of a change and is outside the scope of this rulemaking because it involves changing the definition of a low-income family and not just providing an expanded safe harbor to defining an eligible family.

F. Revise § 92.203(e) To Extend the Length of Time That an Income Determination Is Valid in Homeownership Programs

A commenter stated that for owner-occupied rehabilitation and homeownership assistance for new construction, it is unclear if the income certification before loan closing can remain valid for 12 months now or if the rule is still limited to 6 months.

Another commenter stated that, for new construction, developers should be able to confirm that buyers are eligible to purchase the unit more than 6 months out because of the potential for construction delays. Two commenters recommended that this rule revise the regulations found at § 92.203(e)(2) to indicate that the participating jurisdiction is not required to re-examine the family's income at the time the HOME assistance is provided unless 24 months has elapsed since the homebuyer was determined to be income-qualified at the start of program participation. These commenters also recommended revising the regulations to state that at re-examination, the participant's income should be considered eligible so long as their income has not grown to the point of exceeding the low-income threshold by more than 10 percent.

HUD Response: The Department recognizes the commenters' concerns but is not revising § 92.203(e)(2) to allow an income determination to be valid for a period of 12 or 24 months as requested by the commenters. The Act is clear that a family must qualify as a low-income family at the time of the home purchase.[29] This means that if a family is being assisted to purchase existing housing, they must be a low-income family at the time of transfer of ownership (usually at settlement or closing). If a family is being assisted to purchase existing housing or housing to be constructed under a lease-purchase program, the family must be low-income at the time the lease-purchase agreement is executed pursuant to § 92.504(c)(5). If a family is being assisted to purchase housing to be constructed, the family must be low-income at the time the contract to purchase housing to be constructed is signed in accordance with § 92.254(a)(8). The HOME assistance is provided at execution of the contract to purchase housing to be constructed in accordance with § 92.504(c)(5). HUD wants to clarify that if the family was determined to be income eligible at the time the contract to purchase housing to be constructed was executed, there is no additional requirement to redetermine income if there are delays in construction.

HUD understands the complexity of homeownership programs and how it can vary by locality. HUD permits an income determination to be valid for six months for homeownership activities to account for this complexity and delays in property settlement. The Department has determined that permitting the income determinations to remain valid for six months is consistent with the Act but that providing a longer time period for homeownership activities creates a more tenuous standard, as prospective homebuyers may already have relatively higher incomes than other low-income participants in the HOME program.

The commenter's recommendation that families be considered eligible if their annual income has not exceeded the low-income threshold by more than 10 percent, is not statutorily permissible (see 42 U.S.C. 12744(2)). HUD declines to revise the income regulations to permit families to exceed the HOME income limits and still be considered eligible low-income families.

G. Counting Income From All Family Members in § 92.203(e)

One commenter stated that the HOME method of income determination, which counts the income of all household members with some exclusions, does not account for multi-generational households where some family members do not contribute financially. The commenter explained that this method leads to an inflated household income calculation that does not reflect the financial burdens or capacities of families. The commenter recommended that HUD revise its regulations to allow household members who are not immediate family (which the commenter defined as anyone other than parents, siblings, spouses, and children) to be excluded from the income eligibility calculation.

HUD Response: The Department recognizes the commenters' concerns, but HUD is not revising § 92.203(e)(1) to remove the requirement to include the income from all persons in the household when calculating the annual income of a family under the HOME program. The HOME statute specifically requires that the low- and very low-income thresholds be determined with respect to smaller and larger families,[30] and necessarily intends that the income of all members of the household [31] be used in determining family income under the HOME program.

The definition of family [32] used in the HOME program covers multi-generational households. This is pursuant to the Act, which requires that the definition of ''families'' in the HOME program be the same definition of ''families'' contained in the 1937 Act that is applicable to other HUD programs such as the Housing Choice Voucher Program and the public housing program.[33] The Department has codified the definition of family found in the 1937 Act in 24 CFR 5.403, and HUD is maintaining a consistent interpretation of the 1937 Act across HUD programs by using the definition of family in 24 CFR 5.403 for the HOME program. Therefore, the Department must decline the commenter's suggestion to narrow the definition of family for purposes of determining income in the HOME program.

Specific Solicitation of Comment #7

The Department seeks input on whether and how the rule should facilitate the conveyance of a financial benefit to low-income tenants when the project owner makes energy efficiency upgrades such as the installation of small-scale wind or solar facilities in connection with an eligible Federal or State program. HUD has issued guidance that currently describes how certain utility discounts or rebates can be treated under HUD income and utility allowance regulations. HOME is subject to the same income requirements under 24 CFR 5.609 as

[29] See 42 U.S.C. 12745(b)(2)(A)–(C).

[30] See 42 U.S.C. 12704(9) and (10).

[31] Please note, 24 CFR 5.609 provides certain income exclusions for live-in aides, foster children, and foster adults.

[32] The HOME program uses the definition of family contained in 24 CFR 5.403, see 24 CFR 92.2 *Family*.

[33] Section 42 U.S.C. 12704(11) of the Act states that ''families'' shall have the same meaning as the definition of ''families'' in 42 U.S.C. 1437a. 42 U.S.C. 1437a(b)(3) provides the definition of persons and families.

other program areas issuing guidance on the treatment of these discounts and rebates. The Department therefore also requests comment from the public on whether to go farther than this guidance for HOME projects through this HOME rulemaking. For example, should HUD maintain the same utility allowance for the project following energy efficiency upgrades to allow the tenant to realize the benefit of decreased utility costs? Both the current income regulations at 24 CFR 5.609 and 24 CFR 5.609 as revised in the HOTMA Final Rule exclude lump-sum additions to assets, as well as non-recurring income. However, if a HUD program provided a recurring financial benefit directly to a low-income tenant, should the rule exclude this income from the HOME income determinations?

A. Comments Supporting Conveying a Financial Benefit to Tenants

One commenter supported efforts to ensure that tenants are able to receive the benefits of energy efficiency cost savings but requested that HUD eliminate or streamline any obligations on participating jurisdictions to monitor and ensure compliance with this benefit because monitoring would be difficult at best.

One commenter supported conveyance of a financial benefit to tenants through the design of HOME utility allowances which would exclude energy efficient features from the model. The commenter explained that the benefit should go to residents because building owners will receive benefits by virtue of decreased energy costs and use in common areas and building systems.

HUD Response: The Department appreciates the commenters' responses to this specific solicitation, but HUD is declining to adopt a policy conveying a financial benefit to tenants in this final rule. It was difficult for the Department to determine how to convey a financial benefit in a way that would be fair, equitable, and permissible under the Act. Unfortunately, commenters also did not provide sufficient information on how the Department could effectively convey all or a portion of the benefits of energy efficiency measures to HOME tenants without disincentivizing owners from paying for energy efficiency upgrades. The Department may revisit this topic in a future rulemaking. The HOME program will follow current HUD guidance that describes how certain utility discounts or rebates can be treated under HUD income and utility allowance regulations.[34]

B. Comments Opposing Conveying a Financial Benefit to Tenants

One commenter opposed HUD attempting to include any benefit produced by the use of energy efficiency upgrades. The commenter pointed out that if energy efficiency upgrades result in returns to the project, financial benefits could flow to the participating jurisdiction if the HOME loan requires ''cash flow'' payments. The same commenter also stated that it would be better if developers and owners invested in long-term benefits instead of focusing on decreased costs and updating utility allowances for all tenants.

A few commenters supported allowing the owner to recalculate the utility allowance based on the energy efficiency upgrades so that the owner can benefit from a lower utility allowance deduction from the HOME rent. One of these commenters cautioned HUD against reducing an owner's incentives for undertaking energy efficiency upgrades. One commenter noted that it will be important to ensure that utility allowances are not prematurely lowered before energy savings are realized, which would cause financial harm to economically vulnerable tenants.

HUD Response: The Department appreciates the responses from commenters in opposition to the conveyance of financial benefit to tenants when an owner makes energy efficient upgrades. The Department is not adopting any change in this final rule. However, HUD may further study how a financial benefit could be provided to both low-income tenants of HOME-assisted rental units and project owners to incentivize energy efficiency measures. The HOME program will follow current HUD guidance that describes how certain utility discounts or rebates can be treated under HUD income and utility allowance regulations.[35]

C. Comments Stating That Determining How To Convey a Financial Benefit for Tenants Is Difficult

Two commenters stated that the cash benefit or discount to tenants would be difficult for owners to implement. One commenter noted that including revenues generated as a result of enhanced efficiency as income to the tenant would also place an administrative burden on the owner, the tenant, as well as on the monitoring participating jurisdictions for a likely small change per month.

HUD Response: The Department thanks the commenters for reviewing the proposed rule and agrees that it would be administratively difficult to convey such benefit, particularly because consumption of utilities vary by tenant and by season. HUD will not be adopting measures related to providing a financial benefit directly to low-income tenants at this time. Commenters' insights on the difficulty of such a measure's implementation and the administrative burden will be taken into account if HUD chooses to revisit this question in a future rulemaking.

D. Comments Suggesting Methods To Convey Financial Benefit to Tenants

Many commenters agreed that HUD should permit projects to maintain the same utility allowance following energy efficient upgrades. One commenter stated that this would allow the tenant to realize the benefit of decreased utility costs and allow the owner to benefit by making them eligible to access tax credits when pursuing energy efficiency upgrades. Other commenters indicated that utility allowances often do not reflect actual costs of utilities paid for by tenants because there is significant variation among units that are the same type, therefore, increasing rent based on imprecise estimates of theoretical cost savings would make HOME-assisted housing less affordable for tenants after energy efficiency upgrades are made.

One commenter said utility allowances should only be updated if there is a risk that utility costs will rise, say, due to electrification of heating. This commenter also said that owners also need to benefit from green construction in order to incentivize them to do the work, and they need green projects to be financially viable. The commenter suggested that one approach may be to rely on the addition to the project subsidy, along with other tax incentives, and Federal and local funding to incentivize owners toward green construction.

HUD Response: The Department thanks the commenters for their suggestions to permit projects to maintain the same utility allowance following energy efficient upgrades, which could decrease utility costs and increase affordability for tenants while providing owners with the opportunity to access relevant tax credits. The

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

[35] *Id.*

Department agrees with the commenter that owners must be able to obtain the benefit of energy efficiency upgrades. As a result, the Department is declining to change the current requirement that utility allowances be redetermined annually.[36] The Department believes holding utility allowances constant would disincentivize owners from making energy efficiency improvements during the period of affordability, as it would deny the owner the benefit of any energy efficiency improvements for those HOME-assisted units without guaranteeing that the owner obtained the benefit of tax credits or other financial incentives. The Department considered whether to maintain the same utility allowance and convey the financial benefit to the tenant by making such a program optional to the owner or dependent upon the owner's participation in a program that conditioned the tax credit or assistance upon providing a financial benefit to the tenant, but determined that this increased the complexity of the HOME program to align with time-limited Federal and state programs without necessarily providing adequate incentive to owners to participate in such programs. As such, the Department is declining to make the change here.

The Department is adopting a change that will allow participating jurisdictions to use either the HUD Utility Schedule Model, the utility allowance established by the local public housing authority (PHA), or another method approved by HUD as their maximum monthly allowances in the final rule. The Department believes that this added flexibility will allow participating jurisdictions to select methods that are most appropriate for the project, and which can adequately incentivize owners to perform energy efficiency upgrades on their projects.

D. Owners Should Perform a Rental Assistance Demonstration (RAD) Capital Needs Assessment To Determine and Incentivize Owners To Perform Energy Efficiency Upgrades

One commenter recommended that HUD permit owners pursuing energy-efficiency retrofits or other energy-saving measures to pursue the process outlined for RAD conversions in prior HUD notices since owners are not incentivized to pursue energy efficiency measures that would reduce tenant costs when tenants who pay their own utilities and rent are calculated for a utility allowance. The commenter suggested permitting owners to submit the engineering study contemplated by the RAD guidance, along with a request for rent adjustment so that the utility allowance could be conservatively reset and suggested that HUD should grant waivers to facilitate this approach.

HUD Response: The Department appreciates the responses from commenters recommending that HUD permit project owners seeking energy efficiency upgrades to pursue the process outlined for RAD conversions. The Department declines to adopt this suggestion in this final rule because it adds a significant level of complexity to the HOME program without necessarily providing adequate benefits to owners. Requiring a physical conditions assessment delays the work to be performed and requires owners to incur additional costs before engaging in energy efficiency upgrades. Absent project development subsidy, which is only available to new HOME projects or troubled HOME projects that are provided new HOME funds pursuant to § 92.210, the owner would have to pay for these costs themselves. Moreover, the mechanism that the commenter is proposing to use to incentivize owners, increasing rents, cannot be performed under the HOME program because rent limits are statutory.[37]

E. The HOME Program Should Align With Other Federal Programs in the Treatment of Utility Discounts and Rebates in Determining Income

Two commenters recommended aligning requirements for utility discounts and rebates for HOME assisted projects and income and utility allowance requirements with other Federal programs, to the greatest extent possible. One of these commenters noted that the utility allowance could be difficult to enforce if it becomes mandated and instead recommend that the utility allowance be preserved for to tenants up to the net credit on the allowance. In addition, one commenter also urged HUD to consider July 2022 guidance published by the Office of Multifamily Housing on the treatment of solar credits in utility allowance and annual income calculations to facilitate conveyance of financial benefit to residents and to exclude such benefits from HOME income determinations.

HUD Response: The Department thanks the commenters for their responses to this specific solicitation. In revising the Final HOME Rule and soliciting comment on energy efficiency measures, HUD examined other Federal programs' utility allowance and income regulations and requirements at length. The Department believes that there is no single approach or method to align income and utility allowances across other Federal programs. The Department has attempted to expand options for aligning with other programs by allowing participating jurisdictions to select a the applicable local PHA utility allowance in § 92.252(b). However, the Department is declining to make further changes such as providing tenants additional financial benefits or sizing and maintaining an artificially inflated utility allowance up to the net amount of the credit received by the owner. As stated earlier, the HOME program will follow current HUD guidance that describes how certain utility discounts or rebates can be treated under HUD income and utility allowance regulations, including the guidance from Multifamily housing.[38]

F. Exclude From HOME Income Determination Any Recurring Financial Benefit Which Results From Energy Efficiency Upgrades

Commenters stated that HUD should exclude this financial benefit, even when regularly recurring, from HOME income determinations. One commenter expressed concern that including the financial benefits from reduced costs resulting from investment in energy efficiency upgrades as income could cause some tenants to become over-income. The commenter explained that this unforeseen income could result in extended negative impacts on the rents charged and compliance of the HOME-assisted units.

HUD Response: The Department appreciates commenters' recommendations that HUD exclude a recurring direct financial benefit to tenants resulting from energy efficiency upgrades from the HOME program's income determinations. The Department recognizes commenters' concern that the inclusion of such benefits in income determination may result in some low-income tenants being considered over-income, resulting in program noncompliance. HUD will not be adopting measures related to providing a direct financial benefit to tenants in

[36] Paragraph 24 CFR 92.252(d)(1) of the HOME rule existing immediately before the effective date of this final HOME rule, requires the utility allowance be determined annually. The Department is redesignating and revising this as a paragraph (b) but is not changing the requirement that the utility allowance be determined annually.

[37] See 42 U.S.C. 12745.

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

upgraded, energy efficient properties in the final rule.

G. Do Not Exclude From HOME Income Determination Any Recurring Financial Benefit Which Results From Energy Efficiency Upgrades

Two commenters opposed any addition of further income requirements and stated that HOTMA has simplified the income eligibility process, and that any further requirements would prove cumbersome, especially given that so many HOME projects also receive Section 8 assistance.

Another commenter opposed the use of discount and rebate allowances for income determinations because saved resources are not typically given back to tenants. The commenter also said that if discounts and rebates were to be treated as recurring income, HUD would need to clarify how this income would be documented and to which tax standard the income would be subject. The commenter was also concerned about HUD issuing a single rebate formula for a nationwide implementation and about the fact that carve outs for HOME rebates is not aligned with other HUD programs.

HUD Response: The Department appreciates commenters' recommendations that HUD does not exclude any recurring financial benefit to tenants from the HOME program's income determinations and acknowledges that were such a measure to be implemented, the income documentation, tax standard, and coordination with other HUD programs would need to be determined. HUD declines to convey a financial benefit to low-income tenants following energy efficiency upgrades and excludes said benefit from HOME income determinations in this rule.

H. Clarify Supply Sources and Energy Efficiency Measures

One commenter recommended that HUD clarify that small-scale wind and solar facilities are supply sources, not energy efficient upgrades, because they do not reduce the energy demands of the building/unit. One commenter stated that it is exploring energy efficiency benchmarking opportunities and would welcome the opportunity to share its findings.

HUD Response: The Department appreciates the commenter's request that HUD make a distinction between energy efficient upgrades and supply sources. HUD is not proposing a definition of energy efficiency improvements. The Department understands that creating small-scale wind or adding solar power generation is increasing the supply of power to a project and not decreasing the energy demands of the project. The Department solicited comment on these forms of power supply because they may decrease or eliminate the amount an owner or tenant must pay utility providers for utilities to their project or unit respectively. The Department recognizes that one of the commenters is engaged in energy benchmarking and would be happy to share its findings. The Department is happy to discuss this matter with the participating jurisdiction after publication of this final rule but cannot consider these findings for this rulemaking at this time.

I. Other Comments Received—Affordability of Housing

One commenter believed HUD was requesting comment on whether requiring HOME-assisted units to meet a higher energy efficiency standard will negatively impact the affordability of the housing. This commenter strongly urged HUD to consider a broader definition of ''affordability,'' which it argues is incomplete in that it has historically been limited to the market-rate price of a home and upfront costs like downpayment requirements. Instead, this commenter said, housing affordability must also include the costs associated with staying in the home long-term, which can include heating and cooling. The commenter argued that energy costs disproportionately impact low-income homes and that costs related to energy-efficiency improvements are often mitigated in the first few years. The commenter ultimately suggested HUD examine a formulaic approach to determining affordability that includes downpayment costs, monthly mortgage payments, and monthly utility expenses and regard with skepticism comments that make hyperbolic claims about price increases caused by energy efficiency, green building, or resilience requirements.

HUD Response: The Department thanks the commenters for their insight into potential affordability issues that could arise from imposing energy efficiency requirements and the definition of affordability in the context of energy efficiency improvements. However, the suggestions are beyond the scope of the proposed HOME rule. The Department must use the rent limits and homeownership provisions under the Act when determining and preserving affordability of HOME-assisted housing.[39]

§ 92.205—Eligible Activities: General

A. Comments in Opposition to Limitations on Land Banking

A commenter stated that, in paragraph (a)(2) of § 92.205, the commenter opposes HUD explicitly tying the use of HOME funds for acquisition of vacant land to the definition of ''commitment,'' specifically as it relates to uses of the program to support land banking. The commenter stated that the use of HOME funds for land banking leads to the creation of affordable housing units and increases affordability but just on a slightly longer timeline than other uses. The commenter noted that in many places there are no other funding sources for land banking and enabling partnerships between units of local governments and nonprofit affordable housing developers to take advantage of opportunities to purchase at lower prices is a flexible, efficient use of very limited funding to ensure not only production pipelines but also affordability.

HUD Response: Land banking is statutorily prohibited under 42 U.S.C. 12742(a)(1):''Funds made available under this part may be used by participating jurisdictions to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing.'' The Act further explains that [f]or the purpose of this part, the term ''affordable housing'' includes permanent housing for disabled homeless persons, transitional housing, and single room occupancy housing. Purchase of property without a defined end-use that results in ''permanent housing for disabled homeless persons, transitional housing, and single room occupancy housing'' is not a permissible use of HOME funds under statute. HUD permits a participating jurisdiction to provide HOME assistance to an owner if the participating jurisdiction reasonably expects construction to begin within 12 months of the project set-up date in paragraph (2) *Commit to a specific local project* of the definition of *Commitment* in § 92.2 but cannot permit using HOME funds to acquire and indefinitely hold land until such time as enough funds are available to permit development. The participating jurisdiction must not use HOME funds for acquisition of these types of properties if this is the

[39] See 42 U.S.C. 12745, which defines the rent limits for HOME-assisted rental housing; maximum home sales price for HOME-assisted homeownership housing; and use of resale or recapture provisions in preserving affordability of HOME-assisted homeownership housing.

participating jurisdiction's or owner's intent.

B. Concerns About Clarifications to ''Demolition'' in § 92.205(a)(2) and One-for-One Replacement Requirements

Commenters expressed concerns that HUD's clarification regarding demolition could lead to overly strict interpretations requiring a one-to- one rebuild following demolition.

HUD Response: By statute, HOME participating jurisdictions are required to comply with the requirements contained in Section 104(d) of the Housing and Community Development Act (42 U.S.C. 5304(d)) (Section 104(d)) and must certify that they have in effect and follow a residential anti-displacement and relocation assistance plan (RARAP) developed in accordance with Section 104(d) as further provided in 24 CFR part 42.[40] If a participating jurisdiction provides HOME assistance for a project involving demolition, as in the commenters' example, Section 104(d) requires that all occupied or vacant occupiable lower-income dwelling units that are demolished be replaced with lower-income dwelling units on a one-for-one basis. Please see § 92.353(e) and 24 CFR 42.375, which remain unchanged in this rulemaking.

C. Concerns About How Strictly the Requirement That ''Demolition'' and ''Vacant Land'' Be Used for Affordable Housing in § 92.205(a)(2) Will Be Applied

Some commenters were also concerned that HUD's clarification regarding acquisition of vacant land could lead to overly strict interpretations that require affordable housing on each acquired and aggregated parcel. These commenters suggested adding language to § 92.205(a)(2) to permit the acquisition of vacant land or demolition of structures on parcels adjoining or contiguous to a project that will provide affordable housing, so long as those activities are in furtherance of strengthening property values and promoting public health and safety of future residents as part of a cohesive affordable housing development plan. Another commenter said that permitting acquisition of vacant land or demolition of structures on adjoining or contiguous parcels will enable more affordable housing. Another commenter noted that so long as these activities will further neighborhood stabilization, the nature of vacancy and demolition continues to align with the purpose of the HOME program.

[40] See 42 U.S.C. 12705(b)(16).

HUD Response: The revisions to the HOME regulations at § 92.205(a)(2) are not intended to disallow reasonable site assembly or demolition activities that are integral to the development of the affordable housing. The revisions are intended to disallow land banking or demolition activities that are not directly tied to the provision of affordable housing through a ''specific local project'' as defined in § 92.2. If acquisition of vacant land is integral to assembling a site for a specific local project, then the acquisition of the land is a permissible acquisition cost. Similarly, demolition is a permissible cost under the HOME program when the demolition is integral to the creation of an affordable housing project, such as when the demolition removes a structure that would have prevented the owner from developing the affordable housing project. While the Department was revising its regulations for clarity, these revisions do not represent a change in the statutory or regulatory requirements.

The Department also notes that the HOME program is subject to one-for-one replacement requirements. Please see earlier comment responses on the statutory requirement that HOME funds be used to construct affordable housing.

D. Comments About Requirement That ''Demolition'' and Acquisition of ''Vacant Land'' Must Be Used for a Specific Local Project Within 12 Months in § 92.205(a)(2)

One commenter stated that common delays caused by issues such as securing financing, public entitlement, site assembly, and other requirements make the proposed rule's commitment deadline of 12 months for the acquisition of vacant land or demolition work unreasonable, especially for nonprofit developers. These challenges led the commenter to recommend that HUD extend the 12-month requirement or establish separate deadlines for vacancy and demolition work.

HUD Response: HUD understands the commenter's concern but is not revising the 12-month requirement contained in paragraph (i) of the definition of *Commit to a specific local project* for the reasons stated in HUD's earlier comment response on this subject. Demolition and acquisition of vacant land are only eligible costs as part of an affordable housing project and are not standalone costs or activities under the Act. Therefore, the Department will not treat these costs different from other costs associated with site assembly, preparation, or development.

E. Rewording of Project Completion Requirements for Homeownership in § 92.205(e)

A commenter stated that they disagree with the proposed change in wording from ''[i]f 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 . . .'' to ''[i]f project completion, as defined in § 92.2, does not occur within 4 years of the date of commitment of funds for a specific local project, the project is considered to be terminated . . . .'' The commenter explained that a participating jurisdiction should not have to repay HOME funds for multi-address activities where some houses were completed and sold to eligible families since the units that were completed and sold in a timely fashion are HOME-assisted units. The commenter requested HUD provide additional guidance on multi-address activities.

HUD Response: HUD was clarifying that the phrase ''complete a project'' in this regulation means ''project completion'' as defined in § 92.2. This was not a change in existing policy and was a clarification of how HUD interprets existing policy. Regarding project completion for multi-address projects, the commenter is correct that in HUD's IDIS data system, a multi-address development is set up as one activity in IDIS and as such construction must be completed for all addresses before the activity can meet the definition of completed and the period of affordability starts. This system functionality is not new and has been established for the entire history of the HOME Program.

F. Support for the Four-Year Project Completion Deadline in § 92.205(e)

One commenter stated that a four-year deadline to complete the project from the commitment of HUD funds is reasonable.

HUD Response: HUD thanks the commenter for reviewing the proposed rule. HUD is not revising the four-year project completion deadline. The current regulation is consistent with the comment.

§ 92.206—Eligible Project Costs

A. Support for Clarification on Ground Lease Costs

One commenter supported the clarification that acquisition through a ground lease is an eligible HOME cost and sought clarification on whether the costs are limited to those eligible under 2 CFR 200.465.

HUD Response: Acquisition of affordable housing through a ground lease that is at least as long as the time periods stated in paragraph (1) of § 92.2 *Homeownership* is a permissible acquisition cost under § 92.206. HUD clarified this in the proposed rule by revising § 92.206(c) to explicitly state that ''(c) Acquisition costs. Costs of acquiring improved or unimproved real property and costs for a long-term ground lease, including costs of acquisition by homebuyers.'' The cost principles contained in 2 CFR part 200, subpart E are all applicable to HOME project costs, including eligible acquisition costs through a ground lease. To the extent that 2 CFR 200.465 applies to the ground lease, the participating jurisdiction must determine that the cost of the ground lease is reasonable, determine if there are less than arms-length transactions, and act accordingly.

B. Support for Revising Soft Costs in § 92.206(d)

Commenters stated that they support the proposal to allow property insurance during project development as an eligible HOME soft cost. Commenters stated that they support the proposal to permit the costs associated with conducting environmental assessments and reviews as costs eligible for reimbursement with HOME funds. One commenter explained that time and costs associated with environmental reviews of sites proposed for development often stall or restrict execution of affordable housing projects, and that HUD's proposal, while not a total solution, would advantage programs, especially those providing downpayment assistance.

A commenter suggested that oversight-related fees for environmental assessments should qualify for this reimbursement as well, as they can be substantial and cited one example of $96,000 for a 14-unit project. One commenter stated that they support the clarifications made at § 92.906(d)(1) regarding ensuring that developers can be reimbursed for environmental assessments or reviews on successfully awarded HOME projects.

HUD Response: HUD thanks the commenters for reviewing the proposed rule. The Department is accepting the comment regarding oversight fees for environmental reviews and environmental studies and revising the final rule text to include such fees as eligible for reimbursement.

C. Opposition to Requiring the Participating Jurisdiction Explicitly Approve of the Soft Costs in § 92.206(d)(1) in the Written Agreement

A commenter stated that they do not support the proposed requirement that the costs for conducting environmental assessments and reviews are only eligible for reimbursement with HOME funds when expressly permitted in the written agreement. The commenter stated that conducting environmental assessments and reviews are consistent requirements and therefore the reimbursement should be automatically approved.

HUD Response: The Department thanks the commenters for reviewing and is moving forward with the revisions to § 92.206(d)(1). Under 42 U.S.C. 12756(a) and § 92.504, participating jurisdictions must enter into written agreements that bind the owner to comply with HOME program requirements. A written agreement between a participating jurisdiction and an owner must include a description of the eligible uses of the project funds to comply with the regulation. The Department is declining to treat environmental assessments differently from other reimbursable expenses listed in§ 92.206(d)(1),[41] all of which must be explicitly mentioned in the written agreement to be eligible for reimbursement.

D. Clarification of Requirement to State Eligible Soft Costs in § 92.205(d)(1) in the Written Agreement

One commenter stated that participating jurisdictions and other participants do not understand that only the costs expressly listed in § 92.206(d)(1) may be reimbursed with HOME funds notwithstanding that they were incurred up to 24 months prior to the commitment of HOME funds. The commenter recommended that HUD address this issue with additional education or clearer regulatory language.

HUD Response: The Department thanks the commenters for reviewing and is moving forward with the revisions to § 92.206(d)(1) without change. The Department will consider providing implementation guidance on this regulatory change in the future.

E. Allow Additional Predevelopment or Holding Costs To Be Reimbursed if Specified in the Written Agreement

One commenter stated HUD should consider whether it is appropriate to permit predevelopment costs otherwise allowed under § 92.206(d)(2) to be reimbursed with HOME funds in the same manner as predevelopment costs otherwise allowed under § 92.206(d)(1). The commenter noted that it is common for developers to have incurred various predevelopment legal/accounting costs, filing fees for planning/zoning reviews, appraisals and other lender-required third-party reports, etc. prior to the commitment of HOME funds (and often as a predicate for meeting the conditions for commitment). The commenter believed that most of those costs would be ''anchored'' in § 92.206(d)(2) and that HUD should consider whether it is appropriate to allow predevelopment costs otherwise allowed by § 92.206(d)(2) to be reimbursed with HOME funds in the same manner as other pre-commitment predevelopment costs identified in § 92.206(d)(1).

One commenter requested that HUD delineate other holding and interim costs during development that the other parts of industry regularly characterize as soft costs with specific focus on property assessments and taxes, as well as utilities, groundskeeping, and security costs. The commenter stated that this clarification is necessary because these types of costs are not eligible for coverage once the project is ready for lease-up.

HUD Response: The Department agrees with the commenters and is expanding the project soft costs that may be incurred prior to a commitment to include costs to process and settle financing for the project, including private lender origination fees, credit reports, fees for title evidence, legal fees, private appraisal fees, and fees for independent cost estimates. These were all contained in paragraph (d)(2) but will now be deleted from paragraph (d)(2) and added to paragraph (d)(1). While the Department is moving these provisions to paragraph (d)(2), the Department determined that several provisions could not be moved because there is no reasonable expectation that they should occur prior to commitment. These provisions include obtaining building permits, which require HUD environmental review; fees for recordation and filing of legal documents, as recorded documents relating to an acquisition, rehabilitation,

[41] The other reimbursable expenses in 24 CFR 92.206(d) will now include: ''Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, work write-ups; for HUD environmental review or other environmental studies, assessments, or fees; and for certain costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, legal fees, accounting fees, filing fees for zoning or planning review and approval, private appraisal fees, fees for independent cost estimates, and other lender required third-party reporting fees.''

or new construction project should occur after commitment of HOME funds; and builders or developers fees, as those fees should not be earned and chargeable to the HOME grant for work performed prior to the environmental review and commitment of the HOME funds to the project. HUD declines to make reimbursement of holding costs incurred before the commitment of HOME funds eligible as the Department considers these operating costs not project-related soft cost associated with predevelopment.

F. Revise § 92.206(d)(6) To Allow for Additional Costs To Be Reimbursed

One commenter stated HUD should clarify when participating jurisdiction overhead and staff costs remain eligible for reimbursement even when incurred prior to commitment under § 92.206(d)(6) because the rule does not explicitly identify these as eligible costs.

HUD Response: Staff and overhead cost of the participating jurisdiction are eligible for reimbursement as an administrative and planning cost under § 92.207(b) or as a project-related cost under § 92.206(d)(6). However, participating jurisdiction staff and overhead costs for a project that does not proceed as a HOME-assisted project is only eligible to be reimbursed as an administrative cost under § 92.207(b). A participating jurisdiction may only reimburse itself for project-related soft costs under § 92.206(d)(6) after it enters into a written agreement committing funds to the project and funding the project in IDIS.

G. Revise Eligible Project Costs To Include Additional Costs

One commenter suggested expanding HOME's eligible costs so that developing and rehabilitating garage structures would be an eligible cost for the HOME program. The commenter stated that garages provide secure places to maintain personal property, like vehicles and mowers, and also support higher densities in urban neighborhoods through the creation of Accessory Dwelling Units (ADUs).

HUD Response: HUD thanks the commenter for reviewing the proposed rule. HOME funds can be used for the cost of attached garages, *i.e.,* garages that are part of the housing structure receiving HOME funds. Unfortunately, the Act does not authorize the use of the HOME funds for appurtenances. Consequently, costs related to construction of freestanding garages or community buildings are not eligible to be paid with HOME funds.

§ 92.207—Eligible Administrative and Planning Costs

A. Raise Administrative and Planning Cost Cap

One commenter stated that given the addition of new requirements, including BABA and VAWA, and the reduction in recent years of entitlement funding, the limit on only spending 10 percent on administration and planning costs is not sufficient to meet obligations in running compliant programs.

HUD Response: HUD understands the commenter's concerns about the potential increased costs of compliance and the limited amount of administrative and planning funds. Unfortunately, the 10 percent cap on each administrative and planning costs for each grant is statutory. *See* 42 U.S.C. 12742(c).

B. Reimbursement of Program Costs for Projects That Do Not Proceed

One commenter stated that HOME applicants often drop out of the process prior to closing, which means grantees are unable to recover the extensive staff time invested in considering or processing applications. The commenter recommended that HUD allow reimbursement of program costs if the grantee can demonstrate they acted in earnest to achieve the national objective. This could include demonstration of standard program deliverables, including inspection reports, work-write ups, bid packages and construction contract materials.

HUD Response: HOME regulations at § 92.207 currently permit payment of administrative costs, including staff and overhead costs for considering or processing applications, monitoring owners, inspections, and other administrative costs associated with program governance. However, for a cost to be an eligible project cost under § 92.206, it must be for a project that provides affordable housing in accordance with 24 CFR part 92.

C. Inability To Pass Along Costs to Program Beneficiaries Necessitates Additional Administrative Funds

A commenter noted that State participating jurisdictions often develop rules regarding eligible administrative and project costs forcing many small cities and counties to exit the program because costs cannot be reimbursed fully. The commenter believes that not allowing costs for work specifications, needed inspections, and title insurance to be charged to successful HOME beneficiaries unfairly limits compensation for program delivery in homebuyer and home rehabilitation programs.

The commenter stated that HUD should increase support for administrative and activity delivery costs because participating jurisdictions, State recipients, or local recipients require grantees to provide additional funding from general funds to cover cost overruns that stem from these categories. The commenter suggested an increase in allowable administrative costs to 12 percent if a State recipient contractor or subrecipient is utilized. The commenter suggested allowing project delivery cost reimbursement housing rehabilitation, homebuyer assistance, and ADU programs.

HUD Response: Program beneficiaries in HOME homeownership programs (*i.e.,* homebuyers and homeowners) may only pay costs in accordance with §§ 92.254, 92.251, and 92.214. Under § 92.504(a) participating jurisdictions are 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 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 HOME requirements in 24 CFR part 92, and must take all necessary steps to require compliance with the HOME requirements. The Department is not changing these requirements or removing discretion from participating jurisdictions to determine the terms of the HOME assistance. Many of the costs that the commenter mentioned are within the discretion of the participating jurisdiction to pay if they are included in the written agreement, this includes work-write-ups; environmental reviews, studies, or assessments; and title insurance fees.[42] The HOME rule at § 92.205(d)(6) requires that these costs only be charged as activity costs if the project is funded, and the individual becomes the owner or tenant of the HOME-assisted project. The Department believes this is a reasonable restriction of the costs because, by statute, project delivery costs may only be paid for completed projects that meet the requirements of 24 CFR part 92.[43] Finally, the Department understands that the commenter is requesting additional administrative and planning funds. The 10 percent cap on each FY's

[42] See 24 CFR 92.205(d)(1) and (2).

[43] See 42 U.S.C. 12742 and 42 U.S.C. 12749.

administrative and planning costs is statutory. *See* 42 U.S.C. 12742(c). There is no HUD-imposed cap on project delivery cost reimbursement for the costs required in § 92.206(d)(1). Reimbursement of those costs are at the discretion of the participating jurisdiction and must explicitly be included in the written agreement committing the funds to be eligible HOME project costs.

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

A. General Support

Commenters supported the proposed rule revisions to correct a drafting error that created an unintended barrier to using CHDO operating expense and capacity building funding to assist nonprofit organizations seeking CHDO designation to meet the demonstrated capacity requirements.

HUD Response: The Department thanks the reviewers for commenting, agrees with the commenters in support of the change, and is moving forward with the change.

B. Concern About Requirement That Operating Assistance Be Provided to an Organization That the Participating Jurisdiction Expects To Commit Assistance to for a Project Within 24-Months

One commenter recommended adding the requirement described in § 92.300(e) of the existing rule, that a participating jurisdiction may only provide operating expense assistance under § 92.208 to a CHDO if the participating jurisdiction expects to commit CHDO set-aside funds to the CHDO for a project within 24 months, to § 92.208. The commenter believed this to ensured that the limitation is not overlooked. A commenter asked that HUD clarify the consequences of providing operating funds to a CHDO that does not receive CHDO set-aside funding for a project within 24 months and recommended that HUD not require repayment of the operating assistance funds if the CHDO has made good faith efforts to qualify for project funding. Another commenter recommended providing examples of good faith efforts in sub-regulatory guidance and two commenters provided potential examples of good faith efforts.

One commenter stated that CHDOs receiving capacity building funds should receive more time because developing affordable housing for low-income persons is complex and difficult. Other commenters recommended extending the time period for organizations receiving operating expense funds to secure project-related set aside funds from 24 months to 36 months. Some commenters noted that a 36-month timeline would align CHDO TA with other Federal programs, such as the CDFI Fund, which requires that organizations receiving TA awards become certified as a CDFI within three years of receiving their TA award. A commenter also suggested that the longer timeframe would align with the needs of low-income communities, recognizing the unique challenges and longer timelines that are often faced in those areas.

HUD Response: Based on the comments received, the Department recognizes that there is some confusion among commenters about the use of operating assistance funding for capacity building activities, and the separate category of capacity building funding for development of CHDOs by new participating jurisdictions during their first 24 months of participation of the HOME program. To eliminate this confusion, HUD is revising the language in the proposed rule's paragraph § 92.208(c) to strike the term ''capacity building.''

In response to the query about the consequences of a CHDO that received operating assistance not receiving a commitment of project funding, in most cases repayment is not required but the participating jurisdiction must cease providing operating assistance to the organization when it determines that it will not be committing funds to the organization for a HOME project.

C. Expand CHDOs That May Receive Operating Funds Under § 92.208(a)

One commenter stated that CHDOs experiencing employee turnover should have access to CHDO operating funds under § 92.208(a).

HUD Response: The Department thanks the commenter for reviewing the proposed rule and notes that the current regulations and this final rule permit participating jurisdictions to provide CHDO operating assistance funds to CHDOs experiencing employee turnover.

D. Expand Eligibility for Capacity-Building Funds in § 92.208(b)

A commenter supported the proposed changes but urged HUD to remove the language at § 92.300(b) that restricts capacity building funding only to participating jurisdictions within the first 24 months of participation in the HOME program as there are many participating jurisdictions that have not identified a sufficient number of capable CHDOs and struggle to use their CHDO set-aside each year.

HUD Response: The restriction that a participating jurisdiction may only engage in capacity building activities for CHDOs in the first 24 months of a participating jurisdiction's participating in the program is statutory. 42 U.S.C. 12771(a) states in relevant part that ''[i]f during the first 24 months of its participation under this subchapter, a participating jurisdiction is unable to identify a sufficient number of capable community housing development organizations, then up to 20 percent of the funds allocated to that jurisdiction under this section, but not to exceed $150,000, may be made available to carry out activities that develop the capacity of community housing development organizations in that jurisdiction . . . .'' If a participating jurisdiction has been participating in the HOME program for more than 24 months, it may still provide CHDOs with CHDO operating funds in accordance with § 92.208(a) and (c).

E. General Requests To Enhance CHDO Capacity

Commenters urged HUD to provide technical assistance to help CHDOs build and maintain capacity, particularly in rural areas. A commenter that is an organization that serves persons with disabilities and has previously sought CHDO designation requested that HUD provide technical assistance to existing community-serving organizations that wish to or that are becoming CHDOs. One commenter urged HUD to use capacity building money in non-entitlement communities because it would provide needed funding to nonprofit organizations in those communities to address their affordable housing needs.

HUD Response: HUD acknowledges the importance of providing technical assistance to rural CHDOs to help them succeed in competitive funding cycles administered by their participating jurisdictions. The Department recognizes that rural CHDOs face unique challenges that can be addressed through targeted support. However, HUD can only provide direct program assistance to entities that receive funds directly from HUD. Partners, subrecipients, or project sponsors that receive HUD funds through a participating jurisdiction must coordinate with the participating jurisdiction to submit a request for in-depth program assistance on their behalf. HUD will continue to develop training and tools aimed at providing broad assistance that is relevant to rural CHDOs.

§ 92.209—Tenant-Based Rental Assistance

A. Request for Clarification on Rental Assistance Contract

One commenter asked HUD to clarify § 92.209 by stating that the rental assistance contract is the one under which HOME funds are committed to the activity, not the agreement between the tenant, landlord, and participating jurisdiction/State recipient.

HUD Response: The Department thanks the commenters for reviewing the proposed rule. The definition of ''Commit to specific local project'' in paragraph (2) of the definition of ''Commitment'' in 24 CFR 92.2 states that the committing document for HOME tenant-based rental assistance is the rental assistance contract. When a participating jurisdiction is administering its own tenant-based rental assistance program, this will be the document committing HOME tenant-based rental assistance. If a participating jurisdiction is using a Subrecipient (or State recipient) to provide tenant-based rental assistance, then there will be at least two commitments, one will be committing funds to administer a tenant-based rental assistance program that is between the participating jurisdiction and its Subrecipient (or State recipient); the other will be committing funds through the rental assistance contract between the Subrecipient (or State recipient) and the tenant and owner receiving the tenant-based rental assistance.

If a participating jurisdiction is using a contractor to provide tenant-based rental assistance, then there will also be at least two commitments, one committing the funds to the contractor to administer the participating jurisdiction's tenant-based rental assistance program; and the other being the rental assistance contract between the Contractor (as agent of the participating jurisdiction) and the owner and tenant assisted by the tenant-based rental assistance.

B. Use of Tenant-Based Rental Assistance in Lease Purchases

One commenter expressed support for HUD's outline in the proposed rule of the parameters within which a tenant may become a homeowner through the lease-purchase process and said that easing lease-purchase in the HOME program would provide a much-needed path toward homeownership for low- to moderate-income homebuyers. The commenter reasoned that allowing a homebuyer-tenant to contribute their TBRA toward a down payment will facilitate rent-to-own processes for HOME-assisted households. According to the commenter, if HUD's proposal were finalized, both participating jurisdictions and potential homebuyers could determine that all or some of the tenant's contribution to rent could be set aside for closing costs or a down payment and solidify terms through the lease-purchase agreement.

HUD Response: The commenter supports changes made to the lease-purchase program but requests the ability for TBRA tenants participating in a lease-purchase program to have a portion of their tenant-based rental assistance, and not just the tenant contribution towards rent, be used to accumulate a downpayment for the unit. The current regulation at § 92.209(c)(2)(iv) only allows a portion of the tenant's monthly contribution towards rent to be set aside for this purpose. The Department did not propose a change to this provision and does not believe it can do so because the result would be that the tenant-based rental assistance provided would be used as both tenant-based rental assistance and homeownership assistance. This dual use of HOME funds would violate the provisions of 42 U.S.C. 12742(a)(3) and (b), which do not contemplate using tenant-based rental assistance for such purpose. Instead, the Department only clarified that when all or a portion of the homebuyer-tenant's monthly contribution toward rent is set aside for closing costs or a downpayment, it must be set aside in accordance with the lease-purchase agreement.

C. Income Reexaminations and § 92.209(c)(1)

Several commenters stated that they support reducing the frequency of income determinations by requiring income redetermination only at TBRA contract renewal instead of an annual determination. Commenters stated that reducing the frequency of income determinations was prudent and would lessen the impact on tenants and reduce administrative burden on participating jurisdictions. One commenter noted that longer recertification periods would allow families to build wealth without immediately having to pay higher rent and utility payments. The commenter was grateful HUD was building off its Bridging the Wealth Gap plan but encouraged the Department to implement longer recertification periods such as triennial income recertifications as proposed in the Bridging the Wealth Gap plan.

One commenter noted that, as written, the rule may still require income determinations annually because leases expire annually. The commenter suggested clarifying that income reexamination is not required for amendments to the rental assistance contract during the original term of the contract as project costs may change during the term.

HUD Response: The Department thanks the commenters for reviewing the proposed rule and is moving forward with the proposed change. In response to the commenters, HUD is adding language to § 92.209(e) that clarifies when an income reexamination is required. While the Department is not moving to triennial income reexamination for tenant-based rental assistance, HUD is revising § 92.209(e) to add a new paragraph (3) that defines what events constitute an amendment or renewal of the rental assistance contract. Specifically, a rental assistance contract may only be amended for the following reasons and within its term if all parties consent, for the following reasons: to extend the term of the rental assistance contract up to 24 months from the original date of execution; when a tenant changes units within the same building or development provided the parties to the lease, the family size, and number of bedrooms remain the same; or the lease term or amount charged under the lease has been changed. Subject to the availability of HOME funds, a rental assistance contract may be renewed after the expiration of its initial term.

The Department is also adding language in a new paragraph (4) that explains when initial and subsequent income determinations are required. Income determinations will be required before a participating jurisdiction enters into an initial or new rental assistance contract with the family, and at contract renewal. Participating jurisdictions will not be required to reexamine a family's income if the rental assistance contract is amended. The Department believes this will address the commenters' concerns by establishing a clear framework for reducing income reexaminations in tenant-based rental assistance.

D. Increase Alignment With Section 8 on Income Reexaminations

Commenters stated that HOME TBRA should require income eligibility screening only at new admission and not require it afterwards, *i.e.,* not during the annual certification process, because Section 8 requires income eligibility screening only upon new admission.

Commenters also suggested that HOME TBRA do not have a lease

renewal requirement similar to Section 8, where lease renewal is implied.

HUD Response: The Department thanks the commenter for reviewing the proposed rule and acknowledges the commenter's recommendation to align income eligibility requirements across the HOME tenant-based rental assistance programs and Section 8 Housing Choice Voucher programs. Due to HOME statutory limitations, HUD declines to adopt this recommendation.

The Act requires income targeting for HOME tenant-based rental assistance to be based on income at the time of occupancy or at the time funds are invested, whichever is later.[44] The Act also limits the term of rental assistance contracts to 24 months.[45] The combined effect of the two provisions is that the participating jurisdiction must redetermine income each time it invests its funds into a new rental assistance contract to determine that the family meets the income eligibility requirements and to determine that the funds invested in the rental assistance contract still meet the statutory income targeting requirements. Rental assistance contracts may be renewed if a participating jurisdiction has funds available and the family still meets the income requirements after their income is redetermined.

E. Remove Requirement That a Rental Assistance Contract Begin on the First Day of the Lease

One commenter asked HUD to remove the requirement in § 92.209(e) that the rental assistance contract begin on the first day of the term of the lease because it imposes a hardship on households that receive TBRA in the rental housing they currently occupy, but where they were unassisted at the time of lease execution. The commenter explained that HUD allows for the lease term to expire during the term of assistance, so long as no HOME assistance is provided when an active lease is not in place and that an existing lease may be amended to include the required tenant protections after the lease term begins, so the lease effective date should be immaterial to the HOME assistance start date, so long as all other requirements are achieved.

HUD Response: HUD agrees with the commenter that requiring the rental assistance contract to begin on the first day of the lease is problematic for families that are already under an existing lease. The Department is revising § 92.209(e) to state that the term of the rental assistance contract must begin on the first day of the term of the lease or the beginning of the first month in which tenant-based rental assistance is provided in accordance with the rental assistance contract. Permitting the rental assistance contract to begin on the first month in which the tenant-based rental assistance is provided will allow participating jurisdictions to assist families already residing in a unit, provided that the lease conforms to the tenant-based rental assistance requirements in § 92.209 and includes the HOME tenant-based rental assistance tenancy addendum required in § 92.253.

F. Support for Tenant Hardship Provisions in § 92.209(h)

Several commenters stated that they support the proposed change to the TBRA requirements to allow participating jurisdictions to establish hardship policies that permit an exception to the minimum rent requirement for families with little or no income.

HUD Response: HUD thanks the commenters for their support and is moving forward with these changes.

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

A. Comments in Support of a Tenancy Addendum for Tenant-Based Rental Assistance Recipients

Several commenters supported providing a tenancy addendum for recipients of HOME tenant-based rental assistance. One commenter stated the proposed tenant protections are a positive step towards protecting low-income renters in subsidized units and that they hoped to see the protections expanded to other HUD programs. Another commenter supported the expanded tenant protections and stated that many of the protections already exist in State law and local ordinances. Another commenter said that even though the commenter is unaware of any jurisdictions that use HOME funds to provide TBRA, there is no reason why TBRA should operate differently than the Housing Choice Voucher program, which provides tenant protections.

One commenter stated that a universal HOME tenancy addendum would ensure compliance with Violence Against Women Act (VAWA) requirements and other Federal tenant rights and reduce the burden on participating jurisdictions to develop their own addenda or review individual leases. The commenter cautioned HUD must ensure that the universal HOME tenancy addendum does not conflict with any lease provisions or addenda required by other Federal programs, and should avoid conflict with applicable State or local laws to the maximum extent possible. One commenter urged HUD to extend the full range of tenant protections to those receiving HOME TBRA and noted its appreciation for extending these protections to persons with disabilities. The commenter appreciated HUD seeking to minimize owner retaliation for reasonable accommodation requests but notes that HUD enforcement of the regulation is required in order to prevent such retaliation.

HUD Response: HUD thanks the commenters for their views and agrees that tenancy addenda are an effective and administratively streamlined way to ensure that leases are free from prohibited lease terms and provide tenants with adequate protections and rights. HUD is adopting tenancy addenda for rental housing, tenant-based rental assistance, and families receiving only security deposit assistance. However, in response to public comment, HUD is making significant changes to the addenda requirements in this final rule so that the requirements in the addenda reflect the extent of HOME involvement in the project.

Specifically, HUD is making even greater distinctions between the addenda for rental housing in which the owner has accepted HOME funding for the project and tenant-based rental assistance, as well as between ongoing tenant-based rental assistance and only security deposit assistance. This final rule also better aligns HOME tenancy provisions with those applicable to Housing Choice Vouchers and project-based vouchers to maintain consistency across the programs.

HUD declines to include VAWA protections applicable to HOME projects in the HOME-specific tenancy addenda established by this rule because the Department is undertaking separate rulemaking to implement the expanded VAWA protections across HUD programs. The HOME-specific protections in these addenda must be

[44] 42 U.S.C. 12744.

[45] 42 U.S.C. 12742(a)(3)(C).

adjudicated through State and local judicial processes. Participating jurisdictions are also required to monitor and enforce HOME requirements. HUD, in its HOME program monitoring and oversight role, may identify when a participating jurisdiction is not enforcing the HOME requirements and may require that the participating jurisdiction enforce tenant protections, as necessary. The Department notes that individuals may report housing discrimination to HUD's Office of Fair Housing and Equal Opportunity (FHEO), including complaints involving violations of VAWA, the Fair Housing Act, Section 504 of the Rehabilitation Act, and Title VI of the Civil Rights Act. See *https://www.hud.gov/fairhousing/fileacomplaint.* However, the Department is declining to establish grievance procedures on either the Departmental level or for participating jurisdictions. The HOME program is a block grant affordable housing program, and it is the responsibility of each participating jurisdiction to determine the best systems, policies, and procedures for monitoring and enforcing compliance in accordance with §§ 92.253 and 92.504.

B. Cautious Support of a Tenancy Addendum for Tenant-Based Rental Assistance Recipients

One commenter supported HUD's proposal to expand tenant protections for households receiving TBRA assistance in theory but was concerned that doing so may provide a disincentive for owners of rental housing to participate in the program. While the commenter acknowledged the benefits of extending tenant protections, especially in jurisdictions without many protections for tenants, an expansion of requirements would likely deter available units from being accessed. The commenter recommended providing an option for participating jurisdictions to exempt the new requirements for households that receive TBRA security deposit assistance only, as well as an option for participating jurisdictions to exempt 1–4 family and attached rental dwellings if it is a deterrent for owners in their jurisdiction.

HUD Response: HUD shares the commenter's concern that HOME lease addenda not act as a disincentive to private landlords accepting participants in HOME TBRA programs, including security deposit assistance only programs. HUD believes that establishing different addenda for HOME rental projects, HOME TBRA, and HOME security deposit assistance that provide different levels of tenant protections based on the form of HOME assistance being provided will help address landlord reluctance to accept the tenant protections in the addenda. The Department believes that HOME TBRA recipients should have protections similar to tenants of HOME-assisted rental units. Consequently, the TBRA addendum is substantially similar to the Rental Housing addendum except that it does not include the requirements: (1) that an owner relocate a tenant if a life-threatening deficiency cannot be addressed on the same day it is identified; and (2) that allows tenants to organize, create tenant associations, convene meetings, distribute literature, and post information. Because of the limited nature of security deposit assistance, the new security deposit assistance tenancy addendum includes the prohibited lease terms in the current regulations. The Department chose this set of protections because the vast majority of the protections have been the minimum standard for tenant protections in the HOME program since 1991, when the HOME program's first rule was issued.[46]

C. Opposition to a Tenancy Addendum for Tenant-Based Rental Assistance Recipients

Several commenters stated that requiring a tenancy addendum on TBRA leases would likely limit the housing supply because fewer landlords would accept tenants with HOME TBRA, especially in places where the expanded protections exceed existing law. One of the commenters recommended that HUD specially reach out to all participating jurisdictions to obtain input on the impact of these proposed changes.

One commenter stated that the additional requirements limit the units that are available to tenants for landlords that refuse the additional protections as part of the lease. The commenter explained that where demand exceeds supply the additional requirements limit the units available for rent. Additionally, the commenter said that State and local laws already provide tenant protections and the HOME program should not limit tenants' access to existing available units for rent by adding duplicative regulations and requirements. Another commenter also said the proposed changes would risk decreasing program use and create difficulties finding available units. This commenter said LIHTC units have been lost due to qualified contract provisions that have caused a housing shortage for low-income communities.

One commenter stated that the proposed tenant protection provisions would undermine the operational and financial well-being of participating rental properties and would interfere with existing State and local tenant protection laws without any evidence supporting the effectiveness of the proposed provisions. Another commenter stated that the proposed tenant protection provisions would make it more difficult for local courts to interpret lease agreements.

HUD Response: HUD appreciates the feedback and has carefully considered the commenters' concerns that a TBRA addendum might create a disincentive for private landlords to rent units to HOME TBRA recipients. The Department understands that there may be owners that refuse tenants with HOME tenant-based rental assistance because of the terms of the HOME tenant-based rental assistance tenancy addendum; nonetheless, the Department has experience with applying tenancy addenda in other tenant-based rental assistance programs, most notably the Housing Choice Voucher program, and believes that it must balance the disincentive to some owners with the overall needs of the tenants being assisted with Federal funds. TBRA recipients are entitled to tenant protections and the Department has determined that these tenant protections should be similar to those being provided to tenants of HOME-assisted rental housing units, as described in the preamble to this final rule. The Department provided notice to the public of these protections in the proposed rule and specifically solicited comment on applying the protections to tenant-based rental assistance, just as the commenter is saying that the Department should have done. After examining the comments received, HUD is adopting the requirement for a HOME tenant-based rental assistance tenancy addendum in this final rule.

Tenant protections under State laws vary widely and HUD does not agree with commenters that it should defer to individual State laws that may not always provide sufficient tenant protections for families receiving HOME tenant-based rental assistance. Many State laws do not afford the minimum set of tenant protections provided under the current HOME regulations. After careful consideration of the comments received as part of this rulemaking, the Department has determined that it should not rely upon State laws and should promulgate the tenant protections provided in § 92.253(c) as a

[46] See 56 FR 65354.

minimum standard of tenant protections. The Department does not believe that requiring a minimum level of tenant protections will undermine the operational and financial well-being of participating rental properties, as owners are free to assess the risks and choose whether they are comfortable with executing a tenancy addendum that includes the tenant protections in § 92.253(c). The tenancy addendum will not interfere with existing State and local tenant protection laws and tenants may exercise any protections that are more stringent than HUD requirements. The Department also believes that the preamble discussion of both the proposed and this final rule, the plain language of § 92.253(c), and the HOME tenant-based rental assistance tenancy addendum provide ample materials for courts to interpret tenant leases. The Department also notes that many participating jurisdictions already include a tenancy addendum addressing prohibited lease terms contained in the current HOME regulations, and that such practice has made it easier, not harder, for tenants to assert their rights under their lease.

D. Opposition to Tenancy Addendum for Security Deposit Assistance

One commenter stated HUD should not require a tenancy addendum on security deposit-only HOME clients, as this scenario typically includes TBRA or Housing Choice Voucher or VASH vouchers, which already occur and have an entity monitoring the landlord-tenant relationship for compliance.

HUD Response: HUD agrees with the commenter that it is not appropriate to use the HOME tenant-based rental assistance tenancy addendum for tenants receiving security deposit only assistance. Unlike tenancy in a HOME-assisted rental unit or receipt of HOME TBRA, security deposit only assistance is one-time assistance. This is especially true when it is coupled with another form of assistance such as a Housing Choice Voucher. However, security deposit only assistance is subject to the prohibited lease terms established in the HOME statute and already promulgated in the current regulations. Consequently, HUD is adopting an addendum solely for use in conjunction with security deposit only assistance that contains only those currently prohibited lease terms, as an addendum is an effective mechanism for ensuring compliance.

Specific solicitation of comment #10: Currently, a rental assistance contract can be between a participating jurisdiction and either an owner or a tenant. The Department is also aware of many participating jurisdictions that have tri-party rental assistance contracts where the owner, the tenant, and the participating jurisdiction all sign the rental assistance contract. The Department is seeking feedback on whether a rental assistance contract should always be executed by an owner so that the participating jurisdiction can require that the HOME-assisted tenant's lease contain the HOME tenancy addendum, and that the owner follow all applicable TBRA requirements.

To promote robust enforcement, a commenter suggested that HUD should consider elaborating on the participating jurisdiction's obligations upon receiving the lease or revision via final rule or accompanying guidance. The commenter explained that tenants would benefit if the participating jurisdiction was obligated to notify them of proposed lease revisions and if tenants had the right to submit comments regarding those revisions. The commenter also suggested that HUD could also play a role in compliance monitoring if HUD performed audits of the leases and revisions that are submitted. The commenter further suggested that HUD should also require that leases disclose any other Federal housing subsidies that are attached to the unit and the property, as well as a statement that if a property or unit has multiple subsidies, the most restrictive tenant protections apply.

Several commenters stated that the rental assistance contract should be executed by an owner to ensure that the owner is compliant with all applicable HOME TBRA requirements, particularly given that the regulatory requirements apply to the owner of the project. One commenter noted that agreements with project owners are common practice. Another commenter noted that it already requires the owner to be party to the rental assistance contract and agrees that it is necessary to ensure tenant protections are enforced. Another commenter stated that they have often experienced instances where tenants sign the agreement but as an owner the commenter did not see the agreement until after execution, which doesn't allow the owner to know up front what is expected of them.

One commenter stated that a tri-party rental assistance contract ensures that the owner and tenant have a clear understanding of, and agree to, the program requirements, however the commenter noted that a tri-party contract may be a disincentive to small-scale rental owners' participation in the program. Another commenter noted that while it believes the rental assistance contract should be executed by the owner, it does support triparty contracts as an option.

Two commenters stated that HUD should permit participating jurisdictions to choose whether owners should be included on the rental assistance contract, as is currently permitted in the regulations, although one commenter noted that requiring owners to be on the contract may result in owners electing not to participate in the program. The commenter also encouraged HUD to survey participating jurisdictions to see how many currently include owners on the contract and whether they support requiring the HOME tenancy addendum.

One commenter stated that the tenant protections should be required to be in the tenant's lease in whatever method is appropriate. Another commenter said that even though the commenter is unaware of any jurisdictions that use HOME funds to provide TBRA, there is no reason why TBRA should operate differently than the Housing Choice Voucher program, which requires a tenancy addendum.

One commenter stated that the proposed changes would risk adding an unnecessary layer of oversight and would create a link between participating jurisdictions and owners that would risk property damage concerns and tri-party contract disputes. The commenter also said that since States or subrecipients could also have assistance contracts and/or rental assistance contracts used as emergency solutions, having a requirement to issue contracts with owner signatures would add additional administrative burden. The commenter suggested that HUD leave the regulation in its current form.

One commenter stated that participating jurisdictions can always require that the HOME-assisted tenant's lease contain the HOME tenancy addendum and that the owner follow all applicable TBRA requirements either by including that requirement in a participating jurisdiction/owner contract or in a tri-party contract. The commenter is not aware of any data indicating the proposed change would benefit residents and may, in fact, deter owners from participating in HOME TBRA programs.

HUD Response: The Department appreciates the feedback provided by the commenters and has decided to require the participating jurisdiction to enter a rental assistance contract with the owner and the family. The Department is revising § 92.209(e) to add paragraph (1) to delineate the required parties to a rental assistance contract. This may take the form of one agreement with the owner and a

separate agreement with the family, or one single tri-party agreement with the participating jurisdiction, the owner, and the family. The Department disagrees that requiring an owner be a party to the rental assistance contract would create an administrative burden, but instead believes the participating jurisdiction must have a means of enforcing the tenant-based rental assistance requirements in § 92.209 with both the project owner and the assisted family to ensure compliance with all applicable requirements in § 92.209, including but not limited to tenant protections, income determinations, and unit inspections.

In contrast to the comment that requiring a rental assistance contract to be executed by the owner will lead to more contractual disputes, the Department believes the final rule provides clearer rights for tenants in contract disputes, especially those related to property damage. By eliminating normal wear and tear as grounds for an adverse action, and by tying charges for property damage to the tenant's intentional or negligent acts, the HOME tenant-based rental assistance tenancy addendum provides significantly greater clarity on permissible charges. The Department agrees with the commenter who stated that the rental assistance contract is the best vehicle that the participating jurisdiction has to enforce the tenant protections contained in the HOME tenant-based rental assistance tenancy addendum and also believes that this will provide greater clarity in the event of contractual disputes.

§ 92.210—Troubled HOME-Assisted Rental Housing Projects

A. General Support

Some commenters supported the additional flexibility for troubled HOME-assisted rental projects. A commenter stated that they support HUD's efforts to improve the effectiveness, specificity, and clarity of participating jurisdiction's authority to preserve affordable housing prior to foreclosure or similar events. Two commenters supported the changes in § 92.210(a) and (c), including allowing HUD to consider physical condition and financial viability when preserving HOME-assisted units at risk of failure or foreclosure. One commenter stated that this change would be a critical update providing clarity on this issue, as past interpretations have too narrowly focused on the financial viability of the property. Commenters stated that they support the proposed change to allow units to float-up from 50 percent of area median income to 80 percent of area median income if a project lacks sufficient income to cover operating expenses.

HUD Response: HUD appreciates the commenter's feedback on these troubled HOME-assisted rental projects provisions and has revised this final rule based on the comments. Specifically, HUD is broadening the grounds on which a project may be considered financially troubled under § 92.210; under § 92.210(a)(1) of this final rule, a project is no longer financially viable if any one of three conditions exist, including if the project's operating costs exceed its operating revenue, considering project reserves; if the owner is unable to pay for necessary capital repair costs or ongoing expenses for the project; or if the project reserves are insufficient to be able to operate the project. The Department believes that broadening these grounds will better capture the type of projects that may be assisted with additional HOME funds. By contrast, the Department is moving forward with its proposed definition of physical viability, redesignated as § 92.210(a)(2), without change.

B. Request for Clarification on ''Significant'' Financial Issues

Commenters supported the flexibility in assisting troubled HOME-assisted rental housing projects and recommended HUD provide more clarity on what constitutes ''significant'' where the rule states ''a HOME-assisted rental project is no longer financially viable if its operating costs significantly exceed its operating revenue.'' A commenter asked HUD to evaluate ''a project's current or future ability to maintain affordability'' and asked that HUD detail the expected process and timeline when making a request to HUD regarding troubled HOME-assisted rental housing. The commenter also stated that HUD should allow HOME funds to be used to restructure debt for troubled HOME-assisted projects.

HUD Response: HUD agrees with commenters that the term ''significantly'' in § 92.210 is vague and undefined. Consequently, in this final rule HUD is deleting the word so that the flexibilities of § 92.210 will be available to projects in which operating costs exceed operating revenue. HUD notes that in addition to the provisions set forth in § 92.210, HUD has the authority to waive certain regulations and requirements under 24 CFR 5.110 if HUD determines that good cause exists. The Department understands that commenters may not know how to begin the process of determining if a project is troubled under § 92.210 or requesting a waiver under 24 CFR 5.110. To begin the process, the participating jurisdiction requests technical assistance from HUD to conduct a financial workout for a troubled project. Then, the participating jurisdiction and Department engages in a comprehensive assessment of the project's physical and financial sustainability, which includes discussions with other funders, if appropriate, and identification of all viable methods for the participating jurisdiction to ensure the project will comply with all applicable regulatory requirements through the period of affordability. The process then culminates in either a memorandum of understanding or a request for a waiver of HOME project requirements. In most instances, both methods will lead to changes in the number or mix of HOME-assisted units, investment of additional HOME funds, refinancing of debt, recapitalization of operating reserves, or rent adjustments.

C. Support for Considering Physical Condition in Troubled HOME Projects

A commenter supported the flexibility to consider financial viability or the physical condition of housing when preserving HOME-assisted units at risk of failure or foreclosure. The commenter noted the importance of recognizing that physical changes can significantly impact a project's preservation, including deferred maintenance due to unanticipated financial limitations or unforeseen capital needs. The commenter stated that this change would improve collaboration between participating jurisdictions and property owners to identify troubled properties and preserve them.

HUD Response: HUD appreciates the commenter's support for the flexibility to consider both financial viability and the physical condition of housing when preserving HOME-assisted rental units at risk of failure or foreclosure. HUD agrees that acknowledging the impact of physical changes, often driven by unexpected financial challenges or unforeseen capital needs, is crucial to preserving these projects.

HUD agrees that this flexibility will enhance collaboration between participating jurisdictions and property owners, enabling the early identification of troubled properties and improving preservation efforts. HUD thanks the commenters and concurs that strong partnerships with participating jurisdictions are vital in reducing the number of troubled projects in the HOME rental portfolio. While projects do not deteriorate overnight, early identification, thorough analysis, and

proactive management are essential for ensuring the long-term sustainability of HOME-assisted rental projects.

D. Participating Jurisdictions Should Preserve as Many Units as Possible

One commenter understood that unforeseen events can affect projects but encouraged HUD to allow participating jurisdictions to request additional HOME funds to preserve as many units as possible or reduce the number of HOME-assisted units to ensure the safety and health of families. The commenter was concerned that ''deferred maintenance'' or ''unforeseen capital needs'' can be considered as factors that impact the long-term affordability or physical viability of projects and recommended that in these cases, 92.210(c) not apply and that HUD do as much as it can to preserve the units, including enforcing inspections regularly and providing additional resources to participating jurisdictions.

HUD Response: HUD agrees that addressing deferred maintenance and unforeseen capital needs is critical to preserving HOME-assisted rental housing for families. However, the regulatory framework, including § 92.210, establishes clear requirements for when and how units may be assisted with additional HOME funds. While HUD strives to preserve as many units as possible, funding constraints limit HUD's ability to provide additional HOME resources for every at-risk project. HUD encourages participating jurisdictions to leverage other Federal, State, and local funding sources alongside HOME to ensure comprehensive preservation strategies.

HUD agrees that regular inspections are essential for identifying potential issues early and will continue to emphasize their importance through monitoring and technical assistance to prevent deferred maintenance and protect long-term affordability. HUD remains committed to working with participating jurisdictions and property owners to maintain the viability of HOME-assisted projects while ensuring the safety and health of residents.

E. Streamlining the Troubled Housing Project Process

One commenter supported process streamlining of troubled HOME-assisted rental projects.

HUD Response: HUD appreciates the comment, and acknowledges that workouts of troubled projects can be difficult and time-consuming due to the complexity of the issues and the number of stakeholders that may be involved. In addition to the changes made in this final rule to the financial viability provisions, which the Department believes may aid in streamlining the approval process under § 92.210, HUD plans to further outline the process for addressing troubled HOME-assisted rental projects in guidance.

§ 92.212—Pre-Award Costs

Two commenters supported the proposed change authorizing pre-award costs instead of requiring HUD to issue a waiver in each fiscal year in which Congressional appropriations are not timely.

HUD Response: HUD thanks the commenters for reviewing and is moving forward with this change.

§ 92.214—Prohibited Activities and Fees

A. Revise § 92.214(a) To Allow for Faircloth-to-RAD Transactions

A commenter opposed the prohibition against providing HOME funds to support rental units that will receive subsidies through the Faircloth-to-RAD program. The commenter stated that Faircloth-to-RAD units are considered assisted under section 9 of the 1937 Act which, though HOME cannot fund, the ultimate intent for Faircloth-to-RAD units is for such assistance to be provided through section 8 of the 1937 Act, and as HOME-assisted rental units may also be assisted under section 8.

HUD Response: The commenter is correct. Until the public housing units are converted to Section 8 units through the Rental Assistance Demonstration, they are public housing units under the U.S. Housing Act.

42 U.S.C. 12745(d)(4) & (5) prohibits HOME funds from being used to provide assistance authorized under section 9 of the U.S. Housing Act (42 U.S.C. 1437g) or to carry out capital and management activities under the Capital Fund. The HOME rule at § 92.213 states that HOME-assisted housing units may not receive Operating Fund or Capital Fund assistance under section 9 of the 1937 Act (42 U.S.C. 1437g) during the HOME period of affordability. Because the public housing units in a Faircloth-to-RAD transaction are being constructed as public housing units under section 9 of the U.S. Housing Act (42 U.S.C. 1437g), and because the units must receive Public Housing Operating and Capital Funds in order to convert the assistance into a Housing Assistance Payments Contract when the units are converted, HOME assistance cannot be provided to develop the units. After conversion to Section 8 project-based rental assistance or project-based vouchers, HOME funds can be used to assist the development if there are any remaining expenses. Pursuant to § 92.213(c), HOME funds can also be used for non-public housing units if any are being constructed on the same site as the Faircloth-to-RAD units.

B. Revise § 92.214(b) To Clarify the Role of Participating Jurisdictions in Approving Fees

One commenter suggested HUD amend § 92.214(b)(4) to state ''With the permission of the participating jurisdiction, rental project owners may charge. . .'' The commenter stated this language clarifies a participating jurisdiction's responsibilities with respect to permissible fees.

HUD Response: HUD thanks the commenter for reviewing. HUD will not be moving forward with this change. The Department did not propose to limit owners from charging reasonable application fees, parking fees (where customary), or fees for services such as transportation (when such services are voluntary and the fees are charged for the service provided) and these are already fees that owners are permitted to charge tenants of HOME projects under the current regulations. The Department also does not see the utility in requiring that participating jurisdictions regulate the permissible fees and is only requiring that participating jurisdictions prohibit the fees and charges listed in § 92.214(b)(3).

C. Revise § 92.214(b) To Permit Late Fees

One commenter stated that HUD should clarify whether owners may charge late fees and insufficient funds fees, which are common in the industry. The commenter noted HUD has informally indicated such fees are not meant to be prohibited under the current language of § 92.214(b)(1).

HUD Response: The HOME rule at § 92.214(b)(3)(ii) prohibits ''[f]ees that are not customarily charged in rental housing (*e.g.,* laundry room access fees).'' Reasonable late fees and returned check fees are customarily charged in rental housing and would not be prohibited by § 92.214(b).

D. Revise § 92.214(b) To Add Additional Prohibited Fees

Another commenter urged HUD to further clarify prohibited activities and fees in § 92.214 including ''normal wear and tear.'' The commenter also asked HUD to address predatory fees such as a trip fee in conjunction with a lock-out and requested that HUD require owners to have a free rent payment method to address the fees often required when tenants pay online or with a credit card. The commenter stated that any fees which are not optional, such as

mandatory renter's insurance, should be required to be included in the gross rent calculation. The commenter also questioned whether bulk cable/phone/internet providers are allowable fees.

HUD Response: The Department thanks the commenter for reviewing the proposed rule and agrees with the commenter's recommendation that HUD clarify that charges for the normal wear and tear be prohibited under § 92.214. In this final rule, HUD is adding this prohibition to § 92.214(b)(3). The Department declines to accept the commenter's suggestion to prohibit fees for lock outs since owners may incur costs where a locksmith is required, or duplicate keys must be made. Provided such fees are customary and reasonable, participating jurisdictions may determine that owners of HOME-assisted projects may charge such fees.

With respect to the comment that HUD require owners to have a free rent payment method to address the fees often required when tenants pay online or with a credit card, charging fees associated with online payments and using credit cards is a normal and customary business practice in many markets and as such HUD declines to adopt the commenter's suggestion. However, participating jurisdictions should encourage owners to ensure free rent payment methods are available to low-income families and may restrict the types of fees charged for paying rent through the written agreement with the rental housing project owner, as per § 92.504(c)(3)(x).

While the Department understands that one commenter believes that any fees that are not optional, such as mandatory renter's insurance, should be required to be included in the gross rent calculation, HUD is declining to adopt the commenter's recommendation. Fees are not utility costs and are not included in the gross rent determination. Mandatory fees may be permissible when commercially reasonable. The Department is not going to create a compliance standard where the owner must reduce the rent charged to a tenant by the monthly cost of mandatory fees. Instead, the Department is providing participating jurisdictions discretion to restrict fees through the written agreement. The Department also notes that mandatory renter's insurance is a commercially reasonable practice in the rental market.

Finally, one commenter questioned whether bulk cable/phone/internet providers are allowable fees. When such fees are not customarily charged within the participating jurisdiction's local rental market, such fees must be prohibited.

E. Revise § 92.214(b) To Clarify How To Determine Reasonable Application Fees

One commenter questioned what a reasonable application fee is, what can be used to calculate a reasonable application fee. In terms of reasonable application fees, the commenter provided HUD the example that in their State's LIHTC Program, the owner can only charge the actual costs of processing an application credit/criminal background and cannot inflate application fees.

HUD Response: The Department appreciates the commenter's question concerning reasonable application fees. The Department is declining to define the amount of a reasonable application fee, as commercially reasonable application fees may vary based on the project's location, sources of financing, and the type of background examination selected by the owner.

§§ 92.216 and 92.217—Income Targeting in HOME Rental Housing, Tenant-Based Rental Assistance, and Homeownership Programs

A. Align Income Limits Across HOME and NAHASDA Programs

One commenter requested that HUD align the definition of area median income for the HOME program with the definition contained in the Native American Housing Assistance and Self-Determination Act (NAHASDA) to facilitate leveraging NAHASDA funds with HOME funds and Tribes' use of HOME funds, and to reduce burden caused by two different methodologies for income for projects that utilize both NAHASDA and HOME funds. The commenter stated that HUD's interpretation seems to be that the median income of an Indian Area is the NAHASDA definition, and that this should be implemented for instances where HOME funding is used in an Indian Area. In support, the commenter referenced section 214 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12744); statutory language in NAHASDA at 25 U.S.C. 4103(14), and the definition of ''median income'' in paragraph (15); the definition of ''Indian area'' in NAHASDA,; the definition of ''median income for an Indian area'' in HUD's Indian Housing Block Grant (IHBG) regulations that implement NAHASDA; published guidance containing median incomes for Indian Areas; [47] published IHBG area income limits; and the U.S. Department of Treasury's definition of area median income for the Emergency Rental Assistance Program.[48]

HUD Response: The Department thanks the commenter for their recommendation that HUD align area median income for the HOME program with the NAHASDA. NAHA and NAHASDA define low-income families differently. NAHASDA permits HUD to establish an income floor for low-income families for NAHASDA programs nationwide that is the greater of 80 percent of the median income for the United States or 80 percent of the median income of the Indian area.[49] In the definition of low-income families, NAHA permits the Secretary to establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's finding that such variations are necessary in accordance with 42 U.S.C. 12704(10).[50] This revision requires that HUD reexamine its methodology for calculating income limits for the HOME program and make findings based on variations relating to the prevailing levels of construction costs, unusually high or low family incomes. The Department would then propose a different methodology and solicit public input. HUD did not propose to change the definition of low-income families or the way that area median income is calculated in the HOME program in the proposed rule. The Department also did not propose to establish a national income floor for HOME program as part of the proposed rule. The Department believes that such significant changes require notice and

[47] *E.g., https://www.hud.gov/sites/dfiles/PIH/documents/2022-01_Income_Limits.pdf.*

[48] *E.g., https://www.huduser.gov/portal/datasets/il.html#2022.*

[49] 25 U.S.C. 4103(15) states: ''MEDIAN INCOME-The term 'median income' means, with respect to an area that is an Indian area, the greater of—(A) the median income for the Indian area, which the Secretary shall determine; or (B) the median income for the United States.''

25 U.S.C. 4103(14) defines low-income families as follows: ''LOW-INCOME FAMILY—The term 'low-income family' means a family whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may, for purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of the Secretary or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.''

[50] 42 U.S.C. 12704(10) states that: ''The term ''low-income families'' means families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.''

comment and will not make this change in the final rule.

B. Create a National Income Limit Floor

One commenter recommended that HUD address the failures of its income limit calculations in the HOME program and beyond, noting that ''state floors'' meant to prevent the effects of concentrated poverty do not work in places with severely depressed economies and high levels of poverty. The commenter stated that families in such places are not able to qualify for assistance under HUD programs despite very low incomes with respect to cost of living because the median family income limits in their communities are so low. The commenter said they are pursuing a legislative change to create a ''national floor'' and that a HUD January 2024 Notice proposing the idea of a ''national minimum income limit'' shows that HUD could immediately implement changes to address this existing inequality.

HUD Response: The Department thanks the commenter for their recommendation to address the effects of HUD's methodology for calculating the income limits used for determining eligibility for HUD programs, and particularly the HOME program, on individuals and families living in places with severely depressed economies and high levels of poverty. The HOME income limits are calculated using the same methodology that HUD uses for calculating the income limits for the Section 8 program, in accordance with section 3(b)(2) of the U.S. Housing Act of 1937, as amended. These limits are based on HUD estimates of median family income, with adjustments based on family size using the American Community Survey (ACS) and other sources. Every year, HUD publishes the annual income limits, which are used primarily to determine the income eligibility of applicants for the HOME program. In addition to being used to determine eligibility for Federal rental housing programs, income limits are also used to determine the maximum rents allowed for HOME projects.

HUD acknowledges the commenters' concerns that HUD's methodology for calculating income limits used by the HOME Program should be reexamined. In a January 10, 2024, **Federal Register** Notice (see FR–6436–N–01), HUD first announced a change in the methodology for determining the cap on how much income limits can go up in a single year in any individual Fair Market Rent (FMR) area. Since FY2010 HUD has limited all annual income limit decreases to five percent and all annual increases to the greater of five percent or twice the change in the national area median incomes. For FY–2024, HUD added an absolute cap of 10 percent and clarified that the national median family income is the change in uninflated ACS estimates. HUD made this change for three reasons: to protect tenants from facing a large single-year rent increase resulting from higher income limits, to address statistical errors resulting in fair market rent areas that do not have a large sample size, and to create stable and predictable income limits. However, HUD will not revise how the HOME income limits are calculated with this final rule, as the change is too significant to make without HUD first proposing a different methodology and soliciting public input.

§ 92.221—Match Credit

A commenter requested that HUD clarify that the requirements in § 92.221(b) would be applicable only to carryover amounts going forward from the applicable date of the adoption of the rule otherwise participating jurisdictions would have to have records beyond the current recordkeeping period of documentation.

HUD Response: The Department will prospectively require compliance with the revised requirements in § 92.221(b), which explicitly requires a participating jurisdiction to have documentation supporting the source, eligibility, and value of match contributions that have been carried over from previous years at the time that they apply the contribution toward their match obligation. However, HUD notes that participating jurisdictions are already responsible for complying with the § 92.508(a)(2)(ix), which requires records related to carryover match. HUD is adopting the proposed rule language without change.

§ 92.250—Maximum Per-Unit Subsidy

A. Support for Increasing HOME Maximum Per Unit Subsidy Limit

Several commenters supported the increase of HOME subsidy limits. Two commenters stated that HOME subsidy limits should be increased because of the increase in the cost of labor and materials.

HUD Response: The Department appreciates the commenters' review of the proposed rule and notes that the policy HUD is establishing through a separate **Federal Register** publication increases the maximum per unit subsidy limits from the current levels.

B. General Support for Revising § 92.250(a) To Establish HOME Maximum Subsidy Limits in Accordance With Section 212(e) of NAHA

Generally, commenters stated that they support the proposal of establishing the HOME maximum subsidy limits in accordance with section 212(e) of NAHA. Several commenters stated support for HUD's clarification that the statutory limit in Section 212(e) of NAHA is a floor and not a cap of the subsidy amount, and for revising § 92.250 so that the section refers to the statutory requirements in order to avoid the need to waive or change the HOME regulations to align with section 212(e) in the future. Two commenters supported HUD's proposal to publish the methodology for determining the new maximum per-unit subsidy limits through a future notice published in the **Federal Register** and on HUD's website, with the opportunity for public comment. Another commenter recommended HUD seek feedback through a notice and comment period before finalizing a new methodology to ensure it meets the diverse needs of stakeholders.

HUD Response: The Department appreciates the commenters' feedback and is moving forward with the changes as proposed.

C. Support for Using Section 234 Limits on an Interim Basis

Several commenters supported HUD's proposal to adopt the Section 234 limits and increase the housing cost percentage from 240 percent to 270 percent in the maximum per-unit subsidy methodology. One commenter said this would permit more flexibility for the commenter's members and other stakeholders looking to maximize their usability of HOME funds ahead of HUD's release of the proposed methodology. One commenter said the resulting increase will be essential for communities where land and building costs are exceptionally high, and that the additional financing might also make the creation of smaller-scale properties unable to obtain LIHTC financially feasible. Another commenter stated that until a new methodology is finalized, HUD should establish the maximum per-unit subsidy limit as 270 percent of the section 234 limitations, educate stakeholders, and consider waivers or high-cost percentage exceptions. Another commenter noted its appreciation that HUD increased the Section 234 limitations to 270 percent while it designs new limits as this will allow more flexibility and affordable

homeownership stakeholders who seek to maximize their useability of HOME funds ahead of HUD's release of the proposed methodology. Another commenter stated that changes to the per-unit subsidy limits methodology would affect many other aspects of the proposed rule and urged HUD to issue the notice that will revise the methodology as soon as possible and in the interim to use the Section 234 elevator condominium mortgage limits as the base but lift the cap for high-cost areas to 270 percent. One commenter advocated for an increase in the subsidy limit to 300 percent to accommodate land and construction costs.

HUD Response: The Department appreciates the commenters' review of the proposed rule and agrees that increasing the maximum per unit subsidy limits to 270 percent of the Section 234 elevator condominium mortgage limits will help communities where land and building costs are exceptionally high and may also make the creation of smaller-scale properties that are unable to obtain LIHTC financially feasible. The Department believes increasing the limits to 300 percent is currently unnecessary because few HOME-assisted units receive HOME subsidies close to the limits. However, HUD notes that this final rule will permit HUD to reconsider the limits based upon changing circumstances.

D. Specific Considerations in Per-Unit Methodology

Several commenters also recommended that in developing its new methodology HUD consider the specific cost implications of rehabilitation, rural communities, single family housing and multifamily properties, fluctuating construction costs, as well as operating costs, property insurance costs, income limits, administrative costs, and impacts to a developer's revenue stream.

HUD Response: HUD appreciates the comments and, as allowed by the Act, may consider appropriate variables such as the cost of land and construction, market area, number of bedrooms, eligible activity type (*e.g.,* homeownership, rental), and work performed (*e.g.,* rehabilitation, new construction) when developing a future methodology for maximum per unit subsidy limits.[51]

E. Opposition to Using Maximum Per-Unit Subsidy in Effect at Underwriting

One commenter opposed the proposed change that the HOME subsidy limit must be determined at the time of underwriting and recommended that the HOME subsidy limit be determined at the time of project completion. The commenter stated that their recommended approach is appropriate because: (1) the HOME subsidy limits are published once a year, giving the participating jurisdiction plenty of time to adjust subsidy layering, if needed; (2) projects may take more than a year to complete and, with inflation, the HOME subsidy limits can significantly increase, allowing participating jurisdictions more HOME funds to complete the substantial renovations; and (3) while the maximum per-unit HOME subsidy limit is often not reached, it is the times when a particularly substandard home is renovated that more HOME funds being available allows participating jurisdictions to make the necessary substantial repairs.

HUD Response: The Department did not propose a change with respect to the maximum per-unit subsidy limit applicable to a project. The proposed language is a clarification. Because a HOME participating jurisdiction is required to perform a subsidy layering analysis before committing HOME funds to a project, the maximum per-unit subsidy limit in effect at this time is the appropriate limit to apply to the project. The Department does not agree that the HOME subsidy limit should be determined at the time of project completion and will adopt this language as proposed.

F. Exceeding the Maximum Per-Unit Subsidy To Meet Green Building Standards in § 92.250(c)

Commenters overwhelmingly supported HUD's proposal to permit participating jurisdictions to provide additional subsidy in excess of the maximum per-unit subsidy limits at § 92.250(a) for HOME projects that meet a green building standard. Several commenters indicated that the increased subsidy could help to defer upfront costs and assist with meeting their sustainability and housing goals, and they encouraged HUD to include mitigation and resilience improvements in the permissible standards. However, commenters also reminded HUD to consider that the application of green building standards is different for rehabilitation and new construction projects. One commenter noted that due to project construction timelines, any new green building requirements should be applicable based on date of commitment of HOME funds rather than grant year.

HUD Response: The Department thanks commenters for their support of HUD's proposal to permit participating jurisdictions to provide additional subsidy in excess of the maximum per-unit subsidy limits at § 92.250(a) to HOME rehabilitation and new construction projects that meet a green building standard. HUD is moving forward the change and in response to comments has increased the amount by which the maximum per-unit subsidy described in § 92.250(a) may be exceeded to ten percent for a project that meets one of the acceptable green building standards enumerated by the Department. HUD agrees with the commenter that stated that the green building requirements are applicable based on the date HOME program funds are committed to a project.

G. Opposition to Mandatory Green Building Requirements

Commenters opposed any mandatory green building requirements as a condition of receiving HOME funds. These commenters stated that green building standards should be voluntary given reductions in HOME appropriations and increased costs of construction over time. One of these commenters also suggested that requiring green building could result in fewer HOME units produced and decreased interest from contractors and developers in participating in the HOME program.

HUD Response: HUD thanks the commenters and clarifies that it did not propose to require green building requirements under § 92.251 property standards requirements but instead is proposing to incentivize building to industry-recognized green building standards through the use of an increased maximum per-unit subsidy.

H. Additional Green Building Incentives and Considerations

Commenters offered additional policy suggestions and shared concerns for HUD's consideration. One commenter recommended that the rule allow participating jurisdictions to exempt the amount of HOME funds spent on green and resilient building measures from the calculation of the total HOME subsidy for the purpose of determining the minimum HOME period of affordability in accordance with § 92.252(e). Two other commenters stated that HUD should consider Build America, Buy America (BABA) requirements in determining any increases in maximum per-unit subsidy related to green building standards because BABA may result in increased costs from sourcing green building materials.

[51] See 42 U.S.C. 12742(e)(1).

HUD Response: The Department thanks the commenters for reviewing the proposed rule. As described elsewhere in the preamble, HUD is adjusting the periods of affordability to reflect increased costs over the last three decades and other requirements that may increase compliance costs for owners. For new construction of rental housing, the incremental cost of meeting green building standards will have no effect on the period of affordability, as HUD has retained the 20-year period of affordability. The Department does not have statutory authority to disregard the costs related to green building from the determination of per-unit subsidy and declines to adopt the change.

HUD notes that BABA is beyond the scope of this rulemaking. Until additional guidance is provided about how BABA will apply to HOME and other HUD programs, HUD cannot determine the effect of BABA compliance on the green building incentive or overall compliance with the HOME final rule.

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

A. Requiring a Specific List of Qualifying Green Building Standards

Commenters were divided over whether HUD should specify green and resilient building standards and which standards HUD should permit. Several commenters suggested that HUD should allow participating jurisdictions a range of choices by prescribing a wide variety of qualifying standards to account for differences in the availability of resources, costs of certification, and unique State and local needs based on population and geographic location. Alternatively, two commenters recommended against a HUD-prescribed list and instead suggested that HUD establish a broad definition of green and energy efficient measures that would qualify as a green building standard to allow for maximum flexibility. Furthermore, commenters recommended that HUD allow the increased HOME subsidy if the project meets State and local green standards and requirements. One commenter stated that HUD should review best practices that increase the feasibility of the developer to adhere to green standards while bringing down energy costs for the consumer.

HUD Response: The Department thanks commenters for their views regarding whether HUD should establish a set list of green and resilient building standards to publish in the **Federal Register**. HUD has received numerous recommendations of green building certifications, standards, codes, and thresholds that commenters believe HUD should incentivize, each with differing technical components, building requirements, and effectiveness criteria. HUD will evaluate the standards suggested, publish a provisional **Federal Register** notice for effect, and solicit additional public comments.

B. Use of Nationally Recognized Certifications To Align With Other Federal Programs

Commenters that support a HUD-prescribed list recommended that HUD establish green and resilient building standards that are consistent with the national certifications required by other Federal or HUD-assisted programs to promote alignment, limit disruption or confusion, and ease administrative burden, given that these standards are well known by many participating jurisdictions and their developers. One commenter noted that these standards are included by States in their qualified allocation plans (QAPs) for low-income housing tax credits. Another commenter suggested that HUD collaborate with other Federal agencies such as the Department of Energy, Department of Health and Human Services, and the Environmental Protection Agency to create such a list or consider allowing the use of other agency's Green Building Standards. The specific Federal programs suggested for alignment by commenters include the following:

1. HUD's Green and Resilient Retrofit Program (GRRP), which permits DOE Zero Energy Ready Home; Zero Energy Ready Multifamily; National Green Building Standard—Silver, Gold, or Emerald; LEED V4.1; Enterprise Green Communities Plus, Greenpoint Gold or Platinum; Earthcraft Gold or Platinum; Passive House; International Living Institute; Well Building Standard; RELi; or FORTIFIED Silver or Gold.

2. The Environmental Protection Agency's Greenhouse Gas Reduction Fund program.

3. The Department of Energy's Section 45L Tax Credits for Zero Energy Ready Homes, which also includes Energy Star requirements.

HUD Response: The Department thanks commenters for recommending a large number of green and resilient building standards for HUD's consideration. HUD agrees that green standards consistent with national certifications required by other Federal programs have the highest likelihood of reducing confusion and administrative burden. HUD will evaluate the standards suggested, issue a provisional **Federal Register** publication for effect, and solicit additional public comments.

C. Green Building Standards Promoted by Commenters

Irrespective of alignment with other HUD or Federal programs, commenters recommended that the following certifications, standards, codes, or thresholds be used to determine compliance for the purposes of increased HOME subsidy:

1. CALGreen (California Green Building Standards Code—Part 11, Title 24, California Code of Regulations).

2. GreenPoint Rated (GPR) Certified or 75+ points.

3. International Green Construction Code (IgCC), which the commenter indicates will allow for coordination with the statutory HOME energy efficiency requirements for new construction projects. A commenter also notes that Appendix M of the 2024 IgCC provides options for residential compliance with the National Green Building Standard (ICC 700) and Appendix K aligns IgCC requirements with core elements of versions 4.0 and 4.1 of the LEED rating system.

4. Home Energy Rating System (HERS) Index threshold specifically for homeownership projects, for example requiring a HERS rating of 50 or lower to qualify as meeting the green building standard.

5. Earth Advantage.

6. Energy Rating Index (ERI) thresholds, for example requiring that homes achieve an ERI of 60 or lower.

7. ENERGY STAR, and specifically ENERGY STAR Multifamily New Construction National Program Requirements Version 1.1.

8. Enterprise Green Communities, and specifically Enterprise Green Communities Plus.

9. National Green Building Standard (NGBS Green).

10. Passive House.

11. US Green Building Council's LEED, and specifically LEED Silver (50+ points) or LEED Net Zero.

12. Zero Energy Ready Homes.

HUD Response: The Department thanks commenters for recommending a large number of green and resilient building standards for HUD's consideration. Just as in the previous responses, HUD will evaluate the standards suggested, issue a provisional publication in the **Federal Register** for effect, and solicit additional public comments. The Department understands that the green building standards mentioned by commenters may not be currently required under or incentivized by Federal programs but that they should be considered, and HUD will perform the necessary examination of these standards before it issues its **Federal Register** publication.

D. Support for Electrification

Two commenters urged HUD to prioritize electrification as an essential measure for reducing greenhouse gas emissions and improving indoor air quality, and therefore, the health and safety of the occupants. Both commenters suggested that the HOME rule should require that new construction and substantial rehabilitation projects be all electric, and that HUD prevent the use of HOME funds in new fossil fuel connections. However, one commenter suggested that an exception may be necessary in cold weather climates to allow for fossil fuel backup sources.

HUD Response: The Department thanks the commenters for their recommendations on improving energy efficiency and resident health outcomes via the prioritization of electrification. However, these recommendations are not within the scope of this rulemaking. The Department will continue to assess ways to further incentivize green building in the HOME program.

E. Five Percent Increase in Maximum Per-Unit Subsidy Is Insufficient

Although several commenters support HUD's proposal to permit an increase in the maximum per unit subsidy by five percent for meeting a green building standard, the majority of commenters indicated that five percent is insufficient to cover the increased costs of constructing or rehabilitating affordable housing to a green standard including the costs associated with obtaining a certification. Two commenters asserted that the proposed five percent increase is insufficient even to cover the increased costs of meeting the HOME statutory energy efficiency requirements as updated by FR–6271–N–03. Meanwhile, other commenters indicated that they could not determine whether a five percent increase would cover increased costs of construction or provide any incentive for green building without knowing which standards would be required to access the benefit. One commenter recommended that HUD request funding to establish a competitive Green Building pilot program in conjunction with the HOME program to gather data on costs associated with various green building standards.

Several commenters also expressed concern that the proposed policy to permit an increase of the maximum per-unit subsidy would be ineffective at any level to incentivize green building because participating jurisdictions lack the additional HOME funds needed to provide the benefit. Specifically, commenters noted that HOME projects are often not awarded the full amount of the current maximum per unit subsidy, particularly homeownership projects. In addition, one commenter suggested that providing additional funding to HOME projects would be a more effective means of incentivizing owners to meet green building standards rather than allowing participating jurisdictions to exceed the maximum per-unit subsidy by five percent.

HUD Response: The Department thanks the commenters and agrees that the proposed five percent increase in the maximum per-unit subsidy is insufficient to cover the costs associated with meeting nationally recognized green building standards. Subsequently, the Department is adopting a change in this final rule to increase the percentage in § 92.250(c) to 10 percent. The Department acknowledges that ascertaining whether this 10 percent increase sufficiently covers associated costs is difficult without having confirmed green and resilient building standards. Moving forward, HUD will complete an additional review and include standards in a provisional notice for effect with public comments. The Department will continue to reevaluate both green building standards and other methods of incentivizing green building for the HOME program.

F. Increasing the Maximum Per-Unit Subsidy by 5 Percent Is Not Sufficient To Incentivize Meeting Stronger Green Building Standards

Of the commenters who supported a 5 percent increase, several indicated that 5 percent would only be sufficient to cover the increased costs of meeting certain basic standards. These commenters indicated that 5 percent is not sufficient to cover the higher costs of more rigorous green and resilient building standards and that the 5 percent increase would not incentivize the type of wraparound measures necessary to achieve meaningful energy and cost savings. Commenters who suggested a greater increase in the maximum per unit subsidy limit proposed a wide variety of alternatives. Commenters stated that the appropriate amount would be closer to 10, 15, 20, or even 30 percent of the maximum per unit subsidy given the wide range of costs associated with different green building standards and the varying costs of acquiring certifications based on location. One commenter indicated that all residential buildings in California are required to meet CALGreen, so the additional costs of building to green standards are already reflected in the costs of residential construction in the State. However, this commenter also recommends allowing an increase of 20 percent in the maximum per unit subsidy, which in States like California where green building compliance is required, the additional HOME investment will help to mitigate the current high cost of construction and make assisted projects less reliant on other highly competitive funding sources. In addition, two commenters stated that an increase up to 30 percent would support green building by covering the increased upfront costs of supplies while lowering the rents required to be charged at the project.

HUD Response: The Department thanks the commenters for reviewing and agrees that the proposed five percent increase in the maximum per-unit subsidy is insufficient to cover the costs associated with meeting green building standards. The Department is adopting a change to increase the percentage in § 92.250(c) to 10 percent. The Department understands that many commenters recommended the maximum per-unit subsidy limits be increased by an even higher percentage. However, the Department must balance the benefits from more sustainable, energy-efficient housing against the potential that fewer units will be created or fewer families will be served. Given the level of annual appropriations that

the HOME program receives, the Department believes it can only move to 10 percent at this time but will reevaluate in the future.

G. A Higher Maximum Per-Unit Subsidy Increase for Rehabilitation Projects

One commenter noted that meeting green building standards for new construction is fundamentally different than for rehabilitation projects and the commenter estimated that an increase of 25 percent of subsidy would be required for rehabilitation projects to achieve a green building standard beyond the State energy code. However, the commenter expressed concerns with permitting a significant increase in maximum per unit subsidy due to the impact on production and instead suggested that HUD provide a 10 percent increase for rehabilitation projects in States with ambitious green building standards, as determined by HUD. The commenter stated that this proposal could increase the number of HOME-assisted rehabilitation projects in areas where green building standards are already required.

HUD Response: The Department thanks the commenters for reviewing and is adopting a change increasing the maximum per-unit subsidy limit percentage to 10 percent in § 92.250(c) for both new construction and rehabilitation projects that meet certain green building and resiliency standards. The Department understands that many commenters had requested increases that were significantly higher, particularly for rehabilitation projects. However, the Department must balance the benefits from more energy-efficient housing against the potential that fewer units will be created or fewer families will be served. Given the level of annual appropriations that the HOME program receives, the Department believes it can only move to 10 percent for both new construction and rehabilitation project at this time but will reevaluate in the future.

H. Use of Actual Construction Costs Instead of Set Percentage Increases in Maximum Per-Unit Subsidy for Green Building

Rather than permitting a specific percentage increase in the maximum per unit subsidy limits, several commenters supported permitting participating jurisdictions to exceed the limits by actual additional construction costs of green building measures for the project. One of these commenters suggested that the rule should permit project owners to apply for the amount above the maximum per unit subsidy needed for a rehabilitation project, and that the participating jurisdictions should provide the largest awards to proposed projects with the highest energy and cost savings potential, therefore prioritizing rehabilitation of the most inefficient housing. Other commenters recommended that the rule permit a participating jurisdiction to determine the percentage increase because needs and costs vary geographically.

HUD Response: The Department thanks the commenters for their recommendation that HUD adopt increases in the maximum per-unit subsidy limit based on either documented construction costs or at a participating jurisdiction's discretion, rather than adopting a set percentage increase. The Department declines to adopt these recommendations, as measuring, documenting, and implementing these methods would be unduly burdensome and complex for all parties involved.

I. Using a Tiered Approach to Maximum Per-Unit Subsidy Increases for Different Types of Green Building Standards

Many commenters also suggested that HUD implement a tiered approach to providing an increased HOME subsidy to account for the varying nationally recognized standards, with more aggressive standards equating to larger incentives based on the relative level of value-added above-code efficiency in terms of both energy savings and energy cost savings and resilience in the project. One commenter remarked that increased subsidy levels designed to cover the higher costs of advanced standards would be a sufficient incentive in projects that would not otherwise have been designed to meet green building standards. However, the commenter also noted that there is not always an additional cost to meet green building standards, particularly for standard level green certifications and that the cost differential is likely to diminish over time as developers become more familiar with green building standards, so an increased HOME subsidy will eventually become a true incentive to build greener housing.

Two commenters suggested that a tiered approach be tied to Energy Rating Index (ERI) thresholds with the largest subsidy available for net zero design and/or the installation of solar in assisted projects. Other commenters suggested that HUD allow a lower increase, from 2 to 5 percent for base green building certifications such as ENERGY STAR and a 10 percent increase for buildings that achieve higher certifications consistent with the recent National Definition of a Zero Emissions Building, such as Enterprise Green Communities Plus, the forthcoming LEED Zero Carbon, ENERGY STAR NextGen, and/or the Department of Energy's Zero Energy Ready Homes combined with specific required criteria or additional requirements to make them zero emissions. Another commenter suggested that to create an incentive, HUD should implement a range of increased subsidy rather than a set percentage using a formula based on criteria such as disparities between State code and HUD requirements, the extent of green building rating systems and any subsidies offered at the State or local level. The commenter recommended that the further ''behind'' a State is in adopting the most recent International Energy and Conservation Code (IECC) and American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) codes, the higher the base subsidy should be. A different commenter stated that HUD should implement an ''up to or higher'' standard, which could be provided through a waiver process based on taking into account the type of activity and technology deployed.

HUD Response: The Department thanks the commenters for the recommendations. However, HUD believes that establishing a tiered approach or ranges based on the green building standards individual participating jurisdictions use would be extremely complicated and potentially unworkable. HUD is declining to adopt these recommendations at this time but will continue to assess ways to pay for the increased costs of developing affordable housing that meets higher standards for green building, climate resiliency, and a greater level of energy efficiency and may revisit this issue in a future rulemaking.

J. Opposition to Five Percent Increase in Maximum Per Unit Subsidy Because of Uneven Application and Reduction of Overall Units Produced

Commenters anticipated that homeownership projects would be the most affected by cost increases related to energy efficiency requirements and green building standards. Commenters agreed that large multifamily rental development projects are the most likely to benefit from any permitted increase in maximum per unit subsidy. However, a commenter stated that data they analyzed showed that the amount of HOME funds awarded even to rental projects depends largely on the participating jurisdiction's policies rather than on local conditions (*e.g.,* high cost areas), and therefore it is not

clear that participating jurisdictions will provide additional HOME funds based on the increased costs of meeting a green building standard. Consequently, this commenter does not support HUD's proposal because they believe it would have an uneven impact nationally, with most of the country unable to take advantage of the flexibility. In addition, the commenter worried that HUD's proposal will result in a decrease in the number of assisted projects and limit unit production. However, in anticipation of this challenge, two other commenters suggested that HUD provide guidance and tools on how to leverage other funding sources and maximize available HOME funds to allow for more comprehensive energy efficiency projects while maintaining unit production.

HUD Response: The Department appreciates the comments. HUD notes that HOME is a block grant program with local choice and flexibility at its core. Consequently, the Department does not believe that because not all participating jurisdictions will exercise this or any other flexibility in the regulations is a sound reason for not offering the flexibility at all. HUD does not expect that all participating jurisdictions will choose or need to take advantage of the increase in the subsidy limit. HUD takes seriously the need to balance the benefits from more resilient and energy-efficient housing with the added costs and marginal reduction in the total number of HOME-assisted unit. Because the regulation does not require the use of green building standard and instead makes it more feasible to pursue this housing that meets the standards, HUD is devolving the choice to State and local government based upon their priorities. The Department is moving forward with the 10 percent increase and will continue to reevaluate green building standards, other methods of incentivizing green building, and the prospect of requested technical assistance once green standards are implemented for the HOME program.

K. Incentivizing Universal Design With Increases in the Maximum Per-Unit Subsidy

One commenter suggested that in addition to increasing Green Building standards, HUD should consider how the HOME program can incentivize or require increased disability-related accessibility standards. For example, the commenter suggested that the HOME program could adopt the Universal Design criteria which is currently in the HUD Section 811 Capital Advance application.

HUD Response: The Department appreciates the comment and urges HOME program participants to create projects with Universal Design in units and common areas, enhanced accessibility features, and more than the minimum number of units that meet Federal accessibility requirements for persons with disabilities. However, the commenter's proposal is outside the scope of this regulation as HUD has not solicited public comment on suitable standards for a regulatory provision or the incremental cost of compliance with them. Individual projects that require HOME investment exceeding the maximum per unit subsidy limits due to the cost of incorporating universal design elements may seek case-specific relief from HUD.

§ 92.251—Property Standards and Inspections

A. General Support for Changes

One commenter provided general support for all the changes to HOME property standards to include energy efficiency, carbon monoxide detectors, incorporate green building standards and include NSPIRE changes.

HUD Response: HUD thanks the commenters for reviewing the proposed rule and for their support.

B. Statutory Energy Efficiency Requirements in § 92.251(a)—Support

Commenters supported the proposal to codify the statutory HOME energy efficiency requirements in the HOME regulations. One commenter recommended HUD update the reference from section 109 of NAHA to HUD's recent minimum energy standards determination (FR–6271–N–03) to streamline requirements across programs and minimize confusion about the requirements.

A commenter agreed with HUD's proposal that the rule should be clear that the ASHRAE Standard 90.1–2019 (for high-rise multifamily) and the 2021 Energy Conservation Code (for single-family and low-rise multifamily) apply to all new construction under HOME, including alternative compliance pathways such as specified green building certifications and future HUD-developed standards. The commenter recommended that HUD go further and apply the standards to major rehabilitations under HOME, arguing that rehabilitated homes can and should meet the same standards as new construction. Additionally, the commenter said that HUD should consider setting higher minimum standards for HOME new construction and major rehabilitation that require certifications consistent with the Department of Energy's National Definition of a Zero Emissions Building.

One commenter noted that low-income households are more likely to experience higher utility costs, and that energy efficiency means residents do not need to choose between paying utilities, rent, or putting food on the table and responds to climate instability. The commenter noted the importance of energy standards being codified in accordance with section 109 of NAHA, including any revisions adopted by HUD and USDA and encouraged the use of HUD funding to implement these requirements.

HUD Response: The Department thanks the commenters for their review and is adopting the proposed change codifying the statutory requirement that all HOME-assisted rental and homebuyer new construction projects meet the energy efficiency standards promulgated by HUD in accordance with section 109 of NAHA, including any revisions adopted by HUD and the U.S Department of Agriculture (USDA). To maintain consistency in regulations and energy efficiency requirements as standards are updated over time, the Department declines to update the reference from section 109 of NAHA to the recent minimum energy standards determination (FR–6271–N–03). The Department also declines to apply these standards to rehabilitation projects, or to apply new, higher minimum standards to new construction or rehabilitation projects under the HOME program. The priority of this final rule is to maintain consistency and advance alignment across programs, meaning that the HOME program has the same energy efficiency standards as the rest of the Department. The Department will continue to assess ways to further produce efficient, healthy, and resilient affordable homes, and may revisit this issue in a future rulemaking.

C. HUD Should Engage in Monitoring of Energy Efficiency Requirements in § 92.251(a)

One commenter stated that the energy efficiency standards would require monitoring to ensure that HUD's energy efficiency goals are being met. The commenter stated that HUD could ensure the goals are met by tracking developer use of inspections and assessments. The commenter stated that HUD could require these assessments since the proposed rule allows for reimbursements of environmental assessments.

HUD Response: The Department thanks commenters for their recommendation that HUD require

tracking developer use of inspections and assessments to ensure that energy efficiency goals are being met. Requirements at § 92.504 state that participating jurisdictions must have and follow, among other things, a system for monitoring entities to ensure that HOME program requirements for HOME-assisted units set forth in 24 CFR part 92 are met throughout the specified period of affordability. As the energy efficiency standards under § 92.251 fall under that umbrella and are subject to monitoring, the Department declines to adopt this recommendation that more stringent or developer-specific monitoring requirements be put into effect.

D. HUD's Energy Efficiency Standards Should Prohibit New Fossil Fuel Connections

One commenter stated that HUD's proposal to have projects meet high energy efficiency standards was beneficial but could go further by further eliminating new fossil fuel hookups.

HUD Response: In a separate rulemaking, HUD has developed energy efficiency standards in order to comply with 42 U.S.C. 12709. Revising those energy efficiency standards to prohibit new fossil fuel connections is beyond the scope of this rulemaking.

E. Allowing the Use of NSPIRE Inspections To Determine Compliance With HOME Property Standards in § 92.251(a), (b), and (f)—Support

Multiple commenters stated that they support the proposed alignment in the HOME program of permitting the use of inspections from other programs or sources.

HUD Response: HUD thanks the commenters. HUD is moving forward with its proposal to accept inspections performed under other HUD programs.

F. Allowing the Use of NSPIRE Inspections To Determine Compliance With HOME Property Standards in § 92.251(a), (b), and (f)—Concern About Current Properties

Commenters stated that HUD should clarify the specifics of the applicability of NSPIRE to various HOME-eligible activities. One of these commenters noted that it is unclear how NSPIRE applies differently among homebuyer activity, homeowner rehabilitation activity, rental new construction activity and rental rehabilitation activity. The commenter requested that the final rule address the as-applied differences between these activities. One commenter cautioned that applying new physical condition standards such as the NSPIRE program to old properties is problematic because they were built under very different code and standard requirements.

HUD Response: HUD recognizes the commenter's concerns. Under § 92.251(f)(2), if a participating jurisdiction is monitoring a project that received a HOME commitment before January 24, 2015, then the participating jurisdiction is required to monitor that project under the applicable State or local housing quality standards or code requirements, and if there are no such standard or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401. For projects with commitments after January 24, 2015, they must meet all applicable State or local code requirements and ordinances and in the absence of existing applicable State or local code requirements and ordinances, at a minimum, the participating jurisdiction's ongoing property standards must provide that the property does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the **Federal Register** for HOME rental housing (including manufactured housing) and housing occupied by tenants receiving HOME tenant-based rental assistance (see § 92.251(f)(1)(i)).

Under the Effective Date section of the NSPIRE Final Rule, HUD clarified that ''[p]articipants and owners subject to these regulations are subject to the Code of Federal Regulations as it exists on the publication date of this rule and are not subject to the regulatory changes being made by this rule on July 1, 2023, until October 1, 2023.'' HUD has since delayed the compliance date for implementing NSPIRE inspection standards and requirements until October 1, 2025,[52] giving participating jurisdictions more time to update their property standards and owners more time to bring their properties into compliance with the new ongoing property standards. HUD will provide additional guidance and materials aimed at assisting participating jurisdictions and owners in complying with the requirements, including a streamlined list of minimum inspectable items that shall be a subset of the larger set of standards published in the NSPIRE Standards notice at 88 FR 40832.

G. Allowing the Use of NSPIRE Inspections To Determine Compliance With HOME Property Standards in § 92.251(a), (b), and (f)—Compliance Concerns

While one commenter was supportive of the changes made to accept inspections under other HUD programs, they noted that the success of the policy will depend upon effective implementation and coordination among the various entities involved in the project and urged HUD to take steps to ensure that all entities involved are committing to inspection standards that prevent issues in units from going undetected for extended periods. In addition, one commenter requested that HUD clarify whether a participating jurisdiction must be a party to the contract for an inspector conducting the inspection in satisfaction of another funding source's requirements. Another commenter asked which entity is responsible for ensuring that inspections are conducted in compliance with HOME requirements and stated that they wished to avoid conflicts between states and local jurisdictions.

HUD Response: HUD acknowledges the commenter's concerns and believes that the final rule requirement that a participating jurisdiction perform an onsite inspection within 12 months after project completion coupled with the ongoing inspection requirements at § 92.251(f)(3)(i) address the commenter's concern. The participating jurisdiction will still be required to determine that HOME units meet the property standards at the completion of rehabilitation. Moreover, once every three years, either the participating jurisdiction will perform an onsite inspection of the units to determine if they meet the ongoing property standards (§ 92.251(f)(3)(i)(A)) or it may accept an inspection conducted on the HOME-assisted units within 12 months that met the NSPIRE requirements in 24 CFR part 5, subpart G or an alternative inspection standard, which HUD may establish through **Federal Register** publication (§ 92.251(f)(3)(i)(B)). To help ensure that all entities involved are meeting inspection standards, HUD will continue to develop training and tools aimed at ensuring compliance.

The participating jurisdiction is not required to be a party to the contract of an inspector that is inspecting on behalf of another program but may enter into contracts with inspectors to perform the on-site inspection of units under the HOME program. The Department is not

[52] On September 2023, HUD delayed the compliance date for CPD programs (88 FR 63971) and for the HCV and PBV programs (88 FR 66882) until October 1, 2024, to allow PHAs, jurisdictions, participants, recipients, and HUD grantees additional time for implementation. On July 5, 2024, HUD further extended the compliance date for CPD programs and for the HCV and PBV programs until October 1, 2025 (89 FR 55645).

responsible for monitoring the entity that inspects the units under another funder's program but is simply provided the option of accepting the inspection results if it meets the requirements of the final rule in § 92.251.

H. Allowing the Use of NSPIRE Inspections To Determine Compliance With HOME Property Standards in § 92.251(a), (b), and (f)—Equivalent Standards in Tax Credit Programs

Two commenters stated that the proposal to allow a participating jurisdiction to ''[a]ccept a determination made under another HUD program . . .'' should be expanded to also include rental inspections made for tax credit programs. One of these commenters stated that tax credit programs, while not HUD programs, are by far the most frequent and prominent other funding source for affordable housing. The commenter requested that HUD revise the proposed language in § 92.251 to allow participating jurisdictions to accept inspections made by any other funding source when the other funding source's inspection requirements equal or exceed HUD's requirements. One commenter noted that the language of the proposed rule states that HUD may accept the determination of ''another HUD program,'' which could limit HUD's ability to accept the determination of programs outside of HUD that engage in similar determinations. The commenter stated they were especially confused because the informational portion of the comment session made it seem as though HUD ''may accept the determination of another funder in accordance with [§]92.251 every three years thereafter.''

HUD Response: The Department thanks commenters for their recommendation that HUD revise the proposed language in § 92.251 to allow participating jurisdictions to accept inspections made by other funding sources when those other funding sources' requirements equal or exceed HUD's own requirements. This recommendation would allow participating jurisdictions to accept rental inspections for tax credit programs. The Department is moving forward with language allowing for participating jurisdictions to use an inspection performed under the requirements of NSPIRE (24 CFR part 5, subpart G) as evidence of compliance with the HUD housing standards required under § 92.251(b)(1)(viii), and is clarifying that inspections for tax credit programs such as LIHTC are acceptable so long as those inspections meet or exceed the NSPIRE standard in 24 CFR 5.703. The Department acknowledges that the language stating that HUD may accept the determinations made under ''another HUD program'' may be limiting when it comes to non-HUD programs that make similar determinations.

I. Allowing the Use of NSPIRE Inspections To Determine Compliance With HOME Property Standards in § 92.251(f)—Accepting an Inspection Within 3 Months

One commenter suggested that the flexibility of accepting physical inspections performed by other HUD programs using the Housing Quality Standards and NSPIRE standards for tenant-based rental assistance units should operate in a slightly different manner. The commenter recommended extending the timeframe for when the other inspection has occurred from 3 months to 12 months because requiring duplicative inspections annually can cause unnecessary delays in getting families housed.

HUD Response: The Department understands the commenter's concern but must balance the potential delay in receiving assistance with the requirement that a tenant receiving tenant-based rental assistance live in a unit that meets all applicable local or State codes and applicable housing quality standards. HUD believes 3 months is a reasonable period of time in which an inspection reflects the state of the property condition. Any inspections before that period may not accurately represent the condition of the property because too much time will have passed in which intervening events may have negatively impacted the property causing new deficiencies that must be corrected before the tenant could occupy the unit. HUD also retained the language in § 92.251(f)(4)(ii) of the proposed rule that stated that ''[a] participating jurisdiction may move its inspection cycle to align with an inspection'' made under another program. This will better enable the participating jurisdiction to reduce the frequency of inspections during the tenancy.

J. Allowing the Use of NSPIRE Inspections To Determine Compliance With HOME Property Standards in § 92.251(a), (b), and (f)—Use of Housing Quality Standards (HQS) Under § 982.401

One commenter stated that they support HUD's proposal to accept physical inspections performed by other HUD programs that were completed using Housing Quality Standards, or eventually, NSPIRE. Another commenter asked whether inspections conducted under NSPIRE replace inspections conducted under previous standards such as the Uniform Physical Condition Standards (UPCS) or Housing Quality Standards.

HUD Response: HUD wishes to clarify that it is not allowing the use of Housing Quality Standards inspections performed under 24 CFR 982.401 to be used to determine compliance through either § 92.251(b)(1)(viii)(A) (rehabilitation property standards) or § 92.251(f)(3)(i)(B) (ongoing property standards). HOME property standard regulations allow inspections conducted under 24 CFR part 5, subpart G. This provision does not contain Housing Quality Standards inspection requirements, it contains NSPIRE requirements. The Department did not propose to apply or allow the application of the Housing Quality Standards requirements contained in 24 CFR 982.401 beyond its current application to projects with commitments before 2015. Please see § 92.251(f)(2). The Department has determined that the use of NSPIRE standards will result in better housing quality and long-term viability of HOME-assisted units than Housing Quality Standards. In addition, through the Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE) Final Rule published on May 11, 2023 (88 FR 30442), the Department replaced the Uniform Physical Condition Standards previously at 24 CFR 5.703 with NSPIRE. In accordance with the **Federal Register** Notice titled Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE); Extension of NSPIRE Compliance Date for HCV, PBV and Section 8 Moderate Rehab and CPD Programs published on July 5, 2024 (89 FR 55645), HOME participating jurisdictions are not permitted to use UPCS inspection requirements to determine compliance through either § 92.251(b)(1)(viii)(A) (rehabilitation property standards) or § 92.251(f)(3)(i)(B) (ongoing property standards) for HOME-assisted projects with commitments on or after October 1, 2025. The use of NSPIRE as a unified inspection protocol will facilitate alignment inspections of HOME-assisted units with other housing programs.

K. Allowing the Use of NSPIRE Inspections To Determine Compliance With HOME Property Standards in § 92.251(b) and (f)—Use of NSPIRE Results During Rehabilitation and Ongoing Inspections

One commenter supported HUD's proposal to provide administrative relief by better aligning HOME inspection standards with the standards of other funding sources. The commenter supported allowing participating jurisdictions to accept NSPIRE inspections conducted under another funding source, in lieu of the final completion inspections for rehabilitation projects as well as ongoing inspections of rental projects and housing occupied by tenant-based rental assistance tenants because it would reduce participating jurisdictions' administrative burden and reduce the impact on owners and tenants of having multiple project inspections due to layered Federal funding.

HUD Response: HUD appreciates the commenter's review and is moving forward with language allowing for participating jurisdictions to use an inspection performed under the requirements of NSPIRE (24 CFR part 5, subpart G) as evidence of compliance with the HUD housing standards required under § 92.251(b)(1)(viii).

L. Elimination of Initial, Progress, and Final Inspections in § 92.251(b)

One commenter believed HUD's proposal allowed participating jurisdictions to accept NSPIRE inspections of rehabilitation projects performed for other funding sources instead of final and ongoing periodic inspections. The commenter also believed that this allowed the use of LIHTC inspections. The commenter stated that it recommends that HUD still provide participating jurisdictions the option of performing final and ongoing inspections to prevent delays in inspection.

HUD Response: HUD thanks the commenter for reviewing the proposed rule. However, the commenter misunderstands the inspection provision in the proposed rule. HUD did not propose to eliminate initial, progress and final inspections under § 92.251(b)(3). HUD proposed to allow the use of another HUD inspection conducted under 24 CFR part 5, subpart G to be evidence that the property met the requirements under § 92.251(b)(1)(viii) once construction was completed. The participating jurisdiction must still conduct initial and ongoing progress inspections, as HUD explained in the preamble to the proposed rule. *See* 89 FR 46630.

M. Inspection to Applicable Housing Codes in § 92.251(a), (b), and (f)

One commenter stated that HUD should allow State participating jurisdictions to inspect all their HOME properties in accordance with either local codes or a national standard as determined by HUD and that if a State participating jurisdiction chooses to use the national uniform standard, participating jurisdictions should still require owners to certify that they meet local codes but should not be required to inspect the property in accordance with the local code.

HUD Response: Participating jurisdictions are required, by statute, to provide on-site inspections to determine compliance with housing codes and other applicable regulations. *See* 42 U.S.C. 12756(b). HUD does not believe that is has the flexibility to require a national uniform property standard instead of applicable local and State housing codes because the requirement to perform on-site property inspections to those codes is statutory.

N. Support for Adding Carbon Monoxide Detection Requirements to § 92.251(a), (b) and (f)—General Support

Many commenters expressed general support for requiring the installation of carbon monoxide detectors in HOME projects. One commenter went further, stating that carbon monoxide alarms should also be accessible for people with hearing loss.

HUD Response: HUD appreciates commenters' support of the provisions. HUD will describe standards for carbon monoxide detection through a **Federal Register** publication, as described in § 92.251(a)(3)(vi)(A), (b)(1)(xi)(A), and (f)(1)(iv)(A).

O. Adding Carbon Monoxide Detection Requirements to Paragraphs (a), (b), and (f)—Concerns

Many commenters also conveyed concerns about imposing strict requirements for the installation of hard-wired carbon monoxide detectors. One commenter requested that the rule provide an exception be made for those housing units where a gas line or similar hazard is not present. Another commenter only supports requiring hard-wired alarms in HOME-funded new construction. One commenter supports a requirement for a 10-year battery-powered carbon monoxide detector in rehabilitation and homebuyer acquisition projects and in units occupied by tenants receiving HOME tenant based rental assistance. However, for homebuyer acquisition and tenant-based rental assistance projects, the commenter requested that the installation of a carbon monoxide detector be permitted as an eligible HOME cost. This commenter expressed concern that requiring a seller or landlord to pay for the cost of installation of carbon monoxide detectors may reduce the available housing stock for these types of activities. Furthermore, this commenter and another were not in favor of requiring a HOME-assisted homebuyer to pay these costs. Other commenters also requested that HUD make additional HOME funding available for the costs of installing carbon monoxide detectors.

Another commenter stated that they do not support the proposal because carbon monoxide detectors are already required by the International Housing Code, and they view any additional HOME requirements for carbon monoxide detectors as overreach.

HUD Response: HUD recognizes commenters' concerns regarding the installation costs of carbon monoxide alarms. Through final rule, HUD will be establishing carbon monoxide alarm requirements through a **Federal Register** publication. HUD believes installing carbon monoxide alarms is a reasonable cost for homeowners and owners of rehabilitated rental units. Finally, HUD is unable to make additional funds specifically available for the costs of installing carbon monoxide detectors but notes that installation of carbon monoxide alarms is an eligible use of HOME funds for new construction and rehabilitation projects.

P. Carbon Monoxide Requirements in § 92.251(a), (b), and (f) Should Align With Other HUD Programs

One commenter emphasized that any HOME requirements for carbon monoxide detectors should align with other HUD programs.

A different commenter noted that some State regulations require a smoke alarm in every unit room that also contain carbon monoxide detection. Consequently, the commenter suggests that the rule defer to applicable State and local laws for carbon monoxide detection standards.

HUD Response: This final rule seeks to align HOME carbon monoxide requirements with those of the NSPIRE Final Rule and those contained in the U.S. Housing Act of 1937 (42 U.S.C. 1437), thereby promoting consistency with other HUD programs. HUD declines to defer to State and local codes due to the safety benefits of these carbon monoxide alarm requirements to

occupants of HOME-assisted housing and in the interest of aligning HOME requirements with other HUD programs.

Q. Permitting Property Standards Compliance Six Months After Title Transfer in Homeownership Programs Under § 92.251(c)—Support

Most commenters support the proposal to allow homebuyer acquisition projects to meet HOME property standards within six months after the assisted homebuyer purchases the unit because such a change would expand homebuyers' purchasing options and simplify the pre-purchase period. One commenter reasoned that this change would provide more choices for homebuyers and provide access to bank foreclosures, and that this change would prove advantageous for buyers because of risks for buyers to cover out-of-pocket repairs before closing. Furthermore, commenters noted that sellers would often not consider offers that included contingencies regarding property standards, which made HOME-assisted homebuyers less competitive in the private market. In addition, one commenter indicated that the proposal would align HOME with other funding sources before closing. Furthermore, commenters noted that sellers would often not consider offers that included contingencies regarding property standards, which made HOME-assisted homebuyers less competitive in the private market. In addition, one commenter indicated that the proposal would align HOME with other funding sources.

HUD Response: HUD thanks the commenters for their support. HUD is adopting the six-month deadline for a homebuyer to make necessary repairs so that their unit meets applicable property standards. However, HUD has also adopted language in the final rule permitting participating jurisdictions to provide the homebuyer a written extension of up to an additional six months to meet property standards. Participating jurisdictions that wish to exercise the authority to provide extensions, when necessary, must establish policies and procedures for reviewing and approving a homebuyer's request for an extension of the deadline.

R. Permitting Property Standards Compliance Six Months After Title Transfer in Homeownership Programs Under § 92.251(c)—Need for Additional Time

Several commenters suggested that the proposed six-month timeframe would be insufficient time for many homebuyers to complete the necessary rehabilitation. As reasons for this statement, one commenter cited supply chain issues, Build America, Buy America requirements, contractor availability, and green certifications requirements. Commenters proposed allowing longer periods, such as 9, 12, or 18 months after acquisition, to bring a property to standard. Allowing for reasonable extensions or phased rehabilitation plans based on property conditions and local market dynamics could alleviate some of the pressure on participating jurisdictions while maintaining housing quality standards.

HUD Response: HUD agrees with commenters' concerns about potential obstacles to homebuyers meeting the proposed six-month deadline and is revising the proposed language to allow participating jurisdictions when necessary to provide up to an additional six months for homebuyers to meet property standards. This revision allows participating jurisdictions to exercise their judgment regarding a homebuyer project's unique circumstances and local market conditions.

S. Permitting Property Standards Compliance Six Months After Title Transfer in Homeownership Programs Under § 92.251(c)—Opposition

One commenter stated that they do not support the proposed revision due to concerns around enforcement and the possibility that the participating jurisdiction may be required to foreclose on the property or allow the homeowner to live in substandard conditions. Another commenter supportive of the proposal expressed similar concerns about the difficulty of monitoring the six-month deadline to rehabilitate housing and meet homebuyer acquisition property standards. One commenter opposed the proposal, recommending instead that the requirement should align with a local jurisdiction's certificate of occupancy requirements. This commenter agreed with the previous commenter that it may not be practicable for a participating jurisdiction to enforce property inspection requirements on a homeowner after title transfer.

HUD Response: HUD thanks the commenters for reviewing the proposed rule. However, HUD believes that there are adequate safeguards in place to prevent homebuyers from occupying substandard properties. Participating jurisdictions are required to conduct inspections to ensure that homes purchased with HOME assistance comply with HOME property standards, in accordance with § 92.251(c)(3). In the case of projects under this delayed compliance date, the participating jurisdiction must confirm through onsite physical inspection that all required work has been completed to meet property standards. Regarding the concern related to inspecting units after title transfer, participating jurisdictions will be required to make such inspections a condition of the receipt of funds in the homebuyer written agreement. HUD recognizes that permitting homebuyers six months to meet property standards will require participating jurisdictions to adjust their policies and procedures but views this as a worthwhile change to expand the supply of homes that homebuyers may purchase with HOME funds. Regarding the risk that a homebuyer may be unable to afford the rehabilitation necessary to meet property standards, HUD emphasizes that participating jurisdictions must establish and use homebuyer underwriting standards and ensure that HOME funds are supporting sustainable homeownership opportunities, in accordance with § 92.254(f). If a homebuyer is unable to fund necessary repairs, the participating jurisdiction must either provide HOME or other funding for rehabilitation or decline to provide HOME funds to the homebuyer for the purchase.

T. Permitting Property Standards Compliance Six Months After Title Transfer in Homeownership Programs Under § 92.251(c)—Defining How ''Funds are Secured for Rehabilitation''

Several commenters requested clarification of the proposed policy. Specifically, two commenters requested that HUD clarify what evidence a homebuyer must provide to demonstrate that ''funds are secured for rehabilitation.'' One of these commenters suggested that HUD consider a letter provided by a mortgage lender or a bank statement as evidence of sufficient funds.

HUD Response: In accordance with § 92.254(f), participating jurisdictions must establish and use homebuyer underwriting guidelines that ensure homebuyers will have sufficient savings post-purchase or secured financing to complete rehabilitation necessary to meet HOME property standards. This final rule does not prescribe specific documentation that a homebuyer must provide to the participating jurisdiction, as this is for the participating jurisdiction to define in its policies and procedures. It is in the interest of participating jurisdictions to ensure that rehabilitation can and will be completed because the project will otherwise be determined to be ineligible for HOME funding.

U. Permitting Property Standards Compliance Six Months After Title Transfer in Homeownership Programs Under § 92.251(c)—Clarifying Consequences of Non-Compliance

One commenter requested that the Department clarify in the regulation at § 92.251(c) the consequences of failure to meet the property standards requirements within six months after title transfer in a homeownership program.

HUD Response: If the homeownership unit does not meet property standards within six months, the participating jurisdiction may extend the time period in which the property must meet the participating jurisdiction's property standards to 12 months (see § 92.251(c)(3)(ii)(D)). If the property still does not meet the participating jurisdiction's property standards after six months (if no extension is given) or 12 months (if an extension is given), then the housing does not meet the requirements of 24 CFR part 92 and the participating jurisdiction must repay the HOME investment. The corrective and remedial actions for failure to comply with HOME program requirements are outlined at § 92.551. HUD declines to make the suggested change to further clarify the consequences of failing to meet the property conditions because it is unnecessary.

V. Permitting Property Standards Compliance Six Months After Title Transfer in Homeownership Programs Under § 92.251(c)—Guidance

Two commenters requested HUD provide guidance on the inspections required to ensure that the housing met property standards after a HOME-assisted homebuyer purchases the unit and completes the required rehabilitation. One of these commenters requested that HUD provide a sample template inspection form for jurisdictions that operate downpayment assistance programs to standardize practices.

HUD Response: HUD is unable to provide a sample inspection form as part of this final rule. HUD encourages the commenter to review the provisions of this final rule and HOME program resources on the HUD Exchange. As part of the implementation of the NSPIRE Final Rule, HUD will provide additional guidance and materials aimed at assisting participating jurisdictions and owners to comply with the requirements, including a streamlined list of minimum inspectable items that shall be a subset of the larger set of standards published in the NSPIRE Standards notice at 88 FR 40832.

W. Exempt Manufactured Homes From Construction and Safety Standards if They Meet HUD National Construction and Safety Standards for Manufactured Housing

One commenter requested HUD provide for an exemption for HUD Code manufactured housing from all proposed requirements that deal with construction and safety standards. The commenter is concerned that HUD's proposal would impose new construction requirements on all housing structures utilized under the HOME program. For manufactured homes, the commenter believed this would result in conflicts with the Manufactured Home Construction and Safety Standards (the HUD Code) resulting in the inability to utilize manufactured housing for projects funded by the program. The goals of the new construction requirements may make sense for other forms of housing that are not subject to national construction standards administered by HUD. However, the commenter believed they are not necessary for manufactured homes, which as noted, already are subject to such standards.

HUD Response: The Department agrees with the commenter that construction of manufactured housing should meet the requirements contained in the HUD manufactured housing regulations. Under § 92.251(e), ''Construction of all manufactured housing including manufactured housing that replaces an existing substandard unit under the definition of ''reconstruction'' must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280 . . . .''

X. Use the International Code Council/Modular Building Institute Standards for Off-Site Construction

One commenter encouraged HUD to recognize the International Code Council/Modular Building Institute standards for off-site construction in order to facilitate their expanded use and encourage efficient design and construction that addresses housing affordability and availability, sustainability, workforce availability, and supply chain disruptions.

HUD Response: The HOME rule at § 92.251(e) requires that construction of all manufactured homes meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280 and additional requirements. Section 92.251(e) also requires that in HOME-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or State codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285. Manufactured housing that is rehabilitated using HOME funds must meet the participating jurisdiction's rehabilitation standards requirements, as required in § 92.251(b). When building components are built off-site and then installed on the HOME project site as a form of new construction or reconstruction but not as a form of manufactured housing under the Manufactured Home Construction and Safety Standards, the new construction must meet the requirements in § 92.251(a).

Y. Revise Financial Oversight Requirements in § 92.251(f)

One commenter is not supportive of the financial oversight requirements applying to rental projects with 10 or more HOME-assisted units. While the commenter understands that it can always adopt more restrictive requirements, the reality is that financial oversight is an invaluable tool in understanding how properties are performing, as well as early indications of financial distress and/or properties having surplus beyond what was originally underwritten. The commenter uses financial oversight during annual rent increase requests to verify it is reasonable for HOME-funded projects which more than likely have a blend of LIHTC, HOME, Housing Trust Fund (HTF), and/or local resources.

HUD Response: HUD is noting that it has not changed the financial oversight provisions in § 92.504(d)(2). In the proposed rule, HUD reorganized the HOME regulations and moved those requirements to § 92.251(f). HUD understands that many participating jurisdictions may wish to exert greater financial oversight on HOME-assisted projects in their portfolio and encourages participating jurisdictions to determine and implement the best approach for their jurisdictions. At this time, the Department is not reducing the 10-unit threshold for when a participating jurisdiction is required to conduct financial oversight under § 92.251(f). HUD believes this is inconsistent with its efforts to provide monitoring flexibilities to small-scale housing projects and that it is best left to the participating jurisdiction to determine how to monitor projects with fewer than 10 units.

Z. Energy Efficiency Considerations for Manufactured Homes and Off-Site Construction

One commenter also suggested that HUD should ensure that energy efficiency considerations are addressed for off-site built housing like manufactured homes. The commenter noted that HUD should consider the Environmental Protection Agency's EnergyStar v.3 standard or the Department of Energy's Zero Energy Ready standard for manufactured homes as a minimum for any activities related to the purchase of new manufactured housing with HOME funds.

HUD Response: HUD appreciates the comment. However, the Department was not proposing to change the minimum property standards for manufactured housing, which are covered by § 92.251(e). Paragraph § 92.251(e) continues to require that manufactured housing be constructed in accordance with the Manufactured Home Construction and Safety Standards found at 24 CFR part 3280. The Department just recently revised its Manufactured Home Construction and Safety Standards as part of another rulemaking and the Department is declining to make further revisions to those rules or to the HOME rules in response to this comment.[53]

AA. Use of Inspection Performed by Third Parties

Another commenter recommended allowing States to accept ongoing inspection reports from local government inspections that review compliance with local codes during construction of a HOME-assisted project. The commenter believed that HUD should only require the final inspection be conducted by the State participating jurisdiction before completing the project in the IDIS, instead of requiring frequent State participating jurisdiction inspections during construction. The commenter explained that this would avoid unnecessary burden, especially for larger States where it can take several hours to commute to a project's location.

Another commenter stated that HUD should create a process to accept either State or local rental inspections in lieu of HUD required inspections.

HUD Response: HUD declines to revise the requirement that participating jurisdictions conduct progress inspections and notes that HOME regulations do not require participating jurisdiction staff to conduct the inspections. Participating jurisdictions may contract with qualified third-party inspectors, including contractors for other funders or units of government, to conduct HOME inspections in accordance with the participation jurisdiction's policies and procedures.

BB. Provide Small-Scale Rental Housing Inspection Requirements to All Owners

One commenter said that the changes being proposed to the small-scale development compliance requirements, such as requiring inspections every three years, should be extended to larger-scale developments as well.

HUD Response: HUD declines to extend the revisions to compliance requirements for small-scale rental housing to all rental projects. These revised requirements are based on the unique considerations of small-scale housing and would result in insufficient monitoring if applied to larger rental projects. HUD also notes that current HOME regulations at § 92.504(d)(1)(ii)(A) require inspections every three years following the inspection within 12 months of project completion.

CC. Reduce Property Standards Requirements for Homeowner Rehabilitation

One commenter stated that HOME's Housing Quality Standards, especially the requirement to address all health and safety hazards, impose significant challenges on low-income homeowners who cannot afford critical repairs due to limited equity or reluctance to encumber properties. The commenter stated that these issues cause HOME applicants to drop out of the process, which often means that grantees cannot recover the extensive staff time invested in considering or processing applications. The commenter recommended that HUD remove the Housing Quality Standards (HQS) requirements for single-family rehabilitation projects. One commenter stated HUD should expand grant funding available to cover critical repairs, such as roofs, plumbing, and electrical systems, which are often unaddressed due to limited equity, hesitation of homeowners to participate in the program, and concerns about encumbering their property with debt vs income. The commenter noted that HUD could expand the range of available grants to mirror CDBG programs.

HUD Response: HOME is an affordable housing program with the statutory purpose of bringing rental and homeownership housing up to standard physical condition and imposing periods of affordability on the housing.[54] CDBG is a community development program that can fund single purpose or emergency rehabilitation that does not address all deficiencies in a property or impose long-term affordability restrictions. Unlike the CDBG program, the HOME regulations require that the rehabilitation meets the participating jurisdiction's rehabilitation standards, which are more stringent standards that require that the entire housing structure is code compliant and meets the HUD housing standards contained in 24 CFR 5.703, as provided for in § 92.251(b). HQS do not apply to HOME-assisted homeowner rehabilitation projects. For HOME-assisted homeowner rehabilitation, participating jurisdictions must determine the scope of repairs needed to bring the homeowner's property up to code as well as the form of assistance to homeowners, including any loan terms. The critical repairs noted by the commenter are eligible costs if such repairs are necessary to meet participating jurisdiction's rehabilitation standards. Salaries, wages, and related costs of program administration are also eligible costs under the HOME program (§ 92.206(d)(6)). The Department declines to reduce the property standards requirements for homeowner rehabilitation projects and acknowledges that other programs may be better suited for more limited-scope homeowner rehabilitation projects than the HOME program.

DD. Reduce Property Standards Requirements for Homebuyer Acquisition

One commenter requested that HUD only require participating jurisdictions to ensure that homebuyer housing is free of immediate life and safety issues rather than imposing extensive property standards. The commenter stated that this may create a more reasonable option for income eligible buyers and private sellers instead of financing additional rehabilitation costs, which may put debt-to-income ratios too high.

HUD Response: The Department declines to reduce the property standards requirements for homebuyer acquisition projects. The purpose of the HOME program is to bring housing into compliance with property standards and ensure the housing remains affordable over time.[55] For homeownership, adequate property condition is key to

[53] See 89 FR 75704.

[54] See 42 U.S.C. 12721, 42 U.S.C. 12722, and 42 U.S.C. 12741.

[55] See 42 U.S.C. 12721, 42 U.S.C. 12722, and 42 U.S.C. 12741.

the sustainability of a household's homeownership over the period of affordability. When a participating jurisdiction uses HOME funds for downpayment assistance or other homebuyer assistance programs, the participating jurisdiction is required to determine that the housing being acquired meets property standards at purchase or to ensure that necessary rehabilitation is performed soon after purchase. HUD encourages participating jurisdictions to use HOME funds to complete necessary repairs to units being acquired by homebuyers with HOME funds. However, this final rule also reduces a key barrier for private sellers by providing the HOME-assisted homebuyer 6 months to meet property standards. When permitted by a participating jurisdiction, this time period may be extended to 12 months. This should be rare. Meeting property standards may require additional investment by the participating jurisdiction or the homebuyer. The participating jurisdiction must work with the homebuyer and determine the correct amount of homeownership assistance based not only on the cost of acquisition but also any necessary rehabilitation to bring the property into compliance with the participating jurisdiction's property standards.

EE. Align Rehabilitation Standards With the Community Development Block Grant (CDBG) Program

One commenter suggested that the Department align HOME rehabilitation requirements with the rehabilitation requirements under the CDBG program.

HUD Response: The Department declines to align HOME rehabilitation requirements with CDBG. The CDBG program does not require that all rehabilitated residential properties meet the national Standards for the Condition of HUD housing contained in § 5.703. The Department chose to align with programs that are subject to the standards contained in § 5.703 because those programs, which include but are not limited to the Section 8 project-based rental assistance and Housing Choice Voucher program, are the forms of assistance most likely to be combined with HOME assistance. The CDBG program does not require rehabilitation projects to meet these property standards or inspection requirements, and therefore, the CDBG program does not align with other HUD programs under NSPIRE inspection protocols. Adopting the CDBG rehabilitation requirements for HOME-assisted rehabilitation would mean the removal of property standard and inspection requirements from the existing regulation. 42 U.S.C. 12722 states that one of the purposes of the HOME program is ''to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans.'' HUD does not believe that is has the flexibility to remove rehabilitation property standards and inspection requirements because the requirement that all HOME-assisted projects be decent, safe, and sanitary is statutory.

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

A. Support for Smoke Alarms in HOME Projects

Commenters generally expressed support for requiring the installation of smoke alarms in the interest of promoting safety. In addition, only a few commenters stated their support for the specific proposal to require NFPA 72 smoke alarms in HOME-assisted projects. Of those commenters, one indicated support of the proposal for all types of HOME-assisted projects (*i.e.,* new construction, rehabilitation, homeowner or rental acquisition and TBRA) and indicated that the minimal additional cost is worth the potential lifesaving impact. One other commenter indicated support for compliance with NFPA 72 specifically in homebuyer acquisition (*i.e.,* downpayment assistance) programs. The third commenter reasoned that hard-wire smoke detectors would reduce both the removal of batteries and the frustration of tenants responsible for replacing batteries but could not comment on the impact of the policy on homebuyer acquisition projects because the participating jurisdiction does not use funds for that purpose.

HUD Response: HUD thanks the commenters for sharing their views. HUD is revising the proposed language in order to achieve an approach that improves safety while addressing feasibility concerns that commenters raised. This final rule requires that HOME-assisted new construction projects use hardwired smoke alarms. For rehabilitation projects, if the use of hardwired smoke alarms places an undue financial burden on the owner or is infeasible, a participating jurisdiction may provide a written exception to an owner to allow the owner to install a sealed and tamper resistant smoke alarm that uses 10-year non-rechargeable, non-replaceable primary batteries. Participating jurisdictions may also provide exceptions for projects including the acquisition of standard housing for homeownership, such as downpayment and closing cost assistance programs. Finally, a participating jurisdiction's standards must require that existing rental housing and housing occupied by tenants receiving tenant-based rental assistance contain smoke alarms in accordance with the requirements contained in 24 CFR 5.703(b) and (d). These standards do not require NFPA 72 compliance but do require that units occupied by a hearing-impaired person contain smoke alarms designed for hearing-impaired persons.

B. Concerns Over Requiring Installation of NFPA 72 Compliant Smoke Alarms

Most commenters expressed concerns about the specific proposal to require the installation of NFPA 72-compliant smoke alarms. Their primary concerns are costs, availability of such smoke alarms, and feasibility in projects that do not involve new construction or rehabilitation. Specifically, commenters were unclear how compliant smoke alarms would be paid for in homebuyer programs and speculated the proposal could increase administrative burden and cost in many jurisdictions where homeownership assistance programs are often oversubscribed and financially stretched. Many commenters were also concerned that installation would be challenging and cost-prohibitive in the rehabilitation of older housing. One of these commenters stated that adoption of the NFPA 72 standard would cause their participating jurisdiction to discontinue use of HOME funds for rehabilitation projects.

HUD Response: HUD acknowledges commenters' concerns and has revised the proposed language to provide flexibility for participating jurisdictions. For new construction projects and many rehabilitation projects, installing hardwired smoke alarms is feasible and promotes safety and user-friendliness. However, installing hardwired alarms may be challenging for certain rehabilitation projects. This final rule allows participating jurisdictions to provide written exceptions to allow the

owner to install a sealed and tamper resistant smoke alarm that uses 10-year non-rechargeable, non-replaceable primary batteries. Likewise, the participating jurisdiction may provide an exception for homebuyers participating in homeownership assistance programs. HUD believes installing battery-powered smoke alarms is a reasonable cost for homeowners and owners of rehabilitated rental units. Finally, HUD notes that smoke alarms are widely available and that their installation is an eligible use of HOME funds for new construction and rehabilitation projects.

C. Smoke Alarm Requirements Should Be Optional

To address concerns about costs, one commenter proposed that smoke alarm requirements should be encouraged but not required. Other commenters suggested that the rule not require smoke alarms to be hard-wired. One commenter, however, supported hard-wired smoke alarms only in HOME-funded new construction projects. Two other commenters agreed that HUD should differentiate requirements for new construction and rehabilitation projects. The first commenter suggested that the rule require 10-year battery-powered smoke alarms in rehabilitation, homebuyer acquisition, and HOME tenant based rental assistance projects. However, this commenter's recommendation for homebuyer and TBRA projects was contingent on the HOME rule allowing the installation of alarms as an eligible HOME cost.

HUD Response: HUD appreciates the commenters' recommendations. This final rule requires all HOME-assisted units to contain smoke alarms while differentiating requirements by project type. Hardwired smoke alarms are required in new construction projects, while participating jurisdictions may provide exceptions for rehabilitation and homebuyer projects. The installation of smoke alarms is not an eligible HOME cost for homebuyer and tenant-based rental assistance activities. As with other property standards requirements, homebuyers and owners of tenant-based rental assistance units must ensure compliance with smoke alarm requirements. This final rule revises § 92.251(c)(3) to allow a homebuyer to bring a home up to the participating jurisdiction's property standards within 6 months after acquisition, rather than requiring the home to meet all property standards at the time of purchase. The final rule also allows for the participating jurisdiction to extend that time up to 12 months through an amendment to its written agreement with the homebuyer.[56]

D. Cost Concerns Are Not Eliminated by Eliminating Hardwired Smoke Alarms

Other commenters disagreed that eliminating the requirement for hard-wired smoke alarms would address cost concerns. They stated that compliant battery-operated smoke alarms can also be significantly more expensive and harder to find than more widely available models. One commenter suggested that 10-year non-rechargeable, non-replaceable batteries pose the risk of increased replacement costs due to uncertainty about future safety codes after initial battery life has expired. In addition, one commenter indicated that these smoke alarms may require training for the tenant or homeowner to use this system and creates additional expense for homeowners and rental housing owners to replace and maintain.

HUD Response: HUD recognizes that the smoke alarms required by this rule may be more expensive than other smoke alarms in some cases and that battery-powered alarms will involve future replacement costs. However, the marginal cost of these smoke alarms is not significant in the context of rehabilitation or new construction and smoke alarms required by this rule are widely available in stores and online. HUD believes potential additional costs are reasonable in order to promote the safety of tenants and homeowners. Additionally, training for tenants and homeowners on using battery-powered smoke alarms, if required, may already be available online from manufacturers and should be minimal in any case.

E. Consider Availability and Cost of NFPA 72 Smoke Alarms

One commenter urged HUD to assess the availability and cost of NFPA 72 smoke alarms before imposing such a requirement on HOME projects.

Several commenters requested that HUD make additional funds available to cover the costs of meeting any new smoke detector requirements. One commenter stated that national standards must not disadvantage rural places or low-income people, so Federal funds should be provided to cover the cost of any new Federal standards.

HUD Response: This final rule allows participating jurisdictions to make exceptions for rehabilitation and homebuyer projects where installing hardwired alarms would be infeasible or prohibitively costly. HUD notes that installation of the smoke alarms required by this rule is an eligible HOME cost for rehabilitation and new construction costs. Very few projects receive HOME subsidies at or near the maximum per-unit subsidy limit and this rule increases those limits. HUD does not believe that installation of these smoke alarms will be cost prohibitive.

F. Requiring NFPA 72 Smoke Alarms Reduces Ability To Use HOME for Homeownership Opportunities

Commenters who expressed concern about imposing NFPA 72 requirements on homebuyer acquisition projects stated that the proposal would reduce single family homeownership opportunities because it would be difficult for HOME-assisted homebuyers to negotiate specialized smoke detector requests during the purchase and sales of existing units on the market with private owners. For this reason, one commenter noted that such a policy would reinforce its decision to decline to offer homebuyer assistance independently of HOME-assisted new construction or rehabilitation projects. Another commenter suggested that even if the cost of smoke detector installation was permitted as an eligible HOME cost, low-income homebuyers cannot afford to use their downpayment assistance for this purpose due to the high cost of housing. A third commenter suggested that if a household requires a specialized smoke detector, it should either be requested at the time of construction as a reasonable accommodation or should be installed by the homeowner after purchase. However, commenters also expressed concerns about requiring the assisted family to pay for upgrades after purchase, the ability of participating jurisdictions to enforce smoke alarm requirements after closing, and the additional program costs of additional post-closing inspections.

HUD Response: HUD recognizes that HOME property standards can sometimes make it challenging for HOME-assisted homebuyers to find a compliant home to purchase. In this final rule, HUD has revised the requirements at § 92.251(c)(3) in order to provide HOME-assisted homebuyers 6 months to make improvements necessary to meet HOME property standards, with the ability for participating jurisdictions to extend that period for up to 12 months from purchase. Therefore, homeowners selling to HOME-assisted buyers will not need to install the smoke alarms required by this rule prior to closing. In cases where acquired homes do not have smoke alarms meeting the requirements of this rule, HUD believes

[56] See 24 CFR 92.251(c)(3).

it is a reasonable cost for homebuyers to install a hardwired alarm or, with written exception from the participating jurisdiction, a 10-year battery-powered smoke alarm. Participating jurisdictions will monitor smoke alarm requirements as part of its final inspection for overall property standard compliance. HUD notes that the smoke alarms required by this rule present safety benefits for all tenants and homeowners, not only for persons experiencing hearing loss.

G. Property Standards Requirements Should Only Require That Housing Meet State and Local Smoke Alarm Requirements

Several commenters noted that current building codes in some States and local jurisdictions already require compliance with NFPA 72 smoke alarm standards for single and multifamily buildings. Consequently, a number of commenters urged HUD to defer to State and local code requirements for smoke alarms. Commenters explained that State building codes facilitate choice and therefore flexibility based on the conditions of the project.

HUD Response: Due to the safety benefits of the smoke alarms required by this rule, HUD declines to defer to State and local codes. This final rule provides participating jurisdictions flexibility in rehabilitation and homebuyer projects and does not require NFPA 72 smoke alarms for existing rental and TBRA units.

H. Don't Use Only the NFPA 72 Standard

One commenter advised against solely applying NFPA 72 because these requirements do not align with the Consolidated Appropriations Acts of 2021 and 2023 which require all public housing to meet or exceed the requirements of Chapters 9 and 11 of the 2018 International Fire Code and that smoke alarms are installed in Federally assisted housing in accordance with the International Code Council or NFPA and NFPA 72. The commenter urged HUD to reference the smoke alarms requirements outlined in the International Building Code, International Residential Code, and International Fire Code which the commenter stated are industry-leading national voluntary consensus standards, are widely used by government agencies across the nation, and trigger NFPA 72 smoke alarm installation requirements. The commenter stated that implementation of the hearing impairment requirements will be difficult because they are not referenced in the international codes and the technology is limited in availability. The commenter noted that the international codes require smoke alarms be hardwired with battery backup unless it is a first-time install and that the allowance to install seal tamper resistant non-replaceable 10-year battery operated alarms are intended to be limited to existing buildings that do not currently contain hardwired alarms and that it is unclear whether these alarms would comply with NFPA 72 for hearing impairment.

HUD Response: HUD thanks the commenter for their suggestion. This final rule requires that, for new construction, rehabilitation, and homebuyer projects, smoke alarms be installed in accordance with certain specific requirements of HUD. In addition, meeting the applicable codes and standards published by the International Code Council or the National Fire Protection Association ensures compliance § 92.251(a)(3)(vi)(B). Ongoing property standards require that a participating jurisdiction's standards require housing contain smoke alarms in accordance with the requirements contained in 24 CFR 5.703(b) and (d). All carbon monoxide detectors in HOME-assisted units must be installed in a manner that meets or exceeds the standards that HUD will further describe in a forthcoming **Federal Register** publication.

I. Clarification on Smoke Alarms in Projects With Floating Units

Several commenters asked for clarification of the proposed policy. One commenter asked how the proposal would apply (f) in HOME-assisted properties with floating HOME units. Other commenters asked HUD to clarify monitoring and compliance requirements, especially after resale for homebuyer activities.

HUD Response: For rental projects with floating units, in accordance with § 92.252(j), project owners must ensure that units are comparable in terms of their features, which includes ensuring that units have compliant smoke alarms. For homebuyer projects, participating jurisdictions will monitor compliance with smoke alarm requirements as part of final inspections for overall property standard compliance. This final rule revises § 92.251(c)(3) to allow a homebuyer to bring a home to property standards within 6 months after closing and provides participating jurisdictions the ability to extend that to 12 months, if necessary. Whether at initial sale or resale, the participating jurisdiction would therefore inspect the unit once the homebuyer has completed necessary improvements.

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

A. General Support for 20 Percent Sample Size

Many commenters supported the proposal to require participating jurisdictions to inspect at least 20 percent of the HOME-assisted units. One commenter agreed that the current HOME rule requirement that participating jurisdictions inspect a ''statistically valid'' sample of units is challenging for participating jurisdictions that lack software capabilities to develop such a sample. In addition, one commenter in support of the proposal also recommended that HUD require that each inspection include accessible units and evaluate the accessibility of common areas.

HUD Response: HUD thanks the commenters for their support. HUD notes that accessible units in a project are not always HOME units and their designation can change during the period of affordability. Further, requiring each inspection to include accessible units may lead to the same, limited number of accessible units being inspected repeatedly. HUD believes this would be burdensome for the tenants of accessible HOME units. HUD agrees that it is important that common areas remain accessible to persons with disabilities. While the NSPIRE inspection protocol does not specifically include an accessibility section, it requires inspection of common areas for inspection of walkways, ingress and egress, and railings.

B. General Opposition to 20 Percent Sample Size

Many commenters also opposed the proposal, their primary concern being that an inspection of 20 percent of the HOME-assisted units will result in a large sample size, particularly in large projects, and will place an undue burden on residents, project owners, property managers, and participating jurisdictions. In response, several commenters requested that HUD provide additional administrative funds because the proposal would require additional staff time and costs.

One commenter noted that, for properties with a limited number of HOME units, it will be difficult to avoid inspecting the same units each year. Another commenter maintained that current requirements are sufficient for

ensuring properties' compliance with property standards.

HUD Response: HUD appreciates the comments and shares commenters' concerns about burden. HUD is providing burden relief in this final rule by reducing the minimum required sample size to less than 20 percent for projects with 136 or more HOME-assisted units. Beginning with properties that include between 167 and 214 HOME-assisted units, the minimum inspection sample size table in this final rule aligns with the inspection size table included in the NSPIRE Final Rule.[57] HUD also considered aligning with the LIHTC sample size chart but felt it was more appropriate to align HOME with other HUD programs subject to NSPIRE.

C. Impose a Lower Percentage of Units for Larger Projects and Align With LIHTC

Several commenters proposed reducing the sample size for larger projects. Two commenters stated that the proposed sampling method differs from the requirements of other funding sources, including LIHTC, and recommended that HUD instead align the HOME and LIHTC program requirements. One of these commenters suggested using the LIHTC standard of the lesser of 20 percent or an amount on a chart included in the LIHTC regulation 1.42–5 for larger projects to lessen the burden for participating jurisdictions.

HUD Response: HUD thanks the commenters for their suggestions. HUD agrees that the 20 percent sample size in the proposed rule is too large for very large projects and is adopting the NSPIRE sample size chart for larger projects to align with other HUD programs.

D. Require a Bifurcated Sampling Standard for Large and Small Projects

One commenter proposed 20 percent of units in projects with 5–50 units and 10 percent in projects with 50 or more units. Similarly, a different commenter recommended 15 percent of HOME-assisted units in projects with 20–30 units, and 10 percent for projects with more than 30 HOME assisted units.

HUD Response: HUD thanks the commenters for their suggestions and agrees that it should have different sample sizes based on whether the project has a smaller or larger number of units. Although HUD did not adopt the commenter's precise suggestions, this final rule does reduce the minimum required sample size for larger projects as suggested by the commenters.

E. Reduce Sample Size to 10 Percent

One commenter suggested that 10 percent of HOME-assisted units be inspected in all HOME projects, regardless of the total number of units in the project with a minimum of one unit per building.

HUD Response: HUD thanks the commenter for the suggestions. HUD declines to adopt this approach uniformly within the rule because, in most cases, a sample size of 10 percent of HOME-assisted units would be insufficient to ensure the project's compliance with HOME property standards. In larger projects, the Department has determined that it may be appropriate to reduce the percentage to 10% or less, and for projects with greater than 300 HOME units, the sample size is 10% or less.

F. Reduce Sample Size for Small-Scale Rental Housing Projects

One commenter proposed that developers with multiple properties containing between one and four HOME units should be required to inspect 20 percent of the HOME-assisted units across their portfolio every three years.

HUD Response: HUD appreciates the commenter's suggestion but declines to adopt this change. The HOME statute and regulations apply HOME requirements individually to each HOME-assisted project. While a single ownership entity may have multiple HOME-assisted projects in its portfolio, the physical characteristics, management, and occupancy of those project may vary significantly. Physical deficiencies or a lack of deficiencies in one project do not necessarily reflect the condition of other properties in the portfolio. Therefore, the Department believes that each project should be on its own on-site inspection cycle and that the participating jurisdiction cannot sample units across the owner's portfolio to satisfy the individual project inspection requirements for that owner.

G. Confusion Over Sampling Units for Unit Inspections in HOME

Several commenters expressed confusion or requested clarification about the proposed requirements. One commenter stated that the proposed rule is unclear about how the sample size requirement relates to the requirements for timing of HOME onsite inspections. The commenter asked whether annual inspections that, in sum, surpass 20 percent of HOME-assisted units over three years, but do not in a single year, would satisfy the proposed requirement. Another commenter stated that they thought the 20 percent inspection sample size was the existing requirement. And a commenter also stated that no additional inspections should be added to the regulations at all because they are administratively burdensome.

A different commenter requested that HUD clarify whether both HOME and non-HOME units would be required to be included in the inspection sample. The commenter suggests that inspection requirements apply only to HOME-assisted units and that HUD should allow inspection of voucher units without affordability agreements to qualify as inspection and monitoring for HOME. In its final rule, we ask HUD to mandate agreement disbursement for documentation of HOME properties.

HUD Response: This final rule does not change the number or timing of required inspections. Participating jurisdictions must conduct on-site inspections within 12 months after project completion and at least once every 3 years thereafter during the period of affordability. A participating jurisdiction may choose to conduct ongoing inspections more frequently, but each inspection must meet the appropriate minimum inspection sample size defined in this final rule. The inspection must only include HOME-assisted units, and HUD is unable to allow voucher units that are not HOME-assisted to be included in the inspection sample, as these units are not subject to HOME requirements.

H. Other Comments Received on the Solicitation—Adopting Different Property Standards

One commenter urged HUD to adopt the most recent International Property Maintenance Code as the basis for on-site inspections of rental homes to promote standardization of requirements.

HUD Response: HUD thanks the commenter for this suggestion but declines to adopt this change. The Department has engaged in extensive rulemaking on the required standards for on-site inspections and is not going to substantially change those standards at this time.

I. Other Comments Received on the Solicitation—Publish Inspection Components

One commenter asked HUD to publish the components that will be included in a required inspection.

HUD Response: HUD encourages the commenter to review the provisions of this final rule and HOME program resources on *HUD.gov*. As part of the

[57] See ''Table 9—Number of Units Sampled Under NSPIRE Scoring and Sampling Methodology Based on Property Size.'' *https://www.govinfo.gov/content/pkg/FR-2023-07-07/pdf/2023-14362.pdf.*

implementation of the NSPIRE Final Rule, HUD will provide additional guidance and materials aimed at assisting participating jurisdictions and owners in complying with the requirements, including a streamlined list of minimum inspectable items that shall be a subset of the larger set of standards published in the NSPIRE Standards notice at 88 FR 40832.

J. Other Comments Received on the Solicitation—Source Documentation in Income Determinations During the Sixth Year of Affordability

One commenter also asked whether the sixth year of affordability is measured by the individual tenant's occupancy date or the date of the project completion date and how the six-year period of affordability will be affected if ownership changes during that period. The commenter expressed confusion between the current six-year period of affordability and the period of affordability outlined in HOTMA, so they asked HUD to provide occupant variance probabilities and to incorporate said variances into the final rule. The commenter also supported participating jurisdictions making the final determination of period of affordability based on variance probability guidance from HUD in the final rule.

HUD Response: The period of affordability in a HOME-assisted rental project starts when the project meets the definition of project completion (see § 92.2 definitions), and the project is placed into service. During the period of affordability, the HOME-assisted units must be occupied by income eligible families and comply with applicable rent requirements. To ensure the HOME-assisted units qualify as affordable housing, the project owner must determine the annual income of the family using a variety of methods permitted under HOME and selected by the participating jurisdiction. HUD's rule is that unless a person is qualifying under § 92.203(a)(1), (a)(2), or (a)(3), the owner must calculate the person's annual income using source documentation prior to initial occupancy, and then once every six years during the period of affordability (*e.g.,* the six-year schedule of examination for a project with a 20-year period of affordability would be to perform an income examination with source documents in years 1, 6, 12, and 18). The six-year schedule applies to the period of affordability and not to a tenant's occupancy. The requirement to redetermine income eligibility using source documents every sixth year applies only in units where a participating jurisdiction permits the use of self-certification in accordance with § 92.203(b)(1)(ii). The six-year schedule and method of determining income eligibility under this schedule does not change if there is a change in ownership; it is based on when the project was completed and placed into service. When there is a change in ownership during the period of affordability, the HOME requirements continue to apply to the project and the income examination cycle remains the same. This is the methodology that HUD uses to ensure the HOME-assisted units remain affordable during the period of affordability as established in the table in § 92.252(d).

The Department is also clarifying that the six-year schedule in this Final Rule is the same as the six-year schedule in the HOTMA Final Rule, and that the requirements are consistent with one another. HUD does not believe it necessary to calculate occupant variance probabilities (within the six-year period of period of affordability) as requested by a commenter or to reexamine HUD's methodology for verifying units remain affordable and occupied by low-income families during the period of affordability.

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

A. General Comments

HUD received a broad range of responses to this solicitation on the appropriate periods of affordability to impose on HOME-assisted projects. Commenters recommended that HUD leave the existing regulations intact, increase the dollar thresholds for existing periods of affordability, eliminate the longer period of affordability for new construction of rental housing, align HOME requirements with other housing program requirements, establish longer periods of affordability, establish different periods for homeownership activities, or allow participating jurisdictions to determine their own periods of affordability.

HUD Response: The Department appreciates the many thoughtful comments submitted by commenters. HUD is guided by the Act, which states that HOME-assisted housing must ''remain affordable for the remaining useful life of the property, as determined by the Secretary, without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this Act,'' Therefore, HUD carefully balanced commenters legitimate concerns about increases in land and construction costs in the past 30 years with the degree to which the nation's affordability crisis has deepened and spread during that period. HUD also notes that the most recent HOME appropriation of $1.25 billion is less than the $1.5 billion appropriated for HOME in Fiscal Year 1992. Had the HOME appropriation kept pace with the rate of general inflation, the current appropriation would be nearly $3.9 billion. In this final rule, HUD has retained the periods of affordability of 5, 10, and 15 years based on per-unit investment and 20 years for new construction of rental housing but partially adjusted the thresholds for the per-unit investment-based periods to reflect cost increases over the past three decades. However, these limits are not fully adjusted for inflation due to the need to address the significantly worsened affordability crisis with an

appropriation that in real dollar terms is less than half what it was in Fiscal Year 1992. The rule imposes the following periods of affordability: (1) 5 years when per-unit HOME investment is less than $25,000; (2) 10 years when the per-unit HOME investment is between $25,000 and $50,000; (3) 15 years when the per-unit HOME investment is more than $50,000; and (4) 20 years for all projects involving new construction of rental housing.

B. Make No Changes to Period of Affordability

Some commenters stated that the current length and amount criteria for period of affordability is appropriate and can remain as currently written.

HUD Response: HUD appreciates the comments. However, the Department believes that it is appropriate to partially adjust the dollar ranges for the period of affordability to reflect the 226 percent increase in the Consumer Price Index between 1992 and 2024, the increase in compliance costs, and the current cost of labor and materials.

C. Adjust Dollar Thresholds To Reflect Cost Increases

Numerous commenters stated that the length of the current periods of affordability are appropriate but recommended that HUD adjust the dollar thresholds to reflect the significant increase in the cost of land and construction since the current thresholds were established in December 1991. Two commenters who supported the length of current periods of affordability recommended that HUD adjust the existing dollar thresholds to reflect the cumulative change in the Consumer Price Index (CPI) since that time. One of these commenters noted that the existing $15,000 threshold between the 5-year and 10-year periods would be nearly $35,000 if adjusted by the CPI.

Several commenters cited increased costs of rehabilitation since 1991 and stated that HUD should adopt alternative dollar thresholds. Commenters recommended thresholds of between $20,000, and $125,000 for a 5-year period of affordability and between $50,000 and $250,000 for the 15-year period of affordability. One commenter who supported higher dollar thresholds also recommended that HUD adopt a 25-year period of affordability for new construction. One commenter suggested a period of affordability of 20 years for a HOME investment of less than $1,000,000 and 50 years for a HOME investment of more than $1,000,000.

HUD Response: The Department agrees with commenters that the HOME periods of affordability should be adjusted to reflect cost increases over time and appreciates the various suggestions. HUD also declines to adopt suggestions that would increase the thresholds far beyond the 226 percent increase in the Consumer Price Index as such increases would reduce the affordability achieved through HOME subsidies below what was required at the inception of the HOME program. HUD also notes that some of the suggested amounts far exceed the maximum HOME subsidy that may be provided to a unit. The thresholds established in this rule constitute a 66 percent increase in the five-year period of affordability threshold, and a 25 percent increase in the threshold separating the 10-year period of affordability and the 15-year period of affordability, which HUD believes balances the competing needs for modernized thresholds and the severity of the current shortage of affordable housing. HUD also declines to extend the period of affordability for new construction of rental units to 25 years because even newly constructed units will require rehabilitation and recapitalization before the expiration of that period. Extending this period would complicate efforts to recapitalize housing projects, including efforts to further extend periods of affordability through additional HOME funds or other funding sources.

D. Eliminate the Longer Period of Affordability for New Construction of Rental Housing

A commenter recommended eliminating the 20-year requirement for new construction projects and applying the per-unit subsidy-based periods of 5-, 10-, or 15-year to all units irrespective of the activity undertaken. The commenter stated that a gut rehabilitation project has a 15-year period of affordability and new construction has a 20-year period of affordability, although there is essentially no difference in housing quality of these two project types. Another commenter advocated eliminating the 20-years period of affordability for new construction to allow for the reinvestment of HOME funds after 15 years.

HUD Response: The Department appreciates the comments but declines to make this change. HUD believes that the longer period of affordability for newly constructed rental housing faithfully implements the statutory requirement that HOME periods of affordability reflect the useful life of the property or such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this Act. The fact that some substantial rehabilitation or reconstruction projects may be similar in construction and useful lifespan to new construction is not an adequate justification to reduce the period of affordability for HOME-funded new construction projects.

E. Align Period of Affordability Requirements With Other Programs

One commenter stated that periods of affordability are critical to ensuring that the investment of Federal funds has an impact on housing availability and affordability over time, but also make project underwriting at the time of funding and ongoing maintenance of the financial and physical health of the property more challenging. The commenter stated that the affordability restrictions in HOME are a barrier to HOME-assisted rental housing development in high-cost areas, given the need to layer financing from multiple sources. The commenter suggested aligning HOME periods of affordability with the 15-year credit compliance period of the Low-Income Housing Tax Credit (LIHTC) to enable preservation of existing affordable housing through recapitalization. Another commenter recommended that HUD align the HOME period of affordability 30-year LIHTC extended use period to allow cities to track period of affordability more easily among various affordable housing project types. One commenter stated HUD should align its periods of affordability with the minimum 55-year period frequently used in affordable housing programs in California.

HUD Response: HUD appreciates the comments and recognizes that most HOME projects also include one or more other Federal, State, local, or private funding sources, which means that there are multiple restricted use periods imposed by other affordable housing funding sources to which HOME could possibly align. The Department believes that the multiplicity of possible options is a compelling reason not to align with a single other funding source and maintain the current periods, which are well-understood among affordable housing developers. HUD also reads the Act to require it to affirmatively establish periods of affordability that apply to HOME-assisted units rather than deferring to one or more other funding sources.

F. Change Lengths of Periods of Affordability

Several commenters stated that HUD should impose longer periods of affordability. One commenter supported a period of affordability up to 40 years and encouraged HUD to consider mandatory periods coterminous with the compliance requirements of the superior funding source as long as they exceed 30 years.

One commenter requested that HUD require HOME periods of affordability to be the greater of (1) the longest period of affordability of any other public assistance program supporting the assisted housing or (2) 10 years for a per-unit HOME investment of under $15,000, 15 years for a per-unit investment between $15,000 and $40,000, 20 years for a per-unit investment of more than $40,000 or any unit involving refinancing of existing debt, and 30 years for any unit involving new construction. The commenter also recommended that HUD consider incentivizing permanent or 99-year periods of affordability by increasing the maximum per-unit HOME subsidy limit in exchange for a commitment to permanent affordability. Another commenter supported lengthening the HOME periods of affordability but urged HUD to reduce long-term compliance requirements to ease administrative burden.

Other commenters opposed longer periods of affordability. One commenter said that cash flow challenges are already an obstacle to rental housing development in rural areas, and extending periods of affordability would increase the difficulty of cash-flowing potential projects in those areas further limiting already constrained new unit production. The commenter emphasized that impact on project viability in rural areas should be a prime factor when HUD contemplates changes, including changes to the periods of affordability. Another commenter said that although it requires a 30-year or 40-year affordability terms on multifamily development projects, it does not recommend extending the HOME periods due to the prohibition on investing additional HOME funds in a project during the period of affordability. The commenter opposed extending HOME periods of affordability beyond the life of the HOME-funded improvements. A commenter opposed any extensions to the periods, and especially the 15-year period applicable when HOME funds are used to refinance existing debt, due to increased liability and decreased flexibility and recommended that the period begin when a building is put into service not when it is entered into IDIS.

One commenter stated that the period of affordability is too long based on the funding provided and recommended that HOME allow participating jurisdictions to set the period of affordability. The commenter noted that this change would provide flexibility in various housing markets, where needs can vary significantly.

HUD Response: HUD thanks the commenters for reviewing the proposed rule and making suggestions. However, for reasons explained above, HUD is declining to lengthen, to align to other programs, or to devolve decision-making on HOME periods of affordability. As required by the Act, HUD has considered both what is the longest period of affordability consistent with sound economics and the purposes for which the HOME program was established in making the determinations reflected in this rule. HUD believes that a participating jurisdiction's use of HOME funds to refinance an owner's existing debt as part of a HOME transaction should be entered into only after careful consideration and a finding that it is an absolute necessity to enable a project to proceed. The period of affordability selected by HUD ensures that the investment of taxpayer funds to pay off an owner's existing debt results in a tangible benefit.

G. Require Different Periods of Affordability Based on Different Considerations

One commenter recommended different periods of affordability for rental and homeowner activities. The commenter stated that a longer period of affordability is a deterrent for single family homeowner programs. The commenter also urged HUD to investigate ways to update the periods of affordability to take into account scenario planning for varying annual appropriations, how long tenants stay in a HOME unit, and the average cost of repairs and how long repairs last.

HUD Response: The Department thanks the commenter for reviewing the proposed rule. HUD declines to establish different periods of affordability for homebuyer and rental housing. The longest period of affordability applicable to homebuyer housing is 15 years for a total investment of more than $50,000 in a homebuyer development project or direct subsidy to a homebuyer of $50,000 to facilitate the purchase of a property. The Department does not believe that these periods are unreasonable given the public subsidy being provided. HUD has taken the size of recent HOME appropriations, the useful life of construction or rehabilitation, and the costs of these activities into account in finalizing this rule.

§ 92.252—Qualification as Affordable Housing: Rental Housing

A. Support for Changes to Rent and Utility Allowances

Commenters supported proposed changes that resulted in more flexible policies with respect to rent and utility allowances. Other commenters worded their support differently and stated that they supported the proposed alignment of the HOME program with the rent limits from other programs involved in a project.

HUD Response: The Department thanks the commenters for reviewing the proposed rule and providing comments on the proposals related to HOME rental housing. The Department is moving forward with changes to the rent and utility allowance requirements, as described in this preamble.

B. Changes to Marketing Provisions in Introductory Provision

One commenter supported the elimination of the requirement for participating jurisdictions to submit marketing plans to HUD for HOME-assisted units not being leased up within 6 months of project completion. The commenter explained that it, as a participating jurisdiction, works with owners and managers to ensure lease up is timely but would not be the best equipped party to create a marketing plan.

HUD Response: The Department thanks the commenter for their support. HUD is moving forward with the proposed change.

C. Support for Not Applying Rent Limits to Payments Under Federal or State Rental Assistance or Subsidy Programs in § 92.252(a)

Commenters stated that they supported the proposal to permit housing developers to allow an owner of a HOME-assisted unit to charge the permissible Housing Choice Voucher (HCV), project-based voucher, or project-based rental assistance rent instead of the maximum HOME rent because it would increase the financial viability of developments.

One commenter stated that housing developed for persons at or below 30 percent area median income often includes eight or more government funding sources, each with separate inspection and reporting requirements.

The commenter stated that the proposed HOME program alignment will reduce redundancy and increase efficiency. Commenters stated that they support allowing the public housing authority (PHA) rent reasonableness study to serve as the upper limit for rents in a property when an outside subsidy such as Section 8 is used. Another commenter expressed support for aligning § 92.252(a) requirements with HERA rules, and LIHTC rules allowing the owner to receive the rent determined by a PHA in accordance with proposed § 982.507(c)(3) or another Federal or State rental assistance or subsidy program. A commenter noted that the change would align with what has been allowed in LIHTC properties for decades and improve cash flow at properties that have had limited options previously, but that it would be important to ensure adequate funding was provided. Another commenter explained this would ease administrative burden and reduce confusion related to overlapping requirements.

Several commenters supported only applying the rent limits to the amounts paid by the tenants in HOME projects. One commenter also supported the removal of rent subsidy from the rent calculation.

HUD Response: The Department thanks the commenters for reviewing and is moving forward with the proposed language. In addition, in response to the commenters, the Department also considered further streamlining of the rent limit provisions. The Department has determined that it is permissible to revise the High HOME rent limits to exclude the tenant payment when a tenant is participating in a program where the tenant pays no more than 30 percent of their monthly adjusted income or 10 percent of their monthly income towards rent.[58] This allows Section 8 voucher holders to pay the total tenant payment in accordance with Section 8 requirements and permits the HOME rental housing project owner the ability to accept the rent from both the rental assistance provider and the tenant without limitation. This provision will also increase alignment when combining multiple sources of funding.

D. Opposition to Changes in Rent Limits

One commenter sought clarification on the HOME rent limits and stated that it would not support rent limits being only applied to the tenant portion of rent. The commenter wished for the rent limits to apply to the overall amount received by the owner.

HUD Response: The Department declines to make the changes recommended by the commenter. HERA is statutory and it is the Department's legal interpretation that the rent limits under the Act do not apply to either the tenant contribution or the rental assistance or subsidy provided to a person or unit under the Section 8 rental assistance programs. The Department lacks discretion to apply the rent limits to the overall amount received by the owner, as this is contrary to law and the intent of Congress.

E. Request To Further Revise HOME Rent Requirements in § 92.252(a)

Another commenter supported the proposed change as it considerably simplifies compliance for voucher holders. The commenter recommended that the changes should remove the ''project-based'' language and the requirement that the ''very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income'' from § 92.252(b)(2)(ii) because the PHA or subsidy provider should be determining what the household must contribute to rent under their program.

HUD Response: The Department is revising the language of § 92.252(a) in response to public comments. The Department has expanded the provision to state 30 percent of the family's monthly adjusted income or 10 percent of the family's monthly income, to align with the Section 8 regulations on total tenant payment. The Department has added this language to both the High and Low HOME rent provisions and will allow tenants to pay the amount determined under the Section 8 program when a voucher holder is also living in a HOME-assisted unit.

F. Permit an Owner To Receive Rent Determined by a Local Government Rental Assistance or Subsidy Program in § 92.252(a)

Commenters stated that HUD should permit an owner to receive rent determined by a local government rental assistance or subsidy program in addition to the allowance of receipt of rent determined by a PHA or another Federal or State rental assistance or subsidy program. The commenter recommended HUD amend the proposed language in § 92.252(a) from ''rent limits do not apply to any payment provided under a Federal or State rental assistance or subsidy program . . .'' to ''rent limits do not apply to any payment provided under a Federal, State, or local government rental assistance or subsidy program.''

HUD Response: The Department considered the commenter's request, examined the Act in light of the passage of HERA, and has determined that Congress did not intend to apply the rent limits to families that were paying, as a contribution towards rent, no more than 30 percent of their monthly adjusted income or 10 percent of their monthly income in another program. The Department has revised § 92.252(a) accordingly. The Department also expanded the language in § 92.252(a) to cover local rental assistance programs, as requested by the commenter. This fully addresses the commenter's concerns and allows owners to accept the rent contribution of a family under Section 8 and similar rental assistance programs.

G. Change Low HOME Rent Requirements in § 92.252(a) To Be Based on Gross Income

Commenters also proposed amending the language of § 92.252(a)(2)(ii) to say, ''[T]he rent contribution of the family is not more than 30 percent of the family's gross income,'' similar to recent HOTMA changes implemented for rental assistance programs, in order to align more closely with the intent to streamline housing programs and assistance.

HUD Response: HUD thanks the commenters for reviewing the proposed rule. 42 U.S.C. 12745(a)(1)(B) requires that ''not less than 20 percent of the units (i) occupied by very low-income families who pay as a contribution toward rent (excluding any Federal or State rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by the Secretary . . .'' HUD lacks the discretion to change the requirement from the statutory 30 percent of ''monthly adjusted income'' to 30 percent of ''gross income'' that the commenter has recommended.

H. Allow Owners To Collect Full Contract Rent When the Tenant Rental Contribution of a Family That Received Section 8 Rental Assistance in a HOME Unit Earns More Than 65 Percent of Area Median Income in § 92.252(a)

A commenter supported the alignment of project- and tenant-based subsidized rents and Low and High HOME units in § 92.252 but stated that High HOME rent units still face an issue when tenants paying their share of the rent under the subsidy program have a tenant rent that exceeds the otherwise applicable HOME limit. The commenter urged HUD to allow the collection of the

[58] See 24 CFR 92.252(a)(1)(A).

full subsidy for all HOME units that are currently allowed for Low HOME rent units where families are paying 30 percent of adjusted income as required by a rental assistance program. The commenter suggested addressing this issue by adding the same clause to the definition of High HOME rent limits as exists for Low HOME by adding a new § 92.252 (b)(1)(iii) which would say ''[t]he rent contribution of the family is not more than 30 percent of the family's adjusted income.'' The commenter stated that PBRA policy allows families to decide if they want to keep the security of their subsidy or let it go in favor of lower rents applicable to another program and stated that this could also apply to HOME.

One commenter expressed support for the change to allow owners to charge rents that exceed the HOME rent limits for units occupied by tenants with tenant-based vouchers (in alignment with changes made to the Section 8 programs and HERA), but was concerned about how this will impact underwriting financial feasibility at the time of application and possible unintended consequences.

Another commenter stated that HUD should align HOME rent limits with the Section 8 programs for PBVs. The commenter stated that they support this approach because, from an underwriting perspective, it is important to not over-subsidize units, and it is easier to underwrite higher rents when they are guaranteed PBVs.

A commenter stated that, as long as the unit is receiving at least one dollar in subsidy, the HOME program should not impose any restrictions on gross rent or the tenant portion of rent for households receiving PBVs, housing choice vouchers (HCV), or Veterans Affairs Supporting Housing (VASH) vouchers. The commenter stated that this approach aligns with the LIHTC program requirements.

A commenter stated that for projects that have both PBVs and HOME funds, it will be more difficult for PJs to regulate the HOME rent limit being applied to the tenant portion of the rent.

HUD Response: The Department considered the commenter's request, examined the Act and HERA, and has determined that Congress did not intend to apply the HOME rent limits to families that were paying, as a contribution towards rent, no more than 30 percent of their monthly adjusted income or 10 percent of their monthly income. The Department has revised § 92.252(a) accordingly. This fully addresses the comment and allows for owners to accept the rent contribution of a family under Section 8, including HUD VASH and similar rental assistance programs.

I. Underwrite to HOME Rent Limits in § 92.252(a) for Units Without Project-Based Rental Assistance

One commenter recommended that HUD specifically state in the final rule that the HOME rent limits *must* be used for units *without* project-based rental assistance (*i.e.,* units that *may* have tenants with vouchers, but it is not certain at the time of underwriting). If higher rents are assumed for those units, rental income may be artificially inflated; however, after initial occupancy, the commenter believes it would be appropriate to allow owners to charge the allowable rents under the tenant based rental assistance program to generate additional income and help ensure the project is sustainable for the long term.

HUD Response: The Department thanks the commenter for the feedback and agrees with the commenter that unless a project has been awarded a HAP contract and is assured continued provision of project-based rental assistance or project-based vouchers, HOME units should be underwritten using the High and Low HOME Rents. It would not be consistent with the regulation at § 92.250(b) to assume that HOME units will be occupied by people who have Housing Choice Vouchers because there would be no basis for the assumptions around the operating income for the project. However, the Department declines to codify this requirement, as each project is different and there are a variety of other funding sources that may be layered together in a HOME project, some with their own rents that must be factored into underwriting.

J. Allowing Owners To Accept the Full Section 8 Contract Rent in § 92.252(a) May Change Owner Behavior

One commenter expressed concern that allowing owners to charge rents that exceed the HOME rents for units occupied by tenants with vouchers might inadvertently incentivize owners to rent *only* to tenants *with* vouchers. The commenter notes that many more households need rental assistance than receive the assistance; however, HOME units are more affordable than market rate housing, and eligible tenants should be able to access the units without barriers. The commenter expressed concern that the unintended incentive for owners to rent only to tenants with vouchers could have fair housing implications.

HUD Response: The Department appreciates the commenters concern but would like to note that the Act expressly permits project owners to accept tenants with Section 8 vouchers. Specifically, section 12745(a)(1)(D) of the Act states that ''Housing that is for rental shall qualify as affordable housing under this subchapter only if the housing . . . (D) is not refused for leasing to a holder of a voucher or certificate of eligibility under section 1437f of this title because of the status of the prospective tenant as a holder of such voucher or certificate of eligibility . . .'' This statutory requirement is reflected in § 92.253 which also requires project owners to have and follow written tenant selection policies and procedures and provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable. Given the statutory and regulatory requirements for tenant selection, the Department believes it is Congress's intent to incentivize owners in the HOME program to include tenants with Section 8 vouchers or rental assistance in their projects and to allow the owners to accept the total tenant payment and the contract rent for the family's unit. To that end, the Department has expanded the prohibition against source of income discrimination to also include State and local rental assistance programs, as the Department believes it is consistent with the purposes of the Act to allow holders of such forms of assistance the ability to use their assistance to live in HOME units.

K. Support for Utility Allowance Changes to § 92.252(b)

One commenter expressed support for the proposed language in § 92.252(b) that would allow use of the HUD Utility Schedule Model (HUSM), public housing authority utility allowance, or other method approved by HUD, reasoning that HUD should allow more options because: there are difficulties in getting detailed utility data in rural areas; more options would be consistent with other HUD program requirements; and, if options remain limited, Indian Tribes and Indian Housing Authorities may operate rental assistance programs with their own conflicting rules. The commenter explained that the public housing authority utility allowance would be easier to administer for less-experienced project owners with small projects and portfolios. The commenter also encouraged HUD to allow HUSM as an option for all HOME-assisted rental units rather than just units with specified rental assistance programs. Furthermore, the commenter requested that both telephone *and* internet be

listed as exclusions from utilities and services in § 92.252(b).

Another commenter supported the proposed exceptions for HOME projects with Section 8 Project Based Voucher (PBV) and HUD–VASH but noted that utility allowances determined by local public housing authorities are almost always either significantly higher or lower than other models, which ends up being inequitable for tenants or unfair for owners.

HUD Response: The Department thanks the commenters for reviewing and is moving forward with the proposed language in § 92.252(b) allowing participating jurisdictions to use the HUD Utility Schedule Model, the utility allowance established by the applicable local PHA, or other method approved by HUD for its maximum monthly utility allowances. This change will make all three options available for all HOME-assisted rental units. The Department is listing broadband as an exclusion from utilities and services in § 92.252(b) to help clarify utilities covered by the utility allowance.

The Department has noted the commenter's concern about inequities in utility allowances determined by public housing authorities but has seen no data demonstrating that price differences as drastic or prevalent as described exist. Furthermore, if a participating jurisdiction finds the utility allowance determined by its local PHA unsuitable, it is now able to choose a more suitable model (the HUD Utility Schedule Model or another method approved by HUD) for its project.

L. Support for Utility Allowance Changes in § 92.252(b)—Alignment With PHA Utility Schedule

One commenter supported the use of the PHA utility allowance in all HOME-assisted rental projects because a standardized utility allowance allows for better compliance monitoring. In addition, the commenter stated that, to make compliance significantly easier, a participating jurisdiction should still be able to establish the effective date of the utility allowance to align with revisions to the HOME rents.

HUD Response: The Department thanks the commenter for their review and notes that the final rule does not prescribe a timeline for annual updates to rents and utility allowances.

M. Confusion Over Utility Allowances in § 92.252(b)

One commenter recommended that HUD create a pathway for compliance for rental subsidy programs that include the household's contribution to utilities as part of their rental contribution and that HUD move the language at § 92.252(b)(2)(ii) out of paragraph (b) so that rent can go up to the maximum allowed under the Federal or State rental subsidy.

HUD Response: In the rental subsidy programs that the commenter describes, the subsidy provider pays the owner directly on behalf of the renting household or tenant. Under the HOME regulations § 92.252, utility allowances are provided for tenant-paid utilities in HOME-assisted rental units. The Department declines to change the existing language, as the situation outlined by the commenter does not apply to HOME.

N. Support for 60-Day Notice Requirement Before Imposing Rent Increases in § 92.252(e)

One commenter supported the increase in the minimum number of days required from 30 to 60 for a rent increase.

HUD Response: HUD thanks the commenter for their support of the proposed period for rent increases. HUD is adopting propose rule language to ensure that tenants of HOME-assisted rental units have adequate notice of rent increases proposed by the owner and approved the participating jurisdiction.

O. Revise § 92.252(g)(2) To Use Different Terminology

One commenter suggested that the proposed regulatory text at § 92.252(g)(2) be revised to list ''rental'' rather than ''multifamily''.

HUD Response: HUD agrees with the commenter and is making the change.

P. Rent Restrictions in § 92.252(h)

One commenter stated that the proposed § 92.252(h)(2)(i) should allow tenants of HOME-assisted projects with multiple sources of funding to pay the rent amount required under any of the programs' requirements, not just LIHTC.

HUD Response: The Department agrees with the commenter and has expanded the owner's ability to accept the rent and total tenant payment for other programs that are often combined with HOME assistance in HOME rental housing projects, including programs that require tenants to pay no more than 30 percent of their monthly adjusted income or 10 percent of their monthly income. The Department also codified provisions on LIHTC rents that are contained in 42 U.S.C. 12745(a)(1)(B) of the Act. The Department also expanded the amount of rent that an owner may receive for over-income tenants by also allowing the owner to accept the subsidy provided under a program that provides Federal, State, or local rental assistance or subsidy (see § 92.252(h)(iii)). This should adequately address the commenter's concerns.

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

A. Comments in Support of Allowing a Participating Jurisdiction To Use a Local PHA Utility Allowance

Commenters predominantly supported permitting all HOME-assisted projects to use the local public housing authority's utility allowance, noting that the change would make the process simpler, more effective, provide greater flexibility to participating jurisdictions and developers, and align HUD's process and operations with programs like HTF and LIHTC.

HUD Response: The Department thanks commenters for reviewing and is adopting language permitting participating jurisdictions to use the HUD Utility Schedule Model, the utility allowance established by a local PHA, or other methods approved by HUD for their maximum monthly allowances.

B. Comments in Support of Allowing a Participating Jurisdiction To Use a Local PHA Utility Allowance With Changes

In expressing their support, many commenters included addendums or clarifications they suggested be made to this proposed policy. One commenter advised HUD to clarify that using the housing authority-established utility allowance is not a requirement for all units, and that a participating jurisdiction may work with the property owner to determine whether the public housing authority or a property-specific utility allowance is more appropriate. This commenter, as well as another otherwise-supportive commenter, advocated for the use of alternative energy models to provide flexibility for projects with different energy use profiles, with the public housing authority's utility allowance serving as the baseline option to reduce soft costs and provide clear alignment with other funding programs.

HUD Response: The Department thanks the commenters for reviewing and is moving forward with the proposed language in § 92.252(b) allowing participating jurisdictions to use the HUD Utility Schedule Model, the utility allowance established by the local PHA, or other method approved by HUD for their maximum monthly utility allowances. Which of the three methods

is selected is at the participating jurisdictions' discretion. Participating jurisdictions that wish to utilize alternative energy models (or any other utility allowance method that is not the HUD Utility Schedule Model or the utility allowance established by a local PHA) may submit a request to HUD for review.

C. Requests for Clarification of Utility Allowance Requirements

One commenter recommended that HUD clarify the utility rates for communities not served by a local public housing authority. Commenters noted that grantees are confused when State agencies require different utility allowances than local participating jurisdictions and recommended that HUD allow participating jurisdictions to coordinate program funding.

Another commenter recommended HUD clarify which utility allowance should be used where more than one housing authority has PBVs in a development layered with HOME units. In the absence of PBVs, the commenter stated that the participating jurisdiction needs to have authority to determine the most applicable housing authority utility allowance. If HUD does not leave this decision to participating jurisdictions, the commenter suggested that HUD adopt a rule stating that the applicable public housing authority utility allowance is the smallest unit of government. The commenter also recommended that HUD allow participating jurisdictions to establish rules in areas without applicable housing authorities preventing developments from using a housing authority's utility allowance.

HUD Response: The Department thanks commenters for their review and is adopting the proposed language in § 92.252(b) allowing participating jurisdictions to use the HUD Utility Schedule Model, the utility allowance established by the applicable local PHA, or other method approved by HUD for their maximum monthly utility allowances. HUD does not recommend or require any one of the three available options over any other—this is left up to the participating jurisdictions' discretion. If a utility model from a statewide entity that is funding a project is available, the participating jurisdiction may submit a request to HUD for use of that model in its project. Usually, there is at least one public housing authority serving a specific jurisdiction, whether it be a state, regional, county, or city public housing authority. The Department believes that the applicable local public housing authority will typically be the one that administers the project-based voucher assistance to the property, if the project contains project-based voucher units, or the public housing authority that the participating jurisdiction determines is most representative of the community where the project is located.

D. Request for Technical Assistance on Utility Allowance Requirements

One commenter supported the inclusion of public housing authority utility allowance but stated that HUD should provide technical assistance to ensure allowances are updated in a timely manner.

HUD Response: The Department provides technical assistance to public housing authorities and participating jurisdictions in a variety of areas, including utility allowances. The Department will examine further ways to ensure that utility allowances are updated in accordance with the applicable program regulations, including through additional guidance and engagement with participating jurisdictions and public housing authorities.

E. Align Utility Allowances With State LIHTC Requirements

One commenter supported mirroring State agency requirements for utility allowance use on LIHTC properties.

HUD Response: The Department is adopting the proposed language in § 92.252(b) allowing participating jurisdictions to use the HUD Utility Schedule Model, the utility allowance established by the local PHA, or other method approved by HUD for their maximum monthly utility allowances. Which of the three methods the participating jurisdiction uses is up to the participating jurisdictions' discretion. State LIHTC requirements do not fall under HUD's purview. If a participating jurisdiction wishes to use a utility model from a statewide entity for its HOME project, the participating jurisdiction may submit a request to HUD for use of that model.

F. Opposition or Conflicted Beliefs on Applying PHA Utility Allowance

Two commenters did not support permitting all HOME-assisted projects to use the local housing authority's utility allowance. The first commenter stated that using utility information specific to a property is in the best interests of all parties and suggested that HUD use gathered data to ensure that tenants will not be harmed with higher rents caused by less accurate utility allowances (in the case that the local housing authority's utility allowance be permitted for all HOME-assisted projects). The second commenter supported no change to the current method, as HUD has generally expressed flexibility on the rule in the past, which the commenter found helpful when other funding sources have different utility allowances.

One commenter was conflicted about whether aligning HOME-assisted units with PBVs and/or HUD–VASH Vouchers should apply universally to all HOME-assisted units, explaining that while public housing authority rates could be more cost- and time-effective for nonprofits, they are often higher than those found with individual analysis by a developer using the HUSM at the time of application.

HUD Response: The Department appreciates the recommendations made by the commenters but believes that allowing participating jurisdictions to use the HUSM, the utility allowance established by the local PHA, or other method approved by HUD for their maximum monthly utility allowances provides participating jurisdictions with far more flexibility than was permitted prior to this change. With the ability to choose one of the three options presented, participating jurisdictions will be able to select a method that they have determined to be in the best interests of all parties, whether that is in regard to accuracy, time-, or cost-effectiveness. If the Department does not include the local public housing authority's utility allowance as one of the options, then each time that HOME assistance is combined with project-based vouchers or project-based VASH units, the Department will have to waive the utility allowance regulations in § 92.252. This misalignment between HUD programs delays the provision of HOME assistance and projects, requires the Department to waive the regulation, and causes some owners and developers not to combine the two forms of assistance in the same project.

Specific solicitation of comment #5: The Department specifically requests public comment from participating jurisdictions and program participants regarding the challenges they have encountered in using HOME funds to assist small-scale housing, as defined in this proposed rule. The Department also requests public comment regarding the costs and benefits of the changes that HUD is proposing for small-scale housing in requirements for the frequency of income determinations and inspections and the use of alternative waiting lists.

A. Support for Small-Scale Changes

Several commenters supported the changes to monitoring compliance in

small-scale housing projects. One commenter supported the lowering of barriers for small-scale rental properties through the proposed changes to §§ 92.2, 92.251, 92.252, and 92.253. The commenter emphasized their belief that rural areas, as well as areas with limited buildable land, would greatly benefit from the same lowering of barriers, due to a dearth of CRA-driven investment, and economic challenges to new rental unit development in these communities. One commenter believed that small-scale housing provides a tremendous investment opportunity for production and preservation of affordable housing.

Another commenter supported HUD's proposed changes and believes the benefits of reducing the burden for owners of small-scale housing outweigh the possible public benefit loss of reduced compliance requirements.

HUD Response: HUD thanks the commenters for their review of the HOME rule. HUD is moving forward with the small-scale flexibilities it proposed.

B. Support for Small-Scale Housing Inspection Requirements

Several commenters supported a three-year property inspection for small-scale HOME-assisted projects. One commenter supported inspecting small-scale housing every three years instead of using a risk-based schedule for small-scale housing inspections. One commenter supported the proposal to allow participating jurisdictions to adopt customized inspection schedule for small-scale housing where health and safety deficiencies have been identified and corrected.

One commenter stated that the streamlined inspection procedures for small-scale rental projects would not likely assist emerging developers, but would assist existing affordable housing developers acquire, rehabilitate, or build new small-scale units.

HUD Response: HUD appreciates the commenter's review of the proposed rule. HUD is adopting the proposed rule language related to the frequency of physical inspections. HUD believes the flexibilities provided to small-scale housing owners will help all owners of small-scale housing projects, whether they be emerging developers, homebuyers that purchase multi-unit structures and rent them as HOME rental housing units, or developers that have significant experience in the program already.

C. Objections to Small-Scale Housing Inspection Requirements

One commenter objected to HUD's changes to property inspection requirements for small-scale rental housing. The commenter explained that small-scale projects already struggled to maintain compliance with physical condition requirements, that this was exacerbated by the pandemic and the shortage of qualified property managers in their State. The commenter believed that reducing the frequency of inspections will lead to the rapid deterioration of units and to ongoing compliance challenges.

HUD Response: The Department appreciates the commenter's concern about inspections of physical condition for small-scale rental projects. The HOME program is a block grant program that permits participating jurisdictions to determine how best to design and administer their affordable housing programs, as long as they comply with the minimum requirements established in the HOME regulations. As a participating jurisdiction, the commenter has the flexibility to adopt inspections procedures for small-scale rental projects and other rental projects that are more frequent than required in the regulations. HUD is adopting the alternative inspection protocol for small-scale projects to help facilitate the use of HOME for small-scale rental housing. As a reminder, participating jurisdictions must also comply with all applicable Federal fair housing and civil rights requirements in the administration of their affordable housing programs in addition to the HOME regulations.

D. Support for Small-Scale Rental Housing Waiting List Requirements

Several commenters supported the proposed changes to tenant selection procedures in small-scale rental housing. Commenters specifically supported permitting participating jurisdictions to establish policies to identify tenants when vacancies occur in small-scale housing. One commenter believed that HUD's proposed update allowing participating jurisdictions to create alternative waiting list procedures would empower participating jurisdictions to create and enact policies aligned with their respective programs and more responsive to owner and tenant needs. One commenter stated that they support HUD's proposed changes to the alternative waiting list requirements because they would reduce the length of turnover of units from one renter to the next.

HUD Response: HUD thanks the commenters for reviewing the rule and is adopting the alternative waiting list provision with a revision described below.

E. HUD Approval of Waiting List Requirements

One commenter stated the requirement to get pre-written HUD approval of alternative procedures for a written waiting list for small-scale housing would hamper small-scale housing. The commenter recommended that HUD publish in a manner viewable by all participating jurisdictions and a list of previously approved alternative tenant selection procedures, as well as grant participating jurisdictions presumptive approval if they implement one of the previously approved methods for small-scale housing. Another commenter similarly requested clarification or examples of acceptable alternatives to written tenant waitlists.

HUD Response: HUD thanks the commenter for reviewing the proposed rule. To reduce burden, the Department is removing the requirement that it approve a participating jurisdiction's alternative written waiting list and will provide further guidance on required and recommended elements of such plans. Such plans, among other obligations, must be nondiscriminatory and all tenant selection plans and waiting list procedures must comply with Federal fair housing and civil rights requirements. Participating jurisdictions' alternative waiting lists will be subject to compliance monitoring rather than prior approval.

F. Support for Reducing Income Examination Requirements

Several commenters supported permitting streamlined or less frequent procedures for small-scale rental housing projects (one to four total units) for reexamination of annual income. One commenter supported the changes HUD made to reduce the burden but believed that HUD should make income recertifications more flexible.

HUD Response: HUD believes that it is being as flexible as it can be with income recertifications. By moving to a triennial income recertification process for small-scale rental housing, the Department is balancing the need to examine income for families whose rents are income-dependent with the need to provide administrative relief to participating jurisdictions administering small-scale projects across their jurisdictions. HUD has provided additional flexibilities to expand safe harbors in income examinations and believes that the combination of these flexibilities is sufficient to address the commenters concerns. HUD will continue to review income examination policies in the future as the Department seeks to balance the need for accurate

family income data with the burden of income reexamination placed on tenants, owners, and participating jurisdictions.

G. Eliminate Income Reexaminations in Small-Scale Rental Housing Projects

One commenter suggested conducting income determinations only upon unit turnover to reduce administrative burden and impact on tenants. The commenter also suggested requiring that 100 percent of beneficiary households have incomes at or below 60 percent of area median income at initial lease up, which is what the City of Madison and State of Wisconsin require, to address concerns regarding benefitting households over 80 percent of area median income.

HUD Response: The HOME statute at 42 U.S.C. 12756(b) and 42 U.S.C. 12745(a) require that participating jurisdictions monitor owners for compliance with HOME requirements, including income examination requirements, and that rents be determined based upon income examinations. The commenter is proposing that tenants never be reexamined for income, similar to HOME's homeownership activities. This is not consistent with the HOME statute. 42 U.S.C. 12756(c) permits the Secretary to ''provide for such streamlined procedures for achieving the purposes of this section'' for small-scale or scattered site projects. The Department has determined that eliminating income reexamination requirements for tenants in small-scale rental housing is inconsistent with the HOME statute, which requires income reexaminations for all tenants in rental housing. Rents for over-income tenants have an income-based component and to ignore those requirements completely would not be achieving the purposes of the monitoring provisions of the Act.

H. Small-Scale Housing Projects Present Monitoring and Oversight Challenges

One commenter was critical of the small-scale and scattered site housing models. The commenter said that the new rules would make it challenging to produce small-scale and scattered site housing. The commenter believed that enforcing the period of affordability and monitoring requirements on these owners causes additional administrative burden to participating jurisdictions. The commenter also thought that this was encouraging an inefficient use of scare program resources. The commenter encouraged HUD to review financial and commercial viability of the scattered site approach for housing fulfillment, given these concerns.

Two commenters stated they were concerned about the small-scale housing inspections and monitoring because small-scale housing providers often have less oversight experience or ability. One of these commenters stated that this lack of experience may unintentionally decrease the frequency and quality of inspections.

HUD Response: HUD thanks the commenters for reviewing the proposed rule. One commenter mistakenly believes that the small-scale housing requirements are new requirements imposed on participating jurisdictions. This is incorrect. The commenter also states that enforcing the period of affordability and monitoring small-scale projects are too burdensome for participating jurisdictions. Small-scale housing has heretofore been subject to all HOME rental housing requirements; this final rule reduces this burden to make it easier to use HOME for these projects. The Department is adding these monitoring flexibilities for small-scale housing projects to better implement the Act, which authorized the Department to provide streamlined procedures for achieving the purposes of the Act as the Secretary determines to be appropriate.[59] The Department believes that the drafters of the Act intended for small-scale housing projects, including scattered site projects, to be funded under HOME, and that it is best left to participating jurisdictions on whether to fund these types of projects.

Other commenters who expressed concerns about the adequacy of monitoring and inspections under this proposal mistakenly assume that owners, not participating jurisdictions conduct physical inspections and monitoring. HUD is not changing the requirement that the participating jurisdiction engage in onsite monitoring and review of small-scale projects, it is just changing how this monitoring is performed to reduce the burden on participating jurisdictions and owners. HUD believes that this final rule appropriately balances burden reduction and compliance for small-scale housing projects.

I. Opposition to Changes to Small-Scale Housing

One commenter believed that the small-scale changes were not helpful. The commenter was not supportive of using HOME funds for small-scale rental housing projects, believed that CDBG funding was more attractive because it entailed fewer requirements, and believed that owners of small-scale rental housing had no interest in complying with HOME requirements. In the commenter's experience, when the commenter did provide CDBG funds to owners of small-scale housing projects, it was difficult to obtain required documentation, including tenant rents, ethnicity, and income. The commenter also believed that the small-scale housing project requirements did not streamline requirements for the development small-scale housing but only improved how the ongoing requirements are monitored.

Another commenter expressed concerns about enabling increased owner-occupied HOME-assisted rental unit creation, as the commenter's experience is that low-income homebuyers who are immediately made the owners of HOME-assisted rental units have a very high failure rate when it comes to compliance with HUD regulations. The commenter said that the administrative burden on such homeowners would still be too high even despite the lowering of barriers in this proposed rule and the commenter does not support a system that sets its neighbors up to fail. Further, the commenter said that a newly rehabilitated or constructed duplex or triplex would better serve their communities as either individual homeownership units or as properly administered affordable rental units.

HUD Response: HUD thanks the commenters for reviewing the proposed rule. The Department understands that developing and managing small-scale housing can be challenging. Despite these challenges, such housing can play an important role in meeting a community's affordable housing needs. HUD notes that NAHA provides it with authority to establish streamlined requirements with ongoing oversight and compliance of small-scale and scattered site projects, not with respect to the development of that housing. HUD recognizes that not all communities will decide to pursue small-scale housing due to the challenges and priorities cited by the commenters. However, the Department believes that burden relief is beneficial to participating jurisdictions that wish to pursue that strategy and that such revisions are in furtherance of the Act.

J. Small-Scale Housing Project Flexibilities Are Insufficient or Not Helpful

One commenter supported HUD's changes but noted that leading challenges of applying HOME towards small-scale housing include high costs in providing gap financing in rural areas and a lack of training. The commenter

[59] See 42 U.S.C. 12756(c).

encouraged HUD to create policies that are responsive to State and local conditions and empower participating jurisdictions to use HOME funds for targeted developments accordingly. The commenter noted that the use of property management firms may assist in managing small-scale rental housing.

Another commenter said that the reduction or streamlining of regulatory requirements such as inspections and wait lists would make it more attractive to use HOME funding, but compliance would still remain more onerous than the commenter's city-funded program. The commenter explained that their city offers a rental rehabilitation loan program for properties with seven or fewer units where landlords are required only to preserve 50 percent of units for occupants earning at or less than 60 percent of area median income through a 10-year loan term; but that HOME's compliance requirements make it undesirable to utilize HOME for such programs.

Another commenter urged HUD to consider how private market financing conflicts with HOME requirements, especially for condominium development which have early pre-sale requirements from Fannie Mae and Freddie Mac that conflict with HOME's requirement to recheck income after six months.

HUD Response: HUD thanks the commenters for reviewing the proposed rule. As stated above, the Department understands that developing and managing small-scale housing can be challenging, as can oversight by participating jurisdictions and other funders. HUD did not propose these streamlining measures for small-scale rental housing because it believed that every jurisdiction would or should adopt this activity with its HOME funds. Rather, HUD's intent is to make small-scale housing easier to manage and oversee for owners and participating jurisdictions that choose to undertake it with HOME funds. With respect to the comments regarding conflicts between HOME requirements and Fannie Mae and Freddie Mac pre-sale programs, HUD notes that while a small-scale housing project can have a homeownership unit, the rest of the units in the project must be for rental. Therefore, the condominium purchase rules being described are likely not applicable. In any event, the Department has given exhaustive explanation earlier in this preamble about why it is declining to extend the amount of time that an income determination is valid when purchasing housing with HOME homeownership assistance.

K. Accessibility Requirements Are a Barrier to Small-Scale Housing Projects

One commenter stated that the Uniform Federal Accessibility Standards (UFAS) requirements for small-scale housing have made it virtually impossible to fund small rehabilitation developments. The commenter supported more waivers or modified requirements for small rehabilitation developments.

HUD Response: The Department thanks the commenter for reviewing the proposed rule. Section 504 of the Rehabilitation Act of 1973 (Section 504), and HUD's implementing Section 504 regulation at 24 CFR part 8 prohibit recipients from discriminating on the basis of disability. By definition, small-scale housing projects are single family housing consisting of no more than four units or scattered-site projects consisting of no more than four units. These projects do not meet the definition of multifamily housing subject to the requirements that a percentage of newly constructed or rehabilitated units be accessible to individuals with mobility impairments and an additional percentage of units be accessible to individuals with vision and hearing impairments in compliance with HUD's accessibility standards, (*i.e.,* UFAS or HUD's Deeming Notice).

A recipient must provide for reasonable accommodations that may be necessary for individuals with disabilities. A recipient's obligations under Section 504 cannot be waived. Such requirements ensure that individuals with disabilities are able to participate in, and are not denied the benefits of, such programs or activities. As a reminder, recipients may also be subject to additional accessibility requirements under the Fair Housing Act, and title II of the Americans with Disabilities Act (ADA).

L. Request To Reduce Environmental Review Requirements for Small-Scale Housing Projects—HUD Should Change Environmental Review Requirements for Small-Scale Projects

One commenter suggested that, to lower the cost of the production of affordable housing and encourage more supply while still protecting the environment, HUD should change its regulations governing the three project/activity types in this paragraph. They are currently governed under 24 CFR 58.35(a) but should be governed under 24 CFR 58.35(b). The commenter stated that this change would still ensure that reasonable impacts were examined before project commencement, while lowering the burdens and costs to re-entering dilapidated housing stock back onto the market. The commenter also supported retaining limited historic preservation protections, explaining that such limited protections would reduce the delays incumbent in current historic preservation compliance, while retaining State Historic Preservation Officer notification. The commenter suggested that flexibility for waiting periods to run concurrently with participating jurisdictions and HUD review should be explored.

The commenter stated that to lower the cost of the production of affordable housing and encourage more supply while still protecting the environment, HUD should expand the scale of projects that can qualify as categorically excluded. The commenter reasoned that increasing the current categorical exclusion to individual actions on between 5 and 15 scattered site dwelling units or housing units will lower costs, burdens, and speed the delivery of units, while still examining all environmental impacts.

Lastly, the commenter recommended that HUD should use this existing authority to include HOME funds deployed for small (one-four unit) residential projects via nonprofit affordable housing developers as an exception criterion35. The commenter explained that this would allow the nonprofits to work with their local governments, who act as the responsible entity, for speedier resolutions of all existing environmental review processes.

HUD Response: HUD appreciates the commenter's suggestions related to streamlining the environmental review procedures at 24 CFR part 58. However, the authority granted to HUD at 42 U.S.C. § 12756 to establish streamlined procedures for small-scale and scattered site housing extends only to monitoring of such housing after project completion. The commenter's suggestions relate to project development rather than ongoing compliance and thus are outside the scope of this rulemaking. Moreover, the Department did not propose making any revisions to environmental review requirements for HOME projects in the proposed rule and believes that such changes are also beyond the scope of this rulemaking.

M. Other Comments in Solicitation—Create New Eligible Activity for Inspections

One commenter stated that participating jurisdictions stated that the need to regularly inspect all units in small-scale housing every three years is a major expense. The commenter

recommended that HUD allow participating jurisdictions to create an IDIS activity called ''HOME Inspections'' that would enable inspection costs to be charged to that activity and not count the on-site inspection expenses as a part of HOME administration. The commenter recommended that the planning and preparation for the HOME inspections be counted as an administrative cost while the actual site inspection costs would be counted as activity delivery expenses.

HUD Response: The Department appreciates the comment. However, the HOME statute The Act does not permit HUD to establish new activities in IDIS for the types of ongoing administrative costs described by the commenter. *See* 42 U.S.C. 12742. During the HOME period of affordability, the participating jurisdiction may charge the cost of periodic inspections to HOME administration in accordance with § 92.207, or the participating jurisdiction may charge a reasonable monitoring fee to the project owner in accordance with § 92.214(b)(1)(i).

N. Other Comments in Solicitation—Opposition to Financial Oversight Requirements

One commenter believed that the current financial oversight requirements are inadequate and that not performing financial oversight on small-scale rental housing ignores an invaluable tool in understanding how properties are performing. The commenter believed that such oversight detects signs of financial distress or over subsidization and assists in the rent setting process and other processes involved in LIHTC, HOME, HTF, and local resources.

HUD Response: Though it does apply to small-scale housing, the 10-unit threshold for performing financial oversight that the commenter is objecting to is not a small-scale housing flexibility. This is a provision within § 92.504(d)(2) that is being moved to § 92.251(f). Please see HUD's response above on financial oversight for the HOME program for why HUD is declining to reduce the 10-unit threshold.

§ 92.253—Tenant Protections and Selection

A. General Comments on Requiring a Tenancy Addendum in § 92.253(a)

Commenters supported the tenant addendum changes. One commenter stated that outlining the required elements of the HOME lease addendum in the affirmative is much more effective and provides clarity for all parties. Some commenters expressed broad support for the proposed expansion of tenant rights and protections provisions. Another commenter supported HUD's proposed changes to § 92.253(a)–(b) and the proposed addition of paragraph (c), which the commenter stated would simplify TBRA and improve TBRA for tenants, landlords, and participating jurisdictions.

Another commenter strongly supported the proposed requirement of a HOME lease addendum. The commenter suggested that HUD should consider providing additional means of enforcement. For example, the commenter suggested that tenants should have the right to access a grievance procedure, which would permit tenants to request an information conference with the owner when their rights are violated. The commenter further suggested that tenants should be able to appeal the owner's decision to the participating jurisdiction, and they should also have an explicit avenue to bring a complaint to HUD.

One commenter requested that HUD develop a HOME addendum template that contains all of the HOME program requirements in a single addendum. Another commenter supported the tenancy addendum requirement but stated that it should not be a requirement until there is a HUD HOME tenancy addendum that can be used on all rental housing projects.

One commenter generally opposed the proposed tenant protections to the HOME program. The commenter explained that apartment owners and managers already are subject to a myriad of tenant protection and fair housing statutes, regulations, administrative policies, and case law from all levels of government. The commenter further explained that this existing framework provides balanced protections for both tenants and landlords. Specifically, the commenter points out that the proposed mandatory HOME lease addendum would impose a set of one-size-fits-all tenant protections for HOME-assisted rental housing and HOME tenant-based rental assistance (TBRA) recipients.

One commenter preferred that lease addendum and protections be left to State landlord-tenant law but did not strongly oppose the use of a Federal addendum for purposes of consistency and reducing participating jurisdiction burden. Another commenter stated that HUD should not engage in tenant protection rulemaking because State and local regulations are sufficient.

One commenter stated that tenant protections will increase a tenant's ability to locate and sustain units that are affordable and that tenant protections should be included in a tenant's lease agreement. However, that commenter was also concerned that since the HOME funds they used made up a small percentage of the total cost of the project and resulted in a limited number of HOME-assisted units (usually 5–10), a HOME-specific lease addendum would be impractical to implement.

One commenter supported the proposal (under § 92.253(a)) to require owners to attach VAWA and HOME addenda to the lease, as this would help ensure that owners, tenants, and eviction court judges clearly understand tenant rights and owner obligations. However, this commenter suggested simplifying the addendum by drafting an addendum that cites to HOME regulations for additional detail.

HUD Response: HUD appreciates the comments and is moving forward with requiring a HOME tenancy addendum for rental housing, tenant-based rental assistance, and security deposit assistance only. The Act states that the lease between a tenant and owner of HOME-assisted rental housing and HOME tenant-based rental assistance ''shall contain such terms and conditions as the Secretary shall determine to be appropriate.'' (42 U.S.C. 12755(a)). HUD has determined that Congress intended that HUD use the terms and conditions of the lease to provide tenant protections in the HOME program. Instead of requiring a standard form lease or prohibiting terms contained in an owner's lease, HUD believes that creating HOME tenancy addenda for rental housing, tenant-based rental assistance, and security deposit assistance is the best way to enforce reasonable tenant protections in a consistent manner while reducing participating jurisdiction burden.

HUD's HOME tenancy addenda will include the tenant protections listed in the HOME regulations. HUD maintains that the tenant protections it is including in the HOME tenancy addenda represent a minimum standard that is based in a thorough analysis of Federal, State, and local laws. Before proposing these protections, HUD examined State and local landlord-tenant laws and protections and the requirements of other Federal programs that serve the same tenants and are frequently combined with the HOME program (such as the Section 8 programs). Through this analysis and comment from the public, HUD is confident that the inclusion of the tenant protections contained in the HOME tenancy addenda are consistent with the intent of the drafters of the Act.

The Department understands some commenters' desire to formalize a

grievance process and an appeal right to HUD. However, the Act does not require participating jurisdictions to establish a grievance process or for HUD to establish a right to appeal to the Department. Participating jurisdictions must determine their own systems for assessing risk and methods for enforcing compliance with the requirements of 24 CFR part 92.

The Department also recognizes that some commenters have significant concerns about the one-size-fits-all nature of tenancy addenda and the potential for adding new HOME tenant protections to other Federal, State, and local requirements. The Department did its best to address the commenters' concerns by aligning certain tenant protection provisions with other Federal programs (most notably the Section 8 programs) and tailoring each tenancy addendum to the type of HOME program (*i.e.,* rental housing, tenant-based rental assistance, security deposit assistance only).

In response to commenters that stated that the Department should not require tenant protections for HOME because the HOME funding may only be a small portion of the overall financing or fund only a few housing units, the Department understands the concerns, but this does not diminish the need to guarantee tenants of HOME rental housing projects a baseline level of tenant protections, as intended under the Act. Some participating jurisdictions provide HOME funds to projects that require only a small amount of funding to move forward. Others provide much more significant amount of funding and fund much larger HOME projects. Tenants should receive the same protections regardless of the decisions made by the participating jurisdiction on how much funding to provide to a particular rental housing project. The Act did not specify that tenant protections were to be based upon the level of HOME funds and the Department is declining to draw such distinctions or only require a reduced set of protections for HOME simply because some participating jurisdictions may use HOME funds to fund fewer units in larger rental projects.

The Department considered one commenter's request that the HOME tenancy addenda should cite to the appropriate regulations and be as simple as possible. However, the Department intends to create tenancy addenda that do not require a tenant or owner to look up HUD regulations in order to know what they are agreeing to and shall provide a standalone tenancy addendum for HOME rental housing, tenant-based rental assistance, and security deposit assistance only.

B. Requiring a Tenancy Addendum Under § 92.253(a) Violates the Rights of Housing Project Owners

Commenters said that the rule infringes on property rights by circumventing the established legal process for eviction, denying housing providers due process rights, and creating an imbalance in tenant-landlord relations by making nonpayment of rent a protected class. Commenters also called on HUD to be fair and not overreach.

HUD Response: The Act states that the lease between a tenant and owner of HOME-assisted rental housing and HOME tenant-based rental assistance ''shall contain such terms and conditions as the Secretary shall determine to be appropriate.'' (42 U.S.C. 12755(a)). HUD has determined that this is a Congressional delegation of authority to the Secretary and provides the Secretary with the discretion to determine the appropriate lease terms for tenants living in HOME-assisted rental units. Owners accept HOME assistance in the development of their rental housing projects with the knowledge that they do so subject to Federal laws and regulations. This includes the prohibited lease terms and the current termination of tenancy and refusal to renew provisions that are currently listed in § 92.253. HUD is updating these protections but will not, and does not have legal authority to, circumvent State or local eviction processes, alter any due process rights of owners under State or local law, or define any new protected classes.

In recognition of the concerns that the commenter raises, the Department is requiring that the new and revised tenant protections only apply prospectively (See § 92.3). This will allow owners of HOME rental housing to knowingly agree to the new tenant protections before accepting the HOME funds for a project. This will allow the same for owners entering into a rental assistance contract with participating jurisdictions. The Department believes that this meaningfully addresses any legal concerns that the commenter had, even though the Department disagrees with the assertion that imposing such protections upon existing owners would violate their rights.

C. Requirement To Provide the Participating Jurisdiction With a Copy of the Lease in § 92.253(a)

One commenter stated that the components in the rule related to lease contents are generally reasonable, but that the requirement that the owner provide the participating jurisdiction with a copy of the written lease before it is executed and once revised is unclear and potentially troublesome. The commenter recommended that HUD reconsider this requirement because it could be burdensome and lack an understandable review process. The commenter noted that if HUD proceeded with the requirements, to avoid significant confusion and delays, HUD should clarify that a participating jurisdiction would not be required to review or approve individual leases and that a model lease would be sufficient.

HUD Response: HUD is adding the requirement to § 92.253(a) that owners must provide the participating jurisdiction with a copy of the written lease to allow the participating jurisdiction to verify that the lease complies with the requirements in § 92.253, including that it includes the applicable HOME tenancy addendum. This should not be disruptive for participating jurisdictions or owners. HUD is not changing its requirement that *each lease* comply with the requirements in § 92.253 (See § 92.252 (rental housing) and § 92.209 (TBRA)). Section 92.504(a) already requires participating jurisdictions to 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 24 CFR part 92 to ensure that the HOME requirements are met, including lease requirements. Also unchanged, § 92.508(a)(3)(ix) requires the participating jurisdiction to maintain records demonstrating that each lease complies with HUD requirements. A participating jurisdiction is therefore already required to determine that each lease complies with HOME requirements and maintain project records proving that the leases are compliant. HUD is adding the requirement that the owner provide the participating jurisdiction with the lease in advance to allow a participating jurisdiction to review under their procedures before any potential noncompliant leases are executed.

D. Methods of Communication in § 92.253(a)

Commenters expressed strong support for the requirements to provide essential information to tenants, including those in proposed § 92.253(a) regarding (1) accessible means to contact owners, managers, and participating jurisdictions; (2) accessible notice specifying the grounds for any adverse action; and (3) that owners provide 30 days advance notice of an impending

sale or foreclosure of the property. A commenter explained that these are important for maintaining decent, safe, and sanitary conditions in assisted housing; allowing tenants to clear misunderstandings and giving them information needed to challenge adverse actions and avoid unjust outcomes; and allowing tenants to prepare for possible disruptions. However, the commenter stated that without an enforcement mechanism, the requirements will be meaningless and the burden for enforcement will fall on individual tenants. The commenter suggested that for (1) and (2), HUD should require participating jurisdictions to develop and publish an enforcement mechanism. For (3), the commenter suggested that HUD's rulemaking should specify that no adverse action shall become effective unless such notice has been provided. Another commenter supported the HOME lease addendum but suggested that HUD simplify the addendum to make it more user friendly.

One commenter recommended deleting the requirement in § 92.253(a)(2) that leases include the participating jurisdiction's contact information to avoid tenants calling participating jurisdictions. If HUD keeps the requirement the commenter recommended moving it to a new § 92.253(b)(8) so that contact information would be included in the HOME tenancy addendum. Another commenter supported the requirement for tenant leases to contain more than one method to communicate directly with the owner or property manager but stated that as a participating jurisdiction, it does not feel that review prior to lease execution or revision is necessary. Additionally, owners must ensure effective communication with persons with disabilities, including, for example those with hearing, visual, speech, or disabilities consistent with Section 504 and the ADA, as applicable.

HUD Response: The Department is moving forward with the changes and will require that contact information be provided in the lease. The Department is not embedding this requirement in the tenancy addenda regulations in § 92.253(b)–(d) but will include an area in the HOME rental housing tenancy addendum and the HOME tenant-based rental assistance tenancy addendum for this information to be added. By building this information into the addendum, it should reduce the need to create an enforcement mechanism. However, there are other enforcement mechanisms in § 92.504. The Department is committed to ensuring that the tenancy addenda are user-friendly. The Department also recognizes the commenter's concern that no adverse action should occur for a tenant until the notice in the proposed rule's paragraph (a)(3) had been provided. The Department would like to clarify that the proposed rule paragraph (a)(3) was the requirement that a VAWA addendum be added and not the requirement that notice be provided of VAWA protections. The notice the commenter is describing is required under § 92.359(c) and is unchanged by this rulemaking.

The Department has noted the concerns of participating jurisdictions and owners who do not believe that it is appropriate to provide contact information but strongly disagrees. When tenants have clear ways to communicate with the participating jurisdiction that is monitoring the HOME rental housing owner or that is assisting them with tenant-based rental assistance, it empowers them to be able to assert their rights or protections, and better enables participating jurisdictions to learn about potential compliance problems.

E. General Support for Changes to HOME Tenancy Addendum Physical Condition Requirements in § 92.253(b) Description of Tenancy Addendum Contents

One commenter supported HUD's proposed changes requiring owners to provide tenants with the expected timeframe for maintenance and/or repair work, prohibiting owners from charging tenants for normal wear and tear, and requiring owners to prompt relocate tenants to decent, safe, and sanitary housing, or to suitable lodging when there is a life-threatening deficiency that can't be repaired the same day—at no cost to the tenant.

HUD Response: The Department thanks the commenter for their support of the proposed changes. The Department agrees and believes that these changes will promote a better, safer environment for tenants and will enable them to live in units that meet property standards. Tenants must not be exposed to life-threatening deficiencies. Where such deficiencies are present, they should be corrected by owners expeditiously and with as few disruptions to the family as possible. Requiring owners to provide alternative suitable units until such repairs are made is a strong incentive to repair life-threatening deficiencies quickly and comprehensively to avoid future disruption and expense. Notwithstanding the foregoing, the Department believes this requirement is only acceptable where the participating jurisdiction has provided the owner with HOME assistance in the acquisition or development of the project and therefore is not applying the requirement to owners whose units are occupied by tenants with tenant-based rental assistance. This is because the requirement could have the potential to chill participation from private landlords whose only assistance is the rental assistance received from the participating jurisdiction on behalf of the tenant.

F. Unit Maintenance and Repair in § 92.253(b) Description of Tenancy Addendum Contents

One commenter suggested that HUD should require that the owner ''provide expected time frames for maintaining or repairing units'' in writing in § 92.253(b)(1)(ii)(A). The commenter explained that this encourages transparency between the owner and tenant and provides the tenant with the information needed to hold owners accountable in case of delayed maintenance.

HUD Response: The Department thanks the commenter for reviewing the proposed rule. HUD agrees with the commenter that the owner must provide written notice to a tenant of the expected timeframes for maintaining or repairing a HOME-assisted unit. HUD is revising § 92.253(b)(1)(A) to incorporate this change. HUD is also adding similar language to the HOME tenant-based rental assistance tenancy addendum in § 92.253(c)(1)(A).

G. Unit Damage and Charges in § 92.253(b) Description of Tenancy Addendum Contents

One commenter recommended, for HUD's proposed regulatory text in § 92.253(b)(1)(ii)(C), that HUD provide text enabling a tenant to bring a challenge to the participating jurisdiction regarding any charges the tenant believes are unwarranted and requested sub-regulatory guidance regarding such proceedings.

HUD Response: The Department appreciates the comment but is moving forward without the commenter's proposed change. A participating jurisdiction is not responsible for litigating disputes between tenants and owners for charges a tenant may feel are unwarranted. However, the participating jurisdiction is required to monitor and enforce the requirements of 24 CFR part 92, including the tenant protections requirements. The Department defers to participating jurisdictions in determining the best method for enforcing the tenant protections requirements. While some

participating jurisdictions may establish or use existing grievance procedures, there may be others that take a more targeted or risk-based monitoring and enforcement approach.

H. Temporarily Moving Tenants Due to Emergencies on the Property in § 92.253(b) Description of Tenancy Addendum Contents

One commenter supported HUD's proposal in § 92.253(b)(1)(iii) to require owners to temporarily relocate tenants, at the owner's expense, in the situations involving a life-threatening emergency because this clarifies owners' existing duty to provide decent, safe, and sanitary housing for tenants. The commenter expressed concern that ''life'' was too high a bar to achieve HUD's purpose for the change stated in the preamble of the proposed rule, ''to prevent HOME tenants from remaining in housing that poses a threat to their physical safety and from being subjected to additional costs as a result of physical housing conditions outside their control.'' The commenter explained that many housing conditions pose serious but not life-threatening threats to occupants' physical safety, including mold, infestation, and lead-based paint. The commenter also noted that occupants remaining in the home during remediation of emergencies or adverse conditions may not be safe. The commenter suggested extending the relocation requirement to cover all conditions and repair activities that ''pose a threat to the health and safety of the tenant household.'' Another commenter stated that the requirement that owners temporarily relocate tenants at the owner's expense should apply to all conditions that pose an immediate threat to the health and safety of the tenant household.

One commenter recommended that HUD should modify the standard at which an owner must relocate a tenant in § 92.253(b)(1)(iii) to reflect more commonly used standards. Specifically, HUD should require that an owner relocate the tenant when ''maintenance or repairs are necessary to ensure the habitability of the housing unit''—rather than when the unit's physical condition creates ''a life-threatening deficiency.''

HUD Response: HUD thanks the commenters for reviewing the proposed rule but disagrees that HUD should adopt a different standard for relocating tenants in the case of physical deficiencies in the unit. The proposed language in § 92.253(b)(1)(iii) seeks to prevent HOME tenants from remaining in units that pose a threat to their physical safety if a life-threatening deficiency cannot be corrected on the day the deficiency is identified. This provides a strong incentive to fix immediate, life-threatening problems with the unit. Requiring project owners to relocate tenants for health and safety deficiencies that are severe but not life-threatening, especially when those deficiencies could be corrected in a reasonable time frame without posing a life-threatening risk to the tenant, may impose too significant of a financial burden on project owners or deter participation in the HOME program. HUD is moving forward with its proposed change. Participating jurisdictions are always capable of requiring more stringent requirements through their written agreements, but the Department believes that the minimum requirement must prevent families from living in units with life-threatening deficiencies.

I. Owner Requests for Access to Unit Under § 92.253(b) Description of Tenancy Addendum Contents

One commenter supported the new tenant protections except for the notice to enter requirement which it believed should be 24 hours, not 2 days. The commenter stated that 2 days' notice to enter is longer than what many States and HUD programs require and that it may be too long in non-emergency situations where time is still of the essence. One commenter suggested that HUD should strengthen the written statement requirement in § 92.253(b)(2)(iii)(A) by requiring the written statement to include the date and time, as well as the purpose of the owner's entry. The commenter further suggested that HUD should require that the owner deliver the written statement to the tenant, not simply the ''dwelling unit,'' to ensure that the tenant actually received the statement. The commenter stated that it would also encourage accountability and transparency on the owner's behalf.

One commenter supported HUD's proposed changes requiring at least two days' notice before entering a tenant's unit for normal business, but anytime without advanced notice if there is a reasonable belief that there is an emergency.

One commenter suggested that for emergency entries in § 92.253(b)(2)(iii)(B), HUD should require that the owner provide the tenant with a notice similar to the notice required in § 92.253(b)(2)(iii)(C).

HUD Response: The Department thanks the commenters for reviewing the proposed rule. HUD disagrees with commenters that feel that providing the owner providing the tenant with 2 days' notice prior to entry is too long. This is a commercially reasonable time period in much of the country and a best practice in many jurisdictions already. The Department also believes that 2 days' notice provides tenants with ample time to arrange to be present for the repairs and make other arrangements, such as childcare. In non-emergency situations, owners should be able to appropriately plan to notify a tenant 48 hours before repairs or maintenance.

HUD is requiring owners to provide the tenant a written statement specifying the date, time, and purpose of entry when the tenant is not present in the unit but declines to require this notice under all circumstances. This notice is not always necessary, especially if the original notice was already delivered and the tenant is present in the unit when the owner or their agent enters the unit to perform the repairs. The Department does agree that a project owner that enters a unit in the case of emergency should provide the tenant with a written notice of entry upon entering the unit. HUD is revising § 92.253(b)(2)(iii)(C) to require an owner to provide the tenant a written statement specifying the date, time, and purpose of entry after entering the unit in the case of emergency. HUD is also adding similar language to the HOME tenant-based rental assistance tenancy addendum in § 92.253(c)(2)(iii)(2).

HUD disagrees that an owner should be required to serve notice directly to the tenant instead of to the unit. Requiring an owner to locate a tenant to serve notice of entry to the unit is not customary and could cause undue delays to project owners attempting to perform emergency repairs.

J. Reasonable Use of Common Areas in § 92.253(b) Description of Tenancy Addendum Contents

One commenter supported HUD's proposal to require HOME-assisted tenants to have reasonable access to, and use of, common areas and to prohibit having separate elevators or amenities that are only available to non-assisted tenants, which furthers HUD's commitment to fair housing and equity.

HUD Response: The Department thanks the commenter for reviewing the proposed rule and is moving forward with the proposed change.

K. Right To Organize in § 92.253(b) Description of Tenancy Addendum Contents

Commenters supported HUD's proposal in § 92.253(b)(2)(v) to explicitly state that tenants have the right to organize, create tenant associations, convene meetings, and

conduct other similar actions. Two commenters suggested HUD issue guidance mirroring the details of 24 CFR part 245 for clarity and consistency. One of those commenters urged HUD to explicitly state that the rights are further elaborated in sub-regulatory guidance. One commenter recommended elaborating on the tenant's protected organizing activities in § 92.253(b)(2)(v). In addition to the rights under the proposed rule, the commenter suggested that tenants should have the right to provide building access to outside tenant organizers, conduct door-to-door surveys of tenants' interest in establishing a tenant organization and/or offer information about tenant organizations, and distribute leaflets in lobby areas, other common areas, or under tenants' doors.

HUD Response: The Department believes that the final rule's right to organize language sufficiently protects tenants and declines to implement 24 CFR part 245 for HOME tenants. The 24 CFR part 245 protections apply to only a few programs and were not part of HUD's proposed rule. The Department does not believe it is appropriate to add these requirements and the level of detail in 24 CFR part 245 into the tenancy addenda for either HOME rental housing or tenant-based rental assistance. The Department will consider providing additional guidance and best practices based on the lessons learned from implementing 24 CFR part 245 requirements in the future but will not revise the regulation to refer to outside guidance.

L. Notice of Adverse Action in § 92.253(b) Description of Tenancy Addendum Contents

One commenter supported the proposed requirement for owners to provide written notice to tenants for any adverse actions. Another commenter recommended that the notice required prior to an owner carrying out an adverse action in § 92.253(b)(3)(i) specify that the notice be two-weeks advanced notice. The commenter also recommended that the final rule provide for a tenant's ability to bring to the participating jurisdiction a challenge of any adverse action the tenant believes is unwarranted and requested sub-regulatory guidance for such proceedings.

HUD Response: The Department appreciates the comments. HUD agrees that a tenant should be notified in writing of an adverse action prior to the adverse action taking effect. Consequently, HUD is revising § 92.253(b)(3)(i) to state that before an owner may take an adverse action against a tenant, the tenant must be notified in writing. HUD is also adding similar language to the HOME tenant-based rental assistance tenancy addendum in § 92.253(c)(3)(i).

The Department disagrees with the commenter that two weeks' notice should be required prior to any adverse action. This time period is too long, especially when the adverse action is one that may require more immediate correction. HUD also disagrees that the participating jurisdiction must have a formal process for adjudicating any tenant challenges to an owner's adverse action. NAHA does not require a grievance progress for participating jurisdictions to settle disputes between tenants and owners. Participating jurisdictions must determine what is best for monitoring and enforcing compliance with the new tenant protections requirements. Some may wish to establish grievance procedures, while others may choose to perform risk-based monitoring or take other preventative measures to address landlord-tenant disputes in their HOME programs.

M. Take Into Account Income and Medical Expenses Before Imposing Adverse Actions in Paragraph Description of Tenancy Addendum Contents

A commenter suggested that for tenants whose income and medical expenses were high, the expenses (including rent, fines, or damage) should be prorated based on benefit income, taking into account medical spend downs. The commenter believed that this would reduce the number of people that would have to choose between paying housing expenses or paying healthcare expenses.

HUD Response: The Department thanks the commenter for reviewing the proposed rule. Requiring project owners to request and review a tenant's medical expenses to determine a prorated fine or other damage prior to taking an adverse action would be unduly burdensome for project owners and may conflict with other statutes such as the Health Insurance Portability and Accountability Act (Pub. L. 104–191). The Act also does not permit HUD to impose this type of requirement, as it was never contemplated. For families receiving tenant-based rental assistance, families living in Low HOME rent units where their rental payment is based upon 30 percent of their adjusted income, or families receiving rental assistance or living in a subsidized rental unit under another program that calculates adjusted income, the adjusted income calculation will consider health and medical expenses as a deduction from annual income (see 24 CFR 92.203(f)). Moreover, participating jurisdictions that administer a tenant-based rental assistance program may also wish to establish hardship policies as now permitted in § 92.209(h)(2). A TBRA family receiving a hardship would be provided an exception to the requirement that the family contribute a minimum amount of rent which would alleviate some of the financial burden on the family. As a reminder, participating jurisdictions must also provide reasonable accommodations that may be necessary for individuals with disabilities in accordance with Section 504, the Fair Housing Act, and the ADA, as applicable.

N. Notice of Intent To Sell Property or Foreclosure of Property in Description of Tenancy Addendum Contents

One commenter supported the proposed requirement for owners to provide written notice to tenants within 5 business days of any change in ownership (including foreclosure) and at least 30 days' notice before a sale or foreclosure. One commenter also supported the delivery of a 5-day notice for ownership or management company change.

Commenters asked HUD to amend § 92.253(b)(3)(ii) to require an owner to provide a 60-day notice of intent to sell property or foreclosure of property. The commenters stated that 60 days' notice was appropriate given the burdens of finding new housing and moving.

HUD Response: The Department thanks the commenters for reviewing the proposed rule. HUD agrees with the commenter that tenants should be notified of a change in the property management company and is revising § 92.253(b)(3)(ii) and § 92.253(c)(3)(ii) to require the property owner to notify tenants within 5 days of any change to the property management company managing the property. Property management staff are often the face of the owner and have the most communication with tenants. Adding a requirement that tenants be notified if the management company changes is prudent to prevent disruption to families and ensures clear lines of communication between tenants and an owner's representatives at all times. HUD is moving forward with the proposed change to require 30 days' notice prior to an impending sale or foreclosure of the property.

The Department believes that 60 days' notice may be too long and may not always be reasonable or possible. The Department would note that when there is a change in ownership in HOME

rental housing during the period of affordability that is not due to foreclosure, the owner takes the property subject to all the requirements of 24 CFR part 92. Therefore, the change in ownership may not always result in an immediate move from the property or disruption to tenants. The Department understands the concern may be greater for tenant-based rental assistance and is noting that HUD's requirement is a minimum standard, and participating jurisdictions can always require more advance notice of a potential sale or foreclosure in rental assistance contracts or written agreements with owners of rental housing projects, especially if those participating jurisdictions wish to exercise any rights to preserve the affordability of the rental housing project.

O. Act or Failure To Act in Description of Tenancy Addendum Contents

A commenter suggested that HUD add clarifying language to § 92.253(b)(4)(iii) specifying that the liability for action or failure to act is only in connection with the lease. The commenter suggested revisions to HUD's proposed language, ''(iii) The tenant may hold the owner or the owner's agents legally responsible for any action or failure to act in connection with the lease, whether intentional or negligent.''

HUD Response: The Department considered the commenter's recommendation but disagrees with the commenter. The prohibited lease term upon which this is based was one that prohibited excusing an owner from responsibility and was written to apply to owners broadly. It prohibited the tenant from agreeing not to hold owners responsible for any action or failure to act. The Department understands that not every adverse action that an owner can take against a tenant or household relates to the lease. For instance, retaliatory acts may not be acts that are entirely born from or related to the lease; they may be personal in nature. Narrowing potential liability to only matters pertaining to the lease could create a gap in protections that could be exploited by unscrupulous owners who could claim that the negative actions were related to personal matters and not the lease.

P. Retaliation and Unreasonable Interference With the Tenant's Comfort, Safety, or Enjoyment of the Tenant's Housing Unit in § 92.253(b) Description of Tenancy Addendum Contents

One commenter supported the addition of anti-retaliation provisions in § 92.253. Another commenter supported the addition of specific language to the regulations prohibiting owners from retaliating against tenants who exercise their rights, by decreasing services, interfering with a tenant's right to privacy, and/or harassing households or their guests.

One commenter supported the non-exhaustive list of tenants' rights protected by a right against retaliation in § 92.253(b)(5). However, the commenter stated that, as currently written, the prohibition against retaliation provision is ineffective. The commenter said that the actions described in the prohibition against retaliation are independently prohibited as unjust interference, regardless of retaliatory motive. The commenter also stated that the rule fails to specify consequences for retaliation. The commenter suggested that HUD adopt a mechanism similar to that used by States and municipalities to discourage retaliation, and state in regulation that (1) no termination or non-renewal of a lease or alteration of a term or condition of the lease is valid if taken in retaliation for the exercise of a legal right by the tenant or member of the tenant's household, and (2) any such adverse action taken within a specified period of time (the commenter suggested 12 months) of the exercise of a legal right will be presumed to have been taken in retaliation unless the owner proves that the action was taken solely for a non-retaliatory purpose. Another commenter expressed a similar objection to the protection against retaliation in § 92.253(b)(5), stating that it is ineffective as currently written and should specify consequences for violations.

One commenter suggested that HUD should revise § 92.253(b)(5) to more clearly convey that subsection (i) includes examples of owner interference or retaliation and that subsection (ii) includes examples of tenant rights. To better reflect commonly used terms, the commenter recommended that HUD should replace ''comfort, safety, or enjoyment'' with ''right to peaceful enjoyment.''

One commenter recommended adding ''refusal to renew a tenant lease agreement'' and ''increase rental amount in renewal or otherwise initiate a termination of tenancy'' as protections against retaliation in 92.253(b)(5)(i), either by addition or explicit reference to 92.253(d)(1)(i)–(v).

HUD Response: The Department thanks the commenters for reviewing the proposed rule and is making several revisions to the HOME rental housing tenancy addendum retaliation and unreasonable interference regulations in § 92.253(b)(5), and similar provisions in the tenant-based rental assistance tenancy addendum provisions in § 92.253(c)(5). The Department agrees with the commenter that § 92.243(b)(5) and § 92.253(c)(5) should differentiate between unreasonable interference and retaliation by the owner. Consequently, HUD is revising the section headings to include unreasonable interference as its own standalone prohibition and reorganizing the sections to clarify that the consequences for retaliation are that the owner is in breach of the tenant lease, is violating the requirements in 24 CFR part 92, and is in violation of the written agreement with the participating jurisdiction (in the case of rental housing) or the rental assistance contract (in the case of tenant-based rental assistance).

The Department considered changes to shift burden or create presumptions that certain actions were interference or retaliation based upon the time in which they occurred in relation to the protected acts that the Department had initially linked to the retaliation provisions. The Department also considered stating that refusal to renew or termination of tenancy would not be effective if it was to retaliate or interfere with a tenant. However, after the Department specified consequences relating to the written agreement, and made examples of rights that a tenant could take free from retaliation or interference into explicit rights in the tenancy addendum, the Department believed these further revisions would be unnecessary and add undue complexity to the regulation. The Department will consider guidance on how to determine that an action is retaliation in response to a protected act by a tenant or household member in the future.

The Department also agrees with the commenter that recommended that both ''refusal to renew a tenant lease agreement'' and ''increase rental amount in renewal or otherwise initiate a termination of tenancy'' should be examples of retaliation or unreasonable interference. Section 92.253(b)(5)(iii)(A) states that ''[r]ecovery of, or attempt to recover, possession of the housing unit in a manner that is not in accordance with paragraph (b)(10) of this section'' is an action evidencing retaliation or unreasonable interference. HUD is also adding similar language to the HOME tenant-based rental assistance tenancy addendum in § 92.253(c)(5)(iii)(A). Paragraphs § 92.253(b)(10) and § 92.253(c)(10) provide both the termination of tenancy and refusal to renew lease provisions. The Department has also revised § 92.253(b)(5)(iii)(B) and § 92.253(c)(5)(iii)(B) to state that ''[d]ecreasing services to the housing

unit (*e.g.,* trash removal, maintenance) or increasing the obligations of a tenant (*e.g.,* new or increased monetary obligations, etc.) in a manner that is not in accordance with the requirements of this part'' is an example of retaliation or unreasonable interference. Increasing monetary obligations in retaliation or in an attempt to unreasonably interfere with a tenant is now explicitly prohibited by the tenant protections in § 92.253(b)(5)(iii)(B) and § 92.253(c)(5)(iii)(B) in addition to the rent setting provisions in § 92.252.

Q. Other Recommend Provisions in § 92.253(b) Description of Tenancy Addendum Contents

One commenter stated that the HOME tenancy addendum should provide notice to the tenant that there are income restrictions for occupancy and the tenant is required to re-certify and document changes in their household income. The commenter stated that the regulations allow a lease to state that the rent may change if the household income exceeds the income limit at the time of re-certification.

HUD Response: The Department understands the desire to enforce income requirements as part of the tenant lease. This is inappropriate as a required term of the lease addendum. It is up to the participating jurisdiction to determine how best to obtain the necessary income information to determine income for HOME rental housing projects and tenants with tenant-based rental assistance. The Department provides participating jurisdictions with a variety of options for calculating income, including the use of safe harbors, and gives participating jurisdictions the discretion to allow owners to accept self-certification of tenant income in years 2–5, 7–11, and 13–17 of a rental housing project's period of affordability. As such, the Department is declining to add these terms as an explicit part of the lease.

R. Security Deposit Requirements Should Be in the Tenancy Addendum

One commenter suggested that HUD should include the security deposit protections in the HOME tenancy addendum.

HUD Response: HUD agrees with the commenter that security deposit provisions are a material term of the lease, as described earlier in Section III of this preamble, and agrees that these provisions are best contained and enforced through the lease. The Department is revising § 92.253(b) and (c) to add security deposit provisions as part of the terms of the HOME rental housing tenancy addendum and the HOME tenant-based rental assistance tenancy addendum.

S. Security Deposit Limit—Two Month's Rent

One commenter supported the proposed changes to the HOME rule requiring security deposits to be no greater than two months' rent and refundable. One commenter supported imposing a maximum on security deposits but stated that two months of rent is an insurmountable barrier to tenancy and suggested HUD limit security deposits to no more than 1 month's rent. The commenter stated that if HUD does not change the limit, it should require the option of paying any amount over one month's rent monthly installments. Another commenter also recommended that HUD should limit security deposits to the equivalent of one-month's rent, not two months' rent. This commenter asserted that of the States that have enacted limits on security deposit amounts, the majority have opted for a one-month limit over a two-month limit. The commenter provided citations for 14 States that had enacted one-month security deposit limits and three States that had enacted one and one half-month security deposit limits.

HUD Response: HUD understands the commenter's concern that paying a security deposit of two months' rent is not always affordable for HOME tenants, even when that rent is set at the Low HOME Rent Limits. However, HUD also recognizes that a two-month security deposit is a commercially reasonable request that is consistent with most State laws. The Department also understands that there are different ways to reduce that type of barrier, such as by allowing the security deposit to be paid in installments. HOME is a block grant program. Participating jurisdictions and owners must underwrite and determine the level of risk they wish to expose themselves to when determining the amount they wish to charge for a security deposit. Moreover, participating jurisdictions and owners also must determine what is commercially reasonable for affordable housing in their markets. In many of those markets, this necessitates charging a security deposit equal to two months' rent or requiring the security deposit to be paid all at once.

HUD also recognizes that a number of States have different, more stringent security deposit requirements that require that the security deposit be less than the maximum security proposed in § 92.253(c). A lease for a HOME tenant must comply with State and local landlord-tenant law, and where State landlord-tenant laws are more restrictive than HUD requirements, then the owner must follow the more restrictive requirements. Therefore, in those States or localities where landlord-tenant law requires the security deposit be less than two month's rent, the owner may only charge the maximum amount allowable under the applicable law.

T. Use of Surety Bonds and Security Deposit Insurance

Many commenters supported HUD's proposal to prohibit the use of surety bonds and security deposit insurance. The commenters supported HUD's reasoning that these tools disadvantage tenants without any material benefit for landlords. One commenter noted that surety bonds can be costly to both tenants and housing providers. Another commenter believed the use of surety bonds or security deposit insurance in lieu of security deposits don't meet the intent of the National Affordable Housing Act (NAHA) and aren't treated as security deposits under-State statutes.

Other commenters opposed the proposed rule's prohibition of surety bonds or security deposit insurance in lieu of a security deposit. One commenter believed it would be cost-prohibitive for potential renters of HOME-assisted rental housing. The commenter explained that the use of a surety bond or security deposit insurance can be a more affordable option for low-income renters who may not be able to pay up to the allowable two-months' rent in advance as security deposit.

Another commenter asked HUD to remove the prohibition in § 92.209(j)(6) on surety bonds or security deposit insurance and similar instruments in lieu of or in addition to a security deposit because it may deter landlords from renting to TBRA tenants. The commenter also pointed to the possibility that a TBRA tenant could receive assistance in a unit they already occupy and for which a security bond was already purchased. The commenter recommended that HUD only prohibit the use of HOME funds for surety bonds or security deposit insurance as an ineligible fee as proposed in § 92.214(a)(10). Another commenter also stated that a property owner should not be allowed to require a tenant to pay for security deposit insurance but that the regulations should not prohibit property owners from informing the tenant about the availability of third-party insurance coverage.

HUD Response: As HUD explained in the preamble to the proposed rule, HUD

determined as a matter of law that surety bonds and security deposit insurance are not security deposits within the meaning of NAHA nor are they treated as security deposits under State statutes.'' [60] The drafters of NAHA contemplated that renters would pay security deposits and authorized security deposit assistance as part of the tenant-based rental assistance program.[61]

The Department recognizes that commenters are requesting flexibility to accept these instruments, which are generally insurance instruments, in lieu of security deposits and not just as a substitute form of security deposit. To that end, some commenters described allowing the owner to waive the security deposit requirement entirely in exchange for a surety bond or security deposit insurance. Beyond the legal barriers the Department identified, the Department also believes that at each phase of the process, surety bonds and security deposit insurance can pose a risk to both tenants and owners. Tenants must pay a nonrefundable fee or premium and are still liable under State landlord-tenant law and the lease contract for damages that are not covered by the issuer. The owner must submit a claim through a claims process and there is a risk of nonpayment or delayed payment that is significantly higher than if the owner itself held the security deposit in a bank account. Finally, the payment by the issuer of the surety bond or security deposit insurance is reliant upon the sufficiency of the overall fund itself. If the fund's underwriting standards or fund management are insufficient to enable the issuer to pay claims on the instruments it issued, then the owner will still be required to press their claim against the tenant.

While the Department strenuously objects to the use of these instruments in the HOME program, it also recognizes the commenter's concern that there may be some tenants that are already in a lease and are seeking to obtain tenant-based rental assistance. The Department believes that these instances will be rare but has added language to the HOME tenant-based rental assistance tenancy addendum provisions to hold landlords and tenants harmless if the tenant is already leasing the unit from the owner at the time that the HOME tenant-based rental assistance is provided. The Department is doing this because it does not wish to create unnecessary barriers to obtaining tenant-based rental assistance, especially when a tenant has already fulfilled whatever security deposit requirements the owner had set forth under the lease, before the participating jurisdiction provided the tenant-based rental assistance.

As a result of the above, the Department will be moving forward with language barring the use of surety bonds and security deposit insurance in § 92.253(b)(9) and (c)(9). The Department considered tenants that would be receiving tenant-based rental assistance after the beginning of their lease and has revised § 92.253(c)(9) to address the commenter's concerns.

U. Charges Against Security Deposit

One commenter supported the proposed changes to the HOME rule requiring that if charges are made against the tenant's security deposit, owners must list all items charged and their cost, and promptly refund the security deposit to the tenant at move-out, less any documented charges made.

Another commenter recommended that HUD's final rule should enable a tenant to bring to a participating jurisdiction a challenge to any damage claims made by an owner and/or amounts charged against a tenant's security deposit refund. The commenter suggested that a tenant could use this challenge process if an owner does not refund all or a portion of a security deposit within two weeks. The commenter noted that sub-regulatory guidance regarding any such proceedings would be helpful.

HUD Response: The Department is maintaining its proposed language on charges against the security deposit and embedding the language in both the HOME rental housing tenancy addendum (§ 92.253(b)(9)) and HOME tenant-based rental assistance tenancy addendum (§ 92.253(c)(9)). The Department believes that requiring owners to list all items charged against the security deposit and the amount of each item is a minimum standard that should be required of all owners assisted by HOME or whose units are occupied by tenants with HOME assistance.

The Department understands the desire to require participating jurisdictions to decide disputes between owners and tenants, especially when the participating jurisdiction has an agreement with the owner. However, it is up to the participating jurisdiction to determine how best to enforce compliance with the tenant protections provisions and the provisions of the lease addenda. While many participating jurisdictions may wish to inject themselves in disputes such as those over property damage and returning security deposits, there will be many other participating jurisdictions that only respond when the tenant alleges a violation of the HOME requirements and will leave more commonplace landlord-tenant disputes to the courts. The Department defers to participating jurisdictions to choose what is best for their jurisdictions but reminds them that they must demonstrate that they monitored and enforced the tenant protection requirements.

V. Direct Threats to Health and Safety Should Constitute Good Cause Regardless of Whether a Criminal Violation Has Occurred

One commenter emphasized that the proposed changes do not address situations where eviction is necessary due to violence or other lease violations that may endanger other residents or the integrity of the property—situations that the commenter stated the housing provider should have the ability to take appropriate legal action against.

HUD Response: The Department agrees with the commenter that there are explicit grounds for termination of tenancy or refusal to renew under the Act when a tenant poses a direct threat to the safety of the tenants or employees of the housing, or an imminent and serious threat to the property. The Department is adding these grounds to the termination of tenancy provisions at § 92.253(b)(10)(i)(B)(1) and § 92.253(c)(10)(i)(B)(1) in this final rule.

W. Nonpayment of Rent as Grounds for Termination or Refusal To Renew

One commenter questioned whether nonpayment of rent qualified as a ''serious violation of the lease.'' The commenter believed that because the Department further specified the grounds for termination of tenancy or refusal to renew, the omission of nonpayment of rent as a ground for eviction could be interpreted as HUD stating that it is not grounds to take those actions. The commenter was certain it was not HUD's intention to exclude nonpayment of rent as grounds for termination or refusal to renew but believed that one could interpret the new regulations to exclude this as grounds due to its omission.

HUD Response: The Department is not changing its position that nonpayment of rent is a violation of the lease and that violation of this term of the lease is grounds to terminate a tenancy or refusal to renew. The Department disagrees with the commenter that any silence or omissions in the regulation would allow a determination that nonpayment of rent

[60] 89 FR 46266.

[61] 42 U.S.C. 12742(a)(3)(E).

is not grounds for termination or refusal to renew under the HOME regulations. The Department declines to further explain each type of lease violation that could be considered by an owner. If HUD were exhaustive in its explanation of each type of lease violation that an owner could consider, HUD may inadvertently omit grounds for termination and make the very mistake that the commenter is describing in their comment.

X. Increase in Income or Assets Is Not ''Other Good Cause''

One commenter supported HUD's proposed changes that clarify ''other good cause'' may not include a tenant's assets or the type of income or assets.

One commenter objected to the proposed change. The commenter stated that this was an example of a conflict with the Section 8 program. The commenter noted that if a PHA terminates the Housing Assistance Payment for a tenant who becomes over-income, in accordance with existing HUD regulations, ''the lease automatically terminates''. However, neither being over-income nor the termination of a rental assistance contract are allowable reasons for the termination of a tenancy under the proposed regulations for a HOME-assisted unit. The commenter questioned whether HUD defines ''governmental entity'' as including PHAs, and whether a PHA termination represents ''an order from a governmental entity.'' The commenter requested clarity on how to apply the requirements where a PHA terminates assistance because the tenant is over-income or over the asset limitation in 24 CFR 5.618.

HUD Response: The Department thanks the commenter for reviewing the proposed rule and supporting the proposed change. Continuing to live in a HOME rental housing unit when there has been an increase in income is statutorily protected for tenants of HOME rental housing (see 42 U.S.C. 12745(a)(3)). The Act does not permit an increase in assets or assets of a certain type or amount to be considered good cause, even though this is good cause in other programs, most notably certain programs under the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) such as the Housing Choice Voucher program. The Department does not have discretion to permit termination or refusals to renew for these reasons and is clarifying this so that owners continue to comply with HOME requirements when assistance is combined with programs that do consider an increase in income or assets to be good cause for termination or refusal to renew. To that end, the Department is clarifying for the commenters that termination of tenancy due to the amount, form, or type of income or assets is a violation of the Act and current HOME regulations. The Department clarified this for the amount and type of assets in the preamble to the HOTMA final rule and is now further clarifying for over income tenants as well.[62]

Y. Other Good Cause Should Include Unreasonably Denying Access to the Owner To Make Repairs

One commenter supported HUD's proposed changes that clarify ''other good cause'' may include when a tenant unreasonably refuses to provide the owner access to the unit for repairs.

HUD Response: The Department thanks the commenter for reviewing the proposed rule and supporting the proposed change. Owners must be able to reasonably access and repair units. All HOME-assisted rental housing units and units occupied by tenants with tenant-based rental assistance must meet applicable property standards. Requiring tenants to allow owners reasonable access to properly maintain the units in accordance with applicable property standards is prudent and protects tenants and owners alike.

Z. Other Good Cause Requirements—Material Lease Violations, Nuisance, and Nondiscrimination Requirements

One commenter suggested that in § 92.253(d)(1)(i) HUD should amend the rule by adding ''material'' to clarify that good cause exists for serious or repeated violations of the material terms of the lease.

Alternatively, the commenter suggested HUD put landlords on notice that nuisance ordinances may violate Federal civil rights law and recommended the following potential language: Other good cause may include when a tenant creates a documented nuisance under applicable State or local law or when a tenant unreasonably refuses to provide the owner access to the unit to allow the owner to repair the unit, but only when termination or refusal to renew a tenancy would be consistent with Federal civil rights law, such as the Fair Housing Act.

One commenter supported HUD's proposed changes that clarify ''other good cause'' may include a tenant creating a documented nuisance under applicable State or local law. Some commenters expressed concern with the language at § 92.253(d)(1)(i)(B) and asked HUD to remove it as a basis for good cause, stating that it is their experience that alleged nuisances are often disability related.

Commenters recommended that HUD not use the term ''nuisance'' in § 92.253(d)(1)(i)(B) and (C) because States and local governments have laws that target residents responsible for alleged nuisance activity, including calls to emergency services or noise disturbances related to domestic violence, with penalties such as fines and evictions. One commenter stated that these policies stand in opposition to HUD's efforts to protect tenants against unjustified evictions, and that HUD should instead establish a ''good cause'' for eviction that requires an actual, substantial, and imminent threat to the health and safety of, and right to peaceful enjoyment of the premises by, others.

HUD Response: The Department agrees with the comment regarding addition of ''material'' and is adding ''material'' in § 92.253(b)(10) and § 92.253(c)(10) of this final rule to characterize the types of lease violations that constitute good cause to terminate a tenancy or refuse to renew a tenancy of a tenant in HOME rental housing or assisted with HOME tenant-based rental assistance. Inconsequential or minor lease violations that are easily curable or whose conditions no longer exist should not be the basis for a termination or refusal to renew.

The Department has removed from this final rule the use of nuisance as grounds for termination of tenancy or refusal to renew. The Department agrees that this ground has been the subject of significant fair housing and civil rights abuses and has led to the denial of necessary housing for survivors of domestic violence, dating violence, sexual assault, or stalking. The Department does not wish to perpetuate this cycle of discrimination through the

[62] See 88 FR 9625, which states:

There is no HOME statutory requirement to limit a family's assets or to remove a family from the HOME program if the family's net family assets exceed a threshold. HUD solicited public comment on whether HUD should impose asset limitations in the proposed rule to align with other programs. However, after due consideration and examination of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*), HUD has determined that it will not impose asset limitations through this rulemaking. Section 225(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12755(b)), which provides tenant protections in the HOME program, states in relevant part that ''[a]n owner shall not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted under this subchapter except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause.'' HUD has never interpreted holding a certain level or type of assets as sufficient good cause for an owner to terminate a tenancy under the HOME statute and declines to do so in this rulemaking.

use of this terminology as an explicit ground for termination or refusal to renew.

The Department already required that all terminations or refusals to renew are in accordance with all applicable Federal, State, and local laws and believes its revisions have addressed the commenter's concerns.

AA. Good Cause in Lease-Purchase Projects

One commenter expressed concerns about the ''good cause'' definition, at proposed § 92.253(d)(1)(i)(A), stating that the language provides no provision for when a homebuyer fails to purchase a housing unit in a lease-purchase project. The commenter stated that this creates a loophole where after the failure of a lease-purchase agreement, a developer of property specifically for homeownership becomes locked into the long-term ownership and management of a HOME-assisted rental unit because the Department is not allowing this failure to be good cause to terminate the tenancy. The commenter recommended that a ''business or economic reason'' clause be added to the proposed ''good cause'' definition.

HUD Response: The Department agrees with the commenter and is adding to this final rule a provision in § 92.253(b)(10)(i)(A) and § 92.253(c)(10)(i)(A) allowing for termination of a tenancy for a family that is occupying a unit under a lease-purchase program when that family does not acquire the housing unit in accordance with a lease-purchase agreement. The Department recognizes that owners of homeownership development projects should have the ability to terminate the tenancy of a tenant that fails to purchase the housing so that the owner may sell the homeownership unit to another eligible low-income homebuyer before the housing is converted to rental housing (see § 92.254(a)(7) for more information).

The Department is declining to consider a business or economic reason as adequate grounds for termination of tenancy for the HOME rental housing tenancy addendum. In the proposed rule, HUD proposed that it would be good cause to terminate a tenancy when an owner intends to withdraw the unit from the rental market to occupy the unit; allow an owner's family member to occupy the unit; or demolish or substantially rehabilitate the unit. This language is being maintained in this final rule and will allow owners to terminate for certain specific business or economic reasons. However, the Department was concerned that providing the more general grounds that the commenter requested would be too broad and could have unintended consequences.

BB. Use of Previous Convictions To Terminate Tenancy or Refuse To Renew a Tenancy

Commenters stated that the preamble for § 92.253(d)(1)(i)(D) discusses how the crime for which there has been a conviction is a crime ''during the tenancy period'' and that good cause cannot be based on a violation ''that occurred prior to tenancy.'' However, the commenter pointed out that these are not explicit in the regulatory text and urged HUD to explicitly state in the final rule that the record of conviction be of a crime that took place during a person's tenancy and not prior to tenancy. The commenter also urged HUD to specify in the final rule that for ''good cause'' the conviction must have a direct bearing on the tenant's continued occupancy and pose an actual, substantial, and imminent threat to the health and safety of, and peaceful enjoyment of the premises by, others. The commenter repeated these suggestions as applied to the proposed TBRA provisions in § 92.253(d)(2)(i)(B).

One commenter added that HUD should consider limiting this provision to convictions by a tenant, household member, current guest, or other person under the tenant's control. The commenter further suggested that HUD should consider adding a definition of ''crime that bears directly on the tenant's continued tenancy'' or, alternatively, provide examples in sub-regulatory guidance accompanying the final rule. The commenter stated that the standard in the proposed rule is vague and could result in owners evicting for pretextual reasons and for criminal activity that does not pose a real threat to the health and safety of others.

One commenter noted that the preamble states there must be a record of conviction for a crime ''during the tenancy period'' to justify termination of tenancy or refusal to renew a lease, but the text of the rule is not as explicit, and the commenter recommended HUD make the final rule text as clear as the preamble discussion.

HUD Response: The Department agrees with the commenter that stated that the Department should define or provide examples of a ''crime that bears directly on the tenant's continued tenancy.'' After much consideration, the Department is revising the language in the new paragraphs § 92.253(b)(10)(i)(C) and § 92.253(c)(10)(i)(B)(3) to state that an owner may establish good cause for a violation of an applicable Federal, State, or local law through a record of conviction of a crime that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants in the project. This standard is a sufficient threshold and is directly related to the statutory good cause conditions found in 42 U.S.C. 12755.

The Department is declining to specify the time period of the conviction of the crime in the regulation itself. There may be times, such as when a person moves into a unit during a family's ongoing tenancy, where tying the conviction to the family's initial occupancy may be inappropriate. However, the Department maintains, as it stated in the proposed rule, that for tenants that have already been screened by the owner—

''good cause based on a violation of applicable Federal, State, or local law cannot be based on a violation that occurred prior to tenancy, a violation that does not have a direct bearing on a tenant's continued tenancy, or a basis other than a record of conviction. An owner may consider any mitigating circumstances relevant to whether the tenant will commit further violations of the lease or applicable Federal, State, or local law.'' [63]

CC. Good Cause for Violation of Law Evidenced by Arrest for a Crime

One commenter supported HUD's proposal that an owner shall not use a record or arrest, parole or probation, or current indictment to establish a violation of law.

Some commenters expressed opposition to the proposed language in § 92.253(d)(1)(i)(D) that would require that establishment of good cause for violation of law to be predicated on the conviction of a crime. One commenter explained that this lease renewal requirement is an excessively high standard because a criminal conviction requires a ''beyond a reasonable doubt'' evidentiary standard. The commenter suggested that the rule should require a more reasonable ''preponderance of the evidence'' standard. Additionally, the commenter suggested that the proposed rule specify the types of criminal activity that would qualify as affecting the safety of persons or property, as it does not consider the potential risks to tenant and staff safety in cases where an arrest or current indictment is due to violent actions of the tenant.

The commenter also noted that the proposed rule requires ''that an owner shall not use a record of arrest, parole or probation, or current indictment to

[63] 89 FR 46639.

establish a violation of applicable Federal, State, or local law.'' The commenter expressed concerned that this language only gives power to owners in cases where a tenant has a record of conviction. The commenter suggested that the rule should allow for other evidence to be used besides just a conviction in cases where the owner believes the tenant or prospective tenant is a threat to the safety of residents, staff, or property.

HUD Response: The Department understands the concerns of the commenters. The Department believes that direct threats to the safety of the tenants or employees of the housing, or imminent and serious threats to the property should constitute separate grounds for terminating a tenancy or refusing to renew a lease and is adding § 92.253(b)(i)(B)(*1*) and § 92.253(c)(i)(B)(*1*). The Department does not believe that such threats require a record of conviction so long as the threat to safety or property is evidenced by credible acts or threats that the harm will occur. As described in Section III of this preamble, this is not a low standard, but it is also not the legal standard of ''beyond a reasonable doubt'' evidenced by a conviction. The Department believes that with this change, and the change to allow termination in accordance with certain rules of other programs when tenants are assisted by each (see the next comment response), it has addressed the commenters' concerns.

DD. Conviction of a Crime and Section 8 Housing Choice Voucher Regulations

One commenter opposed the proposed changes to § 92.253(c) and (d), citing that many of the changes would create conflicts with existing HUD regulations because they go beyond what other HUD programs require and create conflict with the Housing Choice Voucher program.

One commenter stated that the proposed changes to the current termination of tenancy regulations should match more closely the Housing Choice Voucher program's termination of tenancy regulations to avoid conflicting interpretations. The commenter cites to examples where language mirrors section 8 regulations but is silent as to definitions of key terms. The commenter also stated that the requirement that ''good cause'' be established by conviction of a crime at the proposed § 92.253(d)(1)(i)(D) conflicts with treatment of criminal convictions under section 8 regulations, which allow for termination of tenancy for criminal activity regardless of conviction. The commenter also wanted clarification about whether signs of repeated drug activity on the premises through objectively verifiable contacts by emergency services were sufficient to constitute good cause to evict or if such activity must be coupled with a conviction because it constituted criminal activity in the jurisdiction.

The commenter also explains that where a household member is engaged in criminal activity in the Section 8 program, the requirements of 24 CFR 982.310(h)(2) permit an owner to require a tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination. The commenter believes that the HOME rule conflicts with the Section 8 rule because it requires that a civil court proceeding is instituted against the household member to remove them from the unit.

HUD Response: The Department has revised the regulation at § 92.253(b)(10)(i) to address the commenter's concerns. If the tenant is participating in a program that is subject to 24 CFR part 5, subpart I; 24 CFR 882.511; or 24 CFR 982.310, then the owner is permitted to terminate the tenancy of any tenant or household member or refuse to renew the lease of a tenant of rental housing assisted with HOME funds pursuant to those provisions. This new provision will allow these regulations that govern other programs to form the basis of a termination or refusal to renew and constitute good cause under the HOME program even though these would not necessarily be grounds for HOME tenants that are not assisted through programs subject to those regulations. This improves alignment and addresses the commenter's concerns.

EE. 60-Day Notice Before Termination of Tenancy or Refusal To Renew

Some commenters supported the proposed change in § 92.253(d)(1)(ii) that would require owners to provide 60 days notice to tenants before termination of tenancy or refusal to renew instead of 30 days notice before termination of tenancy or refusal to renew. One commenter stated that HUD should amend 92.253(d)(1)(ii) and 92.253(d)(2)(ii) to require a 60-day notice of intent to terminate tenancy and/or not renew (both rental housing and TBRA should get 60-day notice). Another commenter suggested extending the 30-day eviction notice period for TBRA to 60 days to allow time for finding a suitable housing alternative.

One commenter explained that this would help tenants avoid eviction by providing sufficient time to dispute or cure lease violations and, where tenants are unable to do so, 60 days notice would provide better opportunity for those tenants to find new affordable housing and avoid being rendered homeless. One commenter suggested that HUD should clarify that the tenant has the right to cure a lease violation during the notice period in 92.253(d)(1)(ii). The commenter explained that allowing tenants to cure evictions in that time period promotes clarity in the law, and also prevents needless evictions.

One commenter noted that while a 60-day notice could provide better tenant protections, a concern would be if an industry norm of reciprocated notice periods pushed landlords to extend these expanded 60-day timeline for tenants to notify landlords beyond HOME supported units.

Some commenters opposed the provisions in the proposed rule that would extend the current requirement of a 30-day notice before a termination of tenancy to 60 days. Commenters expressed concern that the extension of the 30-day notice to a 60-day notice would conflict with local or State laws that vary widely on timing and requirements for eviction. A commenter stated that when a State has a 30-day notice in place for non-HOME tenants, administering and determining evictions in mixed-income communities will become difficult and may unintentionally cause confusion and inequity. The commenter recommended that HUD not institute a 60-day notice requirement and maintain the current 30-day notice requirement.

Other commenters also expressed concern with the extension of the notice period, contending that many housing providers cannot sustain the financial burden of nonpayment for an extended period of time and that the 30-day timeframe already leads to loss of income, increased operational costs, unsustainable balances for tenants, and disruptive delays. One commenter stated that the proposed 60-day notice of lease termination provision is particularly onerous and does not provide financially distressed tenants with the financial support that they need. Another commenter noted that owners should have access to timely recourse in the event of continued and ongoing lease violations and there are risks to housing providers, property operations, and maintenance when landlords are unable to collect rent revenue for extended periods and that HUD should not further extend the

HOME notice to quit period without additional resources for owners to weather the resulting ''economic vacancies'' or the resources for residents to find alternate housing.

Commenters opposed increasing the notice of termination of tenancy to 60 days for nonpayment of rent because it adds challenges to owners and current and prospective tenants. The commenters explained that increasing the timeline for nonpayment of rent to 60 days increases the financial burden on owners who need rent to sustain property operations. The commenter further explained that enforcement of a longer notice period may incentivize owners to file for evictions sooner due to the slow pace of the court process and the costs it will incur.

One commenter emphasized that its members are affordable housing providers; they are not in the ''eviction business'' as they are sometimes ''branded,'' and a 60-day notice period would lead to a significant departure of some great housing providers from participation in the HOME program. This commenter further stated that its member housing providers often face noncommunication from tenants who are unable to pay their rent and argued that HUD needed to be fair and require tenants to communicate with landlords when they can't pay their rent and make their best efforts to make timely partial payments as possible. The commenter also stated that housing providers are facing 60–120 days of nonpayment and uncollected rent in the millions, which leads to decreased operating budgets and fewer households assisted. Additionally, the commenter said that eviction cases can last several months.

Another commenter objected to the eviction period extension from 30 days to 60 days, stating that it finds that statistically the longer someone is permitted to stay in a unit without paying rent, the longer they will stay without paying rent. The commenter said that it is more likely that the month's rent will be just another month's rent that goes unpaid to the landlord and decreases the cash available for that landlord to pay its bills or maintain the property. The commenter also stated that anything longer than a 30-day eviction notice would not benefit tenants because it could increase exposure to harmful conditions and increase owners' scrutiny of tenants' background records relative to past-owed amounts to landlords, bad landlord references, and credit issues.

HUD Response: The Department thanks the commenters for reviewing the proposed rule. HUD agrees with commenters that the 60-day eviction notice for tenants in HOME-assisted rental units may conflict with State and local laws as well as the eviction requirements for tenants in units with project-based vouchers. HUD agrees that requiring owners to provide 60 days' notice may be a financial burden to owners, particularly when the good cause for eviction is the tenant's failure to pay rent. This burden may negatively impact the overall financial stability of the rental housing project, given local court processes and other delays once a termination action has been filed. The Department also understands that extending the notice period from 30 days to 60 days reduces alignment with other HUD programs that require only 30 days' notice and could have a chilling effect on new and existing landlords. For these reasons, HUD is maintaining the existing regulatory requirement that a project owner provide a written notice to vacate at least 30 days before the termination of tenancy or refusal to renew in this final rule.

FF. Providing Notice To Vacate to Participating Jurisdictions

One commenter requested HUD explain what a participating jurisdiction is required to do once they receive an owner's notice to vacate in accordance with the proposed § 92.253(d). For example, the commenter suggested that the final rule could clarify that, once collected, the participating jurisdiction should make the information available to HUD for compliance review.

HUD Response: The participating jurisdiction already must maintain the documentation for its files and provide it to HUD upon request. So, the commenter's recommendation is already covered by the recordkeeping requirements in § 92.508. The Department defers to participating jurisdictions on how best to use the notice to vacate. Some participating jurisdictions may wish to monitor the owners of projects that issue notices to vacate, especially if such notices are frequent. In other instances, participating jurisdictions may wish to intercede to attempt to stabilize the landlord-tenant relationship, if it is possible and practicable. These decisions are best left to participating jurisdictions and the owners they assist. The Department is simply attempting to empower participating jurisdictions by making sure they have current information on lease terminations in their HOME rental housing and tenant-based rental assistance portfolios.

GG. Difference Between HOME Requirements and State Law Requirements on Notice of Termination of Tenancy or Refusal To Renew

A commenter stated that many States have a rule of a 7-day ''pay or quit'' for an eviction based on non-payment of rent. The commenter asked for additional clarity on how to manage the 7-day notice requirement in States with the proposed requirement of providing an accessible notice to vacate at least 30 days prior to termination.

HUD Response: Regardless of other State laws that may be more permissive, the HOME statutory minimum notice period prior to termination of tenancy or refusal to renew is 30 days (see 42 U.S.C. 12755(b)). The only exception to the 30-day notice period is when the person poses a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the property and the termination or refusal to renew is in accordance with the requirements of State or local law.

If an owner is in a State where the notice requirements are less stringent (*i.e.,* States that require shorter notice periods) than the HOME statutory notice requirements, then the owner must still comply with the HOME tenant protections and adhere to the HOME requirements. The owner is making the decision to adhere to these stricter notice requirements when the owner and participating jurisdiction enter into a HOME agreement where the owner agrees to comply with the tenant protection requirements (see 24 CFR 92.504(c)). This treatment and the statutory requirements are not being changed as part of this rulemaking.

HH. Termination of Tenancy for Refusal To Provide Income Documentation

One commenter suggested that the provision should also clearly state that the landlord may terminate their tenancy or not renew their lease for failure to provide satisfactory documentation.

HUD Response: The Department declines to make failure to provide sufficient documentation an explicit form of good cause to terminate tenancy or refusal to renew in this final rule. The participating jurisdiction and owner must work with HOME-assisted tenants to obtain the appropriate documentation to determine the applicable income and HOME rents for HOME-assisted rental housing tenants. Failure to provide documentation may be for legitimate reasons. Further, the Department is attempting to reduce the burden of providing source documents during

income determinations by providing an additional safe harbor that can be used at initial and annual income examinations in the new § 92.203(a)(3).

II. Right To Renew Clause

One commenter stated that HUD should have a right to renew clause for all tenants unless the tenants have violated the terms of their agreement. The commenter stated that HUD should require a landlord to provide 180 days advanced notice of their decision not to renew and said notice must offer a written explanation of the good cause for non-renewal. The commenter recommended that good cause be defined as follows: (1) the tenant has not accepted the renewal offer in writing within the time allowed; (2) the tenants who accepted the renewal offer, along with any replacement tenants acceptable to the landlord, have not returned a signed lease to the landlord within 10 days of receipt; (3) the landlord can demonstrate a lease violation; (4) the owner or a member of the owner's immediate family is going to occupy the unit for a succeeding term; or (5) the landlord will no longer be renting the property out.

HUD Response: The Department declines to create the right to renew clause described by the commenter in this final rule. The Department is also not going to impose through this final rule a requirement that an owner provide a family with 180 days' notice before refusing to renew a lease. The Department believes 180 days is an unreasonably long amount of time and has reverted its notice requirements to 30 days' notice in response to public comment (see earlier preamble responses).

The good cause requirements in the HOME program are statutory. In HOME, the tenant has the right to renew unless the owner has good cause to refuse to renew or terminate the tenancy.[64] The Department is providing different forms of good cause that may allow an owner to terminate the tenancy but many of the grounds provided by the commenter provide insufficient protections to families or are inherent in the way that HOME projects and private market properties are managed.

The Department is declining to describe in this final rule whether a tenant's failure to accept a lease renewal offer or failing to execute a lease would constitute good cause to refuse to renew the tenants lease because in each case, the tenant has not renewed the lease. The Act requires that only serious or repeated lease violations be good cause. The Department is further defining the types of lease violations that should constitute good cause as ''material'' as the Department does not believe that frivolous or inconsequential lease violations should constitute good cause. As such, the Department believes the commenter's language that ''the landlord can demonstrate a lease violation'' is not legally acceptable under the Act and is declining to adopt it. The Department does allow for owners of units occupied by tenants receiving tenant-based rental assistance to terminate a tenancy or refuse to renew if the owner wishes to occupy the unit, allow family to occupy the unit, or take the property off the market. The Department had proposed those as appropriate grounds for termination of tenancy or refusal to renew the lease in the proposed rule in § 92.253(d) and is maintaining those grounds in the redesignated § 92.253(c)(10)(i)(B)(*5*). As these grounds apply only to units on the private market and not to HOME rental housing, which must be owned and operated in accordance with the requirements of 24 CFR part 92 for the minimum period of affordability, the Department declines to include in this final rule these grounds for HOME rental housing terminations of tenancy or refusals to renew.

JJ. Termination of Tenancy in Tenant-Based Rental Assistance

One commenter recommended that any deviations between the two sets of protections be clearly stated. One commenter opposed the addition of § 92.253(d)(2) because, according to the commenter, these standards should already apply more broadly and not just for TBRA clients. Additionally, the commenter stated that the word ''reasonable'' would be too subjective and not allow for standardization of tenant selection across the program.

This commenter also asserted that TBRA contracts should continue to be executed by the owner and support tri-party rental assistance contracts where the owner, tenant, and participating jurisdiction all sign, as an option. This method would ensure the lease contains the HOME tenancy addendum and that the owner follows applicable TBRA requirements.

HUD Response: The Department has reorganized the tenant protections in § 92.253 and the tenant-based rental assistance contract provisions in § 92.209(e) in this final rule in a way that addresses some of the commenters' concerns. The Department is now placing the termination provisions directly in the HOME rental housing tenancy addendum and the HOME tenant-based rental assistance tenancy addendum. The Department is also requiring in § 92.209(e)(1) that owners and tenants each enter into a rental assistance contract with the participating jurisdiction when tenant-based rental assistance is provided. This may take the form of a tri-party contract or individual agreements between the participating jurisdiction and the owner and the participating jurisdiction and the tenant.

The Department is declining in this final rule to define reasonable or to remove its usage in HUD regulations. Reasonable is a commonly used and understood term and is not too subjective. There is a body of caselaw and jurisprudence surrounding what is and is not reasonable under certain circumstances and HUD declines to further specify what reasonableness is in tenant selection. The Department also declines in this final rule to apply the termination of tenancy provisions applicable to tenant-based rental assistance to HOME rental housing tenants. The termination provisions for tenant-based rental assistance contain certain provisions that only apply to owners of private rental housing and not HOME rental housing projects, such as termination of tenancy so that the owner may move into their unit (See § 92.253(c)(10)(i)(B)(*5*)).

The Department agrees with the commenter on the benefits of tri-party rental assistance contracts but is providing participating jurisdictions with the option of entering into tri-party rental assistance contracts or into separate agreements with the owner and the tenant. This is because HOME is a block grant program, and participating jurisdictions should have discretion in how they bind owners and tenants to the requirements of their tenant-based rental assistance program.

KK. Prohibiting Constructive Evictions

One commenter supported HUD's proposal to prohibit owners from performing ''constructive evictions'' (aka ''self-help'' evictions''), such as locking a tenant out of their unit or stopping service on their utilities. One commenter supported requiring owners to provide tenants with uninterrupted utility service to ''counteract a disturbing trend of so-called 'self-help' evictions'', whereby owners use their control of utilities to force tenants to end their tenancy.

HUD Response: The Department thanks the commenters and is including these provisions in this final rule. Due to reorganization of the tenancy addenda provisions, these provisions are now contained in § 92.253(b)(10)(v)

[64] See 42 U.S.C. 12755(b).

and § 92.253(c)(10)(iv) and shall apply to both tenants in rental housing and tenants receiving tenant-based rental assistance.

LL. Termination of Tenancy Because of Termination of Rental Assistance Contract

One commenter opposed the revisions to § 92.253(d)(2)(i)(E) because the commenter believes tenants should have the ability to request termination if the rental assistance contract ends, but the landlord should not have the discretion to do so. The commenter also suggested adding tenant liens as a prohibited action in § 92.253(d)(1)(v). The commenter urged HUD to further indicate how confidential tenant information is handled.

HUD Response: The Department agrees with the commenter and is removing from this final rule the termination of the rental assistance contract as specific grounds for termination of tenancy or refusal to renew. Instead, the Department is revising § 92.253 of this final rule to state that the HOME tenant-based rental assistance tenancy addendum shall terminate upon the termination of the rental assistance contract.

The Department is declining to enumerate in this final rule specific measures projects owners must take to ensure tenant information is handled confidentially. Participating jurisdictions and owners should take reasonable measures to prevent unauthorized access to confidential information by persons without a need to know, (*e.g.,* password protected systems, locking file cabinets and desk drawers that contain personal identifying information, etc.).

MM. Tenant Selection Procedures Should Require That Owners Do Not Evaluate Previous Bankruptcies

A commenter stated that a previous bankruptcy should not be treated as equivalent to a previous eviction when a person is applying for low-income housing. The commenter also recommended that, prior to charging an application processing fee, properties must inform persons applying for housing that a previous bankruptcy disqualifies them from housing at the property, if applicable.

HUD Response: HOME is a block grant program, and neither the statute nor the regulations address whether or how previous bankruptcies are treated in the tenant screening process. The Act provides owners with discretion in tenant selection. As long as tenant selection is performed in accordance with the Act, all applicable Federal, State, and local laws (including but not limited to nondiscrimination and VAWA requirements), the owner has discretion to consider the effect of prior bankruptcies or past financial problems. The Department encourages tenant selection policies that do not unfairly penalize families for factors that no longer negatively impact their ability to pay or to live in HOME-assisted rental housing but recognizes that these determinations are fact-sensitive. The Department therefore declines to further impose requirements in this area at this time, including requiring notice prior to submission of application. HUD notes that the comment appears to address all low-income housing, not only housing funded through the HOME program. To the extent that this comment also describes programs that are not part of this rulemaking, that portion of the comment is outside the scope of this rulemaking.

NN. Tenant Selection Procedures Should Incorporate Fair Chance Housing Practices

One commenter suggested that HUD prohibit the use of explicit credit score and criminal history requirements, as well as limit the ''look-back'' period for eviction records to one year from the date of application.

HUD Response: HUD appreciates the commenter's feedback, but HOME is a block grant program, and participating jurisdictions and project owners are permitted to establish tenant screening and selection criteria. Similar to the previous response, the Department encourages tenant selection policies that do not unfairly penalize families for factors that no longer negatively impact their ability to pay or to live in HOME-assisted rental housing. The Department also reminds owners and participating jurisdictions that all tenant selection is subject to Federal, State and local requirements, including nondiscrimination and VAWA protections. However, as these determinations are fact-sensitive and the Act provided owners with discretion in tenant selection,[65] the Department declines to further impose requirements in this area at this time.

Owners should be aware that screening based on credit score and criminal history can have a disparate impact against protected classes in violation of the Fair Housing Act[66] and should ensure that their screening procedures do not run afoul of these laws.

OO. Notification of Grounds of Disapproval Under § 92.253(e) Tenant Selection Procedures

With regard to § 92.253(e)(6), one commenter suggested that HUD should require that the written notification to reject applicants describe the grounds for rejection with sufficient specificity that a person can prepare an appeal of the housing provider's decision. The commenter stated that any supporting materials, such as a consumer report, must be provided to the tenant. The commenter further stated that these additional requirements align with HUD's recent fair housing guidance on tenant screening.

HUD Response: 42 U.S.C. 12755(d)(4)(B) only requires ''the prompt notification in writing of any rejected applicant of the grounds for any rejection'' and does not provide any additional recourse. If an applicant believes that the grounds for disapproval violate Federal, State, or local law, they may make a complaint with the relevant legal authorities in accordance with the applicable process (*e.g.,* contact HUD's Office of Fair Housing and Equal Opportunity if an applicant has reason to believe that the grounds for rejection are due to discrimination). The Department has issued guidance on tenant screening and the Fair Housing Act, and such guidance applies to all HOME rental housing units and HOME tenant-based rental assistance.[67]

PP. Environmental, Health, and Safety Hazards

One commenter supported the change to add language requiring a participating jurisdiction to notify owners and tenants of any environmental, health, or safety hazards affecting the project, a unit, or tenants, and provide them with a summary of the nature, date, and scope of the hazard.

One commenter urged HUD to include in the final rule, in § 92.253(f), a requirement that where an owner has actual knowledge of an environmental, health or safety hazard, the owner must inform tenants (in addition to the

[65] See 42 U.S.C. 12755(d).

[66] See *Guidance on the Application of the Fair Housing Act to the Screening of Applicants for Housing*'' *https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Guidance_on_Screening_of_Applicants_for_Rental_Housing.pdf,* mentioned by a commenter, and ''*Tenant Background Checks and Your Rights*''*, https://www.hud.gov/sites/dfiles/FHEO/documents/HUD_Tenant_Background_Checks_and_Your_Rights.pdf,* which is joint guidance developed by HUD, the Federal Trade Commission, the Department of Justice, and the Consumer Financial Protection Bureau.

[67] See the Fair Housing Act guidance for tenant screening in rental housing here: *https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Guidance_on_Screening_of_Applicants_for_Rental_Housing.pdf.*

participating jurisdiction), and provide them with a summary of the nature, date, and scope of the hazard as well as actions the owner will take, if able, to address the hazard. Furthermore, one commenter suggested that HUD should require that the summary be in writing and that the owner should provide notice of the hazard to tenants, in addition to the participating jurisdiction.

One commenter expressed concern regarding the proposed language at § 92.253(f) requiring both a participating jurisdiction and an owner to notify the other party if one party has ''actual knowledge of an environmental, health, or safety hazard affecting a project, unit, or HOME tenants.'' The commenter noted that it is unclear what HUD intends ''environmental, health, or safety hazards'' to mean and expressed concern about the lack of any defining language to guide participating jurisdictions' and owners' actions to comply. The commenter stated that without definitions, several interpretations are possible. The commenter also noted concerns about the burden of paperwork and compliance monitoring on participating jurisdictions, their partners, and their staff.

HUD Response: The Department has taken the comments into consideration and revised the language of § 92.253(f) to specify that a summary of the nature, date, and scope of such hazards be provided in writing. The Department also revised paragraph (f) to state that an owner must provide notice of the environmental, health, or safety hazard affecting their project, units within their project, or tenants residing within their projects to tenants in addition to the participating jurisdiction. The Department believes both commenters making recommendations are right. The Department is not further defining the language in regulation and has provided examples of the types of hazards in the proposed rule. The Department will provide additional implementation guidance on this provision and other tenant protections after publication of the final rule. The Department is also declining to require owners to further specify how they will address the damage. While the commenter's intent is noble, most environmental, health, or safety hazards are not caused by owners of rental housing projects but by other intervening outside events. It is inappropriate to require owners to specify how they will address hazards they did not cause and are not responsible for resolving.

QQ. Increasing Tenant Protections Could Increase Litigation or Other Costs

One commenter expressed concerns about the potential for litigation and increased costs for nonprofit affordable housing developers and operators. The commenter expressed concerns about the provision of the proposed rule requiring ''secure and confidential'' storage of the personal records of applicants and residents and how HUD will monitor and enforce this requirement. The commenter stated that the costs for information technology staff or software packages would be burdensome, particularly for smaller organizations or organizations in rural areas that do not already have that capacity. The commenter also questioned whether HUD intended to require a certain information security standard, and, if so, at what cost. The commenter also stated that the vague nature of proposed language in the lease addendum section could expose owners to frivolous lawsuits and be difficult to comply with. The commenter recommended further clarification and definitions regarding words like ''unreasonably'' or ''reasonable'' to avoid compliance issues, unnecessary litigation, or uneven application across participating jurisdictions.

HUD Response: The Department disputes the commenter's assertion that litigation costs are likely to increase through the provision of a baseline level of tenant protections. In response to the commenter's concerns about how an owner can maintain confidential records, the Department notes that an owner can maintain confidentiality and securely store records through storing files in locked drawers, password protecting their computers, and using basic encryption if transmitting personally identifying information through email. This standard is not as burdensome as what the commenter describes and represents standard industry practices. Commonly used terms such as ''reasonable'' and ''unreasonably'' have a body of jurisprudence and common law precedent that should provide greater predictability not less. The ''frivolous'' or ''unnecessary'' litigation that the commenter is describing would be litigation if an owner were to disclose or otherwise not protect confidential information of a tenant or household member participating in a Federal program. The Department does not believe that this is an accurate characterization and that violations of confidentiality are serious matters that may have major negative ramifications on people's lives. As such, the Department is not removing the confidentiality requirements in the final rule.

RR. Tenant Protections in the Rule May Conflict With Other Laws and Programs That Have Different Standards

One commenter stated that the proposed language does not account for possible conflicts between local, State and other regulatory schemes and the protections in the proposed rule. Commenters recommended that HUD add language clarifying that the protections in the rule are not exhaustive and that they do not preempt participating jurisdictions, States or local governments from requiring other tenant protections.

HUD Response: The Department revised the tenant protections to make the protections more consistent with Federal laws and HUD programs. The Department has revised § 92.253(b)(10) to enable owners to terminate tenancy in accordance with the requirements in 24 CFR part 5, subpart I; 24 CFR 882.511; or 24 CFR 982.310. This will apply to tenants living in units or receiving assistance that are covered by one of these regulations and allows owners to maintain a consistent approach to termination of tenancy when overlapping HUD program requirements apply. Similarly, the Department withdrew the proposal to extend the notice period for termination of tenancy or refusal to renew tenancy in rental housing to also maintain alignment with other Departmental rulemaking efforts.

The Department agrees with the commenter that these requirements do not preempt a participating jurisdiction, State, or local government from providing additional protections. The Department has revised § 92.253(b)(6) and § 92.253(c)(6) to explicitly state that tenants may assert any protection under their lease and any applicable Federal, State, or local tenant protections. Where State or local landlord-tenant laws are more restrictive than HUD requirements, then the owner must follow the more restrictive requirements.

§ 92.254—Qualification as Affordable Housing: Homeownership

A. Downpayment Assistance Programs Help Low-Income Households

One commenter stated that downpayment assistance programs are vital for low-income households to be able to purchase homes.

HUD Response: HUD agrees with the commenter.

B. Homeownership Value Limits in § 92.254(a)

HUD received several comments on the HOME homeownership value limits, with many commentors stating that the limits are too low and that the data and process for calculating them should be updated to reduce burden on participating jurisdictions and increase options for homebuyers. One commenter noted that by limiting the value to 95 percent of area median home prices, families at or below 80 percent of area median income struggle to access homeownership in the community of their choosing.

Some commentors pointed out that the value limits disproportionally impact rural communities or concentrate opportunities in minority communities while limiting opportunities in predominately white neighborhoods. One commenter stated the 95 percent HOME price limit hinders developers and homebuyers from accessing high opportunity neighborhoods. Another commenter agreed that the limitation creates a barrier for both developers looking to meet housing demand and homebuyers wanting to live in communities of their choice. The commenter said that the home price limit has long been an impediment to fair housing but given unprecedented home prices it is now an insurmountable obstacle.

Several commentors suggested that HUD revert to using the FHA 203(b) Single Family Mortgage Market data. Commenters suggested the data from FHA 203(b) better supports rural communities as it is more dynamic than the current numbers and offers a higher national floor. Additionally, the commenters noted that there is precedent for this practice as HUD used 203(b) data as the basis for the 95 percent of median home price calculation ahead of its 2013 rulemaking.

One commentor stated that the homeownership value limit has been a problem for years, particularly in rural areas, because it is too low to enable the construction of new units or the acquisition-rehab of homeownership units for affordable sale. The commenter noted that HUD cited statutory restrictions against changing the limit but argued that there is significant room for HUD to make regulatory changes. For example, the commenter said that the statute is silent on how HUD should determine the median purchase price for an area, and, in fact, in 2013 HUD changed the source of the median home purchase price data from the FHA Single Family Mortgage Limits (203(b) limits) to the current source.

One commentor stated that the limits are too low to cover repairs to older homes or meet the needs of larger families due to a lack of flexibility in rural areas to account for high costs from limited local contractor availability and infrastructure.

A commentor stated that giving local participating jurisdictions a chance to calculate their own price limits is well-intentioned but of limited use. Another commenter stated that participating jurisdictions struggle with cost and capacity issues while attempting to establish their own limits. Commenters recommended that HUD build out its regulations to further limit the effect of the HOME homeownership value limits as much as possible.

Another commentor argued that homeownership value limits were not needed as other quantitative controls exist in the form of income limits and affordability limits but acknowledged that HUD is still statutorily required to provide them.

One commentor suggested that HUD use an alternative maximum sales price allowed to align with certain State programs that use 90 percent of the IRS annually published Average Area and Nationwide Area Average Purchase Prices.

Commentors acknowledged congressional action, or new legislation would be needed to eliminate the 95 percent limit, with one commentator suggesting that it be replaced with a 110 percent limit or a percentage established by the Secretary.

HUD Response: HUD acknowledges the numerous challenges communities face implementing homebuyer and homeowner rehabilitation programs. Section 215(b) of NAHA requires that the initial purchase price or after-rehabilitation 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. Historically, HUD used the FHA Single Family Mortgage Limit (known as the 203(b) limits) as a surrogate for 95 percent of area median purchase price. However, statutory changes require the 203(b) limits to be set at 125 percent of area median purchase price. Consequently, in its July 2013 final rule, HUD eliminated the 203(b) limit as the sales price or after rehabilitation value limit for HOME-assisted homeownership housing. The 2013 Final Rule established that HUD would begin to provide limits for affordable newly constructed housing based on 95 percent of the median purchase price of newly constructed housing in the area using data from the Federal Housing Administration (FHA) and other appropriate data sources, with a minimum limit based on 95 percent of the U.S. median purchase price for new construction for nonmetropolitan areas. For existing single family housing units being acquired or rehabilitated with HOME funds, HUD would begin to provide limits for affordable existing housing based on 95 percent of the median purchase price of existing housing in the area using data from the FHA and other appropriate data sources on sale prices of existing homes in standard condition, with a minimum limit based on 95 percent of the State-wide nonmetropolitan area median purchase price using this data.

The Department understands the unique challenges rural communities face using the HUD published homeownership value limits and has begun taking steps to assist those communities. In 2024, HUD made a major revision to the homeownership value limit methodology outlined in section 92.254(a)(2)(iii) of the July 2013 Final Rule. For existing housing, HUD is now using the greater (rather than the lesser) of the State non-metropolitan and U.S. non-metropolitan media sales values as the minimum value in which the limit is calculated. This change will substitute more local, State-level data for national-level data.

C. Beginning the Period of Affordability at Project Completion

One commenter stated that the period of affordability for homebuyer projects should be measured by the assisted-homebuyer's acquisition of the unit, not the project completion date. This is because the current rule is administratively burdensome, leads to unintentional noncompliance by participating jurisdictions, and confuses assisted buyers. The commenter noted that parties never know when the period of affordability ends because none of the parties knows for certain when the project is marked complete in the Integrated Disbursement and Information System (IDIS), which leaves participating jurisdictions confused. The commenter noted there is often unintentional compliance because participating jurisdictions need some time, if even only a few days, to review and compile final financial information needed to complete a project in IDIS, which means that project completion cannot be achieved on the same day an assisted buyer purchases the unit.

One commenter noted that the period of affordability is a problem in multi-address homeownership projects

because the buyer of the first HOME-assisted unit in a multi-address project may have taken possession and lived in their unit for months while other units were still under construction. The commenter stated that the project would not be considered complete under the definition until all assisted units have been transferred to eligible buyers, so no buyer's POA has started to run until the last assisted unit is sold. The commenter recommended that HUD could encourage this information to be disclosed to buyers.

HUD Response: The Department agrees with the commenter and is revising § 92.254(a)(4) to begin the period of affordability after execution of the instrument that requires the recapture of the HOME investment or recordation of the resale restrictions for sale to the next homebuyer. The Department is further requiring that execution of the instrument that requires the recapture of the HOME investment or recordation of the resale restrictions for sale to the next homebuyer only occur after the housing meets the participating jurisdiction's property standards in accordance with § 92.251(c)(3) and the property title is transferred to the homebuyer. This will provide the same necessary protections for homebuyers (*i.e.,* that the property meets property standards, that title has transferred, and that the resale or recapture provisions have been applied to the property) without conditioning the period of affordability on the participating jurisdiction's completion of the information in the disbursement and information system.

D. Data Sources and Methodology Recommendations

Commenters suggested that HUD change the data that it uses to calculate the homeownership limit to make the data more accurate or timely, with one commentor even suggesting that HUD remove the value limits if more accurate data couldn't be used. One commentor recommended HUD incorporate an adjustment factor or inflation factor to make limits more current. Another commentor suggested using data that excludes investor-purchased homes and only includes owner-occupied sales, as investor purchases can skew data thereby undermining affordability goals. The commenter also suggested replacing the limit with a HOME Subsidy Limit focused on the ''appropriateness of the amount of assistance'' by participating jurisdictions to address concerns around the prudent use of funds without restricting homebuyers' choices in neighborhood or home.

HUD Response: While the Department is somewhat limited by NAHA, HUD will continue to look for ways to ensure the data used to calculate area median purchase price is as accurate as possible to support the use of HOME funds for homeownership assistance. Unfortunately, for the reasons stated earlier in this preamble, the Department cannot change the 95% limit itself.

E. Support for Resale Formula Revisions in § 92.254(a)(5)(i)

Several commentors expressed support and appreciation for providing resale formulas. Commenters stated that the formulas would improve consistency and fairness to homebuyers while resolving the frustrations felt by participating jurisdictions as they develop provisions or rely on inconsistent guidance. Commenters also expressed appreciation for retaining the ability to submit their own resale formulas for HUD approval, with one commentor asking HUD to provide more detail on the HUD approval process for submitting their own formulas. A commenter encouraged HUD to work with Congress to amend the relevant statutory language to better facilitate the homebuyer resale provision process.

HUD Response: Through this rule making, HUD has worked within the statutory requirements of the Act to amend and clarify the homebuyer requirements at § 92.254 to assist participating jurisdictions that undertake homebuyer activities. HUD thanks the commenters for reviewing the proposed rule and is moving forward with the resale models without change.

F. Undefined Terms in Resale § 92.254(a)(5)(i)

One commenter stated that a ''reasonable range of low-income buyers'', ''capital improvement'', and how to value a capital improvement are not explained and are open to interpretation. A commenter suggested that HUD provide a definition of ''fair return on investment'' in precise percentage terms and recommended that HUD, or the participating jurisdiction, be responsible for providing down payment assistance to ensure the sale price provides an ROI that meets the definition.

HUD Response: As a Federal block grant program, HOME provides flexibility to State and local governments to determine how best to address community needs. By giving participating jurisdictions the ability to define what constitutes a fair return on investment, and a reasonable range of low-income buyers, HUD is permitting participating jurisdictions to design resale provisions to address community goals and adapt to local market conditions. The Department also believes that ''capital improvement'' is a known term in real estate and that a participating jurisdiction should not have difficulty determining whether a capital improvement has been made to the property. Capital improvements can be valued based on appraisals, the cost-to-build, or other commercially reasonable methods. The Department is providing four models that can be used to determine resale, some of which involve the selection of a fixed percentage or use of an index that can assist the participating jurisdiction in determining the fair return on investment in accordance with the HOME regulations and statute. The Department refuses, however, to provide a fixed percentage or range, as the commenter suggests. To assist participating jurisdictions in defining these terms, HUD has published guidance in CPD Notices and technical assistance products. For the reasons listed above, HUD has declined to further define these terms in regulation.

G. Use of HUD-Provided Formulas in § 92.254(a)(5)(i) Will Not Provide Significant Return to Homebuyer

One commenter, that does not use the resale option in its program, stated that a HOME-assisted buyer who sells their home wouldn't receive much of a return using HUD's four proposed formulas. The commenter noted that the benefit of homeownership is wealth building through the appreciation of home value and equity.

HUD Response: HUD does not agree with this comment. HOME is a block grant program. Participating jurisdictions have the flexibility to establish fair return standards that are more or less generous depending on their markets and their policy objectives. Moreover, if an assisted homebuyer owns the housing as their principal residence through the period of affordability, then the resale provisions terminate, and they will be able to realize the full benefits of wealth accumulation that come with homeownership.

H. Support for Recapture of Investment Revisions in § 92.254(a)(5)(ii)

A commenter stated that they support the proposed changes to the HOME recapture language clarifying that the recapture amount is the direct assistance to the homebuyer that enabled the homebuyer to purchase the unit.

HUD Response: HUD thanks the commenter for reviewing and is moving forward with this clarification.

I. Adding Rent Restrictions to Accessory Dwelling Units in § 92.254(a)(6)

A commenter stated that the HOME program should set a rent cap on ADUs where a homebuyer is purchasing a multi-unit property with HOME assistance. The commenter stated that this would prevent the misuse of HOME funds. The commenter also stated that real estate tax exemptions should be provided to homebuyers who are operating within an ADU rent cap limit. The commenter stated that these suggestions would help increase community support for ADU projects and benefit the wider community while offering a modest boost to homeowners.

HUD Response: Whether a unit is subject to the HOME rental housing period of affordability requirements in § 92.252 depends upon whether HOME funds were used to assist in the acquisition of the unit, as described more fully in § 92.254(a)(6), which was only revised for minor technical corrections. The Department believes that through its revisions to small-scale housing provisions in §§ 92.2, 92.251, 92.252, and 92.253, it has enabled purchasers of single family housing, including housing with ADUs, to more effectively manage these units as HOME rental housing units when those requirements apply. State and local property tax exemptions are outside the scope of this rule.

J. Preserving Affordability in § 92.254(b)—Clarify the Parties That Have Rights of First Refusal

One commenter expressed concerns that neither participating jurisdictions nor program participants fully understand that rights of first refusal and other preemptive rights are not acceptable beyond those permitted to a participating jurisdiction and a community land trust. The commenter noted that some developers seek to retain rights of first refusal, particularly in the case of homeownership units under recapture provisions, and the repurchase price prevents buyers from realizing any appreciation otherwise attributable to the owner. The commenter noted that HUD should make clear that only participating jurisdictions and community land trusts are permitted by statute to exercise rights of first refusal.

HUD Response: The Department appreciates the commenter's concern that program participants often fail to understand when preemptive rights are granted and to whom. The Continuing Appropriations Act, 2016 (Pub. L. 114–113) extended a participating jurisdiction's right to exercise purchase options, rights of first refusal or other preemptive rights provided in 42 U.S.C. 12742 of the Act to Community Land Trusts that developed the homeownership units. Neither the Act nor the Continuing Appropriations Act, 2016 (Pub. L. 114–113) provide any other entity the right to exercise purchase options, rights of first refusal or other preemptive rights to acquire housing when there is a termination event threatening the affordability restrictions (*e.g.,* foreclosure, transfer in lieu of foreclosure or assignment of an FHA-insured mortgage to HUD). If a developer of HOME-assisted homebuyer housing attempts to exercise a right of first refusal during the HOME period of affordability, the unit will no longer be in compliance with HOME period of affordability requirements. Section 12744(b) of the Act requires owners of HOME-assisted homebuyer units under a resale provision to sell only to another low-income homebuyer, while units under a recapture provision must be sold on the open market and the participating jurisdiction must use the recaptured funds for other eligible activities in accordance with HOME requirements. Thus, if another entity other than the participating jurisdiction or community land trust that developed the project attempts to exercise a right of first refusal, it could lead to repayment of the HOME investment because the unit will cease to be affordable housing under the Act.

K. Concerns With § 92.254(b) Requirement That the Home Be Resold Within 6 Months to an Eligible Homebuyer

Two commenters expressed concerns regarding the proposed requirement in § 92.254(b)(1)(i) that would require a participating jurisdiction to resell a home acquired by the participating jurisdiction through preemptive rights to an eligible low-income homebuyer within 6 months. Both commenters recommended that HUD extend the deadline for the participating jurisdiction to resell a home acquired through preemptive rights to 12 months instead of 6 months. Several commenters expressed concern that the proposed § 92.254(b)(3)(i) would require community land trusts that acquire HOME-assisted housing through preemptive rights to resell the housing to an eligible homebuyer within 6 months. These commenters stated that HUD should raise the 6-month resale requirement to 9 or 12 months, which several commenters noted would align with the current regulation or proposed revisions in § 92.254(a)(3). One commenter noted that HUD may want to measure compliance with any established resale date against the date of a ratified sales contract. The commenter also suggested that HUD could establish provisions that would extend the period of affordability by the period the community land trust is in possession of the property prior to transferring it to another buyer. Another commenter stated that establishing a minimum deadline of no less than 12 months for both community land trusts and participating jurisdictions to complete the sale of a property would allow community land trusts, which often have limited resources a reasonable amount of time to bring the housing to an appropriate standard and identify an appropriate buyer.

HUD Response: HUD agrees that extending the timeframe from 6 to 12 months to resell a homebuyer unit acquired through purchase options, rights of first refusal, or other preemptive rights will provide both participating jurisdictions and community land trusts additional time to rehabilitate a unit, identify a qualified buyer, and permit the buyer to obtain the financing necessary to acquire the unit. Extending the timeframe from 6 to 12 months will also align with the 12-month homebuyer sales deadline in § 92.254(a)(3).

L. Confusion Over Preserving Affordability in § 92.254(b)

One commenter found the language on preserving affordability of housing assisted with HOME funds in § 92.254(b) confusing and suggested reversing sections (1) and (2) such that the proposed language would begin by stating how the participating jurisdiction may acquire the housing by using additional HOME funds, followed by the requirements for selling the housing.

HUD Response: HUD thanks the commenter for the suggested reorganization but is maintaining the order of sections (1) and (2) in § 92.254(b), as section (b)(1) defines the specific actions a participating jurisdiction may take to preserve affordability of homebuyer housing when there is a termination event, and section (b)(2) defines the eligible use of additional HOME funds should the participating jurisdictions choose to preserve the affordability of the housing.

M. Community Land Trusts Exercising Preemptive Purchase Rights Under § 92.254(b)

One commenter supported the inclusion of community land trusts' right to exercise preemptive purchase rights while several commenters expressed concern or opposition to HUD's proposed language codifying the amendments to NAHA in the Consolidated Appropriations Act, 2016 (Pub. L. 114–113) that community land trusts may hold and exercise purchase options, rights of first refusal, or other preemptive rights to purchase housing to preserve affordability, including but not limited to the right to purchase the housing in lieu of foreclosure.

One commenter expressed broad concerns about the proposed language in § 92.254(b)(3) stating that it was unclear what would happen should a community land trust be unable to purchase a home prior to foreclosure, find an eligible household within 6 months, and the participating jurisdiction cannot provide additional HOME funds to assist the unit. The commenter noted that proposed language would create barriers for the community land trust, the participating jurisdiction because the unit would likely be sold on the private market, and the participating jurisdiction may be required to repay the HOME funds. The commenter stated it would welcome additional guidance from HUD.

HUD Response: The Department appreciates the comments. HUD understands that a community land trust may need additional funds to exercise a preemptive purchase right on a HOME-assisted homebuyer unit to preserve affordability. Because it cannot use additional HOME funds for this purpose, community land trusts interested in exercising the preemptive rights pursuant to the Continuing Appropriations Act, 2016 (Pub. L. 114–113) and the requirements promulgated in § 92.254(b)(3) must either use other non-HOME funds to acquire the unit and preserve affordability, or may request the participating jurisdiction to preserve affordability of the unit through the preemptive rights provided to the participating jurisdiction under § 92.254(b)(1) and (2).

Further, even if a community land trust may not assist the next homebuyer using HOME funds, the participating jurisdiction is permitted to provide additional HOME assistance directly to the next homebuyer should a community land trust exercise its preemptive purchase rights to preserve the affordability of the unit. HUD thanks the commenter that believed that a participating jurisdiction is prohibited from directly assisting the next homebuyer. This was not HUD's intent, and to address any confusion, HUD is adding clarifying language to § 92.254(b)(3)(iv) to state that a participating jurisdiction may provide direct assistance to the next homebuyer of a unit preserved by a community land trust through preemptive purchase rights.

N. Other Organizations Should Be Able To Use Preemptive Purchase Rights Under § 92.254(b)

Two commenters encouraged HUD to evaluate whether preemptive purchase rights could be made available to a wider range of organizations or affordable housing models. One commenter stated that they believed Congress meant to apply preemptive rights broadly to non-profit organizations whose purpose and goal is to preserve affordable homeownership opportunities, including shared equity/long-term affordability homeownership programs and not just to community land trusts. The commenter noted that many participating jurisdictions do not have the capacity or desire to expend time and resources to repurchase properties and should be permitted to allow nonprofit developers to use a preemptive purchase option or to assign the participating jurisdiction's preemptive purchase options to nonprofit developers to ensure long-term affordability. The commenter also states that limiting preemptive rights to participating jurisdictions and community land trusts only in the case of foreclosure is too limiting, particularly if HUD and Congress' goal is for HOME-assisted housing to fulfill the required period of affordability. The commenter states that the homeowner is unnecessarily burdened by these restrictions because they are responsible for finding and qualifying a subsequent, eligible homebuyer. The commenter suggests that eligibility for using preemptive purchase options should be determined based on the intent of the nonprofit developer to exercise the right for the purpose of preserving affordability and reselling to another eligible homebuyer, not whether the nonprofit formerly owned the land after the initial sale or acquired both land and improvements through exercise of the preemptive purchase right.

HUD Response: The Continuing Appropriation Act, 2016 (Pub. L. 114–113) provided preemptive purchase rights only to community land trusts and only with respect to properties these community land trusts properties developed with HOME funds. Congress did not intend broader applicability of these preemptive purchase right than HUD is promulgating in this final rule.

The Department disagrees with the commenter's statement that participating jurisdictions do not have the capacity or resources to exercise preemptive rights. HUD clarified in § 92.254 (b)(2) that participating jurisdictions may use additional HOME funds for certain eligible costs. Specifically, a participating jurisdiction may use additional HOME funds in accordance with § 92.254(b)(2) to obtain ownership of the housing, undertake any necessary rehabilitation, hold the housing pending sale to another homebuyer, and assist an eligible homebuyer in purchasing the unit. Consequently, a participating jurisdiction that chooses to exercise preemptive rights should have the resources necessary to preserve affordable housing.

Further, a participating jurisdiction is not permitted to assign its preemptive rights to a developer to exercise in response to a termination event, or in the case of a right of first refusal should a developer wish to acquire a HOME-assisted unit at resale. The commenter incorrectly states that homeowners' seeking to sell the HOME-assisted unit during the period of affordability are responsible for identifying and qualifying another eligible low-income homebuyer. While a homebuyer unit under a resale provision must be sold to another low-income buyer at a price that provides the seller with a fair return on investment, the homeowner is not responsible for identifying the next buyer or determining whether the buyer is income eligible. The participating jurisdiction is responsible for overseeing the subsequent sale of a homebuyer unit under resale and ensuring that all HOME requirements are met. Homebuyer units under a recapture provision must be sold on the open market with any recaptured funds returned to the participating jurisdiction to use for other eligible activities in accordance with HOME requirements.

O. Recalculating the Period of Affordability When a Participating Jurisdiction or Community Land Trust Exercises a Preemptive Purchase Right Under § 92.254(b)

One commenter stated that the proposed requirement at § 92.254(b)(3)(iii) that the period of affordability for the eligible buyer must be equal to the remaining period of affordability of the former homeowner will inadvertently bar a community land trust from requiring a new 99-year affordability restrictions upon resale of

a previously assisted home. The commenter stated that rather than requiring a fixed period of period of affordability upon resale as a condition to a community land trust's preemptive acquisition and resale of a HOME-assisted property in order to preserve its affordability, HUD should encourage long-term affordability by stating that the new period of affordability must be ''at least equal to'' or ''equal to or greater than'' the remaining period of affordability of the former homeowner.

HUD Response: The Department appreciates the commenter's feedback but believes the commenter is confusing the community land trust long-term ground lease with the HOME period of affordability required in § 92.254(a)(4). The HOME period of affordability and associated affordability restrictions are separate from the long-term ground lease the homeowner executes with the community land trust. Nothing in the HOME regulations would prohibit a community land trust from continuing to enforce a 99-year ground lease on a new homebuyer following the community land trust executing its preemptive rights under § 92.254(b)(3). Should a community land trust choose to exercise its preemptive rights during the period of affordability in accordance with § 92.254(b)(3), the new HOME-assisted homebuyer would be required to meet the HOME affordability restrictions (*i.e.,* principal residency and resale requirements) for the remaining period of affordability on land held by the community land trust under a ground lease for a term established by the community land trust. Participating jurisdictions are permitted to impose longer periods of affordability, perhaps even aligning with the term of the ground lease but would be required to monitor the HOME affordability restrictions for the longer period.

P. Providing Additional HOME Assistance to Property Purchased Through Preemptive Purchase Rights Under § 92.254(b)

Several commenters expressed concern or opposition to the proposed language at § 92.254(b)(3)(iv) that states that a participating jurisdiction may not provide additional HOME funds to a community land trust to obtain ownership, rehabilitate the housing, own/hold the housing pending sale to the next homebuyer, or provide down payment assistance to the next eligible homebuyer.

A commenter questioned why HUD would prohibit community land trusts from providing additional HOME funds to rehabilitate units acquired through their right of first refusal or from assisting buyers of such units because a property may need renovations or upgrades to comply with codes between owners. Several commenters expressed concern or opposition to the proposed language at § 92.254(b)(3)(iv) that states that a participating jurisdiction may not provide additional HOME funds to a community land trust to obtain ownership, rehabilitate the housing, own/hold the housing pending sale to the next homebuyer, or provide down payment assistance to the next eligible homebuyer. A commenter questioned why HUD would prohibit community land trusts from providing additional HOME funds to rehabilitate units acquired through the next eligible homebuyer.

Two commenters questioned why participating jurisdictions may use additional HOME funds to obtain ownership, rehabilitate, hold the housing pending resale, or provide downpayment assistance, yet a community land trust is not. Both commenters questioned the policy rationale behind this distinction, and one commenter stated that this prohibition runs counter to the regulatory definition's purpose of enshrining the preemptive right to purchase,[68] and urged HUD to provide community land trusts with a more complete array of tools to preserve the structure and affordability of their housing units.

One commenter expressed concern regarding the proposed restrictions on community land trusts that would prevent community land trusts from obtaining ownership through a preemptive purchase option. The commenter argued that disallowing the use of HOME funds undercuts the benefit to a community land trust of having a preemptive purchase option at all, and as a result of this restriction participating jurisdictions would not support community land trusts' purchase option since exercising their own would allow them to apply additional funding to the HOME-assisted project, and that the restriction places the burden of rehabilitation and management on a community land trust without providing additional resources to do so responsibly. The commenter said that it is essential that a community land trust exercising the preemptive purchase option be able to access HOME funds to rehab a home in preparation for a new homebuyer and recommended that community land trusts be able to use HOME funds for the same purposes as participating jurisdictions.

One commenter stated that the proposed language creates ambiguity regarding assistance to subsequent homebuyers purchasing property in a community land trust. The commenter stated that the language is unclear on whether the term ''to the Community Land Trust'' modifies each of the following listed elements in § 92.254(b)(3)(iv) or only applies to the ''to obtain ownership'' element. The commenter stated that the lack of clarity led to confusion on whether it could provide homeownership assistance directly to a subsequent buyer of a home in a community land trust where it had provided assistance to a previous buyer and the prior period of affordability was still applicable. The commenter suggested that HUD could address the issue by updating the proposed definition to the following: ''The participating jurisdiction may not provide additional HOME funds to the Community Land Trust to obtain ownership, to rehabilitate the housing, to own/hold the housing pending resale to the next homebuyer, or to provide homeownership assistance to the next eligible homebuyer.'' One commenter asked for clarification on the preemption of providing HOME funds to community land trusts for ownership, rehab, holds pending resale, or downpayment under proposed § 92.254(b)(3)(iv). The commenter also sought clarification on the misalignment with § 92.254(a)(9)(ii) that permits additional HOME funds if it meets the maximum-per-unit subsidy cap. One commenter explained that community land trusts require an enforcement mechanism due to their structure and purpose to provide permanent affordability, requiring financially sound operators to adhere to covenant enforcement and to retain sufficient resources to execute the right of first refusal. The commenter further explained that because of these additional measures, HUD should consider if participating jurisdictions should perform underwriting similar to that of a robust organization to cover these mechanisms, perhaps using the multifamily requirements as a template. The commenter stated that this could better ensure a sound operational foundation for the organization during the duration of the period of affordability.

HUD Response: The Department thanks the commenters for their feedback. However, HUD is moving forward with the provisions in § 92.254(b)(3), which do not permit a participating jurisdiction from

[68] See the proposed definition of *community land trust* in § 92.2, paragraph (4), in the proposed rule. 89 FR 46657.

providing additional HOME funds to a community land trust that has exercised preemptive rights to preserve affordability of HOME-assisted homebuyer housing. The Continuing Appropriations Act, 2016 (Pub. L. 114–113) did not authorize HUD to permit a community land trust, during the HOME period of affordability, to request additional HOME funds from a participating jurisdiction. Instead, the Continuing Appropriations Act, 2016 (Pub. L. 114–113) only allowed a community land trust to take possession of the property and resell to an eligible low-income homebuyer, thereby preventing the participating jurisdiction from having to repay the HOME investment because the property failed to meet the HOME requirements for the full period of affordability.

While the Continuing Appropriations Act, 2016 (Pub. L. 114–113) permitted community land trusts to exercise preemptive rights to preserve the affordability of housing, a community land trust is not required to exercise such options and may instead notify the participating jurisdiction that action is required to preserve the HOME-assisted unit. The participating jurisdiction may invest additional HOME funds in accordance with § 92.254(b)(1) and (2) to acquire, rehabilitate, hold the housing pending sale, and assist an eligible homebuyer to purchase the unit. The total amount of HOME funds invested, (*i.e.,* the original investment plus additional investment) cannot exceed the maximum per-unit subsidy in effect at the time of the additional investment, subject to HUD approval.

A community land trust that chooses to exercise its preemptive rights under § 92.254(b)(3) may use existing organizational resources or other funding sources to acquire, rehabilitate, hold the unit pending sale to another eligible homebuyer, and assist the next eligible homebuyer. The Department is adding clarifying language to § 92.254(b)(3)(iv) that a participating jurisdiction may provide direct assistance to an eligible homebuyer of a unit preserved by a community land trust through preemptive rights. The Department agrees with the commenter that the original proposed language in § 92.254(b)(3)(iv) was not clear about whether a participating jurisdiction could directly assist the subsequent buyer should a community land trust take action to preserve the affordability of the unit. The Department is also clarifying the period of affordability applicable to any homeownership assistance provided by the participating jurisdiction to the next eligible homebuyer.

While the Department agrees with the commenter that community land trusts that exercise preemptive rights under § 92.254(b)(3) should have sufficient resources to execute these rights and resell the unit to an eligible homebuyer, the Department is not requiring a participating jurisdiction to underwrite the community land trust. The participating jurisdiction may choose to exercise its own preemptive rights in lieu of the community land trust should the community land trust not have the financial resources needed.

Q. Revise the Lease-Purchase Requirements in § 92.254(e)(7)

One commenter recommended HUD extend the lease purchase completion deadline from 36 months to 5 years because they believe local experience suggests that the model is more effective when a client has more time from the date of offer and is offered homebuyer education. One commenter requested that the proposed § 92.254(a)(7) enable a second chance at a successful lease-purchase agreement if an initial lease-purchase on the property fails. One commenter stated that if a lease-purchase fails, the developer is locked into a lengthy cycle of rental administration, closing off much-needed affordable inventory for homeownership.

HUD Response: The Department appreciates the comments on the proposed lease-purchase changes and agrees that providing additional time to identify an eligible homebuyer is beneficial. However, if the first homebuyer is unable to acquire the housing within 36 months, the Department does not agree that entering into a subsequent lease-purchase agreement with a new homebuyer is prudent as an indefinite period cannot be permitted to pass before the homeownership unit meets the HOME homeownership requirements. Instead, HUD is revising § 92.254(a)(7) to provide the owner with an additional 12 months to sell the housing to another eligible low-income homebuyer. While the owner would be prohibited from selling the unit through another lease-purchase agreement, the participating jurisdiction could provide homeownership assistance to the next eligible homebuyer. If the owner is unable to sell the unit to an eligible homebuyer within 48 months of the execution of the original lease-purchase agreement, the unit must convert to rental housing in accordance with § 92.252.

R. Support for Nonprofit Lender Revisions to § 92.254(f)

One commenter expressed support for HUD's clarification that participating jurisdictions may provide HOME funds to nonprofit lending institutions as a contractor or subrecipient. The commenter stated this would allow nonprofit lenders to provide HOME homeownership assistance alongside first mortgage financing and thereby strengthen the nonprofit delivery system's ability to meet affordable homeownership needs.

HUD Response: HUD thanks the commenter for reviewing and is moving forward with revisions to specify that nonprofit lenders can be either contractors or subrecipients.

S. Changes to Homebuyer Underwriting in § 92.254(g)

Several commenters voiced support for the changes to § 92.254(g)(1) that revise the homebuyer underwriting standards. Some commenters praised the simplified focus on evaluating the projected overall after-purchase debt of a family, while others were concerned that families could be subjected to foreclosure if monthly expenses are not properly evaluated. Other commenters suggested HUD instead follow the standards provided by Qualified Mortgages or Community Development Financial Institutions while a few commentors disagreed with HUD's clarification on providing a single amount of assistance to all homebuyers.

HUD Response: HUD appreciates the comments and is moving forward with the proposed change.

T. Standardize or Align Third-Party Underwriting Standards in § 92.254(g)

Some commenters noted that the existing structure in which each participating jurisdiction develops their own underwriting standards can create confusion and inconsistencies and suggested that HUD standardize and align with existing mortgage products to help address the issue. These commenters suggested HUD consider establishing a safe harbor if the underwriting of the first mortgage meets the standards of a Qualified Mortgage as defined by the Consumer Financial Protection Bureau (CFPB). Two commentors suggested HUD defer to the underwriting standards of a certified Community Development Financial Institution (CDFI) as CDFIs have experience underwriting loans to low- and moderate-income borrowers.

HUD Response: The Department disagrees with the commenters that HUD should align homebuyer

underwriting requirements with standard mortgage requirements such as the Qualified Mortgage standards established by the CFPB. HOME participating jurisdictions must have separate underwriting standards for HOME-assisted homebuyers because the first mortgage underwriting is not a valid proxy for underwriting a second HOME-mortgage where the participating jurisdiction must consider the homebuyer's overall debt, including the first mortgage debt. Further, Qualified Mortgages, as defined by the CFPB, are not focused on evaluating the low-income populations participating jurisdictions are required to serve. While the CFPB requirements are a good starting point for assessing the appropriateness of private first mortgages, a participating jurisdiction's underwriting policy must consider additional factors because HOME-assisted homebuyers are low-income. Participating jurisdictions must continue to establish and use their own homebuyer underwriting standards in accordance with § 92.254(g) to adequately protect the low-income homebuyers from risky and unsustainable mortgages. The Department is moving forward with the proposed change.

U. Changes to Evaluation of Family Debt in Underwriting in § 92.254(g)

Two commenters noted that HUD correctly identified that the current regulation excludes households that have overall debt and monthly expenses that exceed a participating jurisdiction's underwriting standards but demonstrate an ability to sustain a mortgage through other indicators and argued that rigid ratios for housing expense and total debt is reflective of an outdated practice. The commenters stated that the current requirements can prevent a buyer from buying their preferred home in their location of choice because they favor borrowers with strong credit ratings, high down payments and cash reserves, and other factors. The commenters supported HUD's proposal to eliminate the requirement that a participating jurisdiction evaluate monthly expenses, to establish a standard to determine the maximum amount of direct HOME assistance, and to prohibit participating jurisdictions from providing a single, fixed amount of assistance to every homebuyer receiving assistance but asked HUD to provide additional guidance to participating jurisdictions as it finalizes this rulemaking and implements the requirements. One commenter agreed with some changes that would eliminate the need to evaluate both the housing debt and overall debt of the family in favor of evaluating overall debt of the family projected after purchase, but this commenter expressed concerns with the proposed rule's elimination of the requirement that participating jurisdictions evaluate the monthly expenses of the family. The commenter stated that the lender cannot see if a family can afford a loan if they are not doing their due diligence. The commenter recommended that HUD interpret the rule's language that ''the standards must evaluate the... financial resources to sustain housing'' as requiring robust evaluations to ensure that the overall financial health of the family is still assured prior to home purchase.

Two commenters stated that they do not support HUD's proposal to eliminate the requirement that participating jurisdictions evaluate a family's debt during underwriting. One commenter explained that debt evaluation prevents a family from purchasing a home that is over their income capacity and from putting the family at risk of foreclosure. Another commenter stated that this proposed change is counterintuitive to protecting families from financial distress, jeopardizing the investment of HOME funds due to foreclosure, short sale, or other issues.

HUD Response: HUD is removing the requirement that the overall debt of the family be reviewed as part of the HUD-required underwriting analysis performed by the participating jurisdiction but is retaining the requirement in § 92.254(g)(1) that ''[t]hese standards must evaluate the projected overall debt of the family after the purchase of the housing.'' HUD believes that the evaluation of the overall debt of the family after the purchase of the housing is the correct measure for determining whether the housing would be at risk of foreclosure and whether the family would be in financial distress. HUD does not believe that separately accounting for the current overall debt of the family adds to this analysis. HUD notes that restructuring of debt can occur throughout the closing process, and so overall debt of the family pre-closing is not as informative as overall debt of the family after closing and any necessary repair or rehabilitation work that may be needed on the property.

V. Prohibition of Providing a Single Amount of Assistance in § 92.254(g)

Several commenters stated they do not support the proposed change to § 92.254(g)(1) of explicitly stating that a participating jurisdiction may not provide a single, fixed amount of assistance to every homebuyer receiving assistance in the participating jurisdiction's homebuyer program. Two commenters expressed concerns that tailoring the amount of assistance to each homebuyer is difficult and could be seen as arbitrary. Other commenters stated that tailoring assistance may result in a higher subsidy amount to a higher income buyers or buyers purchasing more expensive homes.

One commenter stated that HUD should base appropriateness of assistance on the local housing market through methods such as percent of median home value. Another commenter supported HUD's attempt to add clarity by stating that a participating jurisdiction establishes a standard to determine the maximum amount of assistance per family by market area but believes that by establishing a cap, a participating jurisdiction should be considered compliant. The commenter also recommended basing the appropriateness of the assistance on the local housing market and using a percentage of the median home value.

HUD Response: While the Department appreciates the comments, the prohibition against providing a single amount of homebuyer assistance is not a proposed change. The 2013 HOME Final Rule required participating jurisdiction to establish homebuyer program policies and procedures, including but not limited to homebuyer underwriting guidelines. In accordance with § 92.254(g), a participating jurisdiction must utilize underwriting standards to determine the amount of HOME assistance each applicant needs to sustain homeownership. HUD is declining to make a change that would permit participating jurisdictions to establish programs that provide the same amount of HOME assistance to every homebuyer irrespective of need. The Department is also not providing a safe harbor where the participating jurisdiction establishes a maximum cap. A participating jurisdiction can always establish a maximum cap for assistance, but if that cap is too low, and every homebuyer is provided the same amount, then the participating jurisdiction is not evidencing that it is appropriately sizing the assistance to meet the requirements of § 92.254.

The Department also disagrees with establishing the appropriateness of assistance based on a set percentage of median home value or the local housing market. Participating jurisdictions must perform the necessary underwriting to determine whether it is possible to assist the family, and how much assistance the family requires in order to be able to maintain sustainable

homeownership. Establishing set percentages or basing assistance on factors that do not involve an evaluation of the family's finances and do not ensure that the homeownership is sustainable. Impact of other resale restrictions on the property.

X. Resale Restrictions

One commenter stated that HUD should clarify whether it is appropriate to allow non-HOME resale restrictions to be imposed by non-participating jurisdiction State or local government programs that are funded by HOME. The commenter noted this clarification is needed because participating jurisdictions have declined to provide homebuyer assistance to low-income buyers from local density bonus programs because the housing was deed restricted in a resale-like manner by non-HOME State or local programs.

HUD Response: The only resale or recapture restrictions that may be placed on a HOME homeownership property are those that are consistent with the restrictions provided in the participating jurisdiction's consolidated plan in accordance with 24 CFR 91.220(l)(2)(iii) or 24 CFR 91.320(k)(2)(ii), as applicable, and included in the participating jurisdictions written agreement in accordance with § 92.504.

Y. Manufactured Housing in HOME Homeownership Programs

One commenter stated that it is important that when States and localities use funds for down payment assistance for affordable first-time home purchase, that these programs do not inadvertently exclude manufactured homes. The commenter noted that personal property manufactured home loans have distinctive attributes that can sometimes result in down payment assistance programs not reaching these homebuyers. The commenter referenced 2003 guidance and requested that HUD updated the program to consider any changes to the regulations would negatively impact manufactured housing homeownership opportunities. The commenter also stated that since manufactured home purchases and financing can be sold differently than site-built home purchases, it is important that States and localities conduct appropriate outreach to these channels, to ensure manufactured homebuyers have the same access to these down payment programs.

One commenter stated that while the purchase, rehabilitation, and development of manufactured homes and manufactured home communities are statutorily eligible uses of HOME funds, HOME is not being used to preserve and improve manufactured home communities as affordable housing and homebuyers and homeowners are routinely denied access to HOME-funded programs, even though they are some of the lowest-income homeowners in America and play a crucial role in the inventory of affordable housing. One commenter stated HUD should engage in outreach to States and localities to ensure that their HOME-funded downpayment assistance programs do not exclude manufactured homes. The commenter stated that this unintentional exclusion has persisted for some time often because manufactured homes are ordered in a different manner, and it is imperative to address the issue.

HUD Response: HUD agrees that the acquisition, rehabilitation, and installation of manufactured homes and manufactured home communities are all eligible HOME projects if they meet the requirements in the HOME regulations. HUD also agrees that manufactured housing is an important source of affordable housing, and that participating jurisdictions and other program partners may not fully understand the ways in which HOME funds can be used for manufactured homes and manufactured home communities, including homeownership assistance and rehabilitation. Because manufactured homes may be personal property in some states and real property in others, there is variation in how HOME funds can be used to assist the acquisition of these units. HOME funds can be used to acquire both the unit and the lot, or to lease the lot for the period of affordability and purchase the housing unit. HOME funds can also be used to rehabilitate manufactured housing as homeowner rehabilitation projects, so long as the units meet the property standards in § 92.251 upon completion. The Department will consider further ways in which to address any misunderstandings about the allowable use of HOME funds in supporting manufactured home homeownership through guidance or technical assistance products.

Z. Barriers to Using HOME To Purchase Manufactured Home Communities

The commenter pointed to regulatory barriers that prevent HOME funds from being used for resident acquisition of manufactured home communities and stated that HOME funds for acquisition need to be implemented through an entity that can meet strict timeframes and work with manufactured home communities owners, that HOME funds should be used to reduce the cost of debt for acquisition, and that HOME funds should be used by participating jurisdictions to make equity grants in CDFIs to specifically finance resident purchases of manufactured home communities.

HUD Response: The Department thanks the commenter for reviewing the rule and notes that some of the suggestions fall outside the scope of this rulemaking. However, HUD agrees that, while an eligible use of funds, it can be challenging to use HOME funds to acquire and rehabilitate manufactured home communities. A primary reason for this is that not all residents of a manufactured home community qualify as low-income, and ownership can vary from resident to resident. A more viable model might be to use another financing source such as CDBG to acquire the manufactured housing community and reserve HOME funds to acquire or rehabilitate manufactured housing units for income eligible residents. HUD can provide technical assistance to participating jurisdictions in structuring HOME projects involving manufactured home communities.

AA. Encourage Homeownership Activities

One commenter also suggested that HUD take further steps to encourage participating jurisdictions to make HOME funding available in their communities for affordable homeownership construction, rehabilitation, and repair by promoting guidance for best practices by participating jurisdictions.

HUD Response: Supporting State and local efforts to expand homeownership is a key goal of the HOME program. HUD appreciates the comment and will continue to provide technical assistance and guidance to participating jurisdictions interested in using HOME funds for homeownership. In recent years, HUD has developed and administered several webinars, and in-person trainings focused on providing in-depth guidance and sharing best practices to participating jurisdictions looking to create or expand their homebuyer programs. HUD will continue to offer trainings and look for new ways to ensure participating jurisdictions have the resources and capacity to expand affordable homeownership.

Specific solicitation of comment #11: The Department requests public comment on whether the existing 9-month deadline for the sale of homebuyer units acquired, rehabilitated, or constructed with HOME funds is reasonable and whether

extending the deadline to 12 months would increase the use of HOME funds for homeownership programs.

A. Comments in Support of a 12-Month Deadline for Purchase by an Eligible Homebuyer

Several commenters supported the extension to 12 months. Commenters stated that they support the proposed extension for the sale of a homebuyer unit acquired, rehabilitated, or constructed with HOME funds to 12 months because 9 months is an insufficient amount of time. One commenter stated that less than 12 months is an unreasonable time period due to market volatility and because small cities do not have the capacity to become landlords or to repay HUD for HOME funds when a property does not sell or convert to a rental unit. In addition, the commenter recommended that HUD remove the requirement for renting all together so that participating jurisdictions have time to sell the home. Another commenter stated that the three additional months would give potential homeowners more time to comply with requirements such as homebuyer counseling and income qualifications. One commenter explained that they support the change because, currently, it takes longer to find income eligible buyers given higher sales prices and interest rates. Some commenters said the extension would add flexibility to the program and one commenter stated it would make it more attractive to use HOME in such projects. One commenter stated that the added time may incentivize some participating jurisdictions to add or expand homeownership programs using HOME funds.

One commenter, in expressing support for the extension to a 12-month deadline, stated that this change would especially benefit new construction and enable the local governments who encounter hurdles or delays to close the deal by providing an additional 3 months.

One commenter supported extending the deadline from 9 to 12 months but warned that developers and non-profits building owner-occupied housing lack rental property management experience and warned of the risks and deterrent effects of this misalignment. The commenter suggested requiring homebuyer projects to convert to a lease-to-purchase model instead of rental.

One commenter noted that having an additional three months to sell HOME-assisted homeownership units may increase the use of HOME funds for homeownership programs for some participating jurisdictions, but high interest rates likely have more of an impact on the success of the program in most markets.

HUD Response: HUD thanks the commenters and agrees that adding an additional three months to the homebuyer deadline will benefit local communities by alleviating potential noncompliance. The Department is moving forward with the proposed change by extending the homebuyer sales deadline from 9 to 12 months.

B. Comments in Support of a Sales Deadline of More Than 12 Months

One commenter stated that because of the current economy the time to sell a home should be extended to 15 to 20 months.

One commenter stated the requirement should be at least 12 months because of volatility in the housing market. The commenter suggested that a participating jurisdiction and owner can provide a mutually agreeable plan to obtain occupancy no later than an additional 6 months (total of 18 months) from the completion of construction if there is no sale at 12 months.

One commenter stated they support increasing the number of months before converting a homeowner unit that hasn't sold to rental housing from 9 months to 12 months but would prefer that HUD eliminate the provision altogether.

HUD Response: HUD acknowledges the volatility of the housing market but has determined that 12 months is an appropriate homebuyer sales deadline. A deadline of 15 months or greater is too long for HOME homeownership housing to remain on the housing market. If an owner is not able to sell the unit to an eligible homebuyer within 12 months, then the unit must be converted into rental housing and run in accordance with § 92.252, or the participating jurisdiction must repay the investment.

C. Current Requirement of Nine Months Is Not Hard To Meet

One commenter said that they do not have challenges closing on homebuyer units within the existing timeline but understand that other markets may not be similarly situated and that the shrinking pool of available Federal funding utilized as mortgages is leading to extremely long waiting periods for homebuyers. The commenter doubted whether extending the deadline would meaningfully impact the proportion of HOME funding used to support homeownership programs because the sales deadline is only one very small part of the barriers in the HOME regulations and laws. Rather, the commenter cites the primary reason for the decline in uses of HOME for homeownership is decision-making at the participating jurisdiction level that prioritizes rental uses for HOME funds over homeownership uses as well as shrinking appropriations and a national proportion of HOME set aside for CHDOs that has not exceeded 20 percent since 2015. The commenter recommended that HUD use its authority to ease barriers in HUD regulations, such as raising the Homeownership Value Limits and to work with homeownership advocates to identify ways to incentivize the use of the HOME program for homeownership activities.

HUD Response: HUD thanks the commenters for their response and acknowledges that multiple factors impact the proportion of HOME funds that are used for homebuyer housing. In 2024, HUD made changes to the methodology used to calculate the homeownership value limits and will continue to explore how it can address other barriers facing HOME funded homeownership.

D. Clarify Rule on When Housing Is Not Sold by the Deadline

One commenter stated that the extension of the proposed sales deadline to 12 months is appreciated, but the requirements for homeownership housing using HOME funds do not specify how a home that has been leased under the provision can subsequently be sold to an eligible homebuyer. The commenter stated that this has led to participating jurisdictions concluding that selling the home as originally intended is not allowed or that it can only be sold via the lease-purchase provisions of the regulations. The commenter recommended that HUD clarify how a home leased under § 92.254(a)(3) can be sold to an eligible buyer within 12 months of a tenant voluntarily moving out of the rented home or after being legally evicted for cause. The commenter also recommended that HUD issue clear guidance on this matter for participating jurisdictions.

HUD Response: HUD would like to clarify that a HOME-assisted homebuyer unit that fails to sell to an eligible homebuyer by the 12-month deadline, must be converted to a rental project in accordance with § 92.252. Once the unit is designated as a rental unit in accordance with § 92.252, a participating jurisdiction cannot execute a lease purchase agreement with a potential homebuyer because the unit has become a rental unit and lease

purchase is only permitted under § 92.254(a)(7). In accordance with § 92.255, a participating jurisdiction may permit the owner of a HOME-assisted rental unit to convert the unit to homeownership unit if the *existing* tenant is willing and eligible to buy the unit. The conversion of a HOME-assisted homebuyer unit into a rental unit after a 12-month vacancy is not intended to serve as a temporary solution for periods of weak market demand. Participating jurisdictions that are unable to sell a homebuyer unit after a 12-month period should consider evaluating local market demand for low-income homebuyer projects. If the owner refuses to convert the unit into a rental housing unit under these provisions, then the participating jurisdiction must repay the investment of HOME funds for the development of that housing unit, as it failed to meet the requirements of § 92.254 and § 92.252.

E. Other Comments Received in the Solicitation

One commenter said that HOME funds are currently unable to assist in areas of homeownership opportunities because of increasing home prices and recommended HUD allow higher per-unit subsidies and after rehabilitation values and sales prices to increase such opportunities. The commenter also supported a rehabilitation per unit subsidy limit that incorporates new construction and requested HUD provide an example of a proposed resale formula in its final rule.

HUD Response: HUD acknowledges that increasing home prices pose a significant challenge to homebuyer programs. The final rule is proposing to make several revisions to the HOME program's maximum per-unit subsidy limits at § 92.250 and a revised methodology that allows HUD an improved ability to review ongoing construction cost changes will be published in a future **Federal Register** publication. HUD has also taken recent steps to update the methodology used to calculate the HOME homeownership value limits and will continue to evaluate how those numbers are calculated.

HUD has published examples of each of the four resales models on HUD.gov, and will provide training, technical assistance, and publish updated guidance to support the implementation of the new resale models.

§ 92.255—Purchase of HOME Units By In-Place Tenants

Commenters stated that HUD should make an exception to the current requirement that a tenant must qualify as low-income at the time of purchase of a HOME unit. One commenter encouraged HUD to consider regulatory changes that would provide more flexibility in income determination in the event of a purchase by an in-place tenants. Other commenters stated that if HOME units were originally developed using LIHTCs, then in-place LIHTC tenants that originally income qualified for both HOME and LIHTC should be able to purchase the units as in-place tenants without need for income recertification. In many cases, the commenters specifically cited to lease-purchase programs but the lease-purchase arrangements they were describing were not lease-purchases as defined under the HOME program but actually purchase of rental housing units by in-place tenants.

Another commenter stated that homeownership is inadvertently disincentivized due to these existing regulations, and urged HUD to consider regulatory changes that would provide more flexibility in income determination in the event of a lease purchase agreement. The commenter noted that in § 92.254(a)(7), current regulations state that ''HOME funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed.'' The commenter explained that during the rental period, the HOME rules defer to the LIHTC qualification standards for whether a renter is eligible to rent a HOME-assisted unit. The commenter further explained that LIHTC qualification standards require an initial qualification of the tenant at the time of lease, but if the tenant household income increases over the LIHTC and/or HOME maximum, the tenant is still qualified to live in the unit and is not displaced. However, the commenter pointed out that since HUD's adoption of the 2013 HOME final rule, many participating jurisdictions are requiring a tenant to re-qualify under the homeownership rules at the time of the sales transaction once they are eligible to purchase their single family home at the end of the LIHTC compliance period. The commenter stated that if the tenant exceeds 80 percent of area median income at the time of requalifying, they are disqualified from purchasing the HOME-assisted unit.

HUD Response: The Department considered its flexibility under 42 U.S.C. 12745(a)(1)(E) to reduce or eliminate the remaining period of affordability on the rental unit to allow the in-place over-income tenant to purchase the property and determined that this was within the Secretary's discretion as it is consistent with the purposes of the Act, which emphasized moving families from poverty to stable homeownership. The Department has added language to §§ 92.254(a)(3), 92.255(b), and 92.255(c) to enable the purchase of units by in-place over-income HOME tenants. As a condition of allowing the in-place over-income tenant to purchase the property, the tenant must agree to the participating jurisdiction's resale restrictions for the remaining period of affordability, similar to other income eligible in-place tenants that purchase their units (see § 92.255(b)). Since an over-income tenant purchasing their HOME unit is no longer income eligible, the tenant may not receive additional HOME funds to assist them in the purchase of their unit.

The Department understands that there is a lot of confusion about what rules control when HOME units are designated in a LIHTC project. The Department is correcting the commenter because HOME rules do not ''defer'' to the LIHTC qualification standards. HOME tenants must be income eligible under the HOME program at initial occupancy. The commenter is correct that an owner may not refuse to renew a tenant's lease because the tenant has become over-income, as this is not good cause under the Act.[69] However, the commenter is also incorrect that the 2013 HOME Rule revised the regulations to prohibit in-place over-income tenants from purchasing their HOME rental housing units. Until this final rule, this has never been permitted in the HOME program.

§ 92.300—Set-Aside for Community Housing Development Organizations (CHDOs)

A. Applicability of Proposed Changes

A commenter requested additional clarity as to whether the proposals relating to CHDOs only applied to CHDOs in rural areas or if they are applicable to all CHDOs.

HUD Response: The Department proposed several changes to the definition of community housing development organization at § 92.2 and the CHDO set-aside requirements at § 92.300, many with the intent of improving CHDO availability and capacity in rural areas. However, the changes made are not specifically applicable to CHDOs in rural areas but any organization receiving CHDO set-aside funds through the HOME program.

[69] See 42 U.S.C. 12755 for good cause and 42 U.S.C. 12745(a)(3), which contemplates over-income tenants and explains what rent they must be charged.

B. Changes to Role of CHDO in § 92.300(a)—Support

Commenters supported these changes. One commenter stated that the proposed revisions to the required role of the CHDO as owner, developer, or sponsor of housing at § 92.300, when combined with the proposed changes to the CHDO definition at § 92.2, would enable more community-based housing organizations to qualify as CHDOs and access the CHDO set-side.

A commenter stated that they support the proposed change that allows CHDOs serving as rental housing sponsors to convey a project to a non-profit organization at a predetermined time after completion of the project.

Several commenters supported the proposed change to sponsorship in § 92.300(a)(4) that would allow a CHDO (or its subsidiary) sponsoring a project to be the ''managing general partner'' rather than the ''sole general partner,'' or the ''managing member'' rather than the ''sole managing member'' of a limited partnership.

HUD Response: HUD thanks the commenters for their support. However, HUD notes that the provision at § 92.300(a)(5) that permits CHDOs serving as rental housing sponsors to convey a project to a non-profit organization at a predetermined time after project completion is not new and is not being substantively changed by this rulemaking.

C. Changes to Role of CHDO in § 92.300(a)—Opposition

One commenter opposed the proposed changes regarding all three CHDO roles and stated they will have the unintended consequence of reducing CHDO requirements and allowing non-CHDOs to fully benefit from a CHDO designation while not being held accountable to CHDO standards. The commenter stated that for the CHDO owner, developer, and sponsor projects, many non-CHDO for-profit and non-profit developers document their relationships with CHDOs in a way that gives them an appearance of decision-making authority they do not actually have. For sponsorship projects, the commenter recommended that the regulations permit two CHDOs with service areas covering the same geography be permitted to be owners of the general partner entity.

HUD Response: HUD shares the commenter's concern about entities other than the CHDO controlling the development process in contravention of the regulations and the statutory intent of the CHDO set-aside requirement, which is the reason why it strengthened and clarified the CHDO regulations in the 2013 final rule. However, the Department believes that the possibility that a non-CHDO entity will attempt to use this flexibility to access CHDO set-aside funds for a project it controls, is not a sufficient justification to deny many neighborhood-based nonprofit organizations the opportunity to participate in the CHDO set-aside. This is particularly significant because participating jurisdictions have the ability through recent appropriation provisions to use uncommitted CHDO set-aside funds for other HOME activities after two years. Participating jurisdictions and CHDOs must themselves be alert to efforts to evade the regulatory requirements applicable to CHDO set-aside funds.

HUD also notes that under the sponsorship provisions of the current HOME regulations, two CHDOs that work in the same area are permitted to be the partners of the ownership entity, as long as one of the CHDOs is in charge of the project.

D. Request for Greater Flexibility Under § 92.300(a) To Allow for Grant-to-Loan or Other Pass-Through Lending Structures To Facilitate Tax Credit Transactions

Commenters asked HUD to consider permitting alternative funding structures with HOME funds for LIHTC projects, for example, allowing the participating jurisdiction to lend or grant the HOME funds to a CHDO which in turn would have an agreement to loan or contribute the HOME funds to the project.

HUD Response: A participating jurisdiction may not grant or provide HOME funds to an entity that then lends the HOME funds to the owner of an affordable rental project because HOME statutory and regulatory requirements require the participating jurisdiction to ensure compliance with HOME requirements through binding contractual agreements with the project owner. A participating jurisdiction may only provide HOME funds to an entity to lend to the owner of an affordable rental project if the entity is a subrecipient to the participating jurisdiction. See HOMEfires, Vol. 16 No. 1, September 2021, (HUD discusses the statutory and regulatory provisions governing how HOME project owners are assisted).

E. Ownership by a CHDO Throughout the Period of Affordability and Transfers of Ownership in § 92.300(a)

Commenters stated that they support the proposed change to eliminate the requirement that HOME-assisted rental projects must be owned by the CHDO during the period of affordability. Commenters stated that allowing conveyance of the CHDO-developed or -sponsored project to eligible private nonprofits would create an additional opportunity for long-term preservation and ongoing operation of existing properties. Some commenters stated that permitting a transfer of ownership to a non-CHDO when necessary to maintain compliance with HOME program requirements will help preserve HOME-assisted stock of affordable housing and preserve HOME affordability requirements.

Commenters questioned why the same ability was not extended to projects under the CHDO ownership role and advocated that HUD make that change in the final rule. One commenter said that the same difficulties HUD cites with respect to housing that is ''developed'' and ''sponsored'' by CHDOs, also applies to housing owned by CHDOs and urged HUD to consider eliminating the requirement that the project be owned by a CHDO throughout the period of affordability at § 92.300(a)(2) in addition to paragraphs (a)(3) and (a)(4).

Commenters stated that they support the proposal to eliminate the requirement that HOME-assisted rental projects must be owned by the CHDO during the period of affordability. Several commenters requested that HUD issue sub-regulatory guidance on how to affect such a transfer. Another commenter recommended that the final rule explicitly state that ownership transfers are permitted when necessary to sustain a CHDO project and maintain compliance with HOME affordability requirements and requested HUD issue sub-regulatory guidance to facilitate such transfers.

One commenter stated that when such transfers occur, the regulation should permit the participating jurisdiction to impose alternative affordability restrictions at the time of transfer, if the transfer is for the purpose of refinancing the property under the LIHTC program.

Two commenters opposed the proposed changes that would permit transfer of CHDO set-aside projects to entities that are not CHDOs. One commenter recommended that HUD grant hardship exceptions rather than changing the regulations, stating that the change would allow for a CHDO-

developed project to be transferred to a for-profit organization that has no connection to the community to benefit from the asset in the long-term. Another commenter stated that they prefer that CHDOs maintain ownership and asked for additional clarity on how the HOME Program proposed rule incentivizes CHDOs to maintain ownership rather than sell ownership.

A commenter requested additional clarity on whether CHDOs are required to maintain ownership of rental housing for the full term of affordability.

HUD Response: HUD appreciates the comments. In response to commenters recommending that HUD extend the flexibility provided to projects developed by a CHDO under paragraph (a)(3) and sponsored by a CHDO under (a)(4) to projects owned by the CHDO under § 92.300(a)(2), HUD believes that projects that were funded under the CHDO ownership model should continue to be owned by a CHDO throughout the period of affordability. HUD appreciates the suggestion that it provide hardship exceptions rather than revising the rule. However, HUD has been involved in situations in which a transfer had to occur on a timeframe inconsistent with a case-by-case waiver or exception process. HUD agrees with the commenter that recommended that the final rule explicitly state that ownership transfers are permitted when necessary to sustain a CHDO project and maintain compliance with HOME affordability requirements. As described in the preamble to the proposed rule, HUD intended to apply this flexibility to instances involving a CHDO's bankruptcy, decrease in capacity, or other business necessity that requires sale or other transfer of the housing to preserve the viability or affordability of the project. However, the proposed rule language was more permissive than intended. Consequently, while HUD is adopting the flexibility, it also is revising the final rule to make clear that a participating jurisdiction may permit a CHDO to sell or otherwise convey housing to a nonprofit organization that is not a CHDO only if determines and documents that the CHDO no longer has the capacity to own and manage the housing for the full period of affordability and there are no CHDOs with capacity to own and manage the project for the full period of affordability. This provision would prohibit transfer of a CHDO project to an entity that does not qualify for a CHDO for routine reasons such as refinancing of a project at the end of a LIHTC period.

F. Clarify CHDO Ownership Role

A commenter asked for additional clarity regarding whether a CHDO is always required to be the sole owner or if it is permitted for CHDOs to have partners that are co-owners.

HUD Response: The Department thanks the commenter for reviewing the proposed rule. A CHDO is not always required to be the sole owner of a rental housing project. Specifically, rental project partnerships are permitted under the CHDO ''sponsor'' definition if the CHDO, or its wholly owned subsidiary, is the managing general partner of a limited partnership or the managing member of a limited liability company.

G. Clarify How a CHDO May Share Responsibilities as a Developer Under § 92.300(a)

Commenters supported HUD's proposed changes to § 92.300(a)(3) to permit the CHDO to share responsibilities in the development process, provided that the CHDO remains in charge of these responsibilities. Several commenters recommended that HUD better describe the sharing of responsibilities when the CHDO acts as developers in § 92.300(a)(2), by stating that it means ''partnering, contracting, or procuring services from other entities.'' These commenters requested that HUD include ''project management'' in the list of responsibilities that may be shared or contracted.

HUD Response: HUD thanks commenters for their support of this provision. HUD declines to add project management to the list of responsibilities that may be shared as the term is vague and open to interpretation, whereas the list of responsibilities included in the proposed rule are discrete and easily understood. HUD is adopting the proposed rule language and, in response to comments, is adding language describing the mechanisms through which responsibilities can be shared and decision-making retained.

H. Removal of CHDO in Sponsored Limited Partnerships ''for cause'' in § 92.300(a)

A commenter supported the proposed change to sponsorship of rental housing in § 92.300(a)(4)(i) that would allow a sponsored CHDO's limited partnership or limited liability company to be removed ''for cause'' as the managing general partner or managing member, provided that the CHDO must be replaced by another CHDO. The commenter recommended HUD issue sub-regulatory guidance to facilitate transfers necessary to sustain CHDO projects.

HUD Response: HUD thanks the commenter and notes that this is not a change from the existing rule.

I. Opposition to the 10 Percent Limitation on Homeownership Assistance to Homebuyer in CHDO Homeownership Projects in § 92.300(a)

One commenter noted that only 10 percent of the funds awarded to a CHDO for development of housing may be used for downpayment assistance, which is in high demand. The commenter urged HUD to increase the 10 percent threshold and coordinate with Congressional partners, where appropriate, to allow greater flexibility in the 10 percent ceiling.

HUD Response: HUD is declining to make a change at this time. The downpayment assistance provided as part of a HOME homeownership project developed by a CHDO is only intended to be a small part of the overall homeownership program. HUD had proposed 10 percent as part of a previous rulemaking and this provision was not being revised as part of this rulemaking (see 78 FR 44628 for the final rule, 76 FR 78344 at 78359 for proposed rule).

J. Encourage Participating Jurisdictions To Allow CHDOs To Retain Project Proceeds

One commenter recommended that HUD encourage participating jurisdictions to allow CHDOs to retain proceeds from the sale of housing developed, owned, or sponsored by the CHDO, as permitted under § 92.300(a)(6)(ii).

HUD Response: Because HOME is a block grant program, each participating jurisdiction has the discretion to determine whether to allow an organization to retain proceeds from the sale of housing in accordance with § 92.300(a)(6)(ii). This determination can be fact-sensitive and organization- or deal-specific. It is best made by the participating jurisdiction in consideration of local housing needs.

K. Provide Easier Format for Designating a CHDO

One commenter urged HUD to issue clarification on the registration requirements for CHDOs in a format that can be shared with organizations because many nonprofits struggle to understand and meet the requirements. The commenter pointed to the CHDO toolkit checklist as an example of clear guidance and urged HUD to align HUD guidance with the checklist.

HUD Response: There is no set format or ''registration requirements'' for an organization to be determined to be a CHDO under the regulations. In accordance with § 92.300(a), ''[t]he 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.'' The definition of CHDO is found in § 92.2. The Department intends on providing further implementation guidance on qualifying an organization as a ''community housing development organization'' under the revised definition in § 92.2. The Department will ensure that its guidance is aligned with the requirements and will consider other guidance materials that are currently available.

L. Frequency of CHDO Designation in § 92.300(a)

Commenters stated that HUD should remove the current requirement that ties CHDO certification to a HOME-funded project and make certification independent of project-based funding as well as allow certification to be valid for three years. The commenters stated that participating jurisdictions could certify a CHDO for three years and then use a simpler ''desktop certification'' process to confirm the organization is still eligible whenever funding is requested. A commenter expressed disappointment that the proposed rule does not address the administrative burden of CHDO certification and stated that CHDOs should be certified periodically instead of on a project-by-project basis.

HUD Response: The Department is declining to change the frequency with which a participating jurisdiction must certify that a CHDO meets the definition in § 92.2 and demonstrates capacity to develop a HOME project. Tying this requirement to the date of commitment is the most consistent approach to implementing the set-aside provisions contained in 42 U.S.C. 12771, which does not contemplate an extended qualification process or a continuous designation for CHDOs. Further, the Consolidated Appropriations Act of 2012 (P. Law 112–55) and Consolidated Appropriations Act of 2013 (P. Law 113–6) stated that a participating jurisdiction may not reserve funds to a CHDO unless it has determined that the CHDO has paid staff with demonstrated development experience, thereby further reinforcing that Congress intended for the CHDO certification process to be a determination made each time a new CHDO project is assisted with set-aside funds.

The requirement that qualification as a CHDO be examined each time a CHDO is funded was included in the Consolidated Appropriation Acts and the 2013 HOME final rule to address the prevalence of participating jurisdictions providing CHDO set-aside funds to organizations that lacked adequate development capacity to successfully complete projects. This lack of due diligence by participating jurisdictions resulted in significant numbers of incomplete and failed projects, which took several years to resolve through repayments by participating jurisdictions to their HOME accounts. In addition to questions of capacity, examining a CHDO's qualifications before committing CHDO set-aside funds ensures that a CHDO meets requirements related to the governing board and other provisions, which will also prevent noncompliance. HUD is unable to make this change based on the provisions of the Act but also believes that the regulation is critical to ensuring HOME compliance and successful completion of projects.

M. HUD Should Allow Wholly Owned For-Profit Subsidiaries in § 92.300(a)(4)

One commenter believed that HUD should not revise paragraph (a)(4) to require that wholly owned subsidiaries of CHDOs be nonprofit organizations.

HUD Response: HUD thanks the commenter for reviewing the proposed rule. HUD agrees that a subsidiary of a CHDO may be either a for profit or non-profit entity and is making the change.

N. HUD Should Add Additional Oversight Requirements to § 92.300(a)

One commenter recommended that HUD add a subparagraph (a)(8) to implement explicit oversight requirements allowing participating jurisdictions to evaluate the CHDO's ongoing participation in the project as required under (2)-(6).

HUD Response: The Department thanks the commenter for reviewing the proposed rule. This is already a requirement for participating jurisdictions, which under § 92.504(a) includes ''ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise.'' Additionally, § 92.504(a) also requires that 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.'' Participating jurisdictions have the flexibility to determine how best to engage in ongoing oversight of the project owners and projects that it funds, consistent with § 92.504 and the requirements of part 92. Consequently, additional regulatory language is not required to require or permit such oversight, and the Department is declining to make the change.

O. HUD Should Clarify the Effect of the Revisions to § 92.300(b)

A commenter requested clarification on the provision allowing up to 20 percent of the minimum CHDO set-aside to be committed to organizations that meet all but the capacity requirement.

HUD Response: The Department is revising § 92.300(b) to allow for new participating jurisdictions that do not have existing CHDOs with capacity to award up to 20 percent of the new participating jurisdiction's set-aside funds in each of the participating jurisdiction's first two years to organizations that meet all but the capacity requirements contained in paragraph (9) of the CHDO definition in § 92.2. This will enable the 12 new participating jurisdictions receiving their first HOME grants in Fiscal Year 2024 to use their CHDO set-aside funds effectively as they begin to establish their HOME programs.

P. HUD Should Explain the Conditions for Using Set-Aside Funds for non-CHDO Projects

Commenters stated that before redesignating uncommitted CHDO funds as non-CHDO funds, HUD should require a participating jurisdiction to demonstrate that it took all available actions to use the funds for CHDO-eligible projects. One commenter recommended that HUD require participating jurisdictions to document that it completed a specific set of actions, including: (1) provide the full five percent of CHDO operating funds under § 92.208; (2) provide the full amount of capacity building funding under § 92.300(b); and (3) implement ''revolving CHDO fund'' policies, sometimes known as ''CHDO proceeds'' policies, to make their CHDO program as attractive and additive to capacity building growth, as possible.

HUD Response: Congress via HUD Appropriations Acts annually provides relief to participating jurisdictions by enabling them without limitation to redesignate any CHDO set-aside funds that have not been committed to a project within 24 months for use in non-CHDO projects. As explained in the

following paragraphs, HUD is declining to add additional limitations beyond those contained in NAHA and HUD Appropriations Acts.

The requirement in 42 U.S.C. 12771(b) states that if any CHDO funds ''remain uninvested for a period of 24 months, then the Secretary shall deduct such funds from the line of credit in the participating jurisdiction's HOME Investment Trust Fund and make such funds available by direct reallocation . . . .'' By statute, HUD is required to recapture and reallocate any funds that are not committed to projects developed, sponsored, or owned by CHDOs within 24 months.

The requirement in 42 U.S.C. 12742 was suspended by section 233 of Division G of the Consolidated Appropriations Act, 2019 (Pub. L. 116–6). Specifically, section 233 of Public Law 116–6 stated, ''[s]ection 231(b) of such Act shall not apply to any uninvested funds that otherwise were deducted or would be deducted from the line of credit in the participating jurisdiction's HOME Investment Trust Fund in 2018, 2019, 2020, or 2021 under that section.'' The 2020, 2021, 2022, 2023, and 2024 appropriations acts added 2022, 2023, 2024, 2025, and 2026 respectively, to the years covered by the suspension.[70]

Additionally, section 242 of Division K of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31) suspended the 24-month commitment deadline requirement set forth in Section 218(g) of NAHA (42 U.S.C. 12748(g)). Section 242 of Public Law 115–31 stated that ''Section 218(g) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12748(g)) shall not apply with respect to the right of a jurisdiction to draw funds from its HOME Investment Trust Fund that otherwise expired or would expire in 2016, 2017, 2018, or 2019 under that section.'' The 2018, 2019, 2020, 2021, 2022, 2023, and 2024 appropriations acts added 2020, 2021, 2022, 2023, 2024, 2025, and 2026 respectively, to the years covered by the suspension.[71]

The combined effect of the suspension of the 2-year commitment deadline at Section 218(g) of NAHA and the suspension of the 24-month CHDO reservation requirement at Section 231(b) of NAHA means that HUD will no longer deobligate a participating jurisdiction's CHDO set-aside funds that remain uncommitted to CHDO projects after 24 months of HUD obligating the participating jurisdiction's grant, or HOME funds that become uncommitted from a CHDO project after the 24-month deadline. Instead, a participating jurisdiction may continue to accumulate those funds for CHDO set-aside projects or may request HUD allow the funds to be used for non-CHDO projects consistent with its guidance.[72] HUD does not believe this is an area that it could or should further regulate, given the ongoing Congressional action taken in this area of the HOME requirements.

Q. HUD Should Create a Public-Facing List of CHDOs

One commenter recommended that HUD create and maintain a publicly available annual list of organizations certified as CHDOs with the information already submitted to participating jurisdictions. The commenter noted that it is currently challenging for researchers, intermediaries, capacity building organizations, and others to research trends among CHDOs, target non-governmental capacity building resources to CHDOs, and evaluate the extent to which the CHDO Program is meeting its goals. A commenter stated that HUD should create, maintain, and make publicly available on its website the organizations certified as CHDOs based on already available information.

HUD Response: The Department does not have access to a list of designated and currently active CHDOs, as each participating jurisdiction is required to determine an organization's status on a project-by-project basis at the time of commitment (see § 92.2 and earlier responses to comment on this issue). Moreover, the Department is unsure of the merit of obtaining information relative to the burden of continuously obtaining and updating this information. There is no guarantee that an organization that has met the qualifications of a CHDO in a given year for a specific project will continue to meet those criteria continuously. As the HOME requirements are based on a single point in time, at project commitment, and do not convey a CHDO's status for a specific period of time, whatever information is reflected on a list may not prove to be accurate at the time the participating jurisdiction wishes to commit funds to the organization. The Department will continue to consider how to better facilitate the participation of CHDOs in the HOME program. However, this rulemaking is not the appropriate method to convey this information.

R. CHDO Oversight

A commenter requested additional clarity regarding how participating jurisdictions can use granted funds for the CHDO and how oversight will be conducted regarding this issue.

HUD Response: In accordance with § 92.300, a participating jurisdiction may use up to 15 percent of its HOME allocation for CHDO set-aside activities including housing that is owned, developed or sponsored by the CHDO. The HOME regulations at § 92.504 require a participating jurisdiction to ensure that HOME funds are used in accordance with all program requirements and written agreements and take appropriate action when performance problems arise. In addition, 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 program partners, including CHDOs, to ensure all HOME requirements are met.

S. Changes to the CHDO Set-Aside

Two commenters recommended that HUD expand the range of activities eligible for the CHDO set-aside (*i.e.,* housing owned, developed, or sponsored by a CHDO). One commenter stated that HUD should allow CHDO operating funds to be used in conjunction with TBRA to encourage more utilization of this activity in the HOME program.

Another commenter suggested that HUD permit participating jurisdictions to use CHDO set-aside funds to rehabilitate homes for existing low-income owner-occupants. The commenter explained that in areas without CHDOs, owner-occupied repair would be a low-barrier entry point for local nonprofit organizations to become CHDOs. The commenter stated that the ability of these nonprofits to move to administratively more difficult and costlier work, like new construction, is limited by their ability to grow their capacity.

A commenter stated that HUD should eliminate the CHDO set-aside requirement and permit participating jurisdictions, whether in rural or urban areas, to exercise discretion in the amount of HOME funds they will award

[70] Title II, Division H, Pub. L. 116–94 (133 Stat. 2989); Title II, Division L, Pub. L. 116–260, (134 Stat. 1881); Title II, Division L, Pub. L. 117–103 (136 Stat. 742); Title II, Division L, Pub. L. 117–328 (136 Stat. 5156); Title II, Division F, Pub. L. 118–42 (138 Stat. 361).

[71] Section 235, Title II, Division L, Pub. L. 115–141; Section 233, Title II, Division K, Pub. L. 116–6; Title II, Division H, Pub. L. 116–94 (133 Stat. 2988); Title II, Division L, Pub. L. 116–260, (134 Stat. 1881); Title II, Division L, Pub. L. 117–103 (136 Stat. 742); Title II, Division L, Pub. L. 117–328 (136 Stat. 5156); Title II, Division F, Pub. L. 118–42 (138 Stat. 361).

[72] *https://www.hud.gov/sites/dfiles/CPD/documents/HOMEfires-Vol-18-No1-CHDO-Setasidefunds.pdf.*

to a CHDO. The commenter stated that HUD's CHDO set-aside requirement hinders communities who have unqualified and inexperienced CHDOs or no eligible CHDO and affect the timeliness of meeting the encumbrance and expenditure deadline. Another also recommended that HUD eliminate the CHDO set-aside, stating that many community development entities do not want to change their board composition and can still access the non-CHDO portion of their participating jurisdiction's HOME funds. This commenter opined that the 15 percent CHDO set-aside is too small to be useful.

One commenter supported an increase in CHDO set asides for homeownership, not just rentals, as the current 10 percent leaves participating jurisdictions unable to assist CHDOs.

HUD Response: The CHDO set-aside is statutory. 42 U.S.C. 12771(a) states that ''[f]or a period of 24 months after funds . . . are made available to a jurisdiction, the jurisdiction shall reserve not less than 15 percent of such funds for investment only in housing to be developed, sponsored, or owned by CHDOs . . .''

The Department does not have the discretion to consider tenant-based rental assistance or homeowner rehabilitation activities to be eligible for the CHDO set-aside, even if they are administered by a CHDO. The participating jurisdiction must enter into a subrecipient agreement with the CHDO to perform those projects. The Department cannot eliminate or reduce the percentage of HOME funds that are set-aside nor require that an additional amount be set-aside beyond that which is required in the Act.

§ 92.352—Environmental Review

One commenter requested HUD permit reliance on a single part 58 Environmental Review by multiple participating jurisdictions funding a project. For example, if a city and county are both providing HOME funds to a project and one of the jurisdictions completes a part 58 Environmental Review, HUD should allow the other jurisdiction to rely on this review for its determination and notification.

One commenter recommended that HUD add language to § 92.352 that would expressly permit upcoming guidance from HUD's Office of Environment and Energy regarding the Fiscal Responsibility Act of 2023 to be followed. The commenter recommended adding a paragraph (b)(4) that would read, ''(4) HUD or the jurisdiction may utilize a Categorical Exclusion and environmental review from other Federal agencies under the Fiscal Responsibility Act of 2023 and implementing regulations adopted by The Council on Environmental Quality (CEQ) and guidance from HUD's Office of Environment and Energy, when issued.''

HUD Response: The environmental review requirements contained in 24 CFR part 58 are outside the scope of this rulemaking. However, HUD notes that 24 CFR 58.14 allows cooperating responsible entities to prepare a single review for activities that require an Environmental Assessment or Environmental Impact Statement, if the coordinated and overall review responsibilities are established through a written agreement and the lead agency is responsible for preparing the review, coordinating consultation (including designating a lead agency for compliance with Section 106 of the National Historic Preservation Act pursuant to 36 CFR 800.2(a)(2)), and approving the review.

§ 92.356—Conflict of Interest

A commenter stated that they support the proposed change to the conflict of interest requirements.

HUD Response: The Department appreciates the commenter's review of the rule. The Department is making one minor revision for clarity to the conflict of interest requirements to state that of the publication methods, ''a combination of at least two of'' the list provided will be sufficient. The Department believes this will be clearer in what the Department means by ''combination.''

§ 92.502—Program Disbursement and Information System

A commenter stated that they support the proposed removal of the requirement that participating jurisdictions enter HOME project completion within 120 days of the final project draw because the four-year project completion is already in place to ensure compliance.

HUD Response: HUD thanks the commenter for reviewing the rule and is moving forward with this change.

§ 92.503—Program Income, Repayments, and Recaptured Funds

A. Program Income Streamlining

One commenter stated that HUD should create a narrow exception to the standard full review process for any use of program income. Specifically, the commenter proposed HUD streamline review for instances where there is no construction of a new unit and the participating jurisdiction, State, or local recipient is in good standing. This streamlining would allow HOME funds to recycle more rapidly and therefore support more low-income families.

HUD Response: HUD permits participating jurisdictions to allow Subrecipients and State Recipients to retain program income through the written agreement provisions of § 92.504. HUD believes this is the only time that a participating jurisdiction should be allowed to permit a streamlined process, as the State Recipient or Subrecipient already has an ongoing relationship under a written agreement with the participating jurisdiction. HUD also notes that the current HOME rule at § 92.503(d) permits participating jurisdictions to retain program income received during its program year, include program income on-hand in its next annual action plan, and commit the program income to specific projects.

B. Recaptured Funds for CHDO Projects

One commenter stated that § 92.503(c) refers to a participating jurisdiction allowing a CHDO to retain recaptured funds, which contradicts provisions in § 92.504(c)(3)(ii)(B) that require CHDOs to return recaptured funds. The commenter noted that this issue could be fixed by replacing ''. . .unless the participating jurisdiction permits the State recipient, subrecipient, or CHDO to retain . . .'' with ''. . .unless the participating jurisdiction permits the State recipient or subrecipient to retain . . .''

HUD Response: The commenter is mistaken. The current rule and this final rule permit CHDOs to retain funds recaptured when a HOME-assisted homebuyer sells their home during the period of affordability and use those funds for additional HOME projects pursuant to the written agreement required by § 92.504. There is no contradiction in the current regulations. Paragraph § 92.504(c)(3)(x), the current regulation addressing CHDO projects, states that ''[r]ecaptured funds are subject to the requirements of § 92.503.'' Paragraph § 92.503(c) of the current rule, as the commenter points out, states that CHDO may retain recaptured funds as follows: ''Recaptured funds must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient, subrecipient, or community housing development organization to retain the recaptured funds for additional HOME projects pursuant to the written agreement required by § 92.504.''

§ 92.504—Participating Jurisdiction Responsibilities; Written Agreements

One commenter cited to the written agreement provisions in § 92.504 and stated that participating jurisdictions should be permitted to require subrecipients, include members of a consortium to establish and comply with their own requirements, including income determinations, underwriting and subsidy layering, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability requirements. The commenter stated that this change is important because the subrecipient or consortium member may be serving a different area or population where the participating jurisdiction's requirements may not be appropriate.

HUD Response: HUD has established minimum requirements that participating jurisdictions must place into their written agreements with subrecipients in § 92.504(c)(2). In many of these cases, HUD permits participating jurisdictions to create policies and procedures and implement their own standards so long as those standards meet or exceed HUD's minimum requirements. This allows participating jurisdictions the discretion to create jurisdiction-specific requirements such as underwriting standards, income verification methods, rehabilitation standards, etc. This type of discretion is due to HOME's nature as a block grant program. This type of discretion is warranted under statute and regulations because HUD's relationship is with the participating jurisdiction, and the participating jurisdiction has both certified to comply with program requirements and executed a grant agreement with HUD that makes them ultimately responsible in the event of program violations. Subrecipients do not have a direct contractual relationship with HUD and so certain requirements must be created and enforced by the participating jurisdiction and cannot be delegated to a Subrecipient. HUD did not propose revisions to this portion of § 92.504(c)(2) and is declining to make this change to allow Subrecipients to create their own requirements. HUD notes that consortium members are not subrecipients to the consortium, as they are part of the participating jurisdiction (*i.e.,* the consortium) itself. However, the lead entity of the consortium must enter into written agreements that meet the requirements of § 92.504(c)(2) with consortium members to which it is distributing funds.

§ 92.551—Corrective and Remedial Actions

A commenter stated that they support the proposed change that would allow participating jurisdictions to correct a deficiency in a HUD finding by taking a reduction in a HOME grant equal to the amount of HOME expenditures that were not in compliance with HOME requirements. Another commenter stated support for HUD's clarification on sanctions, in which HUD may permit a voluntary grant reduction in a participating jurisdiction's HOME grants, as long as the participating jurisdiction chooses which grant to reduce.

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

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

A. Eligibility for Participants in USDA Mutual Help Housing and Homeownership Programs

Commenters stated that CHDO rules should allow mutual self-help housing to be CHDO-eligible under the definition of owner, sponsor, or developer. The commenters stated that the proposed rule is not clear on whether a nonprofit can operate a USDA Rural Development Section 523 mutual self-help housing program as a CHDO, but the rule should allow this as CHDO eligible. Commenters recommended providing targeted technical assistance to CHDOs in rural areas hoping to access HOME CHDO set-aside funds.

One commenter further suggested that HUD should explicitly allow families to qualify for HOME funding based on the low-income limits of the USDA's Section 502 Homeownership Direct Loan Program, when the HOME project is either constructed via Section 523 Mutual Self-Help Housing or sold via the USDA Section 502 Loan Program.

HUD Response: HUD recognizes that nonprofits operating Section 523 mutual self-help housing programs successfully assist very low- and low-income households to build homes in rural areas. However, the Section 523 model does not qualify as homeownership housing developed by a CHDO under § 92.300(a)(6). As commenters noted, these nonprofit organizations do not maintain fee simple ownership of the land and housing throughout the construction period, as required by § 92.300(a)(6). Further, the Section 523 grantee's role managing homebuyers' mutual self-help activities is distinct from that of a housing developer with control of project financing and construction. HUD therefore declines to make a change to HOME CHDO regulations. HUD also notes that the income-banding approach used in USDA programs is not permissible under the HOME program statute. Consequently, HUD is not making changes to the final rule based on these comments.

B. Technical Assistance on HOME Requirements May Assist Rural CHDOs and Participating Jurisdictions

One commenter stated that rural CHDOs often require targeted and specific technical assistance to succeed in competitive funding cycles and can benefit from local partnerships and business relationships and urged HUD to consider what existing regulations may limit those partnerships and rectify the barriers. One commenter recommended provision of targeted technical assistance around HOME underwriting requirements such as pro-forma development to support rural CHDOs applying for competitively awarded State HOME funds. A commenter also suggested that HUD provide participating jurisdictions with training on how to proactively award CHDO capacity building funds, such as when they see multiple unawarded funding applications from a rural CHDO.

HUD Response: One commenter recommended providing technical assistance on HOME underwriting requirements, such as pro forma development for rural CHDOs. The HOME statute states that if a participating jurisdiction is unable to identify a sufficient number of capable community housing development organizations within the first 24 months of their participation in the HOME program, the participating jurisdictions may allocate up to 20 percent of its funds—up to a maximum of $150,000—to activities that develop the capacity of CHDOs. In response, while training participating jurisdictions on how to award capacity-building funds to develop rural CHDOs is commendable, it will not assist many CHDOs since most participating jurisdictions have been in the program for more than 24 months. However, HUD has developed a CHDO training program that participating jurisdictions can use to train on CHDO requirements. Participating jurisdictions may also request direct technical assistance to build CHDO capacity, especially in rural areas where multiple applications go

unfunded due to organizational capacity limitations.

HUD also appreciates the suggestion to expand eligible activities for rural CHDOs to include the rehabilitation of owner-occupied homes and USDA Section 523 mutual self-help housing. While these activities support rural housing initiatives, the entities involved do not develop, own, or sponsor housing investments, which does not align with the statutory intent for a CHDO under HOME. The statute requires CHDOs to develop, sponsor, or own housing as a core requirement for participating in the HOME program.

C. Change How a Person Is Determined as Low-Income for Purposes of Low-Income Board Representation Requirements in Paragraph (5) of the Definition of Community Housing Development Organization in § 92.2

One commenter recommended that HUD factor in a county's median income rather than median incomes of counties State-wide and that the county's median income be considered in CHDO board representation requirements of low-income residents or organizations.

HUD Response: HUD thanks the commenter for reviewing the proposed rule. However, Title I of NAHA defines low-income families as ''families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.''

HUD is declining to make this change because the current regulation faithfully implements the statute and introducing different standards for what constitutes low-income into the program will create confusion and potential noncompliance.

D. HUD Should Examine and Remove Barriers for Nonprofits in Rural Communities

One commenter wants participating jurisdictions to make concerted efforts to remove barriers for nonprofit organizations in rural communities and encouraged HUD to examine barriers that maybe inadvertently be caused by participating jurisdiction policy and determine whether the barriers are disproportionately impacting rural areas.

HUD Response: HUD thanks the commenter for reviewing the proposed rule. HUD agrees that participating jurisdictions should take steps to remove unnecessary barriers to rural nonprofit organizations to become CHDOs. HOME is a block grant program, and participating jurisdictions are free to establish policies and procedures for their programs. HUD believes that a more appropriate role is for HUD to offer technical assistance to participating jurisdictions interested in facilitating the entry of CHDOs to their programs.

§ 570.200—General Policies—Reimbursement for Pre-Award Costs

A commenter stated that they do not support changing the effective date of the grant agreement to the date HUD executes the grant agreement. The commenter noted that this change would require them to front costs because HUD has timely executed grant agreements on only two occasions in the last twelve funding cycles.

HUD Response: HUD appreciates the commenter's concern, especially since it originates from a grantee with a program year start date of July 1 or later, which accounts for more than 81 percent of Community Development Block Grant (CDBG) entitlement grantees. HUD's proposed change to the introductory text of 24 CFR 570.200(h), in conjunction with the proposed addition to § 92.212(b) for the HOME program, was designed to eliminate the need for the Department to issue annual waivers to assist the approximately 19 percent of grantees particularly hampered in recent years by late Congressional appropriations. However, HUD's proposed change to § 570.200(h) decoupled the effective date of a grant agreement from a grantee's program year start date and, as the commenter noted, would have subjected it and hundreds of other grantees with similar program year start dates to incurring pre-award costs on an annual basis. HUD sees the need to maintain the connection between the grant agreement effective date and program year start dates to reserve pre-award costs to those incurred before a program year start date. Therefore, HUD will retain the existing introductory text to § 570.200(h) and instead add a new § 570.200(h)(3) that makes the effective date of the grant agreement, in a year when an annual appropriation occurs less than 90 days before a grant recipient's program year start date, the earlier of either the program year start date or the date that the consolidated plan is received by HUD. This change addresses the commenter's concern, aligns CDBG better with the new HOME program regulation at § 91.212(b)(2), and continues practices implemented through annual waivers.

Outside the Scope of the HOME Rulemaking

A. HUD Should Commission a Study of CHDOs

Commenters stated HUD should commission a study every three to five years on the universe of nonprofit organizations that could potentially become CHDOs, and the research could evaluate trends in CHDO certification, financial health, production, and organizational needs.

HUD Response: The Department thanks the commenters for reviewing but believes that the study that the commenters are requesting is beyond the scope of this rulemaking. The Department will consider this area as a research area in the future.

B. HUD Should Consider Metrics To Evaluate Needs of Rural Communities and Tribes

One commenter encouraged HUD to consider metrics to measure the needs of rural and Tribal communities, and to encourage States to use HOME funds for projects that meet those identified needs.

HUD Response: The Department is declining to develop metrics and measures on rural or Tribal needs as part of this rulemaking. Participating jurisdictions are required to engage in the consolidated planning process in 24 CFR part 91. This evaluation includes the consideration of the needs of rural communities within a participating jurisdiction, including rural homelessness. Separately, Tribes assisted under the Indian Housing Block Grant program engage in the preparation of an Indian Housing Plan in accordance with 24 CFR part 1000, subpart C. This includes an evaluation of housing needs for each assisted Tribe. Each of these planning processes enables HUD grantees to identify housing needs using their own data and metrics, as well as HUD-provided data, and determine how to best address the challenges within their jurisdictions. Additionally, these plans are public facing, thereby allowing the public to review the data as it sees fit.

C. HUD Should Increase Section 8 Assistance

A commenter stated that HUD should increase funding allocations to HAP budgets to cover increased rents because of the expected increase of rent charged to PBVs and HCVs. The commenter

noted that this change is necessary so as not to reduce the number of vouchers available. Another commenter requested an increase in the HAP budget for Section 8 programs to account for the additional rent costs that will result from applying the HOME rent limit only to the tenant contribution to rent. Another commenter urged HUD to consider the impact of participating jurisdiction to regulate the HOME rent limits on units assisted by PBV that this issue will have on a PHA's overall per unit cost and the long-term consequences for PHA budgets.

HUD Response: While HUD is revising the rent reasonableness regulations for the Section 8 program, Section 8 funding is beyond the scope of this rulemaking.

D. Lead-Based Paint Regulations in 24 CFR Part 35 Should Be Updated

One commenter stated that HUD's current lead paint regulations are out-of-date given higher construction costs and extended requirements. The commenter recommended that the ranges that determine intervention level be updated to the following: (1) Lead-safe work practices less than $20,000; (2) interim controls between $20,001 and $50,000; and (3) abatement for more than $50,000.

HUD Response: Lead-based paint requirements are outside the scope of this rulemaking. HUD did not propose any revisions to 24 CFR part 35 or to how HUD applies lead-based paint requirements to the HOME program. Further, the dollar thresholds in the part 35 regulations are established in Section 1012 of Title X of the Housing and Community Development Act of 1992 and are statutory for the HOME program.[73]

E. Provide Build America, Buy America Guidance

Commenters expressed frustration over the limited Buy America, Build America (BABA) waiver availability and increased cost incurred due to sourcing domestic materials. Commenters stated that the lack of guidance from HUD on BABA compliance has further compounded challenges for developers and contractors, hindering their ability to provide feedback and navigate problems. A commenter stated that HUD should clarify the impact of BABA on the green building standards because the impact is unclear at this time.

HUD Response: BABA is beyond the scope of this rulemaking. The Department is developing guidance on how to implement BABA for HUD programs. Until this guidance is developed, HUD cannot determine the effect of BABA compliance on the green building incentive or overall compliance with the HOME final rule.

F. Create a Risk-Lowering Pilot Program

One commenter recommended that HUD should consider creating a ''risk-lowering pilot program for nonprofit affordable housing developers.'' The commenter suggested that the pilot program it suggests might offer a preapproval for nonprofits that enables those organization to bid for HOME funding with no or low environmental review process-based risk. The commenter stated that in the program it suggests that a limited number of nonprofits could enter an agreement with HUD that guarantees HUD reimbursed costs for environmental reviews for unsuccessful applicants. The commenter noted that the pilot program could be designed in a way that it would not cover overhead costs of the nonprofit but only cover the hard costs of specialists. The commenter stated that this design would lower the risk of high pre-development costs being lost. The commenter suggested that this pilot program could be targeted at CHDOs already partnering with HUD or else be based on nonprofit operating budgets, geographic targeting, or other community characteristics, such as persistent poverty counties.

HUD Response: Establishing a pilot program of the nature contemplated by the commenter is beyond the scope of this rulemaking. The Department recognizes that environmental requirements can pose a challenge to many aspiring developers and owners. In recognition of those challenges, HUD revised the regulations in § 92.206(d) to allow HUD environmental review or other environmental studies or assessments to be reimbursable expenses if the participating jurisdiction agrees to pay for those costs in the written agreement.

G. Issue Waivers To Better Enable HOME Homeownership Activities

One commenter asked HUD to provide waivers to Habitat for Humanity chapters so that participating jurisdictions can assist more with following HOME guidelines.

HUD Response: HUD appreciates the comment but is uncertain what types of waivers the commenter is recommending. Outside of Presidentially-declared disasters or national emergencies, the Department is declining to announce the availability of waivers for the HOME program. The Department will still consider waiver requests on a case-by-case basis and determine whether the waiver states good cause upon which relief can be granted in accordance with 24 CFR 5.110 and applicable law.

H. Increase Opportunities for Persons With Disabilities

Another commenter stated that opportunities for HUD loans for people with disabilities and those who may have medical needs should be explored in every State and territory and that HUD must support those who wish to rehabilitate homes in regard to accessibility. The commenter emphasized the need for access to universally designed housing for people with disabilities.

HUD Response: HUD thanks the commenter for reviewing the proposed rule. The recommendation that HUD explore opportunities for HUD loans for people with disabilities or medical needs is outside the scope of this rulemaking. Other aspects of this rule are intended to provide clarity and enhance affordable housing opportunities for eligible beneficiaries, including individuals with disabilities. In addition, accessibility requirements for programs and activities apply to HUD recipients under HUD's existing Section 504 requirements, and housing may be subject to additional accessibility requirements under the Fair Housing Act and the Americans with Disabilities Act, as applicable.

I. HUD Should Perform Additional Rulemaking on the Consolidated Planning Regulations at 24 CFR Part 91

One commenter recommended that HUD issue a separate advance notice of proposed rulemaking (ANPR) regarding how the Consolidated Plan could be improved and simplified. The commenter stated that the ANPR should consider improvements to the Annual Action Plan (AAP) and Consolidated Annual Performance and Evaluation Report (CAPER) with a special focus on reducing redundancies across planning documents. The commenter also urged HUD to facilitate greater consistency among local HUD offices in how Consolidated Plans and related planning regulations and guidance are interpreted.

HUD Response: HUD thanks the commenter. However, as the commenter notes, the suggestion would require a separate rulemaking process and is outside the scope of this rulemaking.

[73] See 42 U.S.C. 12742(a)(5) and 42 U.S.C. 4822 for the lead-based paint requirements for HOME.

J. Incentivizing Use of Section 8 Housing Choice Vouchers in LIHTC Projects

A commenter said HUD should help communities develop non-discriminatory language and potential administrative rules so that many in the LIHTC system can access HCVs and adopt inclusive low-income energy assistance standards. Generally, the commenter said HUD should incentivize renting through HCVs and assisting communities by incorporating sources of income discrimination.

HUD Response: By statute, owners of HOME-assisted rental housing may not discriminate against persons with Section 8 voucher assistance (42 U.S.C. 12745(a)(1)(D)). HUD is expanding this protection to include a source of income protection for all forms of Federal tenant-based rental assistance provided to an applicant of HOME-assisted rental housing through this final rule. Incentivizing HCV utilization in LIHTC projects or in housing that is not HOME-assisted is beyond the scope of rulemaking.

K. Provide Guidance on Participating Jurisdiction-Imposed Unit Caps in HOME Rental Housing Programs

One commenter suggested that HUD should provide guidance to participating jurisdictions on maximum unit counts. For example, the commenter stated in one State, there is a 56-unit maximum rule for HOME funds, and that maximum makes HOME projects ineligible for utilizing four percent tax credits. Additionally, the commenter explained that anything less than a 100-unit maximum creates additional barriers to building integrated, inclusive housing communities for people with and without disabilities (*i.e.,* HUD Section 811 PRA).

HUD Response: The commenter's request for guidance is outside the scope of this rulemaking and HUD declines to make a change. The HOME regulations require that the HOME funds be cost-allocated in multi-unit properties to ensure that, at a minimum, an appropriate number of units are designated as HOME-assisted units; however, they do not cap the number of HOME-assisted units in a project. A participating jurisdiction imposed this cap as a matter of policy and any appeal should be handled at that level.

L. Healthy Homes Requirements Should Be Integrated Into Environmental Review Requirements for HUD Programs

One commenter stated HUD should integrate healthy home inspection requirements into environmental assessments as well as cover them under the eligible cost framework. The commenter recommended that HUD use the healthy homes standard under 42 U.S.C. 711, the Maternal, Infant, and Early Childhood Home Visit Program. The commenter stated this standard is useful because it focuses on those most at risk from poor indoor air quality and would capture the health effects on a significant number of residents in public housing.

HUD Response: HUD appreciates the comment. However, the required elements of environmental reviews conducted under 24 CFR part 58 are outside the scope of this rulemaking, and HUD declines to make any change.

M. Rents Under Tenant-Based Rental Assistance

One commenter asked if HUD has considered changing the requirement from the fair market rent to rent reasonableness.

HUD Response: HUD thanks the commenter. While HUD is revising the rent reasonableness regulations for the Section 8 program, HUD is not revising the rent reasonable requirement used in HOME tenant-based rental assistance programs. This is beyond the scope of this rulemaking.

V. Severability

Consistent with the requirements of the Administrative Procedure Act, HUD has carefully responded to all public comments received in response to its notice of proposed rulemaking and acted within its statutorily delegated authority in the promulgation of regulations that are consistent with the Act. Nonetheless, if any provision of this final rule, or any provision of 24 CFR part 92, is held to be invalid or unenforceable as applied to any action, that provision should be construed so as to continue to give the maximum effect to the provision permitted by law. If such holding is that the provision of this part is invalid and unenforceable in all circumstances, then HUD views each provision as severable from the remainder of this part and a finding that a provision is invalid should not affect the remaining provisions. Additionally, if a provision should be held to be invalid or unenforceable, HUD would have its predecessor provision, the equivalent provision in effect prior to this rulemaking, come back into effect. As this rulemaking is comprehensive and concerns all aspects of the HOME program, the Department recognizes the need to maintain the regulations to the maximum effect, if permissible, and to sever them as necessary if a court challenge prevails. This provides stability for participating jurisdictions, which must rely upon regulations for all activities, regardless of litigation or court orders affecting certain provisions or for certain activities.

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made regarding whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 (Modernizing Regulatory Review) amends section 3(f) of Executive Order 12866, among other things. Updating the HOME program regulation is consistent with the objectives of Executive Order 13563 to reduce burden, as well as the goal of modifying and streamlining regulations that are outmoded and ineffective.

This final rule revises the HOME program regulations, which were first promulgated in 1991, and have not been significantly updated since 2013. This final rule: revises CHDO qualification requirements for community-based non-profit housing organizations to access CHDO set-aside funds to own, develop, and sponsor affordable housing; revises HOME rent requirements to implement statutory changes made to the U.S. Housing Act of 1937 by section 2835(a)(2) of HERA; facilitates the use of HOME funds for small one-to-four-unit rental projects; incentivizes inclusion of ambitious Green Building standards in new construction, reconstruction, and rehabilitation projects; and expands flexibilities for community land trusts to participate in the HOME program. The final rule also provides enhanced flexibility in TBRA programs; strengthens and expands tenant protections; and clarifies the resale requirements for homeownership housing. The final rule also includes

technical amendments or simplifications to certain changes made in the 2013 HOME Final Rule, the HOTMA Final Rule, and the NSPIRE Final Rule. This final rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094, but was not deemed to be significant under section 3(f)(1).

Regulatory Impact Analysis

HUD prepared a regulatory impact analysis (RIA) that addresses the costs and benefits of the final rule. HUD's RIA is part of the docket file for this rule at *https://www.regulations.gov.*

As described in the RIA, HUD anticipates that the economic impact of the final rule will be almost entirely within the HOME program. In other words, the changes to the HOME program will affect what participating jurisdictions do with the HOME funds they receive from HUD and how projects that accept this funding source operate. Many of the policy adjustments will only have a practical impact if participating jurisdictions choose to respond to the policy adjustments by altering how they use HOME funds. HUD strongly encourages the public to view the docket file.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule aims to improve the HOME program by making several changes to the program's regulations through increasing flexibility for grantees in using their HOME grants, streamlining administrative requirements, implementing statutory changes regarding rent restrictions in HOME rental projects, and enhancing tenant protections for HOME-assisted rental households. As described in the RIA, HUD anticipates that the economic impacts of this rule will be almost entirely within the HOME program. In other words, the changes to the HOME program will affect what participating jurisdictions do with the HOME funds they receive from HUD and how projects that accept this funding source operate. Many of the policy adjustments will only have a practical impact if participating jurisdictions choose to respond to them by altering how they use HOME funds. For the reasons presented, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made, at the proposed rule stage, in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to this final rule and is available through the docket file at *https://www.regulations.gov.* The FONSI is also available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Federalism—Executive Order 13132

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

Unfunded Mandates Reform Act

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

Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned the OMB control number 2506–0171. 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 final rule would change the annual income determination requirement for households assisted with HOME TBRA from annual to when a new rental assistance contract must be executed, which can be as long as 2 years, which reduces the burden hours. The final rule includes a new provision in 24 CFR 92.250 to increase the maximum subsidy limit allowed for HOME projects based on whether the project shall meet a more comprehensive property standard that includes Green Building criteria, which would lead to a slight increase in burden for participating jurisdictions with qualified projects. The final rule would amend 24 CFR 92.252 to eliminate the requirement that a participating jurisdiction must submit to HUD a marketing plan for any HOME-assisted rental units that have not achieved initial occupancy within six months of project completion in IDIS, which would reduce the reporting burden on participating jurisdictions with unoccupied HOME-assisted rental units. The final rule adds paragraph (g)(1) to 24 CFR 92.252 to permit an owner of small-scale housing to re-examine annual income every three years, rather than annually, therefore reducing burden for income determination. The tenancy lease addendum, described in 24 CFR 92.253, replaces multiple, separate functions, and results in a decrease in paperwork burden. The changes in 24 CFR 92.300 to define the qualifications for a CHDO result in increased applications and certification, which may lead to an increase of paperwork burden. Overall, the final rule results in a net decrease of burden by 28,852 total estimated annual burden hours.

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

REPORTING AND RECORDKEEPING BURDEN

24 CFR section reference	Number of parties	Frequency of responses	Number of responses per party	Estimated average time for requirements (hours)	Total estimated annual burden (hours)
§ 92.252(g)(1) Small scale housing income determination ..	2,000	Annual	1	2	4,000
§ 92.209(c)(1) Annual income determination for TBRA	72,000	Annual	1	0.75	54,000
§ 92.250 Increase maximum subsidy limits for ambitious green building.	188	Annual	1	2	376
§ 92.253 Tenant protections (including lease addendum requirement).	6,667	Annual	1	3	20,001
§ 92.300 Designation of CHDOs	600	Annual	1	1.5	900
§ 92.251 Property standards and inspection requirements ..	6,000	Annual	1	3	18,000
§ 92.252 6-month marketing plan for unoccupied rental units.	60	Annual	1	1	60
§ 92.507 Grant closeout procedures	652	Annual	1	1	652

List of Subjects

24 CFR Part 91

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

24 CFR Part 92

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

24 CFR Part 570

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

24 CFR Part 982

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

For the reasons stated in the preamble, HUD amends 24 CFR parts 91, 92, 570, and 982 as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 1. The authority citation for part 91 continues to read as follows:

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

§ 91.220 [Amended]

■ 2. Amend § 91.220 by:
■ a. Removing the words ''affordability period'' and adding in their place the words ''period of affordability'' in paragraph (l)(2)(iv)(B);
■ b. Removing ''92.254(a)(2)(iii)'' and adding in its place ''92.254(a)(2)(iv)'' in paragraph (l)(2)(v);
■ c. Removing ''92.253(d)'' and adding in its place ''92.253(e)'' in paragraph (l)(2)(vii)(D);
■ d. Removing paragraph (l)(2)(viii).

§ 91.320 [Amended]

■ 3. Amend § 91.320 by:
■ a. Removing the words ''affordability period'' and adding in their place the words ''period of affordability'' in paragraph (k)(2)(iv)(B);
■ b. Removing ''92.254(a)(2)(iii)'' and adding in its place ''92.254(a)(2)(iv)'' in paragraph (k)(2)(v);
■ c. Removing ''92.253(d)'' and adding in its place ''92.253(e)'' in paragraph (k)(2)(vii)(D);
■ d. Removing paragraph (k)(2)(viii).

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; 12 U.S.C. 1701x.

■ 5. Amend § 92.2 by:
■ a. Removing the definition of ''ADDI funds'';
■ b. In the definition of ''Commitment'' by removing the word ''official'' in paragraph (1) introductory text and adding in its place the word ''officials'', by removing the word ''downpayment'' in paragraph (1)(i) and adding in its place the word ''homeownership'', by removing the words ''or subrecipient'' wherever it appears in paragraph (2)(ii)(A), by removing the words ''owner or the tenant'' in paragraph (2)(iii) and adding in their place the words ''owner and tenant'', and by adding paragraph (2)(ii)(C);
■ c. Revising paragraphs (4), (5), (8)(i), and (9) in the definition of ''Community housing development organization'';
■ d. Adding a definition for ''Community land trust'' in alphabetical order;
■ e. Removing the definitions of ''Displaced homemaker'' and ''First-time homebuyer'';
■ f. In the definition of ''Homeownership'' by revising the introductory text and paragraph (1) and by removing the words ''Low Income Housing Tax Credits'' in paragraph (4) and adding in their place the words ''Low-Income Housing Credits (26 U.S.C. 42)'';
■ g. In the definition of ''Housing'' by removing the words ''single-family dwellings'' and adding in their place the words ''single family housing units'';
■ h. Adding a definition for ''Period of affordability'' in alphabetical order;
■ i. Revising the introductory text and paragraphs (2) and (3) in the definition of ''Program income'';
■ j. Revising the last sentence in the definition of ''Reconstruction'';
■ k. Removing the words ''one-to four-family'' and adding in their place the words ''one-to four-unit'' in the definition of ''Single family housing'';
■ l. Removing the definition of ''Single parent'';
■ m. Removing the word ''dwelling'' and adding in its place the word ''housing'' the definition of ''Single room occupancy (SRO) housing'';
■ n. Adding a definition for ''Small-scale housing'' in alphabetical order;
■ o. Removing the semicolon after ''this part'' and the words ''however, for purposes of the American Dream Downpayment Initiative (ADDI) described in subpart M of this part, the term ''state'' does not include the Commonwealth of Puerto Rico (except for FY2003 ADDI funds)'' in the definition of ''State'';

■ p. Revising the definition of ''State recipient'';
■ q. In the definition of ''Subrecipient'' by removing the words ''public agency'' wherever they appear and adding in their place the words ''governmental entity'', by removing the word ''downpayment'' and adding in its place the word ''homeownership'', and by removing the word ''solely''; and
■ r. Removing the word ''dwelling'' wherever it appears and adding in its place the word ''housing'' in the definition of ''Tenant-based rental assistance''.

The additions and revisions read as follows:

§ 92.2 Definitions.

* * * * *

Commitment: * * *

(2) * * *

(ii) * * *

(C) If the participating jurisdiction (or State recipient or subrecipient) is providing HOME funds to a family to acquire single family housing for homeownership that does not meet the participating jurisdiction's property standards, as described in § 92.251(c)(3), then the commitment must meet the requirements of this paragraph (2)(ii)(C). The participating jurisdiction (or State recipient or subrecipient) and the family must have executed a written agreement under which HOME assistance will be provided for the purchase of the single family housing. The written agreement will require the property to meet the standards in accordance with § 92.251(c)(3) and will require the property title to be transferred to the family within six months of the agreement date.

* * * * *

Community housing development organization * * *

(4) Is tax exempt as follows:

(i) The private nonprofit organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)–1 or 1.501(c)(4)–1));

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

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

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

* * * * *

(8) * * *

(i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, low-income beneficiaries of HUD programs, other low-income community residents, designees of low-income neighborhood organizations, or designees of nonprofit organizations in the community that address the housing or supportive service needs of low-income residents or residents of low-income neighborhoods, including homeless providers, Fair Housing Initiatives Program providers, Legal Aid, disability rights organizations, and victim service providers. For urban areas, ''community'' may be a neighborhood or neighborhoods, city, county, or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and

* * * * *

(9) Has a demonstrated capacity for carrying out housing projects assisted with Federal funds, Low-Income Housing Credits (26 U.S.C. 42), Federal Home Loan Bank Affordable Housing Program (12 U.S.C. 1430) funds, or local and State affordable housing funds.

(i) To satisfy this requirement and demonstrate capacity as a developer of a HOME-assisted project, the nonprofit organization must have paid employees with housing development experience who will work directly on the HOME-assisted project. Where the paid employees of the organization do not demonstrate capacity to develop a HOME-assisted project alone, the experience of paid employees may be supplemented by board members or officers of the organization that are volunteers. If a nonprofit organization is demonstrating capacity using a volunteer board member's or officer's experience, the volunteer may not be compensated by or have their services donated by another organization. For its first year of funding as a community housing development organization, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key, paid staff of the organization;

(ii) An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of § 92.300(a)(2);

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

* * * * *

Community land trust means a nonprofit organization that:

(1) Has as its primary purposes acquiring, developing, or holding land to provide housing that is permanently affordable to low-income persons;

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

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

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

* * * * *

Homeownership means ownership in fee simple title in single family housing or an equivalent form of ownership approved by HUD.

(1) The land upon which the housing is located may be owned in fee simple or the homeowner may have a ground lease for the lowest of the following time periods, as applicable:

(i) For housing, the ground lease must be for 99 years or more;

(ii) For housing located in an insular area, the ground lease must be 40 years or more;

(iii) For housing located on Indian trust or restricted Indian lands or a

Community Land Trust, the ground lease must be 50 years or more; or

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

* * * * *

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

* * * * *

Program income means gross income received by the participating jurisdiction, State recipient, or a subrecipient at any time, generated from the use of HOME funds or matching contributions. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the program income shall be the amount prorated to reflect the percentage of HOME funds invested in the project. Program income includes, but is not limited to, the following:

* * * * *

(2) Gross income from the use or rental of real property, owned by the participating jurisdiction or State recipient that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income. *Program income* does not include gross income from the use, rental, or sale of real property received by the project owner or developer, unless all or a portion of the income must be paid to the participating jurisdiction, subrecipient, or State recipient, in which case, the amount that must be paid to the participating jurisdiction, subrecipient, or State recipient is program income;

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

* * * * *

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

* * * * *

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

* * * * *

State recipient means a unit of general local government designated by a State participating jurisdiction to receive HOME funds to administer all or some of the State participating jurisdiction's HOME programs, own or develop affordable housing, provide homeownership assistance, or provide tenant-based rental assistance.

* * * * *

■ 6. Revise § 92.3 to read as follows:

§ 92.3 Applicability of 2025 regulatory changes.

This part applies to projects based on when an income determination is made or when the HOME funds for the project were committed, as applicable. Projects where the HOME funds were committed before a certain date may be subject to previous versions of this part. This section provides instruction regarding which version of this part applies.

(a) *Effective date of this part as it exists on February 5, 2025.* Except as described in this section, this part, as it exists on February 5, 2025 is applicable to projects for which HOME funds are committed on or after February 5, 2025. A participating jurisdiction must perform income determinations in accordance with § 92.203 after February 5, 2025.

(b) *One year compliance period.* Participating jurisdictions are permitted to choose to continue to comply with the requirements of this part as they existed on February 4, 2025 for commitments made on or before February 5, 2026.

(c) *Delayed compliance date for income determinations.* Participating jurisdictions are permitted to continue to comply with the income determination requirements in accordance with § 92.203 that the participating jurisdiction was implementing on February 4, 2025 until February 5, 2026, or longer as determined by HUD.

(d) *Applicability of this part as it exists on February 5, 2025 to prior agreement*s. A participating jurisdiction may choose to amend its written agreements for funds committed prior to February 5, 2025 to conform to the requirements of this part, except that:

(1) *Certain cost*s allowed to be reimbursable under *§ 92.206(d)(1) and (2), as effective February 5, 2025* may only be included in written agreements for projects if the participating jurisdiction committed the HOME funds for the project on or after February 5, 2025.

(2) Requesting an increase in maximum per-unit subsidy in accordance with § 92.250(c) is only permitted for projects if the participating jurisdiction committed the HOME funds for the project on or after February 5, 2025.

(3) Use of the revised dollar thresholds for the periods of affordability in §§ 92.252 and 92.254 is only permitted for projects if the participating jurisdiction committed the HOME funds for the project on or after February 5, 2025.

(4) Tenant protections provided in § 92.253, including the tenancy addenda requirements in § 92.253(b) through (d), apply for rental housing projects if the participating jurisdiction committed the HOME funds for the project, entered into the rental assistance contract, or entered into an agreement to provide security deposit assistance on or after February 5, 2025.

(5) The revisions to the roles of community housing development organizations in owning, developing, and sponsoring affordable housing in § 92.300 only apply if the participating jurisdiction committed the community housing development organization set-aside funds for the project on or after February 5, 2025.

(e) The following table summarizes the information provided in this section:

TABLE 1 TO PARAGRAPH (e)—SUMMARY OF EFFECTIVE DATES AND COMPLIANCE DEADLINES

2025 Rule effective date	February 5, 2025
Applicability	Rule applies to projects for which HOME funds are committed on or after February 5, 2025.
Compliance Date	Participating jurisdictions must set compliance date: as early as February 5, 2025, and no later than February 5, 2026.
Exceptions for Income Determinations	Participating jurisdictions must set compliance date: as early as February 5, 2025, and no later than February 5, 2026.

TABLE 1 TO PARAGRAPH (e)—SUMMARY OF EFFECTIVE DATES AND COMPLIANCE DEADLINES—Continued

2025 Rule effective date	February 5, 2025
Applicability Limitations	Participating jurisdictions may continue to calculate income in accordance with the provisions that were being implemented by the participating jurisdiction on February 4, 2025 until compliance date set by the participating jurisdiction, or longer as determined by HUD. Listed provisions are not applicable to commitments made to projects prior to February 5, 2025. Participating jurisdictions may not amend written agreements of projects with commitments existing prior to February 5, 2025 to incorporate any of the following provisions: § 92.206(d)(1) and (2). § 92.250(c). §§ 92.252 and 92.254. § 92.253. § 92.300.

§ 92.50 [Amended]

■ 7. Amend § 92.50 in paragraph (c)(3) by removing the words ''poor households'' and adding in their place the words ''households below the poverty line''.

■ 8. Amend § 92.101 by revising paragraphs (a) introductory text and (d) and adding paragraph (g) to read as follows:

§ 92.101 Consortia.

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

* * * * *

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

* * * * *

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

■ 9. Amend § 92.201 by:

■ a. Adding a sentence to the end of paragraph (a)(2);

■ b. Removing the last sentence of paragraph (b)(2); and

■ c. Removing the word ''ensure'' and adding in its place the word ''require'' in paragraph (b)(3)(i).

The addition reads as follows:

§ 92.201 Distribution of assistance.

(a) * * *

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

* * * * *

■ 10. Amend § 92.203 by:

■ a. Revising the section heading and paragraph (a) introductory text;

■ b. Removing the words ''must accept'' and adding in their place the words ''may accept'' in paragraph (a)(1);

■ c. Redesignating paragraph (a)(3) as paragraph (a)(4);

■ d. Adding a new paragraph (a)(3);

■ e. Revising the paragraph (b) heading;

■ f. Removing the word ''any'', adding the word ''two'' after the phrase ''one of the following'', and removing ''§ 92.252(h)'' and adding in its place ''§ 92.252(g)'' in paragraph (b)(1) introductory text;

■ g. Revising paragraph (b)(1)(ii);

■ h Removing paragraph (b)(1)(iii);

■ i. Revising paragraph (b)(2);

■ j. Adding paragraph (b)(3);

■ k. Revising the paragraph (c) heading;

■ l. Removing ''§§ 5.609(a) and (b) of this title'' and adding in its place ''24 CFR 5.609(a) and (b)'' in paragraph (c)(1);

■ m. Revising paragraph (d);

■ n. In paragraph (e)(1), removing ''§ 5.618 of this title'' wherever it appears and adding in its place ''24 CFR 5.618'' and removing ''§ 5.609(a)(2) of this title'' and adding in its place ''24 CFR 5.609(a)(2)'';

■ o. Revising paragraph (e)(2);

■ p. Removing ''§ 5.617 of this title'' and adding in its place ''24 CFR 5.617'' in paragraph (e)(3);

■ q. In paragraph (f)(1)(i), removing ''§ 5.611(a) of this title'' and adding in its place ''24 CFR 5.611(a)'' and removing ''§§ 5.611(c) through (e) of this title'' and adding in its place ''24 CFR 5.611(c) through (e)'';

■ r. In paragraph (f)(1)(ii), removing ''§ 92.252(b)(2)(i)'' wherever it appears and adding in its place ''§ 92.252(a)(2)(ii)'', removing ''§ 5.611(a) of this title'' and adding in its place ''24 CFR 5.611(a)'', and removing ''§§ 5.611(c) through (e) of this title'' and adding in its place ''24 CFR 5.611(c) through (e)'';

■ s. In paragraph (f)(1)(iii), removing ''§ 92.252(i)(2)'' and adding in its place ''§ 92.252(h)(2)'' and removing ''§ 5.611(a) of this title'' and adding in its place ''24 CFR 5.611(a)''; and

■ t. Revising paragraph (f)(2).

The revisions and additions read as follows:

§ 92.203 Income determinations.

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

* * * * *

(3) If a family is applying, renewing, or entering into a new rental assistance contract for tenant-based rental assistance pursuant to § 92.209, or applying for or living in a HOME-assisted rental unit in accordance with § 92.252, and the family is assisted by a form of Federal, State, or local public assistance (*e.g.,* TANF, Medicaid, LIHTC, local rental subsidy programs, etc.) which examines the annual income of the family each year, then a participating jurisdiction may accept a written statement from a Federal or non-Federal entity administering the assistance. The statement must indicate the tenant's family size and state the amount of the family's annual income. When accepting the statement from a government administrator, the participating jurisdiction must still adjust income in accordance with paragraph (f) of this section. The statement must be for an income determination made within the previous 12-month period.

* * * * *

(b) *Determining and documenting annual income.*

(1) * * *

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

(2) For families applying for HOME homeownership activities (*i.e.,* homeowners receiving rehabilitation assistance, homebuyers), the participating jurisdiction must determine annual income by examining at least 2 months of source documents evidencing annual income (*e.g.,* wage statement, interest statement, unemployment compensation statement) for the family.

(3) For families applying for or receiving tenant-based rental assistance, the participating jurisdiction may determine annual income for the family in accordance with either paragraph (a)(3) or (b)(1)(i) of this section, as applicable. Income must be calculated at the times described in § 92.209(e)(3).

(c) *Definitions of ''annual income.''*

* * *

* * * * *

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

(e) * * *

(2) The participating jurisdiction is not required to redetermine the family's income eligibility at the time the HOME assistance (*i.e.,* homeownership assistance and tenant-based rental assistance) is provided, unless more than six months has elapsed since the participating jurisdiction determined that the family is income eligible.

* * * * *

(f) * * *

(2) If a unit is assisted by a Federal or State project-based rental subsidy program, then a participating jurisdiction may accept the public housing agency, owner, or rental subsidy provider's determination of the family's adjusted income under that program's rules.

■ 11. Amend § 92.205 by:

■ a. Revising paragraph (a)(2);

■ b. Removing the last sentence of paragraph (b)(1);

■ c. Adding paragraph (b)(3); and

■ d. Revising the first sentence of paragraph (e)(2).

The revisions and addition read as follows:

§ 92.205 Eligible activities: General.

(a) * * *

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

* * * * *

(b) * * *

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

* * * * *

(e) * * *

(2) If project completion, as defined in § 92.2, does not occur within 4 years of the date of commitment of funds for a specific local project, the project is considered to be terminated, and the participating jurisdiction must repay all funds invested in the project to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b). * * *

■ 12. Amend § 92.206 by:

■ a. Removing ''§ 92.251'' and adding in its place ''§ 92.251(a)'' in paragraph (a)(1);

■ b. Removing ''§ 92.251'' and adding in its place ''§ 92.251(b)'' in paragraph (a)(2);

■ c. Removing the word ''single-family'' and adding in its place the words ''single family'' in paragraph (b)(1);

■ d. Removing the words ''affordability period'' and adding in their place the words ''period of affordability'' in paragraph (b)(2) introductory text;

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

The revisions read as follows:

§ 92.206 Eligible project costs.

* * * * *

(b) * * *

(2) * * *

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

* * * * *

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

(d) * * *

(1) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, work write-ups; for HUD environmental reviews or other environmental studies, assessments, or fees; and for certain costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, legal fees, accounting fees, filing fees for zoning or planning review and approval, private appraisal fees, fees for independent cost estimates, and other lender required third-party reporting fees. The costs may

be paid if they were incurred not more than 24 months before the date that HOME funds are committed to the project and the participating jurisdiction expressly permits HOME funds to be used to pay the costs in the written agreement committing the funds.

(2) Fees for recordation and filing of legal documents, building permits, and builders or developers fees.

* * * * *

(8) Cost of property insurance during development.

* * * * *

§ 92.207 [Amended]

■ 13. Amend § 92.207 in paragraph (e) by removing the words ''under a cost allocation plan prepared''.

■ 14. Amend § 92.208 by adding paragraph (c) to read as follows:

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

* * * * *

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

■ 15. Amend § 92.209 by:
■ a. Removing the last sentence of paragraph (c)(1);
■ b. Revising paragraphs (c)(2)(iv), (c)(3), (e), (g), (h)(2), (h)(3)(ii), and (i);
■ c. Removing the word ''dwelling'' and adding, in its place, the word ''housing'' in paragraph (j)(1);
■ d. Revising paragraph (j)(5);
■ e. Adding paragraph (j)(6);
■ f. Revising paragraph (k); and
■ g. Removing paragraph (l).

The revisions and addition read as follows:

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

* * * * *

(c) * * *

(2) * * *

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

* * * * *

(3) *Existing tenants in projects that will receive HOME assistance.* A participating jurisdiction may select low-income families currently residing in housing units that will be rehabilitated or acquired with HOME funds under the participating jurisdiction's HOME program. Participating jurisdictions using HOME funds for tenant-based rental assistance programs may establish local preferences for the provision of this assistance. Families so selected may use the tenant-based rental assistance in the rehabilitated or acquired housing unit or in other qualified housing.

* * * * *

(e) *Rental assistance contract*—(1) *Parties to the rental assistance contract.* A participating jurisdiction must enter into a rental assistance contract with the owner and the family. A participating jurisdiction may have one agreement with the owner and a separate agreement with the family, or one tri-party agreement with the participating jurisdiction, the owner, and the family.

(2) *Term of the rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but the rental assistance contract may be amended or renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease or the beginning of the first month in which tenant-based rental assistance is provided.

(3) *Amending or renewing a rental assistance contract.* (i) A rental assistance contract within its term may only be amended through the consent of all parties. A rental assistance contract may be amended:

(A) Because the lease between the family and owner has been amended or renewed, if the lease term or amount charged under the lease are the only terms of the contract being changed.

(B) To extend its term up to 24 months from the original date of execution.

(C) When a tenant changes units within the same building or development if the parties to the lease, the family size, and the number of bedrooms in the housing remain the same.

(ii) Subject to the availability of HOME funds, a rental assistance contract may be renewed after the expiration of its initial term.

(iii) In all other instances, the participating jurisdiction must enter into a new rental assistance contract with the family and the owner in accordance with this paragraph (e).

(4) *Initial and subsequent income determinations.* (i) Before the participating jurisdiction enters into an initial or new rental assistance contract with the family, the participating jurisdiction must determine that the family is income eligible in accordance with § 92.203.

(ii) When a rental assistance contract is amended, the participating jurisdiction will not be required to perform a new income examination in accordance with § 92.203.

(iii) Before a rental assistance contract is renewed, the participating jurisdiction must determine that the family is income eligible in accordance with § 92.203.

(iv) If a family is participating in a HOME lease-purchase program and receiving tenant-based rental assistance, then the participating jurisdiction is only required to determine the family's income at the time that the family enters into the lease-purchase agreement and does not need to engage in further income examination during the term of the lease-purchase agreement.

* * * * *

(g) *Tenant protections.* The tenant must have a lease that complies with the requirements in § 92.253. Upon termination of the rental assistance contract, the HOME tenant-based rental assistance tenancy addendum shall automatically terminate.

(h) * * *

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

(3) * * *

(ii) The Section 8 Housing Choice Voucher Program payment standard as determined in accordance with 24 CFR 982.503(a) through (c).

(i) *Housing standards.* The participating jurisdiction must require the housing occupied by a family

receiving tenant-based rental assistance under this section to meet the participating jurisdiction's property standards under § 92.251. Initially and annually thereafter, the participating jurisdiction must determine the housing complies with its property standards and is decent, safe, sanitary, and in good repair in accordance with § 92.251(f).

(j) * * *

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

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

(k) *Program operation.* A tenant-based rental assistance program must be operated consistent with the requirements of this section. The participating jurisdiction may operate the program itself or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through a rental assistance contract in accordance with paragraph (e) of this section. The participating jurisdiction (or entity operating the program) must approve the lease.

■ 16. Revise § 92.210 to read as follows:

§ 92.210 Troubled HOME-assisted rental housing projects.

(a) The provisions of this section apply only to an existing HOME-assisted rental project that, within the HOME period of affordability, is no longer financially viable or its physical viability has substantively deteriorated due to unforeseen circumstances.

(1) For purposes of this section, a HOME-assisted rental project is no longer financially viable through the period of affordability if:

(i) The project's operating costs exceed its operating revenue, considering project reserves;

(ii) The owner is unable to pay for necessary capital repair costs or ongoing expenses for the project; or

(iii) The project reserves are insufficient to be able to operate the project.

(2) For purposes of this section, physical viability means a project's current or future ability to maintain affordability based on the physical characteristics and factors of the project's site and improvements.

(3) HUD may approve the actions described in paragraphs (b) and (c) of this section to strategically preserve the affordability of a rental project after consideration of market needs, available resources, and the likelihood of the long-term physical and financial viability of the project.

(b) Notwithstanding § 92.214, a participating jurisdiction may request and HUD may permit, pursuant to a written memorandum of agreement, a participating jurisdiction to invest additional HOME funds in the existing HOME-assisted rental project. The total HOME funding for the project (original investment plus additional investment) must be necessary to improve the physical and financial viability of the project and may not exceed the per-unit subsidy limit in § 92.250(a) in effect at the time of the additional investment. The use of HOME funds may include, but is not limited to, rehabilitation of the HOME units and recapitalization of project reserves for the HOME units (to fund capital costs). If additional HOME funds are invested, HUD may impose additional conditions, including requiring the participating jurisdiction to extend the period of affordability, increase the number of HOME-assisted units, and change the number or designation of Low HOME rent and High HOME rent units.

(c) HUD may, through written approval, permit the participating jurisdiction to reduce the total number of HOME-assisted units or change the designation of units from Low HOME rent units to High HOME rent units where there are more than the minimum number of Low HOME rent units in the project. In determining whether to permit a reduction in the number of HOME-assisted units, HUD will take into account the required period of affordability and the amount of HOME assistance provided to the project.

■ 17. Amend § 92.212 by:

■ a. Removing ''may incur costs'' and adding in its place ''may incur costs described in this section'' in paragraph (a); and

■ b. Revising paragraph (b).

The revision reads as follows:

§ 92.212 Pre-award costs.

* * * * *

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

(2) In any year in which an appropriation has not been enacted 90 days before a participating jurisdiction's program year start date, a participating jurisdiction may incur eligible administrative and planning costs as of the beginning of its program year or the date that HUD receives its consolidated plan describing the HOME allocation to which the costs will be charged, whichever is earlier.

* * * * *

■ 18. Amend § 92.214 by revising paragraphs (a)(6) through (9), adding paragraph (a)(10), revising paragraph (b)(3), and adding paragraph (b)(4) to read as follows.

§ 92.214 Prohibited activities and fees.

(a) * * *

(6) Provide assistance (other than tenant-based rental assistance, assistance to a homebuyer to acquire housing previously assisted with HOME funds, assistance permitted under § 92.210, or assistance to preserve affordability of homeownership housing in accordance with § 92.254(b)) to a project previously assisted with HOME funds during the period of affordability. However, additional HOME funds may be committed to a project for up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250 at the time of underwriting;

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

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

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

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

(b) * * *

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

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

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

(iii) Fees to inspect units or correct deficiencies in the property condition of units or common areas of the project that were not caused by the tenant or are only due to normal wear and tear.

(4) Rental project owners may charge:

(i) Reasonable application fees to prospective tenants;

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

(iii) Fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

§ 92.216 [Amended]

■ 19. Amend § 92.216 in paragraphs (a)(2) and (b)(2) by removing the word ''dwelling'' and adding in its place the word ''housing''.

§ 92.217 [Amended]

■ 20. Amend § 92.217 by removing the word ''dwelling'' and adding in its place the word ''housing''.

■ 21. Amend § 92.219 by:

■ a. Removing the word ''dwelling'' and adding in its place the word ''housing'' in paragraph (a)(4);

■ b. Revising the first sentences of paragraphs (b)(2)(ii) and (iii);

The revisions read as follows:

§ 92.219 Recognition of matching contribution.

* * * * *

(b) * * *

(2) * * *

(ii) The participating jurisdiction must execute, with the owner of the housing (or, if the participating jurisdiction is the owner, with the manager or developer), a written agreement that imposes and enumerates all of the requirements applicable to the project, including affordability requirements in § 92.252 or § 92.254; tenant protection requirements in § 92.253; property standards requirements in § 92.251; and income determination requirements in § 92.203. * * *

(iii) A participating jurisdiction must establish a procedure to monitor HOME match-eligible housing to ensure continued compliance with the requirements of § 92.203 (Income determinations), § 92.252 (Qualification as affordable housing: Rental housing), § 92.253 (Tenant protections), and § 92.254 (Qualification as affordable housing: Homeownership). * * *

* * * * *

§ 92.220 [Amended]

■ 22. Amend § 92.220 by removing the words ''single-family'' and adding in their place ''single family'' in paragraph (a)(5)(ii).

■ 23. Amend § 92.221 by adding paragraphs (b)(1) and (2) to read as follows:

§ 92.221 Match credit.

* * * * *

(b) * * *

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

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

* * * * *

■ 24. Amend § 92.250 by:

■ a. Revising paragraphs (a) and (b)(3)(i);

■ b. Removing the words ''downpayment assistance'' and in their place adding in their place the words ''homeownership assistance'' in paragraph (b)(4); and

■ c. Adding paragraph (c).

The revisions and addition read as follows:

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

(a) *Maximum per-unit subsidy amount.* The total amount of HOME funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established by HUD in accordance with section 212(e) of the Act. HUD will publish the per-unit dollar limits for the area in which the housing is located annually. HUD will publish its methodology for determining maximum per-unit dollar limits through a publication in the **Federal Register** with the opportunity for comment.

(b) * * *

(3) * * *

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

* * * * *

(c) A participating jurisdiction may exceed the per-unit dollar limits described in paragraph (a) of this section by up to 10 percent if the project meets one of the green building standards identified by HUD and published in the **Federal Register**.

■ 25. Amend § 92.251 by:

■ a. Revising the section heading and paragraph (a)(2);

■ b. Adding paragraph (a)(3);

■ c. Revising paragraph (b)(1)(vi);

■ d. Adding paragraphs (b)(1)(viii)(A) and (B);

■ e. Adding paragraphs (b)(1)(xi) and (xii);

■ f. Removing the words ''must ensure'' and adding in their place the words ''must require'' and by removing the words ''The construction documents'' and adding in their place the words ''The construction contract and documents'' in paragraph (b)(2);

■ g. Revising paragraph (b)(3), the first sentence of paragraph (c)(1), and paragraph (c)(3);

■ h. Adding paragraph (d);

■ i. Revising the paragraph (f) heading;

■ j. Removing the words ''affordability period'' and adding in their place the words ''period of affordability'' and by removing the words ''each of the following'' and adding in their place the words ''all of the following'' in paragraph (f)(1) introductory text;

■ k. Revising paragraph (f)(1)(i);

■ l. Adding paragraph (f)(1)(iv);

■ m. Revising paragraphs (f)(3) through (5); and

■ n. Adding paragraph (g).

The revisions and additions read as follows:

§ 92.251 Property standards and inspections.

(a) * * *

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

(3) *HUD requirements.* All new construction projects must also meet the following requirements upon project

completion, unless an earlier deadline is otherwise required by the applicable statute, regulation, or standard:

(i) *Accessibility.* The housing must meet the accessibility requirements of 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131–12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619).

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

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

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

(v) *Broadband infrastructure.* For new commitments made after January 19, 2017, for a new construction housing project of a building with more than 4 rental units, the construction must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the participating jurisdiction determines and, in accordance with § 92.508(a)(3)(iv), documents the determination that:

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

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

(vi) *Carbon monoxide and smoke detection*—(A) *Carbon monoxide detection.* A carbon monoxide alarm must be installed in the housing unit in a manner that meets or exceeds the carbon monoxide detection standards set by HUD through **Federal Register** publication.

(B) *Smoke detection.* (*1*) A hardwired smoke alarm must be installed:

(*i*) On each level of each housing unit;

(*ii*) In or near each sleeping area in each housing unit;

(*iii*) In the basement of each housing unit and in each common area of a project. A hardwired smoke alarm is not required in crawl spaces or unfinished attics of housing units;

(*iv*) Within 21 feet of any door to a sleeping area measured along a path of travel; and

(*v*) Where a smoke alarm installed outside a sleeping area is separated from an adjacent living area by a door, a smoke alarm must also be installed on the living area side of the door.

(*2*) Each hardwired smoke alarm must have an alarm system designed for hearing-impaired persons.

(*3*) The Secretary may establish additional standards through **Federal Register** publication.

(*4*) Following the relevant specifications of the International Code Council (ICC) or the National Fire Protection Association Standard (NFPA) 72 satisfies the requirements of this paragraph (a)(3)(vi)(B).

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

(b) * * *

(1) * * *

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

* * * * *

(viii) * * *

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

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

* * * * *

(xi) *Carbon monoxide and smoke detection*—(A) *Carbon monoxide detection.* A carbon monoxide alarm must be installed in the housing unit in a manner that meets or exceeds the carbon monoxide detection standards set by HUD through **Federal Register** publication.

(B) *Smoke detection.* (*1*) A hardwired smoke alarm must be installed:

(*i*) On each level of each housing unit;

(*ii*) In or near each sleeping area in each housing unit;

(*iii*) In the basement of each housing unit, and in each common area of a project. A hardwired smoke alarm is not required in crawl spaces or unfinished attics of housing units;

(*iv*) Within 21 feet of any door to a sleeping area measured along a path of travel; and

(*v*) Where a smoke alarm installed outside a sleeping area is separated from an adjacent living area by a door, a smoke alarm must also be installed on the living area side of the door.

(*2*) Each hardwired smoke alarm must have an alarm system designed for hearing-impaired persons.

(*3*) The Secretary may establish additional standards through **Federal Register** publication.

(*4*) Where the use of hardwired smoke detectors places an undue financial burden on the owner or is infeasible, a participating jurisdiction may provide a written exception to allow the owner to install a smoke detector that uses 10-year non rechargeable, nonreplaceable primary batteries. The smoke detector must be sealed, tamper-resistant, contain a means to silence the alarm, and otherwise comply with the requirements of this section.

(*5*) Following the relevant specification of the International Code Council (ICC) or the National Fire Protection Association Standard (NFPA) 72 satisfies the requirements of this paragraph (b)(1)(xi)(B).

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

building standards established by HUD through **Federal Register** publication.

* * * * *

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

(c) * * *

(1) Existing housing that is acquired with HOME assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HOME funds, must meet the property standards for new construction in paragraph (a) or rehabilitation in paragraph (b) of this section, as applicable. * * *

* * * * *

(3) Existing housing that is acquired for homeownership using homeownership assistance must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements, and the housing does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the **Federal Register** for HOME-assisted projects and units. The housing must also meet or exceed the carbon monoxide and smoke detection standards contained in the participating jurisdiction's rehabilitation standards pursuant to paragraph (b) of this section. If the use of hardwired smoke detectors places an undue financial burden on the homebuyer or is infeasible, a participating jurisdiction may provide a written exception to the homebuyer consistent with the requirements contained in paragraph (b) of this section.

(i) The participating jurisdiction must inspect the housing and document compliance with this paragraph (c)(3) based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) before the acquisition, except as provided in paragraph (c)(3)(ii) of this section.

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

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

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

(C) Unless an extension is provided pursuant to paragraph (c)(3)(ii)(D) of this section, the participating jurisdiction conducts a final inspection within six months after acquisition and determines that the property meets the standards.

(D) The participating jurisdiction may provide the homebuyer with an extension of up to 12 months from acquisition to meet the standards. If the participating jurisdiction provides an extension, the participating jurisdiction must amend the written agreement to reflect the extension and conduct a final inspection within 12 months of acquisition and determine that the property meets the standards.

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

(d) *Projects involving a combination of rehabilitation and either new construction or reconstruction.* If a project includes both rehabilitation of housing units and either new construction or reconstruction of housing units, then the participating jurisdiction must apply the rehabilitation standards to the housing units that are rehabilitated and the new construction requirements to housing that is either newly constructed or reconstructed.

* * * * *

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

(1) * * *

(i) *Compliance with State and local codes, ordinances, and requirements.* The participating jurisdiction's standards must require the housing to meet all applicable State and local code requirements and ordinances. In the absence of existing applicable State or local code requirements and ordinances, at a minimum, the participating jurisdiction's ongoing property standards must provide that the property does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the **Federal Register** for HOME rental housing (including manufactured housing) and housing occupied by tenants receiving HOME tenant-based rental assistance, except that the carbon monoxide detection requirements at 24 CFR 5.703(b)(2) and (d)(6) shall not apply. The participating jurisdiction's property standards are not required to comply with 24 CFR 5.705 through 5.713.

* * * * *

(iv) *Carbon monoxide and smoke detection*—(A) *Carbon monoxide detection.* A carbon monoxide alarm must be installed in the housing unit in a manner that meets or exceeds the carbon monoxide detection standards set by HUD through **Federal Register** publication.

(B) *Smoke detection.* The participating jurisdiction's standards must require housing to contain smoke detectors in accordance with the requirements contained in 24 CFR 5.703(b) and (d).

* * * * *

(3) *Ongoing inspections of HOME-assisted rental housing.* During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards in paragraph (f)(1) of this section and to verify the information submitted by owners in accordance with the requirements of § 92.252. The participating jurisdiction must perform inspections in accordance with its established inspection procedures. These procedures, at minimum, must include the following requirements:

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

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

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

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

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

TABLE 1 TO PARAGRAPH (f)(3)(iii)—MINIMUM INSPECTION SAMPLE SIZE FOR HOME RENTAL HOUSING PROJECTS

Number of HOME-assisted units in the HOME project	Number of units that must be selected in the random sample (*i.e.*, minimum unit sample size)
1–20	4
21–25	5
26–30	6
31–35	7
36–40	8
41–45	9
46–50	10
51–55	11
56–60	12
61–65	13

TABLE 1 TO PARAGRAPH (f)(3)(iii)—MINIMUM INSPECTION SAMPLE SIZE FOR HOME RENTAL HOUSING PROJECTS—Continued

Number of HOME-assisted units in the HOME project	Number of units that must be selected in the random sample (*i.e.*, minimum unit sample size)
66–70	14
71–75	15
76–80	16
81–85	17
86–90	18
91–95	19
96–100	20
101–105	21
106–110	22
111–115	23
116–120	24
121–125	25
126–130	26
131–166	27
167–214	28
215–295	29
296–455	30
456–920	31
921+	32

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

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

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

(ii) An inspection conducted within the past 3 months in satisfaction of another funding source's requirements under the National Standards for the Condition of HUD housing (24 CFR part 5, subpart G) or an alternative inspection standard, which HUD may establish through **Federal Register** publication. A participating jurisdiction may move its inspection cycle to align with an inspection covered by this paragraph. If a participating jurisdiction is accepting an inspection pursuant to this paragraph, then the participating jurisdiction must document the inspection's determination that the housing is decent, safe, sanitary, and in good repair in accordance with § 92.508(a)(3)(iv) and is not required to perform a HOME inspection of the project and units for compliance with 24 CFR 5.703.

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

(i) *Health and safety deficiencies.* Health and safety deficiencies must be corrected immediately. Except for small-scale housing, the participating jurisdiction must adopt a more frequent inspection schedule for properties that have been found to have health and safety deficiencies. For small-scale housing, the participating jurisdiction may adopt a more frequent inspection schedule if the small-scale housing is found to have health and safety deficiencies, as described in its inspection procedures.

(ii) *Other deficiencies.* If there are observed deficiencies for any of the inspectable areas in the property standards established by the participating jurisdiction, in accordance with the inspection procedures, a follow-up on-site inspection to verify that deficiencies are corrected must occur within 12 months. The participating jurisdiction may establish a list of non-hazardous deficiencies for which correction can be verified by third party documentation (*e.g.,* paid invoice for work order) rather than re-inspection.

(g) *Inspection procedures.* The participating jurisdiction must establish written inspection procedures. The procedures must include detailed inspection checklists, a description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors. For ongoing property inspections, the procedures must also describe how frequently the property will be inspected, consistent with this section and § 92.209.

■ 26. Revise § 92.252 to read as follows:

§ 92.252 Qualification as affordable housing: Rental housing.

The HOME-assisted units in a rental housing project must be occupied by households that are eligible as low-income families and must meet the requirements of this section to qualify as affordable housing. If the housing is not occupied by eligible tenants within six months following the date of project

completion, the participating jurisdiction must revise its marketing plan to enable the project to reach required occupancy. The participating jurisdiction must repay HOME funds invested in any housing unit that has not been rented to eligible tenants within 18 months after the date of project completion. The affordability requirements in this section also apply to the HOME-assisted non-owner-occupied units in single family housing purchased with HOME funds in accordance with § 92.254. A tenant must have a written lease that complies with § 92.253.

(a) *HOME rent limits.* The rent for a HOME-assisted unit must not exceed the rent limits in this section. HUD will publish the HOME rent limits on an annual basis, with adjustments for number of bedrooms in the unit. The rent limits do not apply to any rental assistance or subsidy payment provided under a Federal, State, or local rental assistance or subsidy program. Regardless of changes in fair market rents and in median income over time, the rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment. The participating jurisdiction may designate (in its written agreement with the owner) more than the minimum HOME units in a rental housing project, regardless of project size. The rent limits apply to the rent plus the utilities or utility allowance.

(1) *High HOME rent limits.* If a low-income family is participating in a program where the family pays as a contribution toward rent no more than 30 percent of the family's monthly adjusted income or 10 percent of the family's monthly income, then the maximum rent due from the family is the family's contribution. For all other cases, the rent does not exceed the lesser of:

(i) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or

(ii) 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD.

(2) *Low HOME rent limits.* 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. If a very low-income family is participating in a program where the family pays as a contribution toward rent no more than 30 percent of the family's monthly adjusted income or 10 percent of the family's monthly income, then the maximum rent due from the family is the family's contribution. All other Low HOME Rent units must have rent that meet one of the following requirements:

(i) The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD. If the rent determined under this paragraph is higher than the fair market rent under paragraph (a)(1)(i) of this section, then the maximum rent for units under this paragraph is the fair market rent under paragraph (a)(1)(i);

(ii) The rent contribution of the family is not more than 30 percent of the family's adjusted income; or

(iii) The unit is a LIHTC unit and has rents not greater than the gross rent for rent-restricted residential units as determined under 26 U.S.C. 42(g)(2).

(3) *HOME rent limits for SRO projects.* (i) For SRO units that have both sanitary and food preparation facilities, the rent limit is the zero-bedroom fair market rent as established by HUD under 24 CFR part 888. The project must meet the requirements of paragraphs (a)(1) and (2) of this section.

(ii) For SRO units that have no sanitary or food preparation facilities or only one of the two, the rent limit is 75 percent of the zero-bedroom fair market rent as established by HUD under 24 CFR part 888. The project must be occupied by very low-income tenants.

(b) *Utility allowances.* The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone, cable, and broadband) and update the allowances annually. The participating jurisdiction may determine the utility allowance for the project based on the type of utilities and services paid by the tenant, including any energy efficiency measures. The participating jurisdiction may use any of the following for its maximum monthly allowances: the HUD Utility Schedule Model, the utility allowance established by the applicable local public housing authority, or another method approved by HUD.

(c) *Review and approval of rents.* The participating jurisdiction must review and approve rents proposed by the owner for units, subject to the rent limits in paragraph (a) of this section. For all units subject to the rent limits in paragraph (a) for which the tenant is paying utilities and services, the participating jurisdiction must require that the rents do not exceed the rent limits in paragraph (a) minus the monthly allowances for utilities and services in paragraph (b) of this section.

(d) *Period of affordability.* The HOME-assisted units must meet requirements under this part for the applicable period specified in the table in this paragraph (d), beginning from project completion.

(1) The affordability requirements, including the applicable rent limits, period of affordability, and income requirements:

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

(ii) Must be imposed by a deed or use restriction, lien on real property, a covenant running with the land, a recorded agreement restricting the use of the property, or other mechanisms approved by HUD in writing, under which the participating jurisdiction has the right to require specific performance (except that the participating jurisdiction may provide that the affordability requirements 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 period of affordability, 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 affordability requirements on the project does not terminate the participating jurisdiction's repayment obligation under § 92.503(b).

TABLE 1 TO PARAGRAPH (d)(4)—MINIMUM PERIOD OF AFFORDABILITY FOR RENTAL HOUSING

Rental housing activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per-unit amount of HOME funds:	
Under $25,000	5
$25,000 to $50,000	10
Over $50,000 or rehabilitation involving refinancing	15

TABLE 1 TO PARAGRAPH (d)(4)—MINIMUM PERIOD OF AFFORDABILITY FOR RENTAL HOUSING—Continued

Rental housing activity	Minimum period of affordability in years
New construction or acquisition of newly constructed housing	20

(e) *Subsequent rents during the period of affordability.* (1) The HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. HUD then publishes the updated HOME rent limits.

(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 rent limits in paragraph (a) 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.

(3) Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 60 days prior written notice before implementing any increase in rents.

(f) *Adjustment of HOME rent limits for an existing project.* (1) Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of a project within the HOME rent limits in this section.

(2) HUD may adjust the HOME rent limits for a project, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly.

(g) *Tenant Income.* The income of each tenant must be determined initially in accordance with § 92.203(b)(1)(i) unless the participating jurisdiction accepts an annual income determination pursuant to § 92.203(a)(1), (2), or (3) or determines income in accordance with § 92.203(b)(3). In addition, each year during the period of affordability, the participating jurisdiction must require the project owner to re-examine each tenant's annual income in accordance with the option in § 92.203(b)(1) selected by the participating jurisdiction and included in the written agreement, except as follows:

(1) A participating jurisdiction may permit an owner of small-scale housing to re-examine each tenant's annual income in accordance with the chart in this paragraph (g)(1), instead of annually, during the period of affordability.

TABLE 2 TO PARAGRAPH (g)(1)—ALTERNATIVE INCOME EXAMINATION CYCLE FOR SMALL-SCALE RENTAL HOUSING PROJECTS

Initial Examination (All Projects)	The income of each tenant must be determined initially in accordance with § 92.203(b)(1)(i) unless the participating jurisdiction accepts an annual income determination pursuant to § 92.203(a)(1), § 92.203(a)(2), or § 92.203(a)(3), or determines income in accordance with § 92.203(b)(3).
Year 3	The income of each tenant must be examined in accordance with the option selected by the participating jurisdiction in § 92.203(b)(1) and included in the written agreement between the owner and the participating jurisdiction pursuant to § 92.504(c)(3).
Year 6 (Projects with a period of affordability of greater than 5 years).	The income of each tenant must be examined in accordance with § 92.203(b)(1)(i).
Year 9 (Projects with a period of affordability of greater than 5 years).	The income of each tenant must be examined in accordance with the option selected by the participating jurisdiction in § 92.203(b)(1) and included in the written agreement between the owner and the participating jurisdiction pursuant to § 92.504(c)(3).
Year 12 (Projects with a period of affordability of greater than 10 years).	The income of each tenant must be examined in accordance with § 92.203(b)(1)(i).
Year 15 (Projects with a period of affordability of 20 years).	The income of each tenant must be examined in accordance with the option selected by the participating jurisdiction in § 92.203(b)(1) and included in the written agreement between the owner and the participating jurisdiction pursuant to § 92.504(c)(3).
Year 18 (Projects with a period of affordability of 20 years).	The income of each tenant must be examined in accordance with § 92.203(b)(1)(i).

(2) A participating jurisdiction that permits an owner of a rental project (including small-scale housing projects) with a period of affordability of ten years or more to re-examine a tenant's annual income through a statement and certification in accordance with § 92.203(b)(1)(ii), must require the owner to re-examine the income of each tenant, in accordance with § 92.203(b)(1)(i), at minimum, every sixth year during the period of affordability; and,

(3) If the participating jurisdiction accepts an annual income determination pursuant to § 92.203(a)(1), (2), or (3), an owner is not required to re-examine a tenant's annual income in accordance with § 92.203(b) for HOME.

(h) *Over-income tenants.* (1) HOME-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

(2) A tenant who no longer qualifies as low-income must pay a rent amount equal to the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted income, except that:

(i) A tenant of a HOME-assisted unit subject to rent restrictions under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay a rent amount that complies with that section;

(ii) A tenant in a HOME-assisted unit designated as floating pursuant to paragraph (j) of this section shall pay a rent amount no greater than the fair market rent for comparable, unassisted units in the neighborhood; and

(iii) The rent limits do not apply to any rental assistance or subsidy payment provided under a Federal, State, or local rental assistance or subsidy program.

(i) *Surety bonds.* Surety bonds, security deposit insurance, or instruments similar to surety bonds and security deposit insurance may not be used in lieu of or in addition to a security deposit in HOME-assisted units.

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

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

(l) *Ongoing responsibilities.* The participating jurisdiction's responsibilities for on-site inspections and financial oversight of rental projects are set forth in § 92.251(f).

■ 27. Revise § 92.253 to read as follows:

§ 92.253 Tenant protections and selection.

(a) *Lease contents.* (1) For rental housing assisted with HOME funds and tenant-based rental assistance, there must be a written lease between the tenant and the owner that is for a period of not less than 1 year, unless by mutual agreement between the tenant and the owner, a shorter period is specified. Any changes to the lease must be in writing. The owner must provide the participating jurisdiction with a written lease or a revision to a written lease before it is executed. The lease shall contain:

(i) More than one convenient and accessible method to communicate directly with the owner or the property management staff, including in person, by telephone, email, or through a web portal;

(ii) The participating jurisdiction's contact information for the HOME program;

(iii) The VAWA lease term/addendum required under § 92.359(e), except as otherwise provided by § 92.359(b); and

(iv)(A) For rental housing, the HOME rental housing tenancy addendum described in paragraph (b) of this section;

(B) For tenant-based rental assistance, the HOME tenant-based rental assistance tenancy addendum described in paragraph (c) of this section.

(2) For tenants receiving security deposit assistance only, there must be a written lease between the tenant and the owner that is for a period of not less than 1 year, unless by mutual agreement between the tenant and the owner, a shorter period is specified. The owner must provide the participating jurisdiction with a copy of the written lease before security deposit assistance is provided. The lease shall contain the HOME security deposit assistance tenancy addendum in paragraph (d) of this section.

(b) *HOME rental housing tenancy addendum.* The terms of the HOME rental housing tenancy addendum shall prevail over any conflicting provisions of the lease. The terms and conditions of the written lease, the HOME rental housing tenancy addendum, the VAWA addendum listed in paragraph (a) of this section, and any addendum required by another Federal, State, or local affordable housing program shall constitute and contain the sole and entire agreement between the owner and the tenant and no prior or contemporaneous oral or written representation or agreement between the owner or tenant shall have legal effect. The HOME rental housing tenancy addendum shall contain the following minimum requirements:

(1) *Physical condition of unit and project.* (i) The owner shall maintain the physical condition of the unit and project so that it meets the participating jurisdiction's property standards and State and local code requirements in accordance with § 92.251(f);

(ii) With respect to maintenance and repairs to a housing unit, the owner shall:

(A) Provide tenants with written expected time frames for maintaining or repairing units as soon as practicable;

(B) Professionally maintain and repair units and the common areas of the project in accordance with the participating jurisdiction's property standards as soon as practicable; and

(C) Not charge a tenant for normal wear and tear or damage to the unit or common areas of a project unless due to negligence, recklessness, or intentional acts by the tenant.

(iii) If the owner is required to repair a life-threatening deficiency impacting the tenant, and the repairs cannot be completed on the day the life-threatening deficiency is identified, the tenant shall promptly be relocated into housing that is decent, safe, sanitary, and in good repair and that provides the same or a greater level of accessibility, or other physically suitable lodging, at no additional cost to the tenant, until the repairs are completed and where it may be necessary, reasonable accommodations must continue to be provided during the relocation;

(iv) The owner shall provide tenants with continued, uninterrupted utility service in projects with owner-controlled utility services unless the interruption is not within the control of the owner (*e.g.,* a general power outage).

(2) *Use and occupancy of the unit and project.* (i) Subject to applicable occupancy requirements under Federal, State or local law, a family may reside in the unit with a foster child, foster adult, and/or live-in aide;

(ii) Except for shared housing, the tenant's household shall have the right to exclusive use and occupancy of the leased unit;

(iii) The owner may only enter the housing unit:

(A) When the owner provides reasonable advance notification to the tenant and enters during reasonable hours for the purpose of performing routine inspections and maintenance, for making improvement or repairs, or to show the housing unit for re-leasing. A written statement specifying the purpose of the owner's entry delivered to the housing unit at least 2 days before such entry is reasonable advance notification;

(B) At any time without advance notification when there is reasonable cause to believe that an emergency requiring entry to the unit exists; and

(C) The owner shall provide the tenant a written statement specifying the date, time, and purpose of entry if the tenant and all adult members of the household are absent from the housing unit at the time of entry or if the owner is entering the housing unit pursuant to paragraph (b)(2)(iii)(B) of this section.

(iv) The tenant's household shall have reasonable access to and use of the common areas of the project;

(v) Tenants shall be able to organize, create tenant associations, convene meetings, distribute literature, and post information; and

(vi) A tenant may not be required to accept supportive services that are offered unless the tenant is living in transitional housing and such supportive services are required in

connection with the transitional housing.

(3) *Notice.* (i) Before an owner may take an adverse action against a tenant, the tenant must be notified in writing, or where necessary to accommodate an individual with a disability or language access needs, must be provided a statement that is accessible and understandable to the tenant, of the specific grounds for any proposed adverse action by the owner. Such notice should be provided in a translated format when needed to ensure meaningful access for limited English proficient (LEP) persons. Such adverse action includes, but is not limited to, imposition of charges for damages that require maintenance and repair;

(ii) An owner must notify tenants about changes affecting property ownership and management as follows:

(A) 30 calendar days before a sale or foreclosure, tenants must be notified of the impending sale or foreclosure of the property;

(B) Within 5 business days of any changes of ownership, tenants must be notified of the change in ownership;

(C) Within 5 business days of any change in the property management company managing the property, tenants must be notified of the change in management company; and

(iii) The owner may not institute a lawsuit against the tenant without providing notice to the tenant.

(4) *A tenant's rights to available legal proceedings and remedies.* (i) The tenant shall not be required by the owner to agree to be sued, to admit guilt, or agree to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(ii) The owner may not take, hold, or sell personal property of a household member without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(iii) The tenant may hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(iv) In any legal proceedings involving tenant and owner, the owner and tenant agree that the tenant shall be able to exercise the tenant's right to:

(A) Obtain independent legal representation in any legal proceedings in connection with the lease, including in any non-binding arbitration or alternative dispute resolution process;

(B) Have a trial by jury where such right is available to a tenant under Federal, State, or local law; and

(C) Appeal, or to otherwise challenge in court, a court decision in connection with the lease where such right is available to the tenant under Federal, State, or local law;

(v) The tenant may only be required to pay the owner's attorney's fees or other legal costs if the tenant loses in a court proceeding between the owner and the tenant and the court so orders.

(5) *Protection against unreasonable interference or retaliation.* (i) An owner may not unreasonably interfere with the tenant's safety or peaceful enjoyment of a rental housing unit or the common areas of the rental housing project.

(ii) An owner may not retaliate against a tenant for taking any action allowable under the lease and applicable law.

(iii) Actions that evidence unreasonable interference or retaliation against a tenant include actions taken for the purpose of causing the housing to become vacant or otherwise, including but not limited to:

(A) Recovery of, or attempt to recover, possession of the housing unit in a manner that is not in accordance with paragraph (b)(10) of this section;

(B) Decreasing services to the housing unit (*e.g.,* trash removal, maintenance) or increasing the obligations of a tenant (*e.g.,* new or increased monetary obligations, etc.) in a manner that is not in accordance with the requirements of this part;

(C) Interfering with a tenant's right to privacy under applicable State or local law;

(D) Harassing a household or their lawful guests; and

(E) Refusing to honor the terms of the lease.

(iv) If an owner unreasonably interferes or retaliates against a tenant, then this shall constitute a material breach under the lease, a violation of HOME program requirements, and a breach of the written agreement between the owner and the participating jurisdiction. A tenant may use evidence of such unreasonable interference or retaliation in a court of law, and the participating jurisdiction must take reasonable actions to address any violation in accordance with the participating jurisdiction's responsibilities under § 92.504(a) and (c).

(6) *Exercise of rights under tenancy.* A tenant may exercise any right of tenancy and assert any protection under their lease and any applicable Federal, State, local tenant protections including but not limited to:

(i) Reporting inadequate housing conditions of the housing unit or project to the owner, the participating jurisdiction, code enforcement officials, or HUD;

(ii) Reporting lease violations and requesting enforcement of the written lease or any protections guaranteed under this part; and

(iii) Requesting or obtaining enforcement of any applicable protections under Federal, State, or local law.

(7) *Confidentiality.* An owner will keep all records containing personally identifying information of any individual or family who applies for or lives in a HOME-assisted rental unit secure and confidential.

(8) *Prohibition on discrimination.* The owner shall operate housing assisted under this part in accordance with all applicable nondiscrimination and equal opportunity requirements pursuant to § 92.350 and the Violence Against Women Act (VAWA) requirements at § 92.359;

(9) *Security deposits.* Security deposits must be refundable and no greater than two months' rent. Surety bonds, security deposit insurance, and instruments similar to surety bonds and security deposit insurance may not be used in lieu of or in addition to a security deposit. Upon termination of tenancy by the owner or tenant, if the owner charges any amount against a tenant's security deposit, the owner must give the tenant a list of all items charged against the security deposit and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.

(10) *Termination of tenancy.* (i) An owner may not terminate the tenancy of any tenant or household member or refuse to renew the lease of a tenant of rental housing assisted with HOME funds, except for serious or repeated violation of the material terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. The owner is permitted to terminate the tenancy of any tenant or household member or refuse to renew the lease of a tenant of rental housing assisted with HOME funds if the owner is permitted to do so pursuant to the provisions contained in 24 CFR part 5, subpart I; 24 CFR 882.511; or 24 CFR 982.310.

(A) Other good cause does not include a change in the tenant's income or assets or the amount or type of income or assets the tenant possesses. Good cause does not include refusal of the tenant to purchase the housing unless the tenant is refusing to purchase the housing pursuant to their lease-purchase agreement.

(B) Other good cause includes:

(*1*) When a tenant or household member is a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the property;

(*2*) When a tenant unreasonably refuses to provide the owner access to the unit to allow the owner to repair the unit;

(*3*) When an owner must terminate a tenancy to comply with an order issued by a governmental entity or court that requires the tenant vacate the project or unit;

(*4*) When an owner must terminate a tenancy to comply with a local ordinance that necessitates vacating the project or unit; or

(*5*) When a tenant fails to purchase a housing unit within the timeframes listed within the tenant's lease-purchase agreement.

(C) An owner may establish good cause for a violation of an applicable Federal, State, or local law through a record of conviction of a crime that directly threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants in the project. The owner shall not use a record of arrest, parole or probation, or current indictment to establish such a violation.

(ii) 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 and provide a copy of the notice to vacate to the participating jurisdiction within 5 business days of issuing notice to the tenant. The minimum 30-day period is not required if the termination of tenancy or refusal to renew is due to a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the property and the termination of tenancy or refusal to renew is in accordance with the requirements of § 92.253(b)(10)(iii).

(iii) The termination of tenancy or refusal to renew must be in accordance with Federal, State, local law, and the requirements of this part, including but not limited to requirements regarding fair housing, nondiscrimination, and VAWA;

(iv) An owner may not terminate the tenancy or evict the tenant or household members without instituting a civil court proceeding in which the tenant or household member has the opportunity to present a defense, or before a court decision on the rights of the parties; and

(v) An owner may not perform a constructive eviction such as locking a tenant out of their unit or stopping service on utilities servicing the tenant's unit. An owner may not create a hostile living environment or refuse to provide a reasonable accommodation in order to cause a tenant to terminate their tenancy in a HOME-assisted unit.

(c) *HOME tenant-based rental assistance tenancy addendum.* The terms of the HOME tenant-based rental assistance tenancy addendum shall prevail over any conflicting provisions of the lease. The terms and conditions of the written lease, the HOME tenant-based rental assistance tenancy addendum, the VAWA addendum listed in paragraph (a) of this section, and any addendum required by another Federal, State, or local affordable housing program shall constitute and contain the sole and entire agreement between the owner and the tenant and no prior or contemporaneous oral or written representation or agreement between the owner or tenant shall have legal effect. The terms of the HOME tenant-based rental assistance tenancy addendum shall terminate upon termination of the rental assistance contract. The HOME tenant-based rental assistance tenancy addendum shall contain the following minimum requirements:

(1) *Physical condition of unit and project.* (i) The owner shall maintain the physical condition of the unit and property so that it meets the participating jurisdiction's property standards and State and local code requirements in accordance with § 92.251(f);

(ii) With respect to maintenance and repairs to a housing unit, the owner shall:

(A) Provide the tenant with written expected time frames for maintaining or repairing units as soon as practicable;

(B) Professionally maintain and repair units in accordance with the participating jurisdiction's property standards as soon as practicable; and

(C) Not charge the tenant for normal wear and tear or damage to the unit or common areas of the property unless due to negligence, recklessness, or intentional acts by the tenant.

(iii) The owner shall provide the tenant with continued, uninterrupted utility service in a property with owner-controlled utility services unless the interruption is not within the control of the owner (*e.g.,* a general power outage).

(2) *Use and occupancy of the unit and property.* (i) Subject to applicable occupancy requirements under Federal, State or local law, a family may reside in the unit with a foster child, foster adult, and/or live-in aide;

(ii) Except for shared housing, the tenant's household shall have the right to exclusive use and occupancy of the leased unit;

(iii) The owner may only enter the housing unit:

(A) When the owner provides reasonable advance notification to the tenant and enters during reasonable hours for the purpose of performing routine inspections and maintenance, for making improvement or repairs, or to show the housing unit for re-leasing. A written statement specifying the purpose of the owner's entry delivered to the housing unit at least 2 days before such entry is reasonable advance notification;

(B) At any time without advance notification when there is reasonable cause to believe that an emergency requiring entry to the unit exists; and

(C) The owner shall provide the tenant a written statement specifying the date, time, and purpose of entry if the tenant and all adult members of the household are absent from the housing unit at the time of entry or if the owner is entering the housing unit pursuant to paragraph (c)(2)(iii)(B) of this section;

(iv) The tenant's household shall have reasonable access to and use of the common areas of the property; and

(v) A tenant may not be required to accept supportive services that are offered unless the tenant is living in transitional housing and such supportive services are required in connection with the transitional housing.

(3) *Notice.* (i) Before an owner may take an adverse action against the tenant, the tenant must be notified in writing, or where necessary to accommodate an individual with a disability or language access needs, must be provided a statement that is accessible and understandable to the tenant, of the specific grounds for any proposed adverse action by the owner. Such notice should be provided in a translated format when needed to ensure meaningful access for limited English proficient (LEP) persons. Such adverse action includes, but is not limited to, imposition of charges for damages that require maintenance and repair;

(ii) An owner must notify the tenant about changes affecting property ownership and management as follows:

(A) Thirty (30) calendar days before a sale or foreclosure, tenants must be

notified of the impending sale or foreclosure of the property;

(B) Within 5 business days of any changes of ownership, tenants must be notified of the change in ownership;

(C) Within 5 business days of any change in the property management company managing the property, tenants must be notified of the change in management company; and

(iii) The owner may not institute a lawsuit against the tenant without providing notice to the tenant.

(4) *A Tenant's rights to available legal proceedings and remedies.* (i) The tenant shall not be required by the owner to agree to be sued, to admit guilt, or agree to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(ii) The owner may not take, hold, or sell personal property of a household member without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(iii) The tenant may hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(iv) In any legal proceedings involving tenant and owner, the owner and tenant agree that the tenant shall be able to exercise the tenant's right to:

(A) Obtain independent legal representation in any legal proceedings in connection with the lease, including in any non-binding arbitration or alternative dispute resolution process;

(B) Have a trial by jury where such right is available to a tenant under Federal, State, or local law; and

(C) Appeal, or to otherwise challenge in court, a court decision in connection with the lease where such right is available to the tenant under Federal, State, or local law;

(v) The tenant may only be required to pay the owner's attorney's fees or other legal costs if the tenant loses in a court proceeding between the owner and the tenant and the court so orders.

(5) *Protection against unreasonable interference or retaliation.* (i) An owner may not unreasonably interfere with the tenant's safety or peaceful enjoyment of a rental unit or the common areas of the property.

(ii) An owner may not retaliate against a tenant for taking any action allowable under the lease and applicable law.

(iii) Actions that evidence unreasonable interference or retaliation against a tenant include actions taken for the purpose of causing the housing to become vacant or otherwise, including but not limited to:

(A) Recovery of, or attempt to recover, possession of the housing unit in a manner that is not in accordance with paragraph (c)(10) of this section;

(B) Decreasing services to the housing unit (*e.g.,* trash removal, maintenance) or increasing the obligations of a tenant (*e.g.,* new or increased monetary obligations, etc.) in a manner that is not in accordance with the requirements of this part;

(C) Interfering with a tenant's right to privacy under applicable State or local law;

(D) Harassing a household or their lawful guests; and

(E) Refusing to honor the terms of the lease.

(iv) If an owner unreasonably interferes or retaliates against a tenant, then this shall constitute a material breach under the lease, a violation of HOME program requirements, and a breach of the written agreement between the owner and the participating jurisdiction. A tenant may use evidence of such unreasonable interference or retaliation in a court of law, and the participating jurisdiction must take reasonable actions to address any violation in accordance with the participating jurisdiction's responsibilities under § 92.504(a) and (c).

(6) *Exercise of rights under tenancy.* A tenant may exercise any right of tenancy and assert any protection under their lease and any applicable Federal, State, or local tenant protections including but not limited to:

(i) Reporting inadequate housing conditions of the housing unit or property to the owner, the participating jurisdiction, code enforcement officials, or HUD;

(ii) Reporting lease violations and requesting enforcement of the written lease or any protections guaranteed under this part; and

(iii) Requesting or obtaining enforcement of any applicable protections under Federal, State, or local law.

(7) *Confidentiality.* An owner will keep all records containing personally identifying information of any family who is assisted with tenant-based rental assistance secure and confidential.

(8) *Prohibition on discrimination.* The owner shall operate housing assisted under this part in accordance with all applicable nondiscrimination and equal opportunity requirements pursuant to § 92.350 and the VAWA requirements at § 92.359;

(9) *Security deposits.* (i) Security deposits must be refundable and no greater than two months' rent. Surety bonds, security deposit insurance, and instruments similar to surety bonds or security deposit insurance may not be used in lieu of or in addition to a security deposit. Upon termination of tenancy by the owner or tenant, if the owner charges any amount against a tenant's security deposit, the owner must give the tenant a list of all items charged against the security deposit and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.

(ii) For tenants that are already under a lease and have already fulfilled the security deposit requirements under the lease before entering into a rental assistance contract to receive tenant-based rental assistance, the provisions of paragraph (c)(9)(i) of this section do not apply.

(10) *Termination of tenancy.* (i) An owner may not terminate the tenancy of any tenant or household member or refuse to renew the lease of a tenant with tenant-based rental assistance, except for serious or repeated violation of the material terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause.

(A) Other good cause does not include a change in the tenant's income or assets or the amount or type of income or assets the tenant possesses. Good cause does not include refusal of the tenant to purchase the housing unless the tenant is refusing to purchase the housing pursuant to their lease-purchase agreement.

(B) Good cause includes:

(*1*) When a tenant or household member is a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the property;

(*2*) Serious or repeated violation of the terms and conditions of the lease;

(*3*) Violation of applicable Federal, State, or local law through a tenant's record of conviction of a crime that directly threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants in the property. The owner shall not use a record of arrest, parole or probation, or current indictment to establish such a violation;

(*4*) When a tenant unreasonably refuses to provide the owner access to

the unit to allow the owner to repair the unit;

(*5*) When an owner intends to withdraw the unit from the rental market to occupy the unit; allow an owner's family member to occupy the unit; or demolish or substantially rehabilitate the unit;

(*6*) When an owner must terminate a tenancy to comply with an order issued by a governmental entity or court that requires the tenant vacate the project or unit;

(*7*) When an owner must terminate a tenancy to comply with a local ordinance that necessitates vacating the residential real property; or

(*8*) When a tenant fails to purchase a housing unit within the timeframes listed within the tenant's lease-purchase agreement.

(ii) To terminate or refuse to renew tenancy, the owner must serve a written notice to vacate upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy and provide a copy of the notice to vacate to the participating jurisdiction in accordance with the rental assistance contract or the participating jurisdiction's policies and procedures. The minimum 30-day period is not required if the termination of tenancy or refusal to renew is due to a direct threat to the safety of the tenants or employees of the housing or an imminent and serious threat to the property and the termination of tenancy or refusal to renew is in accordance with the requirements of § 92.253(c)(10)(iii).

(iii) The termination of tenancy or refusal to renew must be in accordance with Federal, State, local law, and the requirements of this part, including but not limited to requirements regarding fair housing, nondiscrimination, and VAWA.

(iv) An owner may not perform a constructive eviction such as locking a tenant out of their unit or stopping service on utilities servicing the tenant's unit. An owner may not create a hostile living environment or refuse to provide a reasonable accommodation in order to cause a tenant to terminate their tenancy in a HOME-assisted unit.

(d) *HOME security deposit assistance tenancy addendum.* The terms of the HOME security deposit assistance tenancy addendum shall prevail over any conflicting provisions of the lease. The terms and conditions of the written lease, the HOME security deposit assistance tenancy addendum, and any addendum required by another Federal, State, or local affordable housing program shall constitute and contain the sole and entire agreement between the owner and the tenant and no prior or contemporaneous oral or written representation or agreement between the owner or tenant shall have legal effect. The lease for a tenant receiving security deposit assistance shall contain a security deposit tenancy addendum that prohibits the following terms from being present in the lease:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses and the court so orders; and

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

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

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

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

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

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

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

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

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

(C) The families must not be required to accept the services offered at the project. The owner may advertise the project as offering various supportive services, including a description of the specific supportive services available. The project must be open to all eligible persons with disabilities.

(4) Do not exclude an applicant with Federal, State, or local tenant-based rental assistance, such as an applicant with a voucher under the 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 applicant as a holder of such type of assistance;

(5) Except for small-scale housing, provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable. The participating jurisdiction may establish alternative procedures to a written waiting list for the selection of tenants in small-scale housing;

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

(7) Comply with the VAWA requirements prescribed in § 92.359; and

(8) Comply with the nondiscrimination requirements prescribed in § 92.350.

(f) *Health and safety.* In addition to the requirements in § 92.355, if a participating jurisdiction has actual knowledge of an environmental, health, or safety hazard affecting a project, unit, or HOME tenants, the participating jurisdiction must contact the affected owner and tenants in writing and provide them with a summary of the nature, date, and scope of such hazards. If an owner has actual knowledge of an environmental, health, or safety hazard affecting their project, units within their project, or tenants residing within their projects, the owner must inform the participating jurisdiction and HOME-assisted tenants in writing and provide them with a summary of the nature, date, and scope of such hazards. This notification requirement only applies to environmental, health, and safety hazards that are discovered after an environmental review performed pursuant to § 92.352 has already taken place. When either the participating jurisdiction or the owner notifies the tenants of the housing, this satisfies the requirement for the other party.

■ 28. Amend § 92.254 by:
■ a. Revising paragraph (a)(2)(iii);
■ b. Adding paragraph (a)(2)(iv);
■ c. Revising paragraphs (a)(3) and (4), (a)(5)(i) and (ii), and (a)(6) through (8);
■ d. Redesignating paragraphs (b) through (f) as paragraphs (c) through (g) and redesignating paragraph (a)(9) as paragraph (b);
■ e. Revising newly redesignated paragraph (b); and
■ f. Revising newly redesignated paragraphs (f) introductory text and (g)(1) and (3),

The revisions and additions read as follows:

§ 92.254 Qualification as affordable housing: Homeownership.

(a) * * *

(2) * * *

(iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for the rehabilitation of owner-occupied single family properties, the participating jurisdiction must use the HOME affordable homeownership limits provided by HUD for newly constructed housing and for existing housing.

(A) HUD will provide limits for affordable newly constructed housing based on 95 percent of the median purchase price for the area using Federal Housing Administration (FHA) single family mortgage program data for newly constructed housing, with a minimum limit based on 95 percent of the U.S. median purchase price for new construction for nonmetropolitan areas.

(B) HUD will provide limits for affordable existing housing based on 95 percent of the median area purchase price for the area using FHA single family mortgage program data for existing housing and other appropriate data that are available Nation-wide for purchase of existing housing, with a minimum limit based on 95 percent of the State-wide nonmetropolitan area median area purchase price using this data.

(iv) In lieu of the limits provided by HUD, the participating jurisdiction may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows:

(A) The participating jurisdiction must set forth the limits for single family housing of one, two, three, and four units, for the jurisdiction. The participating jurisdiction may determine separate limits for existing housing and newly constructed housing.

(B) For the limits on 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.

(C) The participating jurisdiction must include the following information in the annual action plan of the Consolidated Plan submitted to HUD for review and must update the information in each action plan.

(*1*) 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;

(*2*) Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a 1-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 purchase price;

(*3*) 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;

(*4*) The housing sales data must reflect all, or nearly all, of the single family housing sales in the entire participating jurisdiction; and.

(*5*) To determine the median area purchase price, a participating jurisdiction must 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 area purchase price, the amount should be multiplied by 0.95 to determine the 95 percent of the median area purchase price.

(3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family, and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section. If there is no ratified sales contract with an eligible homebuyer for the housing within 12 months of the date of completion of construction or rehabilitation, the housing must be rented to an eligible tenant as affordable rental housing and must comply with the requirements in § 92.252, including the period of affordability in § 92.252(d). 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. If housing is being purchased by an in-place tenant pursuant to § 92.255, then the housing may be acquired if the homebuyer's family was low-income at the time the homebuyer's family began occupying the HOME rental housing unit. If the housing does not meet the participating jurisdiction's property standards in § 92.251 at the time of acquisition, then the housing may still be acquired if the written agreement between the participating jurisdiction and the homebuyer requires the property to meet the standards within the period specified in § 92.251(c)(3)(ii) and funding is secured to complete the rehabilitation necessary to comply with the standards.

(4) *Periods of affordability.* The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after execution of the instrument that requires the recapture of the HOME investment or recordation of the resale restrictions for sale to the next

homebuyer. Execution of the instrument that requires the recapture of the HOME investment or recordation of the resale restrictions for sale to the next homebuyer may only occur after the housing meets the participating jurisdiction's property standards in accordance with § 92.251(c)(3) and the property title is transferred to the homebuyer. The per unit amount of HOME funds and the period of affordability that they trigger are described more fully in paragraphs (a)(5)(i) (resale) and (ii) (recapture) of this section. The period of affordability is based on the total amount of HOME funds invested in the housing.

TABLE 1 TO PARAGRAPH (a)(4)

Homeownership assistance HOME amount per-unit	Minimum period of affordability in years
Under $25,000	5
$25,000 to $50,000	10
Over $50,000	15

(5) * * *

(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 HOME-assisted homeowner a fair return on investment (including the homeowner's investment and any improvements) and ensure the housing will remain affordable to a reasonable range of low-income homebuyers. The resale price is the fair return on investment added to the original sales price of the property, subject to market conditions. 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 a fair return is not affordable to the subsequent homebuyer. The period of affordability is based on the total amount of HOME funds invested in the housing.

(A) Permissible methods of determining fair return and the resale price include but are not limited to the following:

(*1*) *Itemized formula.* To determine fair return on investment and resale price, the participating jurisdiction may use an itemized formula to add or subtract common, clearly defined factors that increase or decrease the value of a homeowner's investment in the property over the term of ownership. This formula must include the value of capital improvements and the sum of the downpayment and all principal payments by the homeowner on the loan secured by the property. The formula may depreciate the value of the capital improvements and may take into consideration any reduction in value due to property damage or delayed or deferred maintenance of the property condition. The fair return on a homeowner's investment under this formula is calculated by taking the sum of the defined factors for the homeowner's investment in the property over the term of ownership and multiplying this amount by a clearly defined, publicly accessible index or standard.

Formula 1 to Paragraph (a)(5)(i)(A)(*1*)

$$\textit{Change in clearly defined, publicly accessible index or standard}$$
$$\textit{MULTIPLIED BY}$$
$$\left(\begin{array}{c}\textit{(Homeowner's downpayment + sum of all homeowner principal payments + value of capital improvements)}\\ \textit{MINUS}\\ \textit{OPTIONAL (Depreciation of capital improvements + property damage + delayed or deferred maintenance)}\end{array}\right)$$
$$\textit{EQUALS}$$
$$\textit{Fair return}$$
$$\textit{Original sales price} + \textit{Fair return} = \textit{Resale price}$$

(*2*) *Appraisal formula.* The participating jurisdiction may use an appraisal formula to determine fair return on investment and resale price based on the amount of market appreciation, if any, over the term of ownership. Under this method, the appraisals must be conducted by a State licensed or certified third-party appraiser. The amount of market appreciation over the term of ownership is determined by subtracting the appraised value at the time of initial purchase from the appraised value of the property at the time of resale. The fair return on a homeowner's investment under this formula is calculated by multiplying a clearly defined, publicly accessible standard or index by the amount of market appreciation over the term of homeownership.

Formula 2 to Paragraph (a)(5)(i)(A)(*2*)

$$\textit{Clearly defined, publicly accessible index or standard} \times (\textit{New appraisal} - \textit{initial appraisal}) = \textit{Fair return}$$
$$\textit{Original sales price} + \textit{Fair return} = \textit{Resale price}$$

(*3*) *Index formula.* The participating jurisdiction may use an index formula to determine fair return on investment and resale price based on the change in value of a homeowner's investment over the term of ownership. Index formulas adjust the value of the homeowner's investment in proportion to changes in an index, such as the change in median household income. To determine the homeowner's fair return using this model, the sum of the property's original purchase price and the value of any capital improvements to the property is multiplied by the change in the specified index during the term of ownership. The formula may also depreciate the value of the capital improvements and may take into consideration any reduction in value due to property damage or delayed or

deferred maintenance of the property condition.

Formula 3 to Paragraph (a)(5)(i)(A)(*3*)

Change in clearly defined, publicly accessible index
MULTIPLIED BY

(*(Original purchase price + value of capital improvements)*
MINUS
OPTIONAL (Depreciation of capital improvements + property damage + delayed or deferred maintenance))

EQUALS

Fair return

Original sales price + Fair return = Resale price

(*4*) *Fixed-rate formula.* The participating jurisdiction may use a fixed-rate formula to determine the homeowner's fair return on investment. Fixed-rate formulas adjust the value of the homeowner's investment by a fixed percentage (rate) per year (*e.g.,* 3.5 percent). To determine the fair return on investment using this model, the fixed rate is multiplied by the number of years the homeowner owned and occupied the home (*e.g.,* 3.5 percent × 10 years = 35%). The resulting rate is then multiplied by the sum of the original purchase price of the home and the value of any capital improvements to the property to calculate the fair return to the homeowner. The formula may also depreciate the value of the capital improvements and may take into consideration any reduction in value due to property damage or delayed or deferred maintenance of the property condition.

Formula 4 to Paragraph (a)(5)(i)(A)(*4*)

(Fixed rate x length of homeownership)
MULTIPLIED BY

(*(Original purchase price + value of capital improvements)*
MINUS
OPTIONAL (Depreciation of capital improvements + property damage + delayed or deferred maintenance))

EQUALS

Fair return

Original sales price + Fair return = Resale price

(B) Except as provided in paragraph (a)(5)(i)(C) of this section, deed or use restrictions, a recorded agreement restricting the use of the property, liens on real property, covenants running with the land, or other similar mechanisms approved by HUD in writing must be used to impose the resale requirements.

(C) The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD. If the owner of record before the termination event obtains an ownership interest in the property after the termination event, then the affordability restrictions shall be revived under the same terms prior to the termination event, including a minimum period of affordability equal to the terminated period of affordability.

(D) Certain housing may be presumed to meet the resale restrictions (*i.e.,* the housing will be available and affordable to a reasonable range of low-income homebuyers; a low-income homebuyer will occupy the housing as the family's principal residence; and the original owner will be afforded a fair return on investment) during the period of affordability without the imposition of enforcement mechanisms by the participating jurisdiction. The presumption must be based upon a market analysis of the neighborhood in which the housing is located. The market analysis must include an evaluation of the location and characteristics of the housing and residents in the neighborhood (*e.g.,* sale prices, age and amenities of the housing stock, incomes of residents, percentage of owner-occupants) in relation to housing and incomes in the housing market area. An analysis of the current and projected incomes of neighborhood residents for an average period of affordability for homebuyers in the neighborhood must support the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing. For example, an analysis shows that the housing is modestly priced within the housing market area and that families with incomes of 65 percent to 80 percent of the area median income can afford monthly payments under average FHA terms without other government assistance and housing will remain affordable at least during the next five to seven years compared to other housing in the market area; the size and amenities of the housing are modest and substantial rehabilitation will not significantly increase the market value; the neighborhood has housing that is not currently owned by the occupants, but the participating jurisdiction is encouraging homeownership in the neighborhood by providing homeownership assistance and by making improvements to the streets, sidewalks, and other public facilities and services. If a participating jurisdiction in preparing a neighborhood revitalization strategy under § 91.215(e)(2) of its Consolidated Plan has incorporated the type of market data described above, that submission may serve as the required analysis under this section. If the participating jurisdiction continues to provide homeownership assistance for housing in the neighborhood, it must

periodically update the market analysis to verify the original presumption of continued affordability.

(ii) *Recapture.* (A) Recapture provisions must require that the participating jurisdiction recoups all or a portion of the HOME assistance provided 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 amount of HOME funds that directly assisted the homebuyer to buy the housing unit. This amount includes any HOME assistance that assisted the homebuyer to purchase the housing or reduced the purchase price paid by the homebuyer from fair market value to an affordable price but excludes the amount of HOME assistance provided to develop the unit that does not assist the homebuyer or reduce the purchase price paid by the homebuyer. Recapture provisions may permit the subsequent homebuyer to assume the HOME assistance (subject to the HOME requirements for the remainder of the period of affordability) if the subsequent homebuyer is low-income and no additional HOME assistance is provided.

(B) The following options for recapture requirements are acceptable to HUD. The participating jurisdiction may adopt, modify, or develop its own recapture requirements for HUD approval. In establishing its recapture requirements, the participating jurisdiction is subject to the limitation that when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs.

(*1*) *Recapture entire amount.* The participating jurisdiction may recapture the entire amount of the HOME investment from the homeowner.

(*2*) *Reduction during period of affordability.* The participating jurisdiction may reduce the HOME investment amount to be recaptured on a pro rata basis for the time the homeowner has owned and occupied the housing measured against the required period of affordability.

(*3*) *Shared net proceeds.* If the net proceeds are not sufficient to recapture the full HOME investment (or a reduced amount as provided for in paragraph (a)(5)(ii)(A)(*2*) of this section) plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the participating jurisdiction may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

Formula 5 to Paragraph (a)(5)(ii)(A)(*2*)

$$\frac{\text{HOME investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{HOME amount to be recaptured}$$

$$\frac{\text{homeowner investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

(*4*) *Owner investment returned first.* The participating jurisdiction may permit the homebuyer to recover the homebuyer's entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HOME investment.

(*5*) *Amount subject to recapture.* The HOME investment subject to recapture is the amount of HOME funds that directly assisted the homebuyer to buy the housing. This includes the amount that assisted the homebuyer to purchase the housing or reduced the purchase price paid by the homebuyer from fair market value to an affordable price but excludes the amount of HOME assistance provided to develop the unit that did not assist the homebuyer or reduce the purchase price paid by the homebuyer. The recaptured funds must be used to carry out HOME-eligible activities in accordance with the requirements of this part. If the HOME assistance is only used for the development subsidy and therefore not subject to recapture, the resale option must be used.

(6) *Special considerations for single family properties with more than one unit.* If the HOME funds are only used to assist a low-income homebuyer to acquire one unit in single family housing containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit. If HOME funds are also used to assist the low-income homebuyer to acquire one or more rental units in the single-family housing, the affordability requirements of § 92.252 apply to the assisted rental units, except that the participating jurisdiction may impose resale or recapture restrictions on all assisted units (owner-occupied and rental units) in the single-family housing. If resale restrictions are used, the affordability requirements on all assisted units continue for the period of affordability. If recapture restrictions are used, the affordability requirements on the assisted rental units may be terminated, at the discretion of the participating jurisdiction, upon recapture of the HOME investment. If HOME funds are used to assist only the rental units in a single-family property, then the requirements of § 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of § 92.254.

(7) *Lease-purchases in the HOME program.* A homeownership project may consist of acquisition, rehabilitation, or new construction of housing to be sold to an eligible low-income homebuyer through a lease-purchase program.

(i) The homebuyer must qualify as a low-income family at the time of signing the lease-purchase agreement. In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing. If a family is also receiving HOME tenant-based rental assistance, the participating jurisdiction is not required to reexamine the family's income during the term of the lease-purchase agreement.

(ii) The owner and homebuyer must execute a lease-purchase agreement under an existing lease-purchase program prior to occupancy of the unit. The lease-purchase agreement must require the purchase of the housing within 36 months of execution. Owners and homebuyers that have entered into a lease-purchase agreement pursuant to the requirements in this paragraph are

subject to the affordability requirements in this section unless the housing is not purchased within the required timeframes in this paragraph in accordance with the lease-purchase agreement.

(iii) If the first homebuyer does not acquire the housing in accordance with the lease-purchase agreement, the owner must sell the housing to another eligible low-income homebuyer within 48 months from the execution of the original lease-purchase agreement. The next homebuyer is eligible for homeownership assistance from the participating jurisdiction. The owner is not permitted to sell the unit through another lease-purchase agreement. When the next homebuyer purchases the housing, the homebuyer shall be subject to the affordability requirements in this section.

(iv) If the owner is unable to sell the unit within 48 months from the execution of the lease-purchase agreement, the housing is subject to the requirements for affordable rental housing in § 92.252.

(8) *Contract to purchase.* If HOME funds are used to assist a homebuyer who has entered into a contract to purchase housing to be constructed, the homebuyer must qualify as a low-income family at the time the contract is signed.

(b) *Preserving affordability of housing assisted with HOME funds.* When there is a termination event for affordability restrictions, a participating jurisdiction may take the following actions to preserve the affordability of the property:

(1) The participating jurisdiction may exercise purchase options, rights of first refusal, or other preemptive rights to obtain ownership of the housing before foreclosure to preserve affordability, subject to the following requirements:

(i) The housing must be sold to an eligible homebuyer in accordance with paragraph (a)(3) of this section within 12 months of the date the participating jurisdiction obtains ownership;

(ii) The period of affordability for the eligible homebuyer must be equal to the remaining period of affordability of the former homeowner unless additional HOME funds are used to directly assist the eligible homebuyer (*i.e.,* homeownership assistance);

(iii) If the participating jurisdiction directly assists the eligible homebuyer with additional HOME funds, then the period of affordability must be recalculated in accordance with the table in § 92.254(a)(4) based on the total amount of additional HOME funds invested. The additional investment must be treated as a new project; and

(iv) The total HOME funds for a project (original investment plus additional investment) must not exceed the per-unit subsidy limit in § 92.250(a) in effect at the time of the additional investment, subject to HUD approval.

(2) The participating jurisdiction may use additional HOME funds for the following costs:

(i) The cost for the participating jurisdiction to obtain ownership of the HOME-assisted housing through a purchase option, right of first refusal, or other preemptive right before foreclosure or at the foreclosure sale. This cost must be treated as an amendment to the original project. The foreclosure costs to acquire housing with a HOME loan in default is an eligible cost; however, HOME funds may not be used to repay a loan made with HOME funds.

(ii) The cost of the participating jurisdiction to undertake any necessary rehabilitation for the housing acquired. This includes the rehabilitation required for the housing to meet applicable property standards in § 92.251. This cost must be treated as an amendment to the original project.

(iii) The cost to the participating jurisdiction of owning the housing pending resale to another homebuyer. This cost must be treated as an amendment to the original project.

(iv) The cost to assist an eligible homebuyer in purchasing the housing. This cost must be treated as a cost for a new project and not as an amendment to the original project.

(v) As an alternative to charging costs to the HOME program under § 92.206, the participating jurisdiction may charge the costs to the HOME program under § 92.207 as a reasonable administrative cost of its HOME program. To the extent administrative funds are used, they may be reimbursed, in whole or in part, when the housing is sold to a new eligible homebuyer. If the housing is sold for more than the amount of administrative funds that the participating jurisdiction expended to preserve the affordability, then the excess sale proceeds shall be program income.

(3) The participating jurisdiction may permit the Community Land Trust, as defined in § 92.2, that originally developed the HOME-assisted housing, to exercise a purchase option, right of first refusal, or other preemptive right to obtain ownership of the housing to preserve affordability, including but not limited to the right to purchase the housing in lieu of foreclosure, under the following conditions:

(i) The Community Land Trust obtains ownership of the housing, subject to existing HOME affordability restrictions;

(ii) The housing must be resold to an eligible homebuyer in accordance with paragraph (a)(3) of this section within 12 months;

(iii) The period of affordability for the eligible homebuyer is equal to the remaining period of affordability of the former homeowner, unless the participating jurisdiction provides additional HOME funds to directly assist the eligible homebuyer in accordance with subparagraph (b)(3)(iv) below (*i.e.,* homeownership assistance); and,

(iv) The participating jurisdiction may not provide additional HOME funds to the Community Land Trust to obtain ownership, rehabilitate the housing, own/hold the housing pending resale to the next homebuyer, or provide homeownership assistance to the next eligible homebuyer. The participating jurisdiction may provide homeownership assistance to the next eligible homebuyer and the period of affordability shall be based upon the homeownership assistance provided to the homebuyer, in accordance with subparagraphs (b)(1)(iii) and (b)(1)(iv) of this section.

* * * * *

(f) *Providing homeownership assistance through lenders.* Subject to the requirements of paragraph (f) of this section, the participating jurisdiction may provide homeownership assistance through a lending institution that is a contractor or nonprofit lending institution that is a subrecipient that also provides the first mortgage loan to a low-income family.

* * * * *

(g) * * *

(1) Underwriting standards for homeownership assistance to determine the amount of assistance necessary to achieve sustainable homeownership. These standards must evaluate the projected overall debt of the family after the purchase of the housing, the maximum amount that a participating jurisdiction may provide a family, the appropriateness of the amount of assistance, assets available to a family to acquire the housing, and financial resources to sustain homeownership. A participating jurisdiction may not provide a single, fixed amount of assistance to each homebuyer that participates in the participating jurisdiction's homebuyer program;

* * * * *

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

■ 29. Revise § 92.255 to read as follows:

§ 92.255 Purchase of HOME units by in-place tenants.

(a) During a HOME-assisted rental unit's period of affordability, the participating jurisdiction may permit an owner to sell or otherwise convey a HOME-assisted rental unit to an existing tenant in accordance with the requirements of § 92.254. However, refusal by the tenant to purchase the housing does not constitute good cause for termination of tenancy or failure to renew the lease. The participating jurisdiction may not permit the use of a lease-purchase program under this section.

(b) If no additional HOME funds are used to enable the tenants to become homeowners, the homeownership units are subject to a period of affordability equal to the remaining period of affordability if the units continued as rental units. The participating jurisdiction must impose resale requirements that comply with § 92.254(a) for the required period of affordability. The period of affordability and resale restrictions must be applied to the property regardless of the income of the family at purchase. If the tenant's family is no longer low-income at the time of the purchase, then the family must occupy the housing as a principal residence in accordance with § 92.254(a)(3) and must agree to the imposition of resale restrictions on the housing, in accordance with § 92.254(a)(5), for the period of affordability specified in this paragraph (b).

(c) If additional HOME funds are used to directly assist the tenants to become homeowners, the period of affordability is the remaining period of affordability if the unit had remained a rental unit or the required period under § 92.254(a)(4) for the amount of direct homeownership assistance provided, whichever is longer. No additional HOME funds may be provided to an in-place tenant to become a homebuyer if the tenant's family is no longer low-income at the time of the purchase.

§ 92.258 [Amended]

■ 30. Amend § 92.258 by:

■ a. Removing the words ''single-family dwelling'' and adding in their place the words ''single family housing units'' in paragraph (a);

■ b. Removing the word ''single-family'' and adding in their place the words ''single family'' paragraph (b)(1); and

■ c. Removing the words ''affordability period'' and adding in their place the words ''period of affordability'' paragraphs (c) and (d)(3) introductory text; and

■ d. Removing ''§ 92.252(e)'' and adding in its place ''§ 92.252(d)'' in paragraph (d)(3) introductory text.

■ 31. Amend § 92.300 by:

■ a. Removing the words ''developed or sponsored'' and adding in their place the words ''developed, or sponsored'' in the first sentence of paragraph (a) introductory text;

■ b. Revise paragraphs (a)(2) through (4) and (a)(5) introductory text;

■ c. Removing the word ''nonprofit'' and adding in its place the words ''private nonprofit'' in paragraph (a)(5)(iii) introductory text;

■ d. Removing ''community development housing organization'' and adding in its place ''community housing development organization'' and by removing the word ''new'' in paragraph (a)(6) introductory text;

■ e. Revising paragraphs (a)(6)(i), (a)(6)(ii)(A), and (a)(7) and the last sentence of paragraph (b);

■ f. Removing the words ''developed or sponsored'' and adding in their place the words ''developed, or sponsored'' and by removing the words ''and specifies'' and adding in their place the words ''and must specify'' in paragraph (e); and

■ g. Revising the first sentence of paragraph (f).

The revisions read as follows:

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

(a) * * *

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

(3) Rental housing is ''developed'' by the community housing development organization if the community housing development organization is the owner in fee simple absolute (or has a long term ground lease running for the full period of affordability in § 92.252) and the developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for rent to low-income families in accordance with § 92.252. To be the ''developer,'' the community housing development organization may share developer responsibilities with another entity but must be in charge of all aspects of the development process, including selecting the site, obtaining permit approvals and all project financing, selecting architects, engineers, and general contractors, overseeing project progress, and determining the reasonableness of costs. The requirement that a community housing development organization is in charge of all aspects of the development process must be enforceable through a written agreement (*e.g.,* a joint venture agreement or master development agreement). At a minimum, the community housing development organization must own the housing during development and for a period at least equal to the period of affordability in § 92.252. The participating jurisdiction may permit the community housing development organization to sell or otherwise convey the housing to a nonprofit organization other than a community housing development organization, subject to all applicable requirements of this part, if the participating jurisdiction determines and documents that the community housing development organization no longer has the capacity to own and manage the housing for the full period of affordability and there are no other community housing development organizations within the jurisdiction with capacity to own and manage the project for the full period of affordability.

(4) Rental housing is ''sponsored'' by the community housing development organization if it is rental housing ''owned'' or ''developed'' in accordance with paragraph (a)(2) or (3) of this section, as applicable, by a subsidiary of a community housing development organization, a limited partnership of which the community housing development organization or its subsidiary is the managing general partner, or a limited liability company

of which the community housing development organization or its subsidiary is the 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 or its subsidiary to be removed as the managing general partner or managing member, the agreement must provide that the removal must be for cause and that the community housing development organization must be replaced with another community housing development organization.

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

(5) HOME-assisted rental housing is also ''sponsored'' by a community housing development organization if the community housing development organization ''developed'' the rental housing project in accordance with paragraph (a)(3) of this section and agrees to convey the project to an identified private nonprofit organization at a predetermined time after completion of the project. Sponsored rental housing, as provided in this paragraph (a)(5), is subject to the following requirements:

* * * * *

(6) * * *

(i) To be the ''developer,'' the community housing development organization may share the developer role with another entity but must be in charge of all aspects of the development process, including selecting the site, obtaining permit approvals and all project financing, selecting architects, engineers, and general contractors, overseeing project progress, determining the reasonableness of costs, identifying eligible homebuyers, and overseeing the sale of homeownership units. The community housing development organization may provide direct homeownership assistance (*e.g.,* assistance with a downpayment, payment of closing costs, mortgage rate buy-downs, etc.) when it sells the housing to low-income families and the community housing development organization will not be considered a subrecipient. The HOME funds for homeownership assistance shall not be greater than 10 percent of the amount of HOME funds for development of the housing.

(ii) * * *

(A) While proceeds retained by the community housing development organization 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.

* * * * *

(7) The participating jurisdiction must determine the form of assistance (*e.g.,* grant or loan) in accordance with § 92.205(b) that it will provide to the community housing development organization for a rental housing project under paragraph (a)(4) of this section and must provide the assistance directly to the entity that owns the project.

(b) * * * If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable community housing development organizations, up to 20 percent of the minimum community housing development organization set aside specified in paragraph (a) of this section (but not more than $150,000 during the 24 month period) may be committed to an organization that meets the definition of ''community housing development organization'' in § 92.2, except for the requirements in paragraph (9) of the definition, in order to develop demonstrated capacity and qualify as a community housing development organization in the jurisdiction.

* * * * *

(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 $50,000 or 50 percent of the community housing development organization's total operating expenses in that fiscal year, whichever is greater.

* * *

■ 32. Revise § 92.302 to read as follows:

§ 92.302 Housing education and organizational support.

HUD is authorized to provide education and organizational support assistance, in conjunction with HOME funds made available to community housing development organizations in accordance with section 233 of the Act.

(a) HUD will issue a publication in the **Federal Register** announcing the availability of funding under this section, as appropriate. The publication need not include funding for each of the eligible activities but may target funding from among the eligible activities.

(b) Notwithstanding the definition of ''community land trust'' in § 92.2, HUD may provide housing education and organizational support assistance under this section to a community land trust only if the following requirements are met:

(1) The community land trust meets the definition of a ''community housing development organization'' at § 92.2, except for the requirements in paragraphs (9) and (10) of the definition.

(2) The community land trust is established to complete the activities in paragraph (b)(3) of this section.

(3) The community land trust:

(i) Acquires land to hold in perpetuity and primarily for conveyance under long-term ground leases;

(ii) Transfers ownership of any structural improvements located on such leased land to the lessees; and

(iii) Retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity;

(4) The community land trust's corporate membership is open to residents of a particular geographic area, as specified in the organization's bylaws; and

(5) The board of directors:

(i) Includes a majority of members who are elected by the corporate membership; and

(ii) Is composed of equal numbers of lessees pursuant to paragraph (b)(2)(ii), members who are not lessees, and any other category of persons described in the organization's bylaws.

§ 92.351 [Amended]

■ 33. Amend § 92.351 by removing the words ''downpayment assistance'' and adding in their place the words ''homeownership assistance'' and removing the words ''If participating'' and adding in their place the words ''If the participating'', and by removing the citation ''§ 92.253(d)(3)'' and adding in its place the citation ''§ 92.253(e)(3)'' in in paragraph (a)(1).

§ 92.352 [Amended]

■ 34. Amend § 92.352 by:

■ a. Removing the words ''the cost'' and adding in their place the word ''cost'' in paragraph (a); and

■ b. Removing the word ''decisionmaking'' and adding in its place the words ''decision making'' in paragraph (b)(1).

■ 35. Amend § 92.353 by:

■ a. Removing the words ''preceded by at least 30 days advance written notice

to the tenant specifying the grounds for the action'' and adding in their place the words ''in accordance with § 92.253'' in paragraph (c)(2)(ii)(A); and

■ b. Revising paragraph (c)(2)(ii)(C).

The revision reads as follows:

§ 92.353 Displacement, relocation, and acquisition.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) For purposes of the URA, the person meets the definition of ''persons not displaced'' as defined in 49 CFR 24.2; or

* * * * *

§ 92.354 [Amended]

■ 36. Amend § 92.354 in paragraph (a)(2) by removing the word ''single-family'' and adding in its place the words ''single family''.

■ 37. Amend § 92.356 by:

■ a. Revising paragraph (d)(1);

■ b. Redesignating paragraphs (e)(2) through (6) as paragraphs (e)(3) through (7), respectively;

■ c. Adding new paragraph (e)(2); and

■ d. Removing the citation ''§ 92.252(e)'' and adding in its place the citation ''§ 92.252(d)'' in paragraph (f)(1).

The revisions and additions read as follows:

§ 92.356 Conflict of interest.

* * * * *

(d) * * *

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict (public disclosure is considered a combination of at least two of the following: publication on the recipient's website, including social media; electronic mailings; media advertisements; public service announcements; and display in public areas such as libraries, grocery store bulletin boards, and neighborhood centers), evidence of the public disclosure, and a description of how the public disclosure was made; and

* * * * *

(e) * * *

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

* * * * *

§ 92.359 [Amended]

■ 38. Amend § 92.359 in paragraph (f) by removing the words ''affordability period'' and adding in their place the words ''period of affordability''.

■ 39. Amend § 92.454 by:

■ a. Removing the word ''and'' in paragraph (a)(3);

■ b. Removing the text ''participating jurisdiction.'' and adding in its place the text ''participating jurisdiction; and'' in paragraph (a)(4);

■ c. Adding paragraph (a)(5); and

■ d. Removing the words ''participating jurisdictions that'' and adding in their place the words ''participating jurisdictions whose funds were reduced under § 92.551 or that'' in paragraph (b).

The addition reads as follows:

§ 92.454 Reallocations by formula.

(a) * * *

(5) Any HOME funds available for reallocation as a result of any reductions under 24 CFR 92.551 or 92.552.

* * * * *

■ 40. Amend § 92.500 by revising paragraph (c)(2)(ii) to read as follows:

§ 92.500 The HOME Investment Trust Fund.

* * * * *

(c) * * *

(2) * * *

(ii) The statute or local ordinance requires repayments from its own affordable housing trust fund to be made to the local account;

* * * * *

■ 41. Amend § 92.502 by:

■ a. Revising paragraph (b);

■ b. Removing the words ''set-up'' in paragraph (c)(1); and

■ c. Revising paragraphs (d)(1) and (2).

The revisions read as follows:

§ 92.502 Program disbursement and information system.

* * * * *

(b) *Project funding.* After the participating jurisdiction executes the HOME Investment Partnership Agreement, submits the applicable banking and security documents, complies with the environmental requirements under 24 CFR part 58 for release of funds, and commits funds to a specific local project, the participating jurisdiction may provide funding to an activity by identifying specific investments in the disbursement and information system. The participating jurisdiction is required to enter complete project set-up information before providing funding to the project.

* * * * *

(d) * * *

(1) Complete project completion information must be entered into the disbursement and information system, or otherwise provided to HUD.

(2) Additional HOME funds may be committed to a project up to one year after project completion, but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250 at the time of underwriting.

* * * * *

■ 42. Amend § 92.504 by:

■ a. Revising the section heading and paragraph (b) and revising and republishing paragraph (c); and

■ b. Removing paragraph (d).

The revisions and republication read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements.

* * * * *

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity, the participating jurisdiction must enter into a legally binding written agreement with that entity. Before disbursing any HOME funds to any entity, a State recipient, subrecipient, or contractor that is administering all or a part of the HOME program on behalf of the participating jurisdiction, must also enter into a legally binding written agreement with that entity. The written agreement must ensure compliance with the requirements of this part and be a separate agreement from project financing documents (*e.g.,* mortgage or deed of trust, regulatory agreement, or promissory note).

(c) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. This section details basic requirements and the minimum provisions by role and type of entity that must be included in a written agreement.

(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 homeownership assistance, or provide tenant-based rental assistance, including the anticipated 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 homeownership assistance), tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects that meet the deadlines established by this part), a budget for each program, and any requirement for matching contributions. These items must be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the period of affordability. The agreement must require a means of enforcement of the affordability requirements by the State participating jurisdiction or, if the State recipient will be the owner at project completion of the affordable housing, the intended beneficiaries. The means of enforcement may include liens on real property, deed or use restrictions, a recorded agreement restricting the use of the property, covenants running with the land, or other mechanisms approved by HUD in writing, under which the participating jurisdiction has the right to require specific performance. The agreement must establish whether repayment of HOME funds must be remitted to the State or retained by the State recipient for additional eligible activities.

(iii) *Program income.* The agreement must state whether program income is to be remitted to the State or retained by the State recipient for additional eligible activities.

(iv) *Uniform administrative requirements.* The agreement must require the State recipient to comply with applicable uniform administrative requirements, as described in § 92.505.

(v) *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. For any projects involving HOME rental housing, tenant-based rental assistance, or security deposit assistance, the agreement must require that the applicable HOME tenancy addendum is used in accordance with § 92.253 for all HOME-assisted units or tenants.

(vi) *Other program requirements.* The agreement must require the State recipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the State recipient does not assume the State's responsibilities for release of funds under § 92.352 and the intergovernmental review process in § 92.357 does not apply to the State recipient. If HOME funds are provided for development of rental housing or provision of tenant-based rental assistance, the agreement must set forth all obligations the State imposes on the State recipient in order to meet the Violence Against Women Act (VAWA) requirements under § 92.359, including notice obligations and any obligations with respect to the emergency transfer plan (including whether the State recipient must develop its own plan or follow the State's plan).

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

(viii) *Requests for disbursement of funds.* The agreement must specify that the State recipient may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the State recipient requests funds from the State.

(ix) *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 State in meeting its recordkeeping and reporting requirements.

(x) *Enforcement of the written agreement.* The agreement must specify remedies for breach of the provisions of the written agreement. The agreement must specify that, in accordance with 2 CFR 200.339, suspension or termination may occur if the State recipient materially fails to comply with any term of the agreement. The State may permit the agreement to be terminated in whole or in part in accordance with 2 CFR 200.340.

(xi) *Written agreement.* Before providing HOME funds to any owner, community housing development organization, subrecipient, homeowner, homebuyer, tenant (or landlord) receiving tenant-based rental assistance, or contractor providing services to or on behalf of the State recipient, the State recipient must have a fully executed written agreement with such person or entity that meets the requirements of this section. For affordable housing assisted with HOME funds, the State recipient must provide HOME funds directly to the owner under the terms and conditions of the written agreement. The agreement must establish that any repayment on any form of assistance of HOME funds must be remitted to the State or, if permitted by the State, retained by the State recipient for additional eligible activities.

(xii) *Duration of the agreement.* The duration of the agreement will depend on which functions the State recipient performs (*e.g.,* whether the State recipient or the State has responsibility for monitoring rental projects for the period of affordability) and which activities are funded under the agreement.

(xiii) *Fees.* The agreement must prohibit the State recipient and its subrecipients and community housing development organizations from charging for any of the prohibited costs listed in § 92.214, including but not limited to servicing, origination, processing, inspection, or other fees for the costs of administering a HOME program.

(2) *Subrecipient.* 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 the following:

(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 anticipated type and number of housing projects to be funded (*e.g.,* the number of single family homeowner loans to be made or the number of homebuyers to receive homeownership assistance), tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects in accordance with deadlines established by this part), a budget, any requirement for matching contributions, and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement.

(ii) *Program income.* The agreement must state if program income is to be remitted to the participating jurisdiction or retained by the subrecipient for additional eligible activities.

(iii) *Uniform administrative requirements.* The agreement must require the subrecipient to comply with applicable uniform administrative requirements, as described in § 92.505.

(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 out environmental review responsibilities before HOME funds are committed to a project. If the subrecipient is administering a HOME rental housing program or tenant-based rental assistance program on behalf of the participating jurisdiction, the participating jurisdiction must set forth in the written agreement all obligations of the subrecipient to meet the VAWA requirements under § 92.359, including notice obligations and obligations under the emergency transfer plan.

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

(vi) *Requests for disbursement of funds.* The agreement must specify that the subrecipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subrecipient requests funds from the participating jurisdiction.

(vii) *Reversion of assets.* The agreement must specify that upon expiration of the agreement, the subrecipient must transfer to the participating jurisdiction any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(viii) *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.

(ix) *Enforcement of the written agreement.* The agreement must specify remedies for breach of the provisions of the written agreement. The agreement must specify that, in accordance with 2 CFR 200.339, suspension or termination may occur if the subrecipient materially fails to comply with any term of the agreement. The participating jurisdiction may permit the agreement to be terminated in whole or in part in accordance with 2 CFR 200.340.

(x) *Written agreement.* Before the subrecipient provides HOME funds to any owner, community housing development organization, subrecipient, homeowner, homebuyer, tenant (or landlord) receiving tenant-based rental assistance, or contractor providing services to or on behalf of the subrecipient, the subrecipient must have a fully executed written agreement with such entity that meets the requirements of this section. For housing projects assisted with HOME funds, the subrecipient must provide HOME funds directly to the owner under the terms and conditions of the written agreement. The agreement must establish whether repayment of HOME funds must be remitted to the participating jurisdiction or may be retained by the subrecipient for additional eligible activities.

(xi) *Fees.* The agreement must prohibit the subrecipient from charging for any of the prohibited costs listed in § 92.214, including but not limited to servicing, origination, or other fees for the costs of administering the HOME program.

(xii) *Project requirements.* The agreement must require enforcement of project requirements in subpart F of this part, as applicable in accordance with the type of project assisted. For any projects involving HOME rental housing, tenant-based rental assistance, or security deposit assistance, the agreement must require that the applicable HOME tenancy addendum is used in accordance with § 92.253 for all HOME-assisted units or tenants.

(3) *For-profit or nonprofit housing owner (other than a community housing development organization or 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. The HOME assistance must be provided directly to the owner under the terms and conditions of a written agreement that complies with the requirements of this part and contains the following:

(i) *Use of the HOME funds.* The agreement between the participating jurisdiction and a for-profit or nonprofit housing owner must include the address of the project or the legal description of the property if a street address has not been assigned to the property, the specific amount and 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. If HOME funds are being used to reimburse costs incurred not more than 24 months before the date that the HOME funds are committed to the project, the written agreement must explicitly permit the use of HOME funds for costs described in § 92.206(d)(1). The agreement must state that any and all repayments made by the owner on HOME assistance (*e.g.,* grants or loans) must be remitted to the participating jurisdiction, unless the participating jurisdiction permits a subrecipient or State recipient to retain the funds.

(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 period of affordability. The agreement must require a means of enforcement of the affordability requirements by the participating jurisdiction and the intended beneficiaries. The means of enforcement may include liens on real property, deed or use restrictions, a recorded agreement restricting the use of the property, covenants running with the land, or other mechanisms approved by HUD in writing, under which the participating jurisdiction has the right to require specific performance.

(A) If an owner is undertaking a rental project, the agreement must establish the initial rents, the procedures for rent increases pursuant to § 92.252(e)(2), the number of HOME units, the size of the HOME units, the designation of the HOME units as fixed or floating, and include the requirement that the owner provide the address (*e.g.,* street address and apartment number) of each HOME unit no later than the time of initial occupancy. In accordance with § 92.252(g), the written agreement must specify the option in § 92.203(b)(1) that the participating jurisdiction selected for calculating annual income.

(B) If the owner 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. If the owner is a Community Land Trust, as defined in § 92.2, the Community Land Trust may preserve affordability in accordance with § 92.254.

(iii) *Project requirements.* As applicable and in accordance with the type of project assisted, the agreement must require compliance with the project requirements in subpart F of this part, including compliance with tenant protections in 24 CFR 92.253. 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(e).

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

(v) *Other program requirements.* The agreement must require the owner to carry out each project in compliance with the following requirements of subpart H of this part:

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

(B) The Federal and nondiscrimination requirements in § 92.350.

(C) Any displacement, relocation, and acquisition requirements imposed by the participating jurisdiction consistent with § 92.353.

(D) The labor requirements in § 92.354.

(E) The conflict of interest provisions prescribed in § 92.356(f).

(F) If HOME funds are being provided to develop rental housing, the agreement must set forth all obligations the participating jurisdiction imposes on the owner in order to meet the VAWA requirements under § 92.359, including the owner's notice obligations and owner obligations under the emergency transfer plan.

(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 written agreement must require the owner of rental housing to annually provide the participating jurisdiction with information on rents (including rental amounts charged to the tenant), and occupancy of HOME-assisted units to demonstrate compliance with § 92.252. If the rental housing project has floating HOME units, the written agreement must require that the owner provide the participating jurisdiction with information regarding unit substitution and filling vacancies so that the project remains in compliance with § 92.252. 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 written agreement.* The agreement must specify remedies for breach of the provisions of the written agreement. The agreement must require a means of enforcement of the affordability requirements by the participating jurisdiction and the intended beneficiaries. The means of enforcement may include liens on real property, deed or use restrictions, a recorded agreement restricting the use of the property, covenants running with the land, or other mechanisms approved by HUD in writing, under which the participating jurisdiction has the right to require specific performance.

(viii) *Requests for disbursement of funds.* The agreement must specify that the owner may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(ix) *Duration of the agreement.* The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the period of affordability required by the participating jurisdiction under § 92.252. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the low-income family.

(x) *Fees.* The agreement must state the fees that may be charged by the owner in accordance with § 92.214(b)(4) and prohibit owners from charging tenants for any of the prohibited charges listed in § 92.214(b), including but not limited to fees that are not customarily charged in rental housing, such as laundry room access fees. The agreement must also prohibit the owner undertaking a homeownership project from charging servicing, origination, processing, inspection, or other fees for the costs of providing homeownership assistance.

(4) *Contractor.* The participating jurisdiction selects a contractor through applicable procurement procedures and requirements. The contractor provides goods or services in accordance with a written agreement (the contract). For contractors who are administering any 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:

(i) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and budget.

(ii) *Program requirements.* The agreement must provide that the contractor is subject to the requirements in this part that are applicable to the participating jurisdiction, except for §§ 92.505 and 92.506, and the contractor cannot assume the participating jurisdiction responsibilities for environmental review, decision making, and action under § 92.352. The agreement must provide that the requirements at 2 CFR part 200 applicable to a contractor apply. The agreement must list the requirements applicable to the activities the contractor is administering. If applicable to the work under the contract, the agreement must set forth all obligations the participating jurisdiction imposes on the contractor in order to meet the VAWA requirements under § 92.359, including any notice obligations and any obligations under the emergency transfer plan.

(iii) *Duration of agreement.* The agreement must specify the duration of the contract.

(5) *Homebuyer, homeowner, tenant, or owner receiving tenant-based rental or security deposit assistance.* When a participating jurisdiction provides assistance to a homebuyer, homeowner, tenant, or owner for tenant-based rental assistance, the written agreement may take many forms depending upon the nature of assistance. At minimum, it must include the following:

(i) For homebuyers, the agreement must contain the requirements in § 92.254(a), the value of the property, principal residence, lease-purchase, if applicable, and the resale or recapture provisions.

(A) The agreement must specify the amount of HOME funds, the form of assistance, (*e.g.,* grant, amortizing loan, deferred payment loan), the use of the funds (*e.g.,* downpayment, closing costs, rehabilitation), and the time by which the housing must be acquired.

(B) For existing housing that is acquired for homeownership, the agreement must require the participating jurisdiction to inspect the housing to determine that the project meets the property standards in § 92.251 and require compliance with the requirements in § 92.251(c)(3).

(ii) For homeowners, the agreement must contain the requirements in § 92.254(b) and specify the amount and form of HOME assistance, rehabilitation work to be undertaken, date for completion, and property standards to be met.

(iii) For tenants or owners receiving payments under a HOME tenant-based rental assistance program, the rental assistance contract or the security deposit assistance contract must meet the requirements in § 92.209 and applicable requirements in § 92.253.

(6) *Community housing development organization.* When HOME funds are provided to a community housing development organization, the requirements in the written agreement depend upon the type of HOME assistance. At minimum, the agreement must comply with the following requirements for the type of HOME assistance:

(i) *Using set-aside funds under § 92.300 for affordable housing.* The written agreement must contain the requirements described in paragraph (c)(3) of this section and the following additional requirements:

(A) *Role of community housing development organization.* The agreement must state whether the community housing development organization will own, develop, or sponsor rental housing, as described in § 92.300(a)(2) through (5), and require the community housing development organization to comply with the applicable requirements in § 92.300(a), based on its role.

(B) *Developer of homeownership housing—*(*1*) *Retaining proceeds and recaptured funds.* If the community development organization is a ''developer'' of homeownership housing, as defined in § 92.300(a)(6), the agreement must specify whether 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. A participating jurisdiction may permit a community housing development organization to retain recaptured funds for additional HOME projects pursuant to the written agreement required under this paragraph.

(*2*) *Providing homeownership assistance.* If a community housing development organization is providing homeownership assistance, then the agreement between the participating jurisdiction and the community housing development organization must describe the amount and use of the HOME funds for homeownership assistance, the number of homebuyers to receive homeownership assistance, any requirement for matching contributions, and the period of the agreement. The HOME funds for homeownership assistance shall not be greater than 10 percent of the amount of HOME funds for development of the housing. The community housing development organization must enter into agreements with homebuyers that meet the requirements in paragraph (c)(5)(i) of this section.

(C) *Sharing of developer responsibilities.* If the community housing development organization will share developer responsibilities with another entity pursuant to § 92.300(a)(3) or (6), the participating jurisdiction must enter into a written agreement only with the community housing development organization. The written agreement must require the community housing development organization to enter into a separate agreement with the co-developer. At minimum, the agreement between the community housing development organization and its co-developer must contain the following:

(*1*) The responsibilities of the community housing development organization and co-developer with descriptions of the responsibilities in sufficient detail to demonstrate compliance with § 92.300(a)(3) or (a)(6), as applicable;

(*2*) A description of the amount of developer fee and other compensation, if any, to be paid to the co-developer;

(*3*) A description of any ownership interest in the community housing development organization and, if applicable, any membership or partnership interest in the owner held by the co-developer; and

(*4*) A provision that the agreement's terms and conditions are subject to review by the participating jurisdiction and if such terms and conditions affect a project's compliance with HOME requirements, the terms and conditions are subject to approval by the participating jurisdiction.

(ii) *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. If the community housing development organization is also receiving funds for a project, there must be a separate written agreement that complies with this section for the use of HOME funds for the project and the agreement must contain the applicable requirements in paragraph (c)(6)(i) of this section.

(iii) *Receiving assistance for project-specific technical assistance and site control loans or project-specific seed money loans.* The agreement must identify the specific site or sites and describe the amount and use of the HOME funds (in accordance with § 92.301), including a budget for work, a period of performance, and a schedule for completion. The agreement must also set forth the basis upon which the participating jurisdiction may waive repayment of the loans, consistent with § 92.301, if applicable.

(7) *Technical assistance provider to develop the capacity of community housing development organizations in the jurisdiction.* The agreement must identify the specific nonprofit organization(s) to receive capacity building assistance. The agreement must describe the amount and use (scope of work) of the HOME funds, including a budget, a period of performance, and a schedule for completion.

■ 43. Amend § 92.505 by revising the first sentence to read as follows:

§ 92.505 Applicability of uniform administrative requirements.

The requirements of 2 CFR part 200 apply to participating jurisdictions, State recipients, and subrecipients receiving HOME funds, except for the following provisions: §§ 200.306, 200.307, 200.308 (not applicable to participating jurisdictions), 200.311 (except as provided in § 92.257), 200.312, 200.328, 200.330, 200.334, 200.335, and 200.344 (except as provided in § 92.507). * * *

■ 44. Revise § 92.507 to read as follows:

§ 92.507 Closeout.

This section specifies the procedure and actions that must be completed by a participating jurisdiction and HUD to closeout a grant. The requirements of 2 CFR 200.344 apply to closeouts, except to the extent that such requirements conflict with the following:

(a) *Closeout process.* (1) HUD will close out a grant after the period of performance has ended. A participating jurisdiction must complete all required activities and closeout actions for the grant, as required by HUD. If the participating jurisdiction fails to complete the requirements in accordance with this section, HUD may close out the Federal award with the information available. HUD may close out individual grants or multiple grants simultaneously.

(2) To prepare for closeout, before the end of the budget period of the grant, the participating jurisdiction shall. review all eligible activities under the grant and reconcile its accounts as follows:

(i) For any eligible costs incurred under the grant and not yet drawn down from the U.S. Treasury account, the grantee must draw down those funds in a timely manner.

(ii) The participating jurisdiction must promptly refund to the proper accounts any previously disbursed balances of unobligated cash paid in advance. All such refunds must be completed prior to submission of the information and reports required in paragraph (b) of this section.

(3) At the end of the grant budget period, no additional eligible activities may be undertaken by the participating jurisdiction using the grant funds and no additional eligible costs incurred after the budget period may be submitted by the participating jurisdiction. Unused funds remaining on the grant will be returned to the U.S. Treasury by HUD. The participating jurisdiction must promptly refund any unused grant funds not authorized to be retained, consistent with HUD's instructions.

(4) HUD will initiate closeout actions in the computerized disbursement and information system when the participating jurisdiction has met the requirements established in paragraph (b) of this section.

(i) If the participating jurisdiction does not submit and enter all required data, information, and reports or complete the actions described in paragraph (b) of this section, HUD will proceed to close out the grant with the information available within one year of the period of performance end date.

(ii) HUD may report the participating jurisdiction's material failure to comply with the terms and conditions of the award or requirements or the requirements of this section in *SAM.gov.* HUD may also pursue other enforcement actions in 2 CFR 200.339.

(5) A participating jurisdiction may request, and HUD may provide an extension of the period of performance or closeout deadlines provided good cause is demonstrated.

(b) *Actions required for closeout.* A participating jurisdiction must complete the following actions for closeout of the grant:

(1) Submit a complete and final Federal Financial Report for the grant to HUD within 120 days of the end date of the period of performance, as indicated in the grant agreement;

(2) Demonstrate that it has fulfilled all programmatic and administrative requirements for the project (*i.e.,* property inspections, obtaining certificates of occupancy, etc.) within the period of performance in accordance with 2 CFR 200.344(a);

(3) Enter all data for activities in the computerized disbursement and information system established by HUD, within one year from the end of the period of performance, as required by the grant agreement;

(4) Demonstrate that all HOME-assisted units are occupied by eligible occupants by entering accurate beneficiary data in the computerized disbursement and information system established by HUD, within one year from the end of the period of performance, as required by the grant agreement;

(5) Comply with the requirements in 2 CFR 200.313(e) for the disposition of any equipment acquired under one or more HOME grants, that is no longer needed for the HOME program, or for other activities previously supported by a Federal agency;

(6) Resolve and close all HOME monitoring findings for the grant (if applicable);

(7) Resolve and close all OIG audit findings for the grant (if applicable);

(8) Resolve and close all Single Audit findings for the grant (if applicable);

(9) Carry out all other responsibilities under the grant agreement and applicable laws and regulations satisfactorily; and

(10) Complete a closeout certification prepared by HUD. The certification shall identify the grant being closed out and include provisions with respect to the following:

(i) Identification of any unused grant funds that were returned to the U.S. Treasury by HUD;

(ii) Compliance with the recordkeeping requirements in § 92.508, including maintaining program, project, financial, program administration, community housing development organization records, records concerning other Federal requirements, and such other records as necessary to carry out responsibilities for the grant by the participating jurisdiction, its State recipients, and subrecipients;

(iii) Monitoring and enforcement of the requirements for all HOME-assisted units set forth in this part for the period specified in the HOME written agreement with the property owner;

(iv) Compliance with use of program income, recaptured funds, and repayments in accordance with § 92.503. If the jurisdiction is not a participating jurisdiction (as a State, metropolitan city, urban county, consortium, or consortium member) when it receives funds, the funds are not subject to the requirements of this part;

(v) All actions required in 2 CFR 200.344 applicable to the grant have been taken by the participating jurisdiction;

(vi) All actions required in 2 CFR 200.344 applicable to the participating jurisdiction's subrecipients have been taken;

(vii) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) and (2) of this section;

(viii) Acknowledge future monitoring by HUD, including that findings of noncompliance may be taken into account by HUD as unsatisfactory performance of the participating jurisdiction and in any risk-based assessment of a future grant award under this part; and

(ix) Unless otherwise provided in a closeout certification, the Consolidated Plan will remain in effect after closeout until the expiration of the program year covered by the most recent Consolidated Plan.

(c) *Post closeout adjustments and continuing responsibilities.* The closeout of a grant does not affect any of the obligations required under this part and under 2 CFR 200.345, including:

(1) The right of HUD to disallow costs and recover funds on the basis of a later audit or other review. HUD must make any cost disallowance determination and notify the participating jurisdiction within the record retention period;

(2) Compliance with the requirements in § 92.508;

(3) Compliance with the requirements in § 92.509;

(4) Records retention as required in 2 CFR 200.345, as applicable;

(5) Monitoring and enforcement of the requirements for all HOME-assisted units set forth in this part for the period of affordability specified in the HOME written agreement with the property owner;

(6) Compliance with use of program income, recaptured funds, and repayments in accordance with § 92.503. If the jurisdiction is not a participating jurisdiction (as a metropolitan city, urban county, State, consortium, or consortium member) when it receives funds, the funds are not subject to the requirements of this part;

(7) Compliance with the requirement in 2 CFR 200.345(a)(2) that the participating jurisdiction return any funds due as a result of a later refund, corrections, or other transactions including final indirect cost rate adjustments; and

(8) Compliance with the audit requirements at 2 CFR part 200, subpart F).

■ 45. Amend § 92.508 by:

■ a. Adding a sentence to the end of paragraph (a)(2)(ix);

■ b. Revising paragraph (a)(3)(iii);

■ c. Removing the citation ''§ 92.504(d)'' and adding in its place the citation ''§ 92.251(f)'' in paragraph (a)(3)(iv);

■ d. Revising paragraph (a)(3)(vi);

■ e. Revising the first sentence of paragraph (a)(3)(vii);

■ f. Revising paragraph (a)(3)(ix);

■ g. Removing the citation to ''2 CFR 200.302'' and adding in its place a citation to ''2 CFR 200.302 and 200.303'' in paragraph (a)(5)(iv); and

■ h. Removing the words ''affordability period'' and adding in their place the words ''period of affordability'' in paragraphs (c)(1) and (2).

The revisions and additions read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(2) * * *

(ix) * * * If the participating jurisdiction will apply excess matching contribution to a future fiscal year's liability, records demonstrating compliance with the matching requirements of §§ 92.218 through 92.221 for the excess amount applied, as described in § 92.221(b)(1), must be provided at the time of application and maintained for five years from the date of application.

* * * * *

(3) * * *

(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 in accordance with the requirement in § 92.250(a), the subsidy layering and underwriting evaluation adopted in accordance with § 92.250(b), and, if applicable, compliance with a green building standard established by HUD in accordance with the requirements in § 92.250(c).

* * * * *

(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), housing standards of § 92.209(i) (including property inspection reports), security deposit requirements of § 92.209(j), and calculation of the HOME subsidy.

(vii) Records demonstrating that each rental housing project met the affordability and income targeting requirements of § 92.252 for the required period or met the requirements in § 92.255 for conversion to homeownership for in-place tenants.

* * *

* * * * *

(ix) Records demonstrating that each lease for a tenant receiving tenant-based rental assistance, security deposit assistance, and for an assisted rental housing unit complies with the applicable tenant and participant protections of § 92.253. Records must be kept for each family.

* * * * *

■ 46. Amend § 92.551 by adding paragraph (c)(3) to read as follows:

§ 92.551 Corrective and remedial actions.

* * * * *

(c) * * *

(3) A participating jurisdiction may request HUD reduce grant payments by an amount equal to the amount of expenditures that did not comply with the requirements of this part. The amount of a reduction may be for the entire grant amount.

■ 47. Amend § 92.552 by removing the period at the end of paragraph (a)(2)(iv) and adding in its place a semicolon and adding paragraphs (a)(2)(v) through (vii) to read as follows:

§ 92.552 Notice and opportunity for hearing; sanctions.

(a) * * *

(2) * * *

(v) Reduce grant amounts paid to the participating jurisdiction by an amount equal to the amount of any expenditures that did not comply with the requirements of this part. The amount of a reduction may be for the entire grant amount;

(vi) Revoke a jurisdiction's designation as a participating jurisdiction; and

(vii) Terminate the assistance in whole or in part in accordance with 2 CFR 200.340.

* * * * *

Subpart M [Removed]

■ 48. Remove subpart M, consisting of §§ 92.600 through 92.618.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 49. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

■ 50. Amend § 570.200 by adding paragraph (h)(3) to read as follows:

§ 570.200 General policies.

* * * * *

(h) * * *

(3) In a Federal fiscal year when an annual appropriation is signed into law less than 90 days before a grant recipient's program year start date, the effective date of the grant agreement will be the earlier of the recipient's program year start date or the date that the Consolidated Plan incorporating the recipient's allocation amount for the Federal fiscal year is received by HUD.

* * * * *

PART 982—SECTION 8 TENANT–BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 51. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 52. Amend § 982.507 by revising paragraphs (c)(2) and (3) to read as follows:

§ 982.507 Rent to owner: Reasonable rent.

* * * * *

(c) * * *

(2) *LIHTC.* If the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the PHA must determine the rent to owner is a reasonable rent in accordance with paragraph (b) of this section and the rent shall not exceed the lesser of the:

(i) Reasonable rent; and

(ii) The payment standard established by the PHA for the unit size involved.

(3) *HOME program.* If the rent requested by the owner exceeds the HOME rents for non-voucher families, the PHA must determine the rent to owner is a reasonable rent in accordance with paragraph (b) of this section and the rent shall not exceed the lesser of the:

(i) Reasonable rent; and

(ii) The payment standard established by the PHA for the unit size involved.

* * * * *

Adrianne R. Todman,

Deputy Secretary Performing the Duties of the Secretary of HUD.

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