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SUMMARY OF KEY CHANGES
To The
HOME PROGRAM REGULATIONS
In The
FINAL RULE

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August 9, 2013

Community Housing Development Organizations (CHDOs)

The HOME statute requires that at least 15% of a jurisdiction's HOME allocation be reserved for use by CHDOs, which are to be accountable to the low income communities they serve, primarily by requiring their boards to have modest representation by low income community residents.

<u>Reserving, Committing, and Spending CHDO Funds</u>

The previous and final rules both require jurisdictions to "reserve" 15% of their HOME allocation to CHDOs within 24 months.

The final rule tightens the meaning of "reserve".

- CHDO funds will be considered "reserved" when there is a written agreement between the jurisdiction and the CHDO "committing" funds to a specific project as spelled out in paragraph (2) of the definition of "commitment" (see page 14) – which in general requires rehab or construction to start within 12 months of the agreement.
- The definition of "commitment" of HOME funds no longer refers to "reserving" funds to CHDOs because such reservations are not project-specific.
- In the section concerning reduction or recapture of HOME funds, "committed" replaces "reserved".

[Section 92.300(a)(1)]
[Section 92.2, "commitment" definition, paragraph (1)]
[Section 92.500(d)(1)(A)]

The final rule requires HUD to reduce or recapture CHDO funds not spent within five years. This deadline is separate from the general five-year deadline for other HOME funds. According to the preamble, the intent is to provide an incentive for jurisdictions to move CHDO set-aside funds from poorly performing CHDOs to those that are performing well.

[Section 92.500(d)(1)(C)]

To ensure that jurisdictions provide CHDO set aside funds only to organizations that are CHDOs, the final rule requires jurisdictions to <u>certify</u> that an organization meets the CHDO definition and document that the organization has the capacity to own, develop, or sponsor housing <u>each time</u> CHDO funds are committed to it.

[Section 92.300(a)]

The existing rule allows a jurisdiction to use up to 5% of its HOME allocation for CHDO general operating expenses. The final rule clarifies by adding that CHDO operating funds are separate from and are in addition to the 15% CHDO set-aside funds.

[Section 92.208(a)]

Definition of CHDO is changed in four ways:

1. The existing rule allows a for-profit to create a CHDO, as long as no more than one third of the CHDO's board is appointed by the for-profit (among other limits).

   The final rule adds a paragraph stating that if a for-profit creates a CHDO, the for-profit's officers and employees cannot be officers or employees of the CHDO.

   [Section 92.2, CHDO definition, paragraph (3)(iv)]

2. The existing rule states that a "public entity" cannot be a CHDO, but it allows a public entity to create a CHDO as long as no more than one third of that CHDO's board is appointed by the public entity and no more than one third of the board are public officials or employees of the HOME participating jurisdiction.

   The final rule substitutes the term "government entity" for "public entity" and provides examples of government entities, including housing finance agencies and public housing agencies. Government entities can continue to create CHDOs with the same one-third limits. The final rule further specifies that officers or employees of a government entity may not be officers or employees of the CHDO.

   [Section 92.2, CHDO definition, paragraph (5)]

3. The previous rule required a CHDO to have demonstrated capacity for carrying out HOME activities, but allowed an organization to demonstrate capacity by engaging an experienced consultant who could both carry out HOME activities and train key staff so that they could gain the needed capacity.

   In the preamble to the proposed rule, HUD stated that it was concerned that some CHDOs relied on consultants without developing internal capacity. Therefore, the final rule specifically requires a CHDO that is a "developer" or "sponsor" (see next page for definitions) to have paid employees on staff with housing development experience.
   - Demonstrated capacity cannot be met through volunteers or staff donated by another organization.
   - The preamble to the final rule provides additional guidance not evident in the final text of the regulation:
     - Paid staff do not have to be full time, but their hours must be appropriate for their role.
     - Demonstrated capacity may be met through the use of independent contractors who have experience.
     - Volunteers, board members, and donated staff may help the CHDO, but they cannot count toward the requirement of demonstrated capacity.
   - The final rule, however, allows new CHDOs to use consultants to demonstrate capacity and to train staff during the first year of operation.

   The final rule adds a definition of "owner" (see next page) to include a CHDO that does not have development capacity, but demonstrates capacity to own and operate rental housing.

   [Section 92.2, CHDO definition, paragraph (9)]

4. The final rule adds that a nonprofit may qualify as a CHDO if it is a wholly-owned subsidiary of a tax-exempt nonprofit.

   [Section 92.2, CHDO definition, paragraph (4)]

Definitions of housing that is “owned”, “developed”, or “sponsored” by a CHDO

The final rule incorporates language from existing administrative guidance that refines and expands upon previous definitions of housing that is owned, developed, or sponsored by a CHDO.

The final rule adds a definition of “owner” of rental housing to include a CHDO that does not have development capacity, but demonstrates capacity to own and operate rental housing.

- Such a CHDO is required to own the project throughout the affordability period (as well as during development if rehabilitation or construction is involved).
- If a property will be constructed or rehabbed, then the CHDO must hire a project manager or have a contract with a development contractor to oversee the development.

In the preamble to the final rule, HUD indicates that this change to the regulations is intended to address capacity issues in rural areas. During a conference call, HUD also stated that this new provision has the possibility of enabling more nonprofits to access the 15% CHDO set-aside.

[Section 92.300(a)(2)]

The final rule adds a definition of “developer” of rental housing to include a CHDO that constructs new housing or rehabs substandard housing that it owns.

- To be the “developer” the CHDO must be in sole charge of all aspects of the development process.
- The CHDO must own the housing during development and for a period at least as long as the affordability period.

[Section 92.300(a)(3)]

The final rule adds that rental housing is “sponsored” by a CHDO if:

- The CHDO develops the rental housing and agrees to convey it to a nonprofit at a predetermined time after development is complete; or,
- A subsidiary of a CHDO or a CHDO that is a subsidiary of another entity (such as a limited liability company) owns or develops the rental housing.

[Section 92.300(a)(4)&(5)]

CHDO ownership may be met through a long-term ground lease (a provision intended to accommodate land trusts, according to the preamble to the final rule).

[Section 92.300(a)(2)&(3)]

The final rule adds a definition of “developer” of homeowner projects to include a CHDO that owns existing housing it rehabs or new housing it develops to sell to low income residents.

- To be a developer, the CHDO must arrange financing and be in sole charge of construction.
- The CHDO may provide direct downpayment assistance when it sells the housing. However, HOME funds used for downpayment assistance cannot be greater than 10% of the amount of HOME funds used for development.

[Section 92.300(a)(6)]

Written Agreements With Jurisdictions

Before a jurisdiction distributes HOME to a CHDO, there must be a written agreement containing a number of provisions. (See page 22, "*Increased Jurisdiction Responsibilities*" for more about written agreements in general.)

For CHDOs developing homeownership housing, the written agreement must specify whether the CHDO may keep proceeds from the sale of the housing and whether the proceeds are to be used for HOME-eligible activities or other housing activities to benefit low income households.

[Section 92.504(c)(3)(x)]

For CHDOs receiving HOME for operating expenses, the final rule adds a new paragraph pertaining to the written agreement.

- The agreement must describe the use of HOME for operating expenses.
- If the CHDO is not also receiving HOME for a housing project, the agreement must indicate that the CHDO is expected to receive funds for a project within 24 months. It must also discuss the consequences if development funding is not obtained. This language echoes existing language in Section 300(e).

[Section 92.504(c)(6)]

Troubled HOME Rental Projects

The existing rule, in general, prohibits providing additional HOME funds one year after project completion.

[Section 92.214(a)(6)]

The final rule has a new section in order to help preserve HOME rental projects that have become financially troubled and are at risk of failure or foreclosure.

- If operating costs significantly exceed operating revenue, a project is considered no longer financially viable.

[Section 92.210(a)]

- HUD will allow a jurisdiction to invest additional HOME funds in the project, as long as the original investment plus the additional investment does not exceed the per-unit subsidy limit in the current regulations.

  - The additional funds could be used for recapitalization of project reserves for the HOME units, as well as for rehab.
  - HUD "may" (not "must") extend the affordability period if additional HOME dollars are invested.

[Section 92.210(b)]

- HUD could also permit the jurisdiction to reduce the number of HOME units in the project, but only if the project has more than the minimum number of required HOME units.

[Section 92.210(c)]

HUD currently grants waivers in order to preserve projects, but claims in the preamble that this is time-consuming. Therefore, the new rule expedites preservation by allowing jurisdictions to undertake preservation activities without having to seek a HUD waiver.

HOME and Public Housing

A new Section 92.213 sets out rules relating to the use of HOME funds with public housing.

- HOME is explicitly allowed to be used to develop "public housing" units that are HOPE VI units, as long as federal Capital Funds received by a public housing authority (PHA) are not also used to develop the HOPE VI units.

  - Units developed with HOME and HOPE VI could, however, get operating assistance from the PHA's federal public housing Operating Fund; and,
  - They could also subsequently receive Capital Funds for modernization and rehab.

- HOME may be used for units in a project that also has public housing units.

- HOME units cannot receive Capital Fund or Operating Fund assistance during the HOME period of affordability.

The HOME statute prohibits using HOME for public housing authorized under Section 9 of the Housing Act of 1937. HOPE VI is Section 24.

The preamble to the proposed rule offered three reminders:

- Use of HOME may trigger, for the entire project, the one-for-one replacement obligations and longer tenant compensation obligations of the HOME regulation at Section 92.353(e) [also known as the Section 104(d) anti-displacement provisions].

- HOME and public housing units in mixed-source projects must have separate waiting lists and rent structures.

- Gross rent (tenant contribution and operating subsidy) may not exceed the "High HOME rent", which is the lesser of the Fair Market Rent (FMR) or a fixed rent that does not exceed 30% of the annual income of a hypothetical household whose income does not exceed 65% of the area median income.

Tenant Protections

- There must be a written lease for all HOME rental units and units rented by recipients of HOME tenant-based rental assistance (TBRA). The lease must be for at least one year (unless a tenant and owner agree to a shorter period.

[Section 92.253(a)]

- Supportive services cannot be mandatory, except for tenants in transitional housing.
The text of the rule does not characterize "supportive services", but the preamble to the proposed rule assumes supportive services are related to disability and justifies this addition based on Section 504 of the Rehabilitation Act, and the preamble to the final rule again points to Section 504.

[Section 92.253(b)(9)]

- An increase in a tenant's income does not constitute "good cause" for terminating a lease or refusing to renew a lease.

[Section 92.253(c)]

- While not a "protection", Section 253 is changed to allow a tenant's failure to follow any transitional housing supportive services plan to be a basis for terminating a tenancy or refusing to renew a lease.

[Section 92.253(c)]

- Although not in the tenant protection portion of the regulations:

    - If an owner converts HOME rental units to homeownership units, a tenant's refusal to purchase their unit does not constitute grounds for evicting them or not renewing their lease.

    [Section 92.255(a)]

    - The rule prohibits charging low income beneficiaries fees to cover the cost of administering the HOME program, such as fees for construction management or inspections for compliance with property standards. Jurisdictions may charge nominal application fees to discourage frivolous applications, but may not create an undue impediment to a low income household.

    [Sections 92.206(d)(6), 207(b), & 214(b)(1)]

    - Owners of rental projects may not charge tenants fees that are not customarily charged in rental housing, such as and laundry room access fees. However, owners may charge:

        - Reasonable application fees.
        - Parking fees if customary in that neighborhood.
        - Fees for services such as bus transportation or meals, but participation must be voluntary.

[Section 92.214(b)(3) & 504(c)(3)(xi)]

Tenant Selection

- Owners must comply with affirmative marketing requirements established by the jurisdiction (see page 9, *Affirmative Marketing*).

[Section 92.253(d)]

- Owner's tenant selection policies must limit housing to income-eligible households.

[Section 92.253(d)(1)]

- The final rule elaborates on existing language requiring the owner's tenant selection policies to have criteria that are reasonably related to an applicant's ability to perform obligations of the lease. New language gives examples of such obligations: paying rent, not damaging the housing, and not interfering with the rights and quiet enjoyment of other tenants.

[Section 92.253(d)(2)]

- Tenant selection policies can limit eligibility or give preference to a particular segment of the population if permitted by the jurisdiction and if described in the ConPlan.

[Section 92.253(d)(3)]

  - A limit or preference must not violate nondiscrimination requirements.

  - There is no violation if a limit or preference applies to housing that is also receiving funds from a federal program that limits eligibility – and the limit or preference is tailored to serve that segment of the population. The rule cites as examples of such federal programs: HOPWA, Shelter Plus Care, the Supportive Housing program, and Part 891 supportive housing for elderly or disabled people.

[Section 92.253(d)(3)(i)]

  - If a project does not receive funds from a federal program that limits eligibility to a particular segment of the population, the project may have a limit or preference for people with disabilities who need services offered at a project only if:

    - The preference is limited to households with disabilities that significantly interfere with their ability to obtain and maintain housing; and,

    - The households would not be able to maintain themselves in housing without appropriate supportive services; and,

    - The needed services cannot be provided in a non-segregated setting.

      - Families must not be required to accept the services offered at the project.

      - Advertising may feature the services for a particular type of disability, but the project must be open to all people with disabilities who may benefit from the services at the project.

[Section 92.253(d)(3)(ii)]

Tenant-Based Rental Assistance (TBRA)

- New language expressly states that HOME may be used to pay utility deposits in conjunction with HOME TBRA or security deposit assistance. Stand-alone utility deposit assistance is not eligible.

[Section 92.209(a)]

- The final rule adds a provision allowing jurisdictions' costs for unit inspection and income determination for TBRA to be eligible project-related soft costs. The previous rule only allowed such costs to be eligible as general management and oversight, a category capped at 10% of a jurisdiction's HOME allocation. The preamble to the final rule notes that jurisdictions commented that the previous rule was a disincentive to using HOME for TBRA.

[Section 92.209(a)]

- Additional text clarifies that a jurisdiction's tenant selection policies and criteria must be based on local housing needs and priorities consistent with the ConPlan.

[Section 92.209(c)]

- The previous regulation allowed TBRA to be targeted to those with special needs.
  - The final rule clarifies that people with special needs include those who are homeless or are elderly; it also allows targeting people with disabilities.
  - The final rule adds that participation may be limited to persons with a specific disability if doing so is necessary to provide housing, aid, benefit, or services that are as effective as those provided to others.

[Section 92.209(c)(2)(i)]

- The final rule allows use of HOME TBRA to administer a self-sufficiency program in which a family is required to participate as a condition of selection for TBRA. A jurisdiction cannot terminate TBRA assistance if a family does not continue to participate in the self-sufficiency program; however, a jurisdiction is allowed to condition TBRA renewal on participation.

[Section 92.209(c)(2)(iii)]

- TBRA may assist a tenant who is a potential homebuyer through a lease-purchase agreement.
  - Up to 36 months of TBRA can be provided for lease-purchase.
  - TBRA may not be used to accumulate downpayment or closing costs; however, the tenant-homebuyer's monthly contribution toward rent may be set aside for this purpose.

[Section 92.209(c)(2)(iv)]

- People who are eligible for preference must have the opportunity to participate in all programs of the participating jurisdiction, including programs that are not separate or different.

[Section 92.209(c)(2)(v)]

Affirmative Marketing

There are four improvements at Section 92.351(a)(1):

- Jurisdictions are not only required to have affirmative marketing requirements and procedures, they are also obligated to "follow" them.

- The final rule deletes language that exempted jurisdictions from having affirmative marketing procedures for households with TBRA or vouchers.

- The rule expands affirmative marketing requirements to all HOME *programs* (not just *projects* with five or more units).

- If tenant preferences are allowed, jurisdictions must have affirmative marketing procedures that apply in the context of the preferred tenant eligibility.

Subrecipients, as well as owners and jurisdictions, are responsible for affirmative marketing.

[Section 92.351(a)(2)]

Single Room Occupancy Units (SROs)

The definition of SRO is changed, specifying that a project's designation as an SRO cannot be inconsistent with the building's zoning and building code classification.

[Section 92.2]

The final rule codifies what the preamble characterizes as rent limitation policies established in 1994 administrative guidance.

- For SROs that have both sanitary and food preparation facilities, the maximum HOME rent is based on the zero-bedroom FMR. These projects must meet the High HOME or Low HOME rent requirements.

- For SROs that have no sanitary or food preparation facilities, or only one of the two, the maximum HOME rent is based on 75% of the zero-bedroom FMR. These projects are not required to have Low HOME rents, but if there are five or more HOME units in the project, 20% of the units must be occupied by persons with incomes below 50% of the area median income.

[Section 92.252(c)]

Eligible Activities in General

Predevelopment Costs

Predevelopment costs such as architectural and engineering costs and other related professional services incurred not more than 24 months before HOME funds are committed may be paid for with HOME.

[Section 92.206(d)(1)]

Fees

HUD now allows jurisdictions to charge fees to owners of rental projects in order to cover the cost of jurisdictions' ongoing monitoring and physical inspection of HOME projects during the entire period of affordability. In the preamble to the proposed rule, HUD commented that the Low Income Housing Tax Credit program allows monitoring fees, and that allowing monitoring fees might create an incentive for jurisdictions to impose affordability periods longer than the minimum required under the rule.

[Section 92.214(b)(1)(i)]

Jointly Funded Projects

The statute prohibits jurisdictions from using HOME outside of their boundaries, unless for a joint project located in a contiguous jurisdiction serving residents of both jurisdictions.

The final rule clarifies "joint project" by adding that both jurisdictions must make a financial contribution to the project. A financial contribution may be: a loan or a grant (including loans from other federal sources such as CDBG) and relief from a significant tax or fee (e.g., waiver of impact fees, property taxes).

[Section 92.201(a)(2)]

Farmworker Dormitories, A New **Ineligible** Activity

The rule prohibits farmworker dormitories from being considered "housing".
The statute limits HOME to permanent and transitional housing.

[Section 92.2]

Special Provisions Regarding Students

- Jurisdictions cannot limit benefits to students or give preferences to students.

[Section 91.220(l)(2)(vi)(A) & 91.320(k)(2)(vi)(A)]

- The definition of "housing" explicitly excludes any form of housing for students (previously, the rule only excluded student dormitories).

[Section 92.2]

- The definitions of "low income" and "very low income" now exclude students who are enrolled in an institution of higher education who are under 24 years of age, are not veterans, are unmarried, do not have a dependent child, or do not have parents who are low income. The preamble states that this revision ensures that HOME does not benefit students who are dependents of families that are not low income. The rule text cites the Housing Choice Voucher rule reflecting statutory changes to the Housing Choice Voucher program.

[Section 92.2]

Income Determinations

There are five changes; three are mentioned here.

- The final rule clarifies that annual income determination must be based on all people in a "household", (that includes unrelated as well as related people, not just "family members").
  [Section 92.203(d)(1)]

- If a jurisdiction elects to use source documents (e.g. wage statements) to establish a potential or ongoing beneficiary's income eligibility, then it must use, at a minimum, a 2-month standard.
  Jurisdictions can use longer periods.
  [Section 92.203(a)(1)(i)&(2)]

- HUD now requires jurisdictions to select only one of two possible definitions of income for each HOME program (e.g., downpayment assistance, rental housing program, TBRA, etc.) and for each rental housing project.
  [Section 92.203(c)]

Miscellaneous Provisions Pertaining to Rental Properties

A. The final rule specifically states that HOME rent limits include both rent and utilities or utility allowances.
[Section 92.252(a)]

B. The final rule clarifies that single-family rental units (not just multifamily) must be addressed in a jurisdiction's refinancing guidelines.
[Section 92.206(b)(2)]

C. Under the existing rule, in a rental project with five or more HOME units, 20% of the HOME units must be occupied by households with incomes below 50% of area median income who pay "Low HOME rents".

Low HOME rent is either:
- A fixed rent that does not exceed 30% of the annual income of a hypothetical household whose income does not exceed 50% of the area median income, or
- A rent that is less than 30% of the actual household's income.

The final rule makes it clear that jurisdictions may designate more than 20% of the units in a project as "Low HOME rent units", regardless of project size.

> The preamble to the proposed rule observed that it is a common practice to designate many units as Low HOME rent units in projects that also receive project-based rental assistance. That preamble explained that this permits the owner to charge project-based assistance rents which are typically greater than HOME rents, enabling the project to serve extremely low income households. HUD urged jurisdictions to encourage developers to designate all HOME units in Section 202 or Permanent Supportive Housing as Low HOME rent units in order to take advantage of project-based rent subsidies to serve extremely low income people.

[Section 92.252(b)]

D. After project completion, one unit in a project that consists entirely of HOME units may be converted to an on-site manger's unit if necessary to contribute to the stability of the housing or the effectiveness of services provided at service-enriched housing.
[Section 92.205(d)(2)]

***Miscellaneous Provisions Pertaining to Rental Properties**, continues*

E. Utility Schedule

- The final rule requires jurisdictions to annually update maximum monthly utility allowances.

- Jurisdictions are required to use the HUD Utility Schedule Model, or otherwise determine utility allowances based on the type of utilities used at a project.

  - The preamble to the proposed rule noted that the LIHTC program uses the HUD Utility Schedule Model.
  - The preamble to the final rule states that jurisdictions are no longer allowed to use utility allowances established by the local public housing agency for every HOME-assisted rental project.

[Section 92.252(d)]

F. Underwriting and Subsidy Layering Analysis
{*This also applies to homeowner projects too, but is presented here*.}

The existing rule requires jurisdictions to perform a subsidy layering analysis and not invest any more HOME, in combination with other government assistance, than is necessary.

The final rule expands upon this, applying it to projects with or without other government investment. And, it specifically requires the analysis to determine the project's financial viability over the required affordability period based on a reasonable level of return on investment that does not exceed the jurisdiction's standards for various sizes and types of projects.

The jurisdiction must have guidelines that require it to:

- Examine the sources and uses of funds and to determine that costs are reasonable.

- Assess market demand in the neighborhood, the developer's experience and financial capacity, and the solidity of the financial commitment to the project.

There are two exceptions for owner-occupied activities:

- When HOME assistance for rehabilitation of a house that is already owner-occupied is in the form of a grant or forgivable loan, underwriting analysis, market analysis, and evaluation of developer capacity are not required.

- If the only HOME-assisted activity is downpayment assistance, a market analysis or evaluation of developer capacity is not required.

[Section 92.250(b)]

HOME Changes to the Consolidated Plan Regulations

Identifying Eligible Applicants and Process for Funding Applications

A jurisdiction's Annual Action Plan must describe eligible applicants and describe the jurisdiction's process for seeking and funding proposals.

[Section 91.220(l)(2)(v) & 91.320(k)(2)(v)]

Limiting Beneficiaries or Offering Preferences To Particular Segments of the Population

The final rule allows jurisdictions to limit the beneficiaries or give preferences to a particular segment of the low income population such as police, teachers, or artists, but only if described in the Action Plan.

- Students cannot be given such preferences. (See other student-related provisions under the revised definitions of "housing" and "low-income families", page 10.)

- Employees of the jurisdiction cannot get such preferences.

[Section 91.220(l)(2)(vi) & 91.320(k)(2)(vi)]

Existing regulations allow Tenant-Based Rental Assistance to be targeted to people with special needs (see page 8).

[Section 92.209(c)(2)]

HUD Approval Action

The Annual Action Plan portion of the ConPlan rule is changed to clarify that HUD's approval (or failure to disapprove) an Action Plan does not automatically approve a jurisdiction's resale or recapture guidelines, or any alternative forms of HOME investment not already specifically allowed in the regulations (forms already allowed include equity investments, interest-bearing loans, deferred payment loans, grants, etc.).

Existing HOME regs require HUD to determine whether alternative forms of investment and resale and recapture requirements are consistent with the purpose of the HOME program. The ConPlan regs and pertinent portions of the HOME rule are changed to specify that HUD must give written approval.

[Sections 91.220(l)(2)(i)&(ii) and 91.320(k)(2)(i)&(ii)]
[Section 92.205(b)(1)]
[Section 92.254(a)(5)]

Disaster-Related Features

Definition of "Reconstruction"

The previous rule allowed housing to be reconstructed only if the housing was standing on the site at the time of project commitment. However, in the case of disasters, housing might not be standing on the site when an opportunity for project commitment arises. Therefore, the final rule amends the definition of "reconstruction".

- Housing destroyed or severely damaged and subsequently demolished may be rebuilt on the same lot under the "reconstruction" category if HOME funds are committed within 12 months of the date of the damage.
- The preamble to the proposed rule pointed out that this distinction helps avoid longer affordability periods for rental units (a maximum of 15 years for rehab costs greater than $40,000 vs 20 years for any new construction) or resale/recapture provisions for homeowners.
- The preamble to the final rule noted that in the case of a large-scale disaster, jurisdictions may seek waivers from HUD in order to exceed the 12-month limit.

[Section 92.2]

Match Reduction

The match reduction provisions pertaining to major disasters is modified to require HUD to consider the extent of a disaster's fiscal impact on the jurisdiction in determining whether to allow the match reduction, as well as in determining the amount and duration of any reduction. The preamble states HUD will be issuing guidance.

[Section 92.222(b)(1)]

Property Standards

There are new features in the Property Standards portion of the final rule requiring, "where relevant", that housing constructed or rehabbed be done in a manner that mitigates the impact of potential disasters.

[Section 92.251(a)(2)(iii)&(b)(1)(vi)]

Miscellaneous Definition Changes

Commitment to a Specific Project

The final rule tightens the definition for a project involving rehabilitation or new construction. The legally binding agreement must not only be for an identifiable project, the final rule adds: all necessary financing for that project must be secured; a budget and schedule must be established; and, underwriting must be completed. In addition, construction must be "scheduled" to start within twelve months (previously, the construction only needed to be "reasonably expected" to start within twelve months).

[Section 92.2, *Commitment*, paragraph 2]

Program Income

The final rule clarifies that program income does not include gross income from the use, rental, or sale of real property received by the project owner unless the funds are paid by the owner to a jurisdiction or subrecipient.

[Section 92.2, *Program Income*, paragraph 2]

Subrecipient

The proposed rule clarifies that a subrecipient is a public agency or nonprofit that receives HOME to carry out *programs* (eg owner-occupied rehab, downpayment assistance, etc.), not to carry out *projects*.

[Section 92.2]

Timely Performance and Enhanced Quality Assurance

Project Completion

Rental projects may be designated as completed in HUD's management information system (known as IDIS) once construction or rehabilitation is completed, but before all units are occupied.

[Section 92.2]

Quality Upon Completion

The final rule adds that activities and costs are eligible only if, upon completion, housing meets the regulation's property standards.

[Section 92.205(a)(1)]

Acquisition or Demolition

The existing rule limits acquisition or demolition with HOME to a specific affordable housing project. The final rule adds that construction on that specific project must reasonably be expected to start within the existing timeframes of the definition of "commitment" (which in general is 12 months after a formal agreement between the jurisdiction and project owner). The intent is to prevent acquisition or demolition if there is not an immediate, planned use.

[Section 92.205(a)(2)]

Leasing Up Rental Properties

- If rental housing is not occupied by eligible tenants within six months after project completion, then a jurisdiction must submit marketing information, and if appropriate, a marketing plan.

- HUD requires a jurisdiction to repay HOME funds for any unit not rented to an eligible tenant 18 months after project completion.

[Section 92.252]

Project Termination

- The final rule clarifies that a project that fails to meet the requirements of "affordable housing" (affordability, income targeting, etc) must be terminated and all HOME funds invested must be returned to the jurisdiction's HOME account.

[Section 92.205(e)(1)]

- The final rule adds a feature specifying that projects not completed within four years from the date of project commitment are deemed terminated, and the jurisdiction must return all HOME funds invested in it to the jurisdiction's HOME account. The jurisdiction may request a 12-month extension by submitting information about the project's status, steps being taken to overcome obstacles, proof of adequate funding, and a schedule with milestones for completion.

[Section 92.205(e)(2)]

Timely Performance and Enhanced Quality Assurance*, continues*

Termination of Affordability Restrictions

Under the existing rule, a jurisdiction's deed restrictions, covenants, etc. imposing the HOME affordability requirements may provide that affordability restrictions may be terminated upon foreclosure or transfer in lieu of foreclosure.

The final rule is modified to add:

- Repayment of the HOME investment does not end the affordability requirements.

- Termination of affordability restrictions during the affordability period does not relieve the jurisdiction of its obligation to repay HOME funds invested in the project.

[Section 92.252(e)]

On-Site Inspections

The previous regulations required on-site inspections annually if there were more than 26 units, every other year if there were 5-25 units, and every three years if there were 1-4 units.

- The final rule adds that on-site inspections must be conducted at project completion and one year after completion.

- After the first year, the final rule reduces on-site inspections to every three years, regardless of the number of units.

- Health and safety deficiencies must be corrected immediately. Jurisdictions must adopt a more frequent inspection schedule for properties that have had health and safety deficiencies.

- If there are deficiencies, a follow up on-site inspection must be conducted within 12 months to verify that deficiencies were corrected.

- Owners must annually certify that each building and all HOME units are suitable for occupancy.

- Inspections must be based on a statistically valid sample of units.

  However, for projects with 1-4 units, jurisdictions must inspect 100% of the HOME units and the "inspectable items" for each building ("inspectable items are the site, the building exterior, building systems, and common areas).

- The current rule for TBRA units is unchanged; jurisdictions must continue to conduct annual on-site monitoring.

[Section 94.504(d)(1)]

***Timely Performance and Enhanced Quality Assurance**, continues*

Financial Oversight

The final rule adds a new requirement calling for jurisdictions to annually examine the financial condition of rental projects with ten or more HOME units.

[Section 94.504(d)(2)]

Ongoing Rental Property Condition Standards

Jurisdictions must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period.

- The standards must ensure that owners maintain the housing in good repair as decent, safe, and sanitary.
- The description of the property standards must be in sufficient detail to establish the basis for uniform rental housing inspection.
- Ongoing property standards must address each of the following:
  - Compliance with all state and local codes and ordinances. If there are none, then the jurisdiction's standards must include all inspectable items in HUD's Uniform Physical Conditions Standards.
  - The standards must identify life-threatening deficiencies that the owner must immediately correct, as well as the timeframe for addressing them.
  - Housing must meet the lead-based paint requirements of 24 CFR part 35.
- Jurisdictions must have written inspection procedures for ongoing property inspections. The procedures must include checklists as well as descriptions of: inspection frequency, who will carry out inspections and how they will be conducted, and procedures for training and qualifying inspectors.
- There must be procedures for ensuring timely corrective and remedial action.

[Section 92.251(f)]

Corrective and Remedial Actions

When HUD finds that a jurisdiction is failing to meet the HOME requirements, existing regs offer a list of actions HUD "may" use to prevent continuation of the problem.

The final rule adds two and modifies two existing options:

- Establishing procedures to ensure compliance with the regulations.
- Encouraging a city to form a consortium with a willing county.
- Establishing a remedial plan to make up a shortfall in matching contributions.
- Instead of paying a jurisdiction in advance, requiring the jurisdiction to provide documentation before HUD makes a payment, or imposing special conditions on the upcoming year's allocation.

[Section 92.551(c)]

Homeowner Activities

- If a homeowner unit is not purchased by an eligible buyer within 9 months of completion, the final rule requires the housing be rented to an eligible tenant.

- Homebuyers must receive housing counseling.

[Section 92.254(a)(3)]

- In determining the income eligibility of the family, the jurisdiction must include the income of all people living in the housing.

[Section 92.254(a)(3)&(b)(2)]

Initial Purchase Price Limit

The statute requires that the initial purchase price of HOME homeowner units not exceed 95% of the area median purchase price for single family housing – as determined by HUD. The previous regulations allowed jurisdictions to use as a surrogate for the 95% standard, the FHA Single Family Mortgage Limits under Section 203(b) of the National Housing Act . The preamble to the proposed rule noted that due to statutory changes to FHA 203(b), it is a less reliable benchmark.

- Therefore, the final rule eliminated the option of using the FHA 203(b) benchmark.

- Jurisdictions must use limits provided by HUD:
  - For newly constructed housing the limit will be based on 95% of the median purchase price for the area using FHA data, with a minimum limit based on 95% of the U.S. median for non-metro areas.
  - For existing housing, the limit will be based on 95% of the median purchase price for the area using FHA data and other data available nationwide, with a minimum based on 95% of the statewide non-metro median price.

[Section 92.254(a)(2)]

  - Jurisdictions will continue to have the option of determining their own 95% standard, but the rule requires jurisdictions that make their own determinations to include the calculation in their Annual Action Plans.

[Section 92.254(a)(2) and Sections 91.220(l)(2)(iv)&320(k)(2)(iv)]

  - For non-metro areas, states may aggregate sales data from more than one county if they are contiguous and similarly situated.

[Section 92.254(a)(2)]

Homebuyer Program Policies

Jurisdictions are required to have and follow written policies for underwriting standards, responsible lending, and refinancing.

[Section 92.254(f)]

Underwriting and Subsidy Layering

See page 12, "*Miscellaneous Provisions Pertaining to Rental Properties*".

[Section 92.250(b)]

Homeowner Activities*, continues*

Providing Homeownership Assistance Through Lenders

The preamble notes that many jurisdictions provide HOME funds to be used as homeownership assistance (eg downpayment assistance) to lenders (for-profit and nonprofit) that provide first mortgage financing.

The final rule adds a new subsection placing conditions on such activities:
- There must be a written agreement between the jurisdiction and lender specifying the forms and amounts of homeownership assistance.
- Before the lender provides homeownership assistance, the jurisdiction must verify that the family is low income and must inspect the housing to ensure compliance with HOME property standards.
- No fees may be charged to the family for homeownership assistance, and the jurisdiction must determine that fees and other amounts charged by the lender for the first mortgage are reasonable.

[Section 92.254(e)]

Resale and Recapture Policies

The statute requires resale provisions that provide a fair return and that assures that the unit remains affordable for a range of low income buyers.

The final rule requires a jurisdiction's resale requirements to:
- Define "fair return on investment".
- Define "affordability to a reasonable range of low income homebuyers".
- Address how the jurisdiction will make housing affordable to a low income homebuyer in the event that the resale price necessary to provide a fair return is not affordable to subsequent low income homebuyers.

[Section 92.254(a)(5)(i)]

Recapture provisions may allow the subsequent buyer to assume the HOME assistance, if the subsequent buyer is low income and no additional HOME funds are provided.

[Section 92.254(a)(5)(ii)]

Ownership Interest

The final rule expands the ownership interest provision for rehabbed property that does not involve acquisition to include inherited property with multiple owners, life estates, living trusts, and beneficiary deeds. The text of the rule explains each of these situations and sets conditions to be met for each of them.

[Section 92.254(c)]

Definition of Homeownership

The definition of "homeownership" explicitly states that a right to possession under a contract for deed, installment contract, or land sales contract will not be considered legitimate for the purposes of HOME assistance. The preamble to the proposed rule explained that payments made by homebuyers directly to sellers under these mechanisms typically do not constitute equity, and title is not required to be transferred to the buyer until the very last payment. Consequently, homebuyers are not protected if they are late with or miss a payment. Not only could the seller take back the home, but all of the buyer's payments up to such a point would have no equity value.

[Section 92.2]

***Homeowner Activities**, continues*

Refinancing

The final rule limits refinancing to projects in which the cost of rehabilitation is greater than the amount of debt that is refinanced with HOME. The preamble explains that this added provision emphasizes rehabilitation, rather than refinancing, is the primary activity that makes refinancing an eligible cost.

[Section 92.206(b)(1)]

Match Credit

Match credit for the development of affordable homeowner housing may be counted only to the extent that the contribution:

- Reduces the sales price of the housing by the mount of the contribution; or,
- Enables the housing to be sold for less than the cost of development in situations in which development costs exceed fair market value.

The preamble explains that HUD seeks to ensure that match is a permanent contribution which facilitates development of housing and enhances its affordability. Examples of contributions include: cash or below-market interest rate construction financing, forbearance of fees, donated real property, donated site preparation and construction materials, donated labor or professional services, or housing bond financing.

[Section 92.221(d)]

Other Miscellaneous Requirements

<u>Environmental Review</u>

The final rule clarifies that the applicability of environmental review regulations is based on the type of project (e.g., new construction, rehab, acquisition), not on the particular cost paid for with HOME. The preamble to the proposed rule gives an example: if the project is new construction but HOME is only used for acquisition of vacant land, the environmental review should be based on new construction as well as land acquisition.

[Section 92.352(a)]

<u>Labor</u>

Regarding Davis-Bacon wage requirements, the final rule removes a reference to a HUD Handbook and inserts specific language intended to clarify that jurisdictions are responsible for ensuring compliance by contractors.

[Section 92.354(a)(3)]

<u>Conflict of Interest</u>

Financial Benefit:
The rule refines the provision stating that a person who is in a decision-making position or who has functional responsibilities regarding a HOME activity may not obtain a *financial* benefit from the activity. The word "financial" is added to the existing rule, which used the expression "financial interest or benefit from".

The preamble to the proposed rule explained that this is to clarify that elected or appointed officials may serve on the boards of nonprofits.

Immediate Family:
The final rule adds the adjective "immediate" to the word "family" to clarify that a decision-maker's immediate family may not gain a financial interest or financial benefit. The rule also gives examples of "immediate" family ties, including in-laws and step-relatives.

[Section 92.356(b)]

Occupying a HOME Unit:
The existing rule prohibits owners, developers, or sponsors (and a host of others such as employees and consultants) from occupying a HOME unit. The final rule adds "elected or appointed officials" and "immediate family members" to that list.

[Section 92.356(f)(1)]

Increased Jurisdiction Responsibilities

Existing regulations require jurisdictions to have written agreements with entities before disbursing HOME. The written agreements must ensure compliance with HOME's regulations.

The final rule adds that jurisdictions must have and follow written policies, procedures, and systems, including systems for assessing project risk and for monitoring entities to ensure that HOME requirements are met.

[Section 92.504(a)]

For-Profit or Nonprofit Owners, Sponsors, or Developers

The final rule adds to the written agreement, the requirement that owners of rental housing annually provide jurisdictions with information about rents and occupancy of HOME units.

If the project has "floating" HOME units, the owner must provide information regarding unit substitution and vacancy filling. (HOME units can be either "fixed" to a unit or move ("float") from one unit to another in the project as tenants move out.)

[Section 92.504(c)(3)(vi)]

The agreement must specify financial reporting requirements to enable the jurisdiction to determine the financial condition of the project.

[Section 92.504(c)(3)(vi)]

The rule clarifies that any preliminary award of HOME is not a commitment.

[Section 92.504(c)(3)]

In addition to existing content regarding the use of HOME in a written agreement, the final rule also requires inclusion of project addresses and any other funds contributing to it.

[Section 92.504(c)(3)(i)]

Under the current paragraph pertaining to the affordability requirements, the final rule adds that the written agreement must note that the affordability requirements must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the jurisdiction may require specific performance.

- For rental projects, in addition to a statement of initial rents and procedures for rent increases as previously required, the final rule calls for the agreement to include, no later than at the time of initial occupancy: the number of HOME units and their size; a designation of whether units are fixed or floating; and, the obligation to provide the street address and the apartment number of each HOME unit.

- For homeowner projects, in addition to the written agreement stating resale or recapture provisions as currently required, the final rule also requires details about the sales price or basis upon which the sales price will be determined, and how sales proceeds will be treated.

[Section 92.504(c)(3)(ii)]

The agreement must prohibit project owners from charging certain fees:

- For rental housing, agreements must prohibit fees that are not customary, such as laundry room access fees.
  - Fees for services such as bus transportation or meals are permissible if use of the services are voluntary.
  - Reasonable application fees are allowed.
- For homeowner housing, the agreement must prohibit servicing, origination, processing, or inspection fees or other fees for the costs of providing homeownership assistance.

[Section 92.504(c)(3)(xi)]

Additional CHDO-specific changes are in the final rule; see the CHDO section of this summary.

[Section 92.504(c)(3)(x)&(c)(6)]

Subrecipients

A subrecipient is a public agency or nonprofit selected by the jurisdiction to administer all or some of the jurisdiction's HOME programs to produce affordable housing, provide downpayment assistance, or provide TBRA.

- To ensure that the subrecipient is following HOME requirements, the final rule calls for the written agreement to require the subrecipient to comply with the jurisdiction's HOME requirements.
- The requirements must include: income determination, underwriting and subsidy layering guidelines, rehab standards, refinancing guidelines, homebuyer program policies, and affordability requirements.

[Section 92.504(c)(2)]

- The existing regs required the agreement to indicate how HOME will be used, tasks to be performed, a schedule for completing tasks, and the period of agreement.

  The final rule adds that the agreement must describe:
  - Not just the use, but the amount to be used.
  - The type and number of housing projects to be funded.
  - A schedule for committing funds to projects.
  - Any matching requirements.

[Section 92.504(c)(2)(i)]

- The rule requires the written agreement to include requirements the subrecipient must follow to enable the jurisdiction to carry out environmental review obligations before HOME funds are committed.

[Section 92.504(c)(2)(iv)]

- The final rule clarifies that before a subrecipient provides funds to other entities, there must be a written agreement in place that incorporates the HOME program requirements. (The previous rule merely required the written agreement.) Other types of entities include: for-profits, nonprofits, subrecipients, homeowners, homebuyers, TBRA tenants or landlords, and contractors. In addition, the final rule adds that the agreement must make clear whether repaid or recaptured HOME funds may be kept by the subrecipient or must be returned to the jurisdiction.

[Section 92.504(c)(2)(x)]

- The agreement must prohibit the subrecipient from charging servicing, origination, or other fees for the administration of HOME.

[Section 92.504(c)(2)(xi)]

State Recipients

Under the existing regulations, when states distribute HOME to local governments, those local governments are titled "state recipients", and there must be a written agreement between them.

- Revised language regarding requirements to be contained in written agreements with state recipients is similar to that pertaining to subrecipients. This summary does not repeat language that mirrors the subrecipient changes above.
- To ensure that the local government is following HOME requirements, the rule calls for the written agreement to require the local government to comply with either the state's HOME requirements or the local government's own HOME requirements.

[Section 92.504(c)(1)]

- The agreement must indicate whether repayment of HOME funds or recaptured HOME may be kept by the local government or must be returned to the state.

[Section 92.504(c)(1)(ii)]

Property Standards

This portion of the summary does not reflect all of the proposed changes; it merely points out those perceived as significant.

Manufactured Housing

- All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of "reconstruction" must:
  - Be on a permanent foundation.
  - Be connected to permanent utility hook ups located on land that:
    - Is owned by the manufactured housing unit owner, or
    - The manufactured housing unit owner has a lease for a period at least equal to the affordability period.

- HOME-funded rehab of existing manufactured housing must have a foundation and anchoring that meets state and local codes, or in the absence of such codes, the Model Manufactured Home Installation Standards at 24 CFR 3285.

[Section 92.251(e)]

- The final rule clarifies the definition of homeownership by explicitly including manufactured housing with a ground lease that extends for a period at least equal to the affordability period.

[Section 92.2]

New Construction

Jurisdictions must ensure that construction contracts and documents describe the work to be done in adequate detail for inspections. They must review and approve written cost estimates. Jurisdictions must conduct progress and final inspections to ensure work is done in compliance with the construction contract and documents.

[Section 92.251(a)(2)(iv)&(v)]

Acquisition of Existing Housing

- Existing rental housing purchased with HOME that was newly constructed or rehabbed less than 12 months before, must meet the property standards pertaining to new construction (outlined above) or rehab (outlined below). Jurisdictions must base compliance on an inspection conducted no earlier than 90 days before HOME is committed to buying the property.

[Section 92.251(c)(1)]

- Other existing rental housing must meet the rehab standards outlined below, based on an inspection conducted no earlier than 90 days before HOME is committed to buying the property. If the property does not meet these standards, then it must be rehabbed.

[Section 92.251(c)(2)]

- For existing housing acquired for homeownership (e.g., downpayment assistance), jurisdictions must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At a minimum, the housing must meet all state and local standards and be free from deficiencies proscribed in HUD's Uniform Physical Conditions Standards. Jurisdictions must document compliance based on an inspection conducted no earlier than 90 days before HOME is committed. If the housing does not meet these criteria, it must be rehabbed.

[Section 92.251(c)(2)]

***Property Standards**, continues*

***Property Standards**, continued*

Rehabilitation

- Jurisdictions must have detailed rehab standards that include methods and materials. These standards may refer to codes or may exceed minimum codes.

- Rehab standards must:
  - Identify life-threatening deficiencies that must be addressed immediately.
  - Address "major systems", which include structural support, roofing, plumbing, electrical, heating/ventilation/air conditioning, windows, doors, siding, and gutters.
    - For rental housing:
      - The jurisdiction must estimate the remaining useful life for major systems when the project is complete.
      - Projects with 26 or more units must require a capital needs assessment to determine remaining useful life.
      - If the remaining useful life of one or more major systems is less than the HOME affordability period, the jurisdiction must ensure that a replacement reserve is established and that monthly payments are made to it adequate to repair or replace the system.
    - For owner-occupied housing, each major system must have a remaining useful life of five years or a longer period, or must be rehabbed or replaced.
  - Meet lead-based paint requirements.
  - Meet federal accessibility requirements for people with disabilities.
  - Mitigate the impact of potential disasters.
  - Correct any deficiencies in "inspectable items and inspected areas" from HUD's Uniform Physical Conditions Standards that HUD requires be included in the jurisdiction's standards.
  - Require a capital needs assessment for all rental projects of 26 or more units.
- Construction documents must have sufficient detail for meaningful inspections.
- Jurisdictions must review and approve written cost estimates.
- Jurisdictions must conduct initial inspections to identify deficiencies, as well as progress and final inspections.

[Section 92.251(b)]

Ongoing Rental Property Condition Standards

See details under "Timely Performance and Enhanced Quality Assurance" on page 15.

[Section 92.251(f)]