

PROPOSED HOME REGULATIONS SUMMARY OF KEY FEATURES

January 17, 2012

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.

Reserving, Committing, and Spending CHDO Funds

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

The proposed rule would tighten 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 existing definition of "commitment" – which in general requires rehab or construction to start within 12 months of the agreement.
- The definition of "commitment" of HOME funds would remove references to reserving funds to CHDOs because such reservations are not project-specific.
- In the section concerning reduction or recapture of HOME funds, the word "committed" replaces "reserved".

[Section 92.300(a)(1)]

[Section 92.2, "commitment" definition, paragraph (1)]

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

To provide an incentive for jurisdictions to move CHDO set-aside funds from poorly performing CHDOs to those that are performing well, the proposed rule would require HUD to reduce or recapture CHDO funds not spent within five years.

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

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

[Section 92.300(a)]

Currently, the rule allows a jurisdiction to use up to 5% of its HOME allocation for CHDO general operating expenses. The proposed rule would clarify that CHDO operating funds are separate from and would be in addition to the 15% CHDO set-aside funds.

[Section 92.208(a)]

CHDOs continues

Definition of CHDO would be changed in three ways:

1. Existing rules allow 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 proposed rule would add a paragraph stating that if a for-profit creates a CHDO, the for-profit's officers and employees could not be officers or employees of the CHDO, and the CHDO could not use the for-profit's office space. This is intended to prevent the CHDO from being influenced by the profit motive of the for-profit. [Section 92.2, CHDO definition, paragraph (3)(iv)]

2. Existing rules allow a public entity to create a CHDO as long as no more than one third of the 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 proposed rule is revised to clearly state that a government entity cannot be a CHDO. Examples of government entities in the proposed rule include housing finance agencies and public housing agencies. In addition, it is stressed that a CHDO cannot be controlled by a government entity. Government entities can continue to create CHDOs with the same one-third limits. It further specifies that officers or employees of a government entity may not be officers or employees of the CHDO, and the CHDO may not use office space of a government entity. [Section 92.2, CHDO definition, paragraph (5)]

3. Existing rules require a CHDO to have demonstrated capacity for carrying out HOME activities, but allow an organization to demonstrate capacity by engaging an experienced consultant who can both carry out HOME activities and also train key staff so that they can gain the needed capacity.

HUD is concerned that some CHDOs have relied on consultants without developing internal capacity. Therefore, the proposed rule would eliminate the use of consultants to meet the demonstrated capacity requirement; it specifically requires a CHDO to have paid employees on staff with housing development experience. In addition, the proposed rule would specify that volunteers or donated staff do not meet the demonstrated capacity requirement. [Section 92.2, CHDO definition, paragraph (9)]

FY12 Appropriations Act requires CHDO to "demonstrate" that it has staff with "demonstrated development experience".

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

HUD proposes to put into regulation, language from existing administrative guidance defining housing that is owned, developed, or sponsored by a CHDO. There is quite a bit of text; this NLIHC summary does not elaborate. [Section 92.300(a)(2) through (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 the section of this summary on page 18 entitled “*Increased Jurisdiction Responsibilities*” for more about written agreements in general.)

For CHDOs developing homeownership housing, the written agreement must specify whether the CHDO may retain proceeds for 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 proposed 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.

[Section 92.504(c)(6)]

Troubled HOME Rental Projects

HUD proposes a new section of the regulations 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 will be considered no longer financially viable. [Section 92.210(a)]
- HUD would allow a jurisdiction to invest additional HOME funds in the project, as long as the original investment plus the additional investment did 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 this is time-consuming; the proposed rule would therefore expedite preservation by allowing jurisdictions to undertake preservation activities without having to seek a HUD waiver.

The existing rule prohibits providing more HOME one year after project completion. [Section 92.214(a)(6)]

HOME and Public Housing

A new Section 92.213 would allow HOME to be used to develop 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. These units, 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. 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 offers 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). [Section 92.253(a)]
- Supportive services cannot be mandatory. The text of the proposed rule does not characterize “supportive services”, but the preamble assumes supportive services are related to disability and justifies this addition based on Section 504 of the Rehabilitation Act. [Section 92.253(b)(9)]
- An increase in a tenant's income does not constitute good cause for termination or refusal to renew. [Section 92.253(c)]
- If an owner converts HOME rental units to homeownership units, a tenant's refusal to purchase their unit does not constitute grounds for eviction or not renewing the lease. [Section 92.255]
- Although not in the tenant protection portion of the regulations, the proposed rule would prohibit subrecipients and local governments that get HOME from their state to charge low income beneficiaries fees to cover various administrative costs such as construction management fees, loan processing fees, loan servicing fees, and underwriting fees. However, the preamble states that jurisdictions could charge reasonable and customary fees such as credit report and appraisal fees. [Sections 92.206(d)(6),207(b),&214(b)(1)]
- Owners of rental projects could not charge tenants fees such as origination fees, parking fees, and laundry room access fees. Reasonable application fees could be charged, as allowed under the current rule. *{Proposed language regarding parking fees seems inconsistent between Section 504(c)(3)(xi) which prohibits them, but Section 214(b)(2)(ii) allows parking fees if they are customary in other projects in the neighborhood.}* [Section 92.504(c)(3)(xi)&214(b)(2)]

While not a “protection”, Section 253 would be changed to allow a tenant's failure to follow a transitional housing services plan to be a basis for terminating a tenancy or refusing to renew a lease. [Section 92.253(c)]

Tenant Selection

- Owners must comply with affirmative marketing requirements established by the jurisdiction (see *Affirmative Marketing* on page 6 of this summary). [Section 92.253(d)]
- Owner's tenant selection policies must limit housing to income-eligible households. [Section 92.253(d)(1)]
- 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 the limitations or preferences apply to housing that is also receiving funds from HOPWA, Shelter Plus Care, the Supportive Housing program, or Part 891 supportive housing for elderly or disabled people. [Section 92.253(d)(3)(i)]
 - A project may have a limitation or preference for people with disabilities who need services offered at a project only if:
 - It is limited to households with disabilities that significantly interfere with their ability to obtain and maintain housing;
 - The households will 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)]
 - *{Very similar language pertaining to jurisdictions is found in HOME changes to the ConPlan regs [Section 91.220(l)(2)(vi)] discussed on page 10 of this summary. The tenant selection changes of Section 92.253(d) would appear to apply only to people with disabilities because there are two subparagraphs as part of (d)(3) each focusing exclusively on people with disabilities. The ConPlan changes, however, refer primarily to preferences to professions such as police, teachers, or artists. This probably needs clarification in the final rule.}*

Tenant-Based Rental Assistance (TBRA)

- New language would expressly state 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)]
- 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)]
- Existing regulation allows TBRA to be targeted to those with special needs.
 - The proposed rule would clarify that people with special needs include those who are homeless or are elderly; it would also target people with disabilities.
 - The proposed 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 proposed rule would allow 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 family’s failure to continue participation would not be permitted as a basis for terminating assistance, but renewal of TBRA could be conditioned on participation.
 - People with disabilities may not be required to participate in medical or disability-related services as part of a self-sufficiency program.The preamble states that this has been a part of administrative guidance for many years. [Section 92.209(c)(2)(iii)]
- TBRA may assist a tenant who has been identified as a potential homebuyer through a lease-purchase agreement.
 - Up to 36 months of TBRA can be made 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

Three improvements are proposed for Section 92.351(a)(1):

- Jurisdictions would not only be required to have affirmative marketing requirements and procedures, they would also be obligated to “follow” them.
- The proposed rule would delete language exempting jurisdictions from having affirmative marketing procedures for households with TBRA or vouchers.
- The rule would also expand affirmative marketing requirements to all HOME *programs* (not just *projects* with five or more units).

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

[Section 92.351(a)(2)]

Single Room Occupancy Units (SROs)

The definition of SRO would be changed to require consistency with the building's zoning and building code classification. [Section 92.2]

The proposed rule would codify what the preamble characterizes as rent limitation policies established in 1994 administrative guidance.

- For SROs that have both sanitary and food preparation facilities, the FMR would be 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 FMR would be 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

Predevelopment Costs

Predevelopment costs such as architectural and engineering costs and other related professional services incurred not more than 18 months before HOME funds are committed could be paid for with HOME.

[Section 92.206(d)(1)]

The preamble declares that the proposed rule would allow energy audits to become eligible project soft costs, but the proposed text does not include this feature. [Section 92.206(d)(3)]

Fees

HUD proposes to allow jurisdictions to charge fees to owners of rental projects in order to cover the cost of their ongoing monitoring and physical inspection of HOME projects during the entire period of affordability. HUD comments that the Low Income Housing Tax Credit program allows monitoring fees. Allowing monitoring fees might create an incentive for jurisdictions to impose affordability periods longer than the minimum required under the existing rule. Current regulation explicitly prohibits monitoring fees.

[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 proposed 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 would prohibit 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” would explicitly exclude any form of housing for students (the current rule only excludes student dormitories). [Section 92.2]
- Students would also be excluded from qualifying as “low income” under a revised definition. The preamble states that the rule would be revised to be consistent with recent statutory changes to the Housing Choice Voucher program, which prohibits voucher assistance to those enrolled in an institution of higher education from qualifying as low income if they 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. [Section 92.2]

Income Determinations

Five changes are proposed; three are mentioned here.

The proposed rule would clarify that annual income determination must be based on all people in a household, unrelated as well as related, not just “family members”. [Section 92.203(d)(1)]

The proposed rule would formalize in the reg, existing HOME Technical Guidance. 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 3-month standard. Jurisdictions could continue to use longer periods. [Section 92.203(a)(1)(i)&(2)]

HUD would require jurisdictions to select only one of two possible definitions of income for each HOME program (e.g., downpayment assistance, rental housing program, TBRA, etc.). Different programs could use different definitions. [Section 92.203(c)]

Miscellaneous Provisions Pertaining to Rental Properties

- A. The proposed rule would be revised to specifically state that HOME rent limits include both rent and utilities or utility allowances. [Section 92.252(a)]
- B. The proposed rule would clarify 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 proposed rule would make 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 observes that it is a common practice to designate many units as Low HOME rent units in projects that also receive project-based rental assistance. The preamble explains 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 urges 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 manager'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)]
- E. Utility Schedule
- The proposed rule would require jurisdictions to annually update maximum monthly utility allowances.
 - Jurisdictions would be 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 notes that the LIHTC program uses the HUD Utility Schedule Model.) [Section 92.252(d)]
- F. Maximum Per-Unit Subsidy Amount
The current rule allows HUD to increase the maximum HOME per-unit subsidy amount to 240% of the original Section 221(d)(3)(ii) mortgage limits. The proposed rule clarifies that this 240% cap remains, even if the Section 221(d)(3)(ii) mortgage limit for an area exceeds the cap amount. [Section 92.250(a)]

Miscellaneous Provisions Pertaining to Rental Properties, continues

G. Underwriting and Subsidy Layering Analysis *{It seems that this applies to homeowner projects too, but it is presented here.}*

The current 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 proposed 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. As proposed, those guidelines must require the jurisdiction to:

- Examine the sources and uses of funds and determine that costs are reasonable.
- Assess neighborhood market conditions, the developer's experience and financial capacity, and the solidity of the financial commitment to the project.

[Section 92.250(b)]

FY12 Appropriations Act requires jurisdictions to certify that, for each project, it has:

- Conducted an underwriting review.
- Assessed developer capacity and financial soundness.
- Examined neighborhood market conditions to ensure adequate need for each project.

HOME Changes to the Consolidated Plan Regulations

Identifying Eligible Applicants and Process for Funding Applications

A jurisdiction's Annual Action Plan would have to 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 proposed rule would allow 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. Existing regulations allow Tenant-Based Rental Assistance to be targeted to people with special needs (see page 6). [Section 92.209(c)(2)]

- Students cannot be given such preferences. (See other student-related provisions under the revised definitions of "housing" and "low-income families", page 8.)
- Employees of the jurisdiction cannot get such preferences.

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

HUD Approval Action

The Annual Action Plan portion of the ConPlan rule would be 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 would be 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

- A. The proposed rule would amend the definition of “reconstruction”. Existing rules allow 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 proposed rule would allow housing destroyed or severely damaged and subsequently demolished to be rebuilt on the same lot under the reconstruction category if HOME funds are committed within 6 months of the date of the destruction or damage (the preamble says 12 months).
 - The preamble points 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.
- [Section 92.2]
- B. The match reduction provisions pertaining to major disasters would be 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 declares that HUD will be issuing guidance.
- [Section 92.222(b)(1)]
- C. There are new features in the Property Standards portion of the proposed 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)(iv)&(b)(2)(vii)]

Miscellaneous Definition Changes

Program Income HUD proposes to amend the definition to clarify that program income does not include gross rent from the use, rental, or sale of real property received by the project owner unless the funds are paid by the owner to the jurisdiction or a subrecipient.

[Section 92.2]

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]

Enhanced/Timely Performance Quality Assurance

Project Completion The definition would be clarified for rental projects. They 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 proposed 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 current rule limits acquisition or demolition with HOME to a specific affordable housing project. The proposed rule would add that construction on that specific project must reasonably be expected to start within the existing time frames 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 unless there is not an immediate, planned use. [Section 92.205(a)(2)]

Leasing Up Rental Properties

- If multifamily housing is not occupied by eligible tenants within a time period specified by HUD following the date of project completion, then the proposed rule would require a jurisdiction to submit marketing information, and if appropriate a marketing plan. The preamble to the proposed rule specifically seeks suggestions about the length of such a time period, and offers examples of a period that is no less than 90 days but no more than six months.
- HUD will require repayment of HOME funds for any unit that is not rented to an eligible tenant 18 months after project completion.

[Section 92.252]

Project Termination

- The proposed 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 proposed rule adds a new 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)]

FY12 Appropriations Act requires repayment if a project is not completed within four years of commitment date. HUD may extend the deadline for one year if the failure to complete is beyond the control of the jurisdiction.

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 proposed rule would be modified to add:

- Repayment of the HOME investment does not end the affordability requirements.
- “Use restrictions” as one of the potential mechanisms for imposing 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)]

Enhanced/Timely Performance and Quality Assurance, continues

Enhanced/Timely Performance and Quality Assurance, continued

On-Site Inspections

Current regulations require on-site inspections annually if there are more than 26 units, every other year if there are 5-25 units, and every three years if there are 1-4 units.

- HUD is adding that on-site inspections must be conducted at project completion and one year after completion.
- HUD is proposing to reduce on-site inspections to every three years, regardless of the number of units.
- Jurisdictions must adopt a more frequent inspection schedule for properties that have had health and safety deficiencies.
- If there are observable deficiencies, a follow up on-site inspection must be conducted within 12 months to verify that deficiencies are corrected. Health and safety deficiencies must be corrected immediately.
- 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.
 - For projects with 1-4 units, the “inspectable items” for each building and 100% of the HOME units must be inspected.
 - For projects with more than 4 units, the inspectable items for each building and at least 20% of the HOME units in each building must be inspected.
- The current rule for TBRA units is unchanged; jurisdictions must continue to conduct annual on-site monitoring.

[Section 94.504(d)(1)]

In the preamble HUD notes that a number of jurisdictions claim that they effectively monitor rental projects using risk-based processes they utilize for rental housing developed through other funding sources. However, the proposed text of the regulation does not tie the three-year inspection regime to reliance on tested mechanisms from other programs. HUD specifically requests input regarding the criteria used in, and the characteristics of, an effective risk-based system for on-site monitoring.

Financial Oversight

The proposed rule would add a new requirement calling for jurisdictions to annually examine the financial condition of rental projects. The preamble states that this would apply to projects with at least ten HOME units, however the proposed text of the rule does not specify a threshold number of units. HUD specifically asks for comments regarding the unit threshold for triggering the annual financial review.

[Section 94.504(d)(2)]

Enhanced/Timely Performance and Quality Assurance, continues

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. At a minimum, the standards must include all inspectable items in HUD’s Uniform Physical Conditions Standards (currently in use in the Public Housing program).
 - The standards must identify life-threatening deficiencies that the owner must immediately correct, as well as the time frame for addressing other health and safety defects.
 - 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)]

CHDOs

See the CHDO portion of this summary

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 proposed rule adds two and modifies an existing option:

- 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.

[Section 92.551(c)(1)]

Homeowner Activities

- If a homeowner unit is not purchased by an eligible buyer within 6 months of completion, the proposed rule would require the housing be rented to an eligible tenant.

The FY12 Appropriations Act requires that any homeownership unit not sold within six months of completion, be rented.

- 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 existing regulations allow 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 notes that due to statutory changes to FHA 203(b), it is a less reliable benchmark.

- Therefore, HUD proposes eliminating the option of using the FHA 203(b) benchmark.
 - HUD will annually publish 95% of area median purchase prices. [Section 92.254(a)(2)]
 - Jurisdictions will continue to have the option of determining their own 95% standard, but the proposed rule would require jurisdictions that make their own determinations to include the calculation in their Annual Action Plans. [Sections 91.220(l)(2)(iv)&320(k)(2)(iv)]
- The preamble notes that the 95% standard in many areas is often extremely low, and that there are relatively few new homes built in nonmetropolitan communities upon which to arrive at a meaningful standard.
 - Therefore, HUD proposes to provide an exception to the 95% benchmark for newly constructed housing, allowing jurisdictions to use the 95th percentile of the U.S. median purchase price for new construction for nonmetropolitan areas.
 - For nonmetro 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 would be required to have and follow written policies for underwriting standards, anti-predatory lending, and refinancing. [Section 92.254(f)]

Underwriting and Subsidy Layering

See the entry in this summary on page 10 for “*Miscellaneous Provisions Pertaining to Rental Properties*”.

[Section 92.250(b)]

Homeowner Activities, continues

Homeowner Activities, continued

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 proposed 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 proposed rule would require the 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 buyer in the event that the resale price necessary to provide a fair return is not affordable to subsequent low income buyers.

[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.

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

Ownership Interest

The proposed rule would expand the ownership interest provision for rehabbed property that does not involve acquisition to include inherited property with multiple owners, life estates, and living trusts.

The preamble explains each of these and the proposed rule goes into greater detail, setting conditions to be met for each of the three situations.

[Section 92.254(c)]

Definition of Homeownership

The definition of "homeownership" would explicitly state 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 explains 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 can the seller take back the home, but all of the buyer's payments up to such a point have no equity value.

[Section 92.2]

Homeowner Activities, continues

Refinancing

The proposed rule would limit 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 and eligible cost.

[Section 92.206(b)(1)]

Match Credit

To ensure that match credit is not provided for the value of contributions that are included in a homebuyer's mortgage (such as donated land or appliances), the proposed rule would add that contributions to homeownership housing may be credited as match only to the extent that the sales price of the house is reduced by the amount of the contribution.

[Section 92.221(d)]

Other Miscellaneous Requirements

Environmental Review

The proposed rule would clarify 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 gives as 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)]

Labor

Regarding Davis-Bacon wage requirements, the proposed 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)]

Conflict of Interest

Financial Benefit:

The rule would be clarified to add 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). [The current rule is "financial interest or benefit from".]

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

Immediate Family:

In addition, the proposed 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.

[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 proposed rule would add "elected or appointed officials" to that list, and it would clarify that the prohibition applies to the immediate family of those on that list.

[Section 92.356(f)(1)]

Increased Jurisdiction Responsibilities

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

The proposed rule would add that jurisdictions must have and follow written policies, procedures, and systems, including a system for assessing project risk and a system for monitoring entities to ensure that HOME requirements are met. [Section 92.504(a)]

For-Profit or Nonprofit Owners, Sponsors, or Developers

The proposed rule would add 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)]

Also, 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 proposed 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 proposed rule would also require 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 proposed rule would add 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 currently required, the proposed rule would call for the agreement to include, no later than at the time of project completion: 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 proposed rule would also require 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 origination fees, parking fees, laundry room access fees, and other fees. Reasonable application fees are allowed. [Section 92.504(c)(3)(xi)]

Additional CHDO-specific changes are proposed. See the CHDO section of this summary. [Section 92.504(c)(3)(x)&(c)(6)]

Increased Jurisdiction Responsibilities, continues

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 proposed 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)]
- Additional language in the agreement is proposed regarding the subrecipient's use of HOME. (Current regs ask for how HOME will be used, tasks to be performed, schedule for completing tasks, and period of agreement.) The proposed rule would also require the agreement to 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 proposed rule would require 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 proposed 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 current rule merely requires the written agreement.) Other types of entities include: for-profits, nonprofits, subrecipients, homeowners, homebuyers, TBRA tenants or landlords, and contractors. In addition, 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 proposed 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.

New Construction

Jurisdictions must have written standards for methods and materials to be used. They must review and approve written cost estimates. Jurisdictions must establish written procedures for initial, progress, and final inspections, and conduct inspections to ensure that work is performed in compliance with requirements. There must be procedures to ensure that progress payments are consistent with the amount of work completed. [Section 92.251(a)]

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).
- Other existing rental housing must meet the rehab standards outlined below, based on an inspection conducted no earlier than 30 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)]

Rehabilitation

- Jurisdictions must have and comply with their own rehab standards that have sufficient detail to establish the basis for uniform property inspection.
 - At a minimum, the standards must require that when rehab is complete, there will be no observable deficiencies, using HUD's Uniform Physical Condition Standards (already utilized in the Public Housing program).
 - Standards must identify life-threatening deficiencies that must be addressed immediately.
 - For multifamily projects with 26 or more units, the jurisdiction must require a capital needs assessment.
- Major systems must have a remaining useful life of 15 years (for rental housing) and 5 years (for owner-occupied housing). {Major systems include structural support, roofing, plumbing, electrical, heating/ventilation/air conditioning, windows, doors, siding, gutters.}
- Jurisdictions must ensure that projects have a work write-up describing the work to be carried out. Jurisdictions must review and approve written cost estimates.
- Jurisdictions must have written inspection procedures for initial, progress, and final inspections.
- Jurisdictions must conduct initial inspections to identify deficiencies, as well as progress and final inspections.
- There must be procedures to ensure that progress payments are consistent with the amount of work performed.

[Section 92.251(b)]

Manufactured Housing

The proposed rule would require manufactured housing to be on a permanent foundation. [Section 92.251(e)]

Ongoing Rental Property Condition Standards

See details under "Enhanced/Timely Performance and Quality Assurance" on page 14 of this summary.

Sending Comments

Comments are due at HUD by February 14.

It is best to send comments electronically if possible at www.regulations.gov.

Refer to Docket No. FR-5563-P-01

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

Questions? Suggestions?

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