Section by Section Summary of the 2013 HOME Final Rule

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§92.2 Definitions

CDBG Program

The 2013 Rule includes this term in order to provide the cross reference to the Community Development Block Grant program at 24 CFR part 570.

Commitment

The 2013 Rule amends several aspects of this definition to clarify the actions that constitute a commitment:

- The Rule clarifies that PJs are able to commit funds for the provision of downpayment assistance. The pre-2013 Rule expressly permitted a PJ to commit funds for the production of affordable housing or the provision of tenant-based rental assistance. In practice PJs were permitted to commit funds to downpayment assistance, but this policy is now codified.

- It alters the concept of "reserving" funds for CHDOs. With this revision, agreements with CHDOs that are not project-specific are no longer considered commitments. PJs must commit CHDO set-aside funds to ***specific projects*** for a specified amount of HOME funds within 24 months of signing their HOME grant agreement. [Note, a number of other changes related to CHDOs are made in the 2013 Rule. Changes to the definition of CHDO are described in this section; §92.300 includes changes related to activities that are eligible for CHDO set-aside funds and PJ oversight of CHDOs; and §92.208 clarifies certain issues related to CHDO operating funds.]

- It specifies that a PJ cannot commit HOME funds to a project until all necessary financing is secured, a budget and schedule established, underwriting and subsidy layering completed, and construction is scheduled to begin within 12 months.

- It specifies that signatories to written agreements must ***date*** the document in order for it to constitute a valid commitment. Since the HOME statute and regulations require the PJ to enter into a legally binding commitment within 24 months of signing the HOME Investment Partnerships Agreement, dates are needed to verify compliance.

- It includes a cross-reference to §92.504(c) to direct PJs to the required provisions of a written agreement to help ensure that the agreements evidencing commitment meet the HOME standards for written agreements.

- It clarifies that a commitment does not include an agreement between:
    - A PJ and a subrecipient that the PJ controls (such as an authority that is part of the local government), or
    - A lead entity of a consortium and a consortium member.

These entities are considered a part of the PJ itself, and not separate entities.

The requirement that funds are considered committed only when the PJ has a legally binding written agreement with a State recipient, a subrecipient, or a contractor to use a specific amount of HOME funds remains unchanged.

Suggested Next Steps for PJs

1. Revise existing policies and procedures related to project commitments to be sure they include:
    a. Definition of commitment of funds for downpayment assistance.
    b. Verification, prior to execution of a written agreement, that all necessary financing has been secured, a budget and schedule have been established, underwriting and subsidy layering have been completed, and construction is expected to start within 12 months.
    c. Elimination of the "reservation" of CHDO set-aside funds for projects to be determined at a later date, and adoption of CHDO commitment of funds for specific projects and specific amounts of HOME funds.
2. Review commitment agreements to be sure they include the required provisions of a written agreement that are specified at §92.504(c) to meet the HOME standards for written agreements.
3. Develop a tracking system of CHDO set-aside projects that are in the planning stages to ensure that projects will be ready for commitment before the 2-year deadline. This will help ensure that the PJ will meet the requirement to expend 15 percent of its formula allocation through CHDOs.
4. Revise the correspondence/legal review process for documents to ensure that all documents are dated by the signatories.

Effective Date: August 23, 2013 for all definition changes, except for the new provision that requires the reservation of funds to CHDOs be project-specific which becomes effective on October 22, 2013 (90 days after the publication of the Final Rule). HUD will implement the new definition of CHDO reservation for deadlines that occur on or after January 1, 2015.

Community Housing Development Organization (CHDOs)

There are several changes to the definition of CHDO that impact the criteria that qualify a nonprofit organization as a CHDO.

Nonprofit Status (Paragraph 4)

The pre-2013 Rule requires that a nonprofit organization, in order to qualify as a CHDO, must be organized under the Internal Revenue Code of 1986 (IRC) at 501(c)(3) or 501(c)(4). The 2013 Rule expands this definition to include: (1) a subordinate of a central organization under IRC 905 (this was previously permitted in practice, but is now codified); or (2) a wholly-owned entity that is regarded as an entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly-owned by an organization that qualifies as tax-exempt), when the owner organization has a tax

exemption ruling from the IRS under section 501(c)(3) or 501(c)(4) of the IRC. The nonprofit must meet the other qualifying criteria outlined in the CHDO definition.

CHDO and For-Profit Entities (Paragraph 3)

The requirements of paragraph 3 ensure that the CHDO is not controlled by, or significantly influenced by, a for-profit entity. In addition to the pre-2013 requirements that remain unchanged, paragraph 3(iv) adds a new criterion that if a for-profit entity creates or sponsors a potential CHDO, while the officers and employees of the for-profit entity can serve as Board members of a CHDO (subject to the one-third appointment limitation), they cannot serve as officers or employees of the CHDO.

CHDO and Governmental Entities (Paragraph 5)

Paragraph 5 is revised to state that a governmental entity may create a CHDO, and while officers and employees of the governmental entity can serve as Board members to the CHDO (subject to the one-third appointment limitation), they cannot serve as officers or employees of the CHDO. The additional limitations of the pre-2013 Rule on the involvement of a public entity remain unchanged.

CHDO Capacity and Staffing (Paragraph 9)

Paragraph 9 changes how a nonprofit demonstrates its capacity to undertake affordable housing activities. To qualify as a CHDO, the 2013 Rule requires that a nonprofit have paid employees with housing experience appropriate to the role the nonprofit expects to play in projects (i.e., developer, sponsor, or owner) in order to receive a CHDO designation. Note, the definition of "owner" has been significantly revised in the 2013 Rule at §92.300. The Rule now permits a CHDO to own and operate housing that it does not develop. Therefore, a nonprofit that will undertake development activities must demonstrate development capacity. A nonprofit that will undertake property ownership and management must demonstrate ownership/management experience. The requirement for development capacity can no longer be demonstrated through the use of consultants with development experience, except during the first year of operation as a CHDO, provided that the consultant trains the CHDO staff. In addition, the capacity requirement cannot be met through the use of volunteers or staff that is donated by another organization. Consultants or volunteers can continue to fill occasional skill gaps or undertake activities that are required only on a periodic basis (e.g., project underwriting), but cannot be the basis of a determination that a nonprofit has the capacity to be designated as a CHDO.

Unchanged Provisions

The qualifying criteria for CHDOs that are not listed here remain unchanged (paragraphs 1, 2, 6, 7, 8, 10).

Suggested Next Steps for PJs

1. Revise checklist of items that a nonprofit organization must submit in order for the PJ to determine if it qualifies as a CHDO, including:
    a. Documentation of nonprofit status in Articles of Incorporation and IRS correspondence.

   b. For key staff only, statement of qualifications and experience, or resume(s). The qualifications and experience of consultants is no longer relevant unless the CHDO is in its first year of operation and it is using a consultant to train its staff.
2. Determine the PJ's process for reviewing and approving (or rejecting) a CHDO. Determine who will make the determination that a nonprofit qualifies as a CHDO and how will this be documented.
3. See changes at §92.2, definition of commitment regarding the revision of CHDO reservations; §92.300 for changes related to CHDO set-aside eligible activities, PJ oversight of CHDOs, and §92.208 regarding CHDO operating funds.

Effective Date: August 23, 2013

Consolidated Plan

The 2013 Rule includes this term in order to provide the cross references to the consolidated plan that is submitted to HUD for review and approval in accordance with 24 CFR part 91.

Homeownership

The revised definition reorganizes the list of eligible forms of homeownership and provides guidance on ownership situations that were not addressed in the pre-2013 Rule (indicated as "NEW" below):

- Fee simple title in a 1- to 4- unit dwelling or condominium unit or at least a 99-year leasehold interest, except:
    - Housing located in insular areas must have a ground lease for at least 40 years
    - Housing located on an Indian trust or restricted Indian land, for at least 50 years
    - Housing located on land owned by a community land trust, for at least 50 years (NEW)
    - Manufactured housing on a ground lease that is at least equal to the applicable affordability period. (NEW) Additional guidance on manufactured housing is found at §92.251(e).

The 2013 Rule does not change the requirement that ownership interest must be in good, marketable title, subject to only certain restrictions (such as HOME resale restrictions, mortgages, deeds of trust, or liens or instruments that secure debt on the property), provided these are approved by the PJ.

The revised definition expressly states existing HUD policy that a contract for deed (also known as an installment contract or land sales contract) is ***not*** an eligible form of homeownership. A contract for deed is a financing mechanism that fails to provide equitable title to the contracting party, who remains vulnerable to forfeiting the property until the final payment is made. Because of this risk, assisting low-income families through contract for deed situations is not a sound use of HOME funds.

The requirement of the 2013 Rule that PJs have the responsibility to determine whether ownership or membership in a cooperative or mutual housing project constitutes homeownership under State law has not changed. However, the 2013 Rule clarifies that when these types of housing receive Low-Income Housing Tax Credits, they are rental housing (and not homeownership).

Suggested Next Steps for PJs

1. Revise and update homeowner rehabilitation and homebuyer development assistance program policies and procedures to reflect this new definition. For homeowner rehabilitation program policies and procedures, see also revisions at §92.254(c) that permit four additional forms of ownership: heir property, life estate, living trust, and beneficiary deed.
2. Revise and update program policies and procedures to include new eligible forms of homeownership:
    a. Housing located on land owned by a community land trust, for at least 50 years
    b. Manufactured housing on a ground lease that is at least equal to the applicable affordability period.
3. Revise and update program policies and procedures including checklists to prohibit contracts for deed as an eligible form of ownership interest.

Effective Date: August 23, 2013

Housing

The definition of housing remains substantially unchanged, except that the 2013 Rule specifically excludes halfway housing, dormitories (including farmworker dormitories), and ***all*** types of student housing, not just student dormitories. These types of residence constitute facilities or provide short-term or transitory housing, not permanent or transitional housing, as required by the HOME statute.

Note, revisions were also made to the definitions of low-income and very low-income families to clarify when a student household may be an eligible beneficiary.

Suggested Next Steps for PJs

1. Revise and update policies for all programs (rental and homebuyer development, homebuyer assistance, and tenant-based rental assistance programs) to reflect this prohibition/clarification.
2. Notify staff and all program partners (especially those that that accept applications or administer programs on behalf of a PJ and select projects) of this change.

Effective Date: August 23, 2013

Low-Income Families and Very Low-Income Families

The definition of “low-income families” and “very low-income families” remains unchanged. However, the 2013 Rule specifically excludes certain students from participating independently in the HOME program. The HOME program adopts the Section 8 Housing Choice Voucher (HCV) program restrictions on student participation found at 24 CFR 5.612, which exclude any student that:

1. Is enrolled in a higher education institution
2. Is under age 24
3. Is not a veteran of the U.S. military

4. Is not married
5. Does not have a dependent child(ren)
6. Is not a person with disabilities
7. Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income.

Excluded students are prohibited from receiving any type of HOME assistance, including renting HOME-assisted rental units, receiving HOME tenant-based rental assistance, or otherwise participating in the HOME program independent of their low- or very low-income families.

Suggested Next Steps for PJs

1. Revise and update policies for all programs (rental and homebuyer development programs, homebuyer assistance, and tenant-based rental assistance) to reflect this policy on student participation.
2. Notify staff and program partners of this clarification, particularly those that determine eligibility for HOME assistance.
3. Modify application forms and program materials provided to applicants to state this exclusion of students.

Effective Date: August 23, 2013

Program Income

The definition of program income remains unchanged. The 2013 Rule amends the definition to clarify and codify previous policy that program income ***does not include*** gross income from the use, rental, or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid ***by*** the project owner, developer, or sponsor ***to*** the PJ, subrecipient, or State recipient.

Suggested Next Steps for PJs

1. Review and update program policies and procedures for rental and homebuyer development programs to ensure that income from the sale, rental, or use of real estate by the project owner, developer, or sponsor is not treated as program income.
2. Clarify this policy with staff and program partners and instruct them on how to implement this policy.
3. Update written agreements with program partners to reflect this policy, pursuant to §92.504(c).

Effective Date: August 23, 2013

Project Completion

The definition is clarified for rental projects only: a rental project is considered complete when construction is completed and the units are ready for occupancy. The PJ is required to report on

beneficiary data in accordance with §92.502, however, the input of beneficiary data in IDIS is no longer required for project completion; units may be marked as vacant. Otherwise, the definition of project completion remains unchanged: projects must have all necessary title transfer requirements and construction work complete; projects must comply with all HOME requirements (including property standards at §92.251), final draw must be disbursed; and project completion data must be entered into IDIS (except for rental projects as amended).

§92.502(d) requires project completion data to be entered into IDIS within 120 days of the final drawdown for all activity types.

Suggested Next Steps for PJs

1. Revise the procedures for rental development programs to ensure that upon final draw of HOME construction funds and issuance of a certification of occupancy, the project is determined to be complete and it is designated as complete in IDIS.
2. Revise written agreements with owners, developers, and sponsors to ensure that they continue to report beneficiary data, as units are rented, after the project is completed.
3. Track rental projects to ensure that all available beneficiary data is provided and input into IDIS at project completion, and that beneficiary data is regularly input during project rent-up. This tracking provides the PJ with early notice of any units at risk of going unrented. Revisions at §92.252 require the PJ to provide marketing information to HUD for units that are unrented at six months. PJs must repay HOME funds for units that are unrented at 18 months after project completion. See §92.252 for more information.

Effective Date: August 23, 2013

Public Housing

The 2013 Rule includes this term in the list of common HUD terms found at the beginning of §92.2 in order to provide the cross reference to the term in 24 CFR 5.100.

Reconstruction

The pre-2013 Rule states that housing can be rebuilt under the reconstruction category only if the housing was standing on the site at the time of project commitment. This definition is revised to facilitate rebuilding efforts after disasters (when housing may no longer be standing on the site). It permits reconstruction of units that are not standing on the site at the time of project commitment, provided that HOME funds are committed within 12 months of the date of destruction.

Since reconstruction is considered rehabilitation under the HOME program, the periods of affordability for reconstructed housing are based on the per-unit investment for rental projects [§92.252(e)], and displaced owner-occupants are not subject to resale and recapture provisions of §92.254(a)(5).

For all other housing (not destroyed by disaster), the definition of reconstruction remains unchanged.

Suggested Next Steps for PJs

1. Revise and update program policies and procedures to permit reconstruction of units that were destroyed by disaster and are not standing on the site at the time of project commitment, provided that HOME funds are committed within 12 months of the date of destruction.

Effective Date: August 23, 2013

Single Room Occupancy (SRO)

The 2013 Rule amends this definition to clarify that in order for a project to be designated as an SRO, its characteristics cannot be inconsistent with the PJ's applicable building and zoning code classifications. For jurisdictions whose building and zoning codes do not include an SRO designation, SRO housing is permitted because it is not "inconsistent."

The pre-2013 HOME Rule provides PJs with flexibility with respect to classifying a property as SRO housing or a group home, depending on the physical configuration of the project. This flexibility remains unchanged. Classifying a project as a SRO rather than a group home results in larger potential HOME subsidies and higher gross rents (because a group home is considered a single unit with multiple bedrooms). However, a PJ may not classify a project as a SRO in violation of its own building and zoning code classifications.

Suggested Next Steps for PJs

1. Revise and update rental program policies to reflect that SRO determinations must not be inconsistent with zoning and building code classifications.
2. See also §92.252(c) regarding the rents that can be charged for SRO housing.

Effective Date: August 23, 2013

Subrecipient

The definition of subrecipient is amended to clarify that HOME subrecipients receive funds to carry out ***programs*** (e.g., downpayment assistance, homeowner rehabilitation, or tenant-based rental assistance programs, etc.), and not to undertake specific ***projects***. (Entities that carry out projects are generally owners, developers, or sponsors.)

Suggested Next Steps for PJs

1. For projects and programs to which a commitment is made after August 23, 2013, prior to executing an agreement, determine the role of the entity and enter into a written agreement accordingly.
    a. Any entities carrying out all or a portion of a program activity are serving in the capacity of subrecipient, and must have a written agreement that specifies this role. Determine if the existing written agreement with those entities meets the new requirements of a

written agreement with a subrecipient specified at §92.504(c)(2). If not, amend the agreement(s). Examine agreements with State recipients, subrecipients, and contractors who administer programs.

b. Any entities carrying out specific projects are serving in the capacity of owner, developer, or sponsor and must have a written agreement that specifies that role. PJs (and their State recipients and subrecipients) should determine if the current written agreement for owners, developers, or sponsor meets the requirements of a written agreement for that role as specified at §92.504(c)(3). If not, amend the written agreement(s) executed for new projects as of the effective date.

Effective Date: August 23, 2013

Uniform Physical Condition Standards (UPCS)

This is a new definition. The UPCS are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair, pursuant to 24 CFR 5.703. These standards are newly adopted for HOME rehabilitation, acquisition, and tenant-based rental assistance projects in accordance with revisions made to the property standards requirements at §92.251. In the near future, HUD will issue guidance on the specific inspectable elements of UPCS that will apply to HOME. These new requirements become effective on January 24, 2015 (18 months after the publication date of the Final Rule).

Suggested Next Steps for PJs

1. Look for HUD guidance on the UPCS and the property standard revisions at §92.251.
2. Once these revisions go into effect and HUD guidance has been issued, modify policies, procedures, and agreements for HOME rehabilitation, acquisition, and TBRA projects to meet the requirements of §92.251.

Effective Date: January 24, 2015 (18 months after the publication date of the Final Rule)

§92.3 Applicability of 2013 Regulatory Changes

This new section to the HOME Rule establishes the effective dates for various provisions of the 2013 Rule. In general, the provisions of the 2013 Rule are applicable to projects for which HOME funds are committed on or after August 23, 2013 (30 days following publication date of the Final Rule), except for the following:

- The change in the definition of *commitment* at §92.2 that no longer permits non-specific reservations of funds to CHDOs as a commitment becomes effective 90 days after the publication date of the Final Rule, on October 22, 2013. This provision will be implemented by HUD for deadlines that occur on or after January 1, 2015.

- The requirements at §92.254(f) that require the PJ to adopt homebuyer program policies will be effective six months after publication date of the Final Rule, on January 24, 2014.
- The new requirement at §92.504(a) that PJs develop and follow written policies and procedures and implement a risk-based monitoring system becomes effective 12 months after publication of the Final Rule, on July 24, 2014.
- The requirement at §92.504(d)(2) for financial oversight of HOME-assisted rental projects during the affordability period will become effective 12 months after the publication date of the Final Rule, on July 24, 2014.
- The separate 5-year deadline for expenditure of CHDO set-aside funds established at §92.500(d)(1)(C) becomes effective on January 1, 2015, and will be implemented by HUD for all deadlines that occur on or after that date.
- The property standard provisions at §92.251 apply to projects to which funds are committed 18 months after the publication date of the Final Rule, on January 24, 2015.

Suggested Next Steps for PJs

1. Create a master list and schedule of changes in the HOME Final Rule and begin to plan for effective dates, as listed above.

2. Communicate deadlines to all decision makers and staff and make all necessary program changes.

§92.201 Distribution of Assistance

The pre-2013 Rule codifies the HOME statutory requirement that prohibits a local PJ from investing HOME funds in projects outside its boundaries, except for projects located in a contiguous jurisdiction that are joint projects that serve the residents of both jurisdictions. The 2013 Rule amends §92.201(a)(2) to provide guidance about what constitutes a "joint project." It states that a joint project is one in which both jurisdictions make a financial contribution to the project. The contribution can be in the form of a grant, loan, or relief of a significant tax or fee (such as waiver of impact fees, property taxes, or other taxes or fees customarily imposed on projects within the jurisdiction) and must contribute to the feasibility of the project.

The provisions of §92.201(b), that provide guidance about how and where State PJs must distribute HOME funds, remain unchanged.

Suggested Next Steps for PJs

1. When undertaking a ***joint project***, be sure that both jurisdictions make a financial contribution in the form of a grant, loan, and relief of significant tax or fee.
2. Be sure that the project underwriting reflects the financial contributions of both jurisdictions.
3. Document the project files to demonstrate compliance with this requirement.

Effective Date: August 23, 2013

§92.202 Site and Neighborhood Standards

§92.202 is amended to update the regulatory citation to the site and neighborhoods regulations, which were moved to 24 CFR 983.57(e)(2) and (3).

There is no substantive change to the pre-2013 Rule related to site and neighborhood standards. PJs continue to be required to (1) provide housing that furthers compliance with civil rights laws, and that promotes greater choice of housing opportunities; and (2) determine that proposed sites for new construction rental housing meet the cited site and neighborhood standards.

Suggested Next Steps for PJs

1. For projects involving new construction of rental housing, be sure that proposed project sites meet the site and neighborhood standards prior to making a funding commitment.

Effective Date: August 23, 2013

§92.203 Income Determinations

The 2013 Rule imposes a number of changes to this section, related to calculating the annual income of a family or household in order to determine eligibility for HOME assistance.

Source Documentation for Income Determinations

The 2013 Rule amends §92.203(a)(1)(i) and (a)(2) to require PJs to examine at least two months of source documentation (e.g., wage statements, interest statements, or unemployment compensation documentation) when determining household income for all potential HOME beneficiaries. This change establishes a minimum standard for all PJs. The remaining guidance in §92.203(a) related to how and when to determine household income remains unchanged.

Elimination of Census Long Form as Definition of Income

The 2013 Rule amends §92.203(b)(2) to eliminate the pre-2013 Rule option available to PJs to use the definition of "annual income" that is based on income reported on the U.S. Census Long Form. PJs continue to have the option to use either the income definition in HUD's regulations at 24 CFR part 5 (often referred to as "the Section 8 definition") or the definition of adjusted gross income of the IRS, both of which are broadly used in other housing and supportive service programs.

Single Income Definition for Each HOME-Funded Program or Rental Project

§92.203(c) imposes a new requirement that PJs select a single definition of income to use for each HOME-assisted program it administers (e.g., downpayment or homeowner rehabilitation assistance), and for each of its rental housing projects, to ensure equitable treatment for all applicants. Determining

which definition to use on a project-by-project basis in rental housing (rather than program-wide) enables the PJ to coordinate the requirements of HOME with other funding sources for each project, while ensuring that all applicants in the project are treated equitably.

Note, although not specifically addressed in the regulatory amendment, HUD considers programs administered by State recipients or subrecipients as distinct programs; they do not each need to use the same definition of income.

Counting All Household Members' Income

§92.203(d)(1) is amended to clarify that, when determining the annual income of a household to establish eligibility for HOME assistance, the PJ must count the income of ***all*** persons in the household, including nonrelated individuals. This clarification is intended to address situations where not all household members are related, or where several adult members will reside in a HOME-assisted unit. It is not intended to supersede the income determination requirements of the definition the PJ has adopted. For instance, if the PJ adopts the Part 5 definition of income, the income of a minor child is not included in the determination of income, even though the minor will reside in the housing unit.

The remaining requirements of §92.203(d) remain unchanged, including requirements related to the frequency of using source documentation, acceptable types of source documents, and use of exclusions to calculate adjusted income.

Suggested Next Steps for PJs

1. Revise policies related to making income determinations for ***all*** programs (rental and homeownership development, homeowner rehabilitation, tenant-based rental assistance, and downpayment assistance) to reflect the clarifications and changes in the income determination requirements.
2. If the PJ uses the definition of income from the U.S. Census Long Form for any of its programs, discontinue its use and adopt a new income definition (either the Section 8 or the IRS definition for adjusted gross income).
3. Notify/train staff and program partners (subrecipients, State recipients, owners, developers, and sponsors) of the changes, particularly the staff responsible for making income determinations.
4. Look to the HOME program website for updates to the online *Income Calculator* and the guidebook, *Technical Guide for Determining Income and Allowances for the HOME Program.* These updates will be announced at www.hud.gov/homeprogram/.
5. Review and revise written guidance and related checklists for staff that makes income determinations to ensure that:
    a. All applicants provide at least two months of source documentation for verification of income.
    b. The income of ***all*** household members is included in the income determination.

c. For each program except for rental housing, determine that the same definition of income is used when calculating a household's income eligibility. Direct each State recipient, subrecipient, developer, owner, sponsor to do the same.

6. Determine what definition of income should be used for each rental project and instruct each developer, owner, and sponsor that the same definition of income must be used within a project.
7. Revise the written agreement template for use on new projects to reflect these new requirements.

Effective Date: August 23, 2013

§92.205 Eligible Activities: General

Several provisions of §92.205 have been amended.

Housing Must Meet Property Standards to Be Eligible

The 2013 Rule adds language to paragraph §92.205(a)(1) to clarify that activities and costs are eligible for HOME funding only if the housing meets the property standards in §92.251 upon project completion.

Suggested Next Steps for PJs

1. See §92.251 for required standards.

Effective Date: August 23, 2013

Acquisition of Vacant Land or Demolition Are Not Eligible Stand-Alone Activities

§92.205(a)(2) clarifies current policy to specify that the acquisition of vacant land or demolition with HOME funds may be undertaken only for an particular affordable housing project on which construction will begin within 12 months, as established in paragraph (2) of the definition of *commitment* in §92.2. This amendment clarifies and emphasizes the pre-2013 HOME requirement that HOME funds may not be used to acquire property or demolish structures on land for which there is not an immediate, planned HOME-eligible use.

Suggested Next Steps for PJs

1. In the project review and selection process, for any proposed project that involves acquisition of vacant land or demolition activities, evaluate whether it is reasonable to expect that construction will begin within 12 months of project commitment, before committing HOME funds.
2. Track the construction start of projects that involve acquisition of vacant land or demolition.

Effective Date: August 23, 2013

Using Alternative Forms of Assistance

A PJ is required to get HUD approval before using HOME funds in any form of assistance that is not specified in the regulation. §92.205(b)(1) is revised to state that HUD must approve alternative forms of investment ***in writing***. Under the pre-2013 Rule, a PJ could seek HUD approval by providing public notice in its consolidated plan and when HUD approved the consolidated plan, the alternative form of assistance was approved. With this change, the PJ must seek and receive written approval from HUD independent of its consolidated plan.

Note, the following forms of assistance are expressly permitted in the HOME Rule (this list remains unchanged from the pre-2013 Rule):

- Equity investments
- Interest-bearing loans or advances
- Non-interest-bearing loans or advances
- Interest subsidies consistent with the purposes of HOME
- Deferred payment loans
- Grants.

Suggested Next Steps for PJs

1. For any new form of assistance the PJ will use that is not one of the six identified in the 2013 Rule (listed above), seek written HUD approval.
2. If currently using a form of assistance not identified in the HOME Rule, verify that the PJ has obtained written approval from HUD. For existing projects, this approval can be in the form of a HUD-approved consolidated plan.
    a. If HUD has not approved this alternative form of assistance, seek approval as soon as possible.

Effective Date: August 23, 2013

On-Site Manager's Unit

A new paragraph, at §92.205(d)(2), has been added to make clear that, for multi-unit rental projects, the number of units designated as HOME-assisted may only be reduced for troubled projects in accordance with §92.210, with only one exception. In projects with 100 percent HOME-assisted units, if a PJ determines there is a need for an on-site manager to contribute to the stability of the property, one HOME-assisted unit may be converted to an on-site manager's (non-assisted) unit. The PJ must be certain that, with this decrease in HOME-assisted units, the costs of the project do not exceed either the actual costs of the HOME-assisted units or the HOME maximum subsidy limit that was in effect at the time HOME funds were committed to the project.

Suggested Next Steps for PJs

1. Before approving any decrease in the number of HOME-assisted units:

   a. Determine that the project has been identified as having marketing, management, or financial difficulties during ongoing monitoring, and consider whether an on-site manager could provide stability to the property.
   b. Determine whether this change will contribute to the stability of the property.
   c. Re-evaluate the initial cost allocation. Look for updated guidance from HUD on the issue of cost allocation.
2. See §92.210 (new section) of the 2013 Rule for additional discussion about steps that can be taken in workout situation to stabilize a property.

Effective Date: August 23, 2013

Terminated Projects

A new paragraph is added at §92.205(e)(1) to clarify that when HOME funds are expended for projects that are terminated before completion, for whatever reason, the HOME funds that have been expended are ineligible and must be repaid. It further clarifies the requirement that the PJ must terminate any project that does not meet the HOME requirements for affordable housing (affordability provisions, income targeting, property standards, etc.) and repay HOME funds expended for the project.

Suggested Next Steps for PJs

1. Notify PJ staff inspectors and PJ monitors that when HOME funds are expended for projects that are not completed or terminated before completion, for whatever reason, the HOME funds expended are ineligible and HOME funds must be repaid.
2. Track all HOME projects during the period of affordability and identify units that do not meet the HOME affordability requirements.
3. Crosscheck IDIS reports and make periodic assessments of projects to determine if any projects are inactive/ terminated.
4. Repay HOME funds for any projects that are inactive/ terminated.

Effective Date: August 23, 2013

Project Completion Deadline

A new paragraph at §92.205(e)(2) is added. It states that a project that is not completed within four years from the date the written agreement is executed (project commitment) is deemed terminated and that the PJ must repay the HOME funds. In the event that a project is not completed within the four-year timeframe, the PJ may request a 12-month extension from HUD. The request should provide information about the status of the project, steps being taken to overcome any obstacles to completion, proof of adequate funding to complete the project, and a schedule with milestones for completion of the project. This is a new requirement; the pre-2013 Rule imposed a five-year expenditure deadline.

Suggested Next Steps for PJs

1. Evaluate the readiness of all projects before committing funds to them. Make sure the production schedule reflects completion before the 4-year deadline.
2. Update written agreements to reflect this deadline; in the written agreement include intermediate benchmarks, progress reporting requirements, and appropriate enforcement mechanisms.
3. Monitor project progress using the "HOME Activities Reports" (available online at http://www.hud.gov/offices/cpd/affordablehousing/reports/activities.cfm) to identify stalled and slow-moving projects.
4. For any project that is progressing, albeit slowly, determine if it is likely to be completed within five years. If yes, make a written request for an extension to HUD, providing the necessary information, outlined above.

Effective Date: August 23, 2013

§92.206 Eligible Project Costs

Refinancing

HOME funds can be used for refinancing only in projects where rehabilitation is the primary activity. The 2013 Rule adds a provision at §92.206(b)(1) that clarifies that for refinancing to be an eligible cost, the rehabilitation cost must exceed the amount of debt that is refinanced with HOME funds. Refinancing alone is not an eligible HOME activity and HOME funds may not be used to refinance existing debt of projects unless rehabilitation is the primary activity taking place. This is a clarification of the pre-2013 requirement.

The 2013 Rule also amends §92.206(b)(2) to require that the eligibility of costs of refinancing existing debt, and the requirement for PJs to adopt accompanying refinancing guidelines, are intended to cover all rental housing – multifamily and single family.

Suggested Next Steps for PJs

1. If the PJ chooses to permit refinancing when funding rehabilitation projects, it must modify program policies and procedures as necessary to ensure that projects receiving funds for refinancing and rehabilitation have rehabilitation costs greater than the amount of debt to be refinanced.
2. Incorporate this requirement into project application and underwriting/evaluation reviews and checklists.

Effective Date: August 23, 2013

Costs Incurred Before Commitment of HOME Funds

§92.206(d)(1) is revised to allow for the use of HOME funds to pay architectural and engineering and other professional services costs that are incurred before the PJ has made a commitment of HOME funds. These costs can be paid when the PJ expressly authorizes payment in the written agreement and when the costs have been incurred in the 24 months prior to the commitment of funds. This change provides increased flexibility to PJs and affordable housing developers that are planning a project that is intended to eventually receive HOME financing. It also permits PJs to reimburse these costs for projects that are already under construction when it becomes clear that HOME financing is necessary to complete the project.

Suggested Next Steps for PJs

1. Determine whether this is an option that the PJ wishes to make available to applicants and developers and amend program policies and procedures accordingly.
2. If yes, revise policies regarding cost eligibility for projects and/or Requests for Proposals.
3. Review and include the specific costs that are eligible for reimbursement (pre-paid) in the written agreement. Specify that these costs must be incurred no earlier than 24 months prior to the HOME commitment.

Effective Date: August 23, 2013

Clarification of Eligible Audit Costs

The amendment to §92.206(d)(3) clarifies that eligible costs of a project audit include the cost certification of costs performed by a certified public accountant. This has always been an eligible cost; the amendment clarifies and codifies this.

Suggested Next Steps for PJs

1. Update policies regarding cost eligibility for projects and/or Requests for Proposals to clarify the eligibility of cost certifications.
2. Clarify this policy with staff and program partners.

Effective Date: August 23, 2013

Prohibition on Charging PJ "Soft" Costs to Beneficiaries

§92.206(d)(6) is revised to clarify that the PJ's, State recipient's or subrecipient's staff and overhead costs related to carrying out a project ***cannot*** be charged to, or paid by, low-income families. These costs can be charged as administrative or project costs. Examples of these costs are construction management fees, loan servicing fees, loan processing fees, and underwriting fees.

Note that PJs, State recipients, and subrecipients are permitted to charge reasonable and customary fees commonly charged to a loan applicant in unassisted real estate transactions, such as the cost of credit reports and appraisals fees since these are customarily charged by a lender as part of a home

purchase and paid to third parties performing services on behalf of the lender. PJs, State recipients, subrecipients, contractors, project owners/developers are permitted to charge nominal application fees to applicants for assistance, pursuant to §92.214(b).

These revisions are consistent with pre-2013 policy. However, the eligibility of certain fees was not specified in the pre-2013 Rule.

Suggested Next Steps for PJs

1. Update policies and procedures to clarify that the PJ's, State recipient's or subrecipient's staff and overhead costs related to carrying out a project cannot be charged to, or paid by, low-income families. These costs can be charged as administrative or project costs.
2. Review and update policies and procedures for all programs to permit reasonable and customary fees commonly charged to a loan applicant.
3. Update policies and procedures to permit nominal application fees to applicants by program participants.
4. Provide guidance on this issue in Requests for Proposals.
5. Clarify the policy with staff and program partners.
6. Document this policy in written agreements with program partners, as required by §92.504(c).

Effective Date: August 23, 2013

§92.207 Eligible Administrative and Planning Costs

Amendments to §92.207(b), which describe eligible staff and overhead costs, clarify that lead-based paint evaluations (including visual assessments, inspections, and risk assessments), are allowable as administrative costs or project costs. This section reiterates the change to §92.206(d)(6) that prohibits PJs, State recipients, and subrecipients from charging administrative or PJ soft costs to low-income families. Reasonable and customary fees commonly charged to a loan applicant in unassisted real estate transactions, such as the cost of credit reports or appraisals, are permissible. In addition, nominal application fees charged to applicants for assistance are expressly permitted, as are housing counseling fees. See §92.214(b) for additional clarification of allowable and prohibited fees.

Suggested Next Steps for PJs

1. Determine how lead-based paint evaluations are currently being charged and decide if a change is warranted. Note:
    a. If lead-based paint costs are counted as administrative costs, the PJ must absorb them within the 10 percent administrative cap.
    b. If lead-based paint costs are counted as project costs, they are included in the per unit subsidy limit determination.

2. Review and revise policies and procedures for all programs to clarify the new regulations about fees that are permitted or not permitted. See "Suggested Next Steps for PJs" for §92.206(d)(6).
3. Provide guidance on these issues in Requests for Proposals.
4. Clarify the policy with staff and program partners.
5. Document this policy in written agreements with program partners, as required by §92.504.

Effective Date: August 23, 2013

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

Under §92.208 in the pre-2013 Rule, a PJ may use up to five percent of its fiscal year HOME allocation for operating expenses of CHDOs. HOME policy has always considered CHDO operating funds (for general operating assistance such as office rents, utilities, staff salaries, or insurance) to be separate from and not intended to supplant CHDO set-aside funds for project costs provided under §92.300(a). §92.208(a) has been revised to clarify this point.

Suggested Next Steps for PJs

None needed.

Effective Date: August 23, 2013

§92.209 Tenant-Based Rental Assistance: Eligible Costs and Requirements

The 2013 Rule amends the tenant-based rental assistance provisions at §92.209 in several ways.

Eligible Costs

Language is added to §92.209(a) that:

- Expressly states that payment of utility deposits is an eligible HOME cost, but only in conjunction with the provision of HOME tenant-based rental assistance or security deposit assistance. HOME funds cannot be used for programs that provide ***only*** utility deposit assistance, since such assistance does not constitute tenant-based rental assistance. This amendment codifies longstanding HUD policy.
- Changes existing policy by making eligible the costs of inspecting housing units and determining income eligibility of the family as general management and oversight [administrative cost under §92.207(a)] or as a cost of the TBRA [as a project-related soft cost under §92.206(d)(6)].

Suggested Next Steps for PJs

1. Review current TBRA program policies and practices to be sure that utility deposit assistance is not permitted independent of tenant-based rental assistance or security deposit assistance.
    a. If it is, discontinue this practice immediately. Update policies and procedures and revise written agreements with subrecipients (if applicable).
2. Evaluate the staff or contractor costs related to making income determinations and inspecting TBRA housing units to determine whether it would be advantageous to charge these costs as project costs.
    a. If yes, document the basis of the costs, and implement the change.

Effective Date: August 23, 2013

Tenant Selection

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

Suggested Next Steps for PJs

1. If administering a TBRA program, determine whether or not the program is consistent with the local housing needs and priorities identified in the consolidated plan.

    a. If it is not, amend the consolidated plan to address the need for TBRA or discontinue this use of funds.

Effective Date: August 23, 2013

Targeted Assistance in Tenant-Based Rental Assistance

§92.209(c)(2)(i) and (ii) are revised to clarify and add provisions on using HOME funds to target tenant-based rental assistance to special needs populations and to persons with disabilities:

- The pre-2013 Rule at §92.209(c)(2)(i) permits a PJ to establish a preference for individuals with special needs. The 2013 Rule clarifies that preferences can be established for both individuals with special needs (such as homeless persons or elderly persons) ***and*** persons with disabilities, in certain situations.
- The 2013 Rule at §92.209(c)(2)(i) also clarifies that a PJ can limit TBRA to persons with a specific disability or disabilities if doing so is necessary to provide housing, aid, benefit, or services that are as effective as those provided to others, in accordance with the requirements in 24 CFR 8.4(b)(1)(iv). The 2013 Rule does not change the provision at §92.209(c)(2)(ii), that allows the PJ to provide a preference for a specific category of individuals with disabilities (e.g., persons with

HIV/AIDS or chronic mental illness) if the specific category is identified in the PJ's consolidated plan as having an unmet housing need and the preference is needed to narrow the gap in benefits and services received by such persons.

- A PJ may not require participation in medical or disability-related services as a condition of receiving or continuing to receive HOME-funded tenant-based rental assistance.

Suggested Next Steps for PJs

1. Review the consolidated plan needs and action plan and amend TBRA program policies and procedures to accommodate needs of persons with a specific disability, for whom housing assistance is needed to provide housing, aid, benefit, or services that are as effective as those provided to others.
2. If warranted, amend tenant selection policies and procedures to either limit or give preference to persons with specific disabilities.
3. Inform and provide guidance to program administrators (PJ staff, State recipients, or subrecipients) on how to implement the limitation or preference.
4. Document this guidance in written agreements with program partners in accordance with §92.504(c).
5. If services are offered with the TBRA, be sure that these are not mandatory.
6. See §92.253 for guidance on developing tenant selection policies that reflect these preferences and limitations.

Effective Date: August 23, 2013

Self-Sufficiency Programs

A new paragraph §92.209(c)(2)(iii) has been added to codify longstanding administrative guidance on using HOME tenant-based rental assistance in self-sufficiency programs. It states that a PJ may use HOME tenant-based rental assistance to administer a self-sufficiency program in which the family is required to participate as a condition of selection for tenant-based rental assistance. The family's failure to continue participation in the self-sufficiency program ***cannot*** be grounds for terminating the assistance, but ***renewal*** of the assistance can be conditioned on participation in the program. (As noted above, PJs may not require persons with disabilities to participate in medical or disability-related services as a part of a self-sufficiency program.) The pre-2013 Rule was silent on this issue.

Suggested Next Steps for PJs

1. Review the PJ's TBRA self-sufficiency program policies to determine that this policy is clear, and revise it if it is not.
2. If a TBRA self-sufficiency program is administered by a State recipient or subrecipient, notify them of this clarification.
3. Document this requirement in any written agreements for projects or programs that include self-sufficiency programming.

4. Update program materials (such as brochures and application forms) for program applicants and beneficiaries of a self-sufficiency program to be sure this requirement is clearly stated.

Effective Date: August 23, 2013

Homebuyer Program

A new paragraph §92.209(c)(2)(iv) has been added to codify longstanding administrative guidance on using HOME tenant-based rental assistance in homebuyer programs. It states that a PJ may select tenants to participate in a lease-purchase homebuyer program. In such cases, the HOME tenant-based rental assistance payment may not be used to accumulate a downpayment or closing costs for the purchase. The HOME tenant-based rental assistance payment must be used for the monthly rental payment. However, all or a portion of the homebuyer-tenant's own monthly contribution toward rent can be set aside for these purposes. The pre-2013 Rule was silent on this issue.

Suggested Next Steps for PJs

1. If permitting the use of TBRA to support lease-purchase programs, review TBRA program policies to determine whether this policy is in effect, and if not add it.
2. If a TBRA program is administered by a State recipient or subrecipient, notify them of this clarification and be sure it is reflected in the written agreement [executed in accordance with §92.504(c)].

Effective Date: August 23, 2013

Protections for Persons with Disabilities that Have a Preference in the TBRA Program

§92.209(c)(2)(iii) of the pre-2013 Rule is redesignated as §92.209(c)(2)(v) and amended to expressly prohibit the exclusion of persons who are given preferences for HOME TBRA from participating in any other program of the jurisdiction.

Suggested Next Steps for PJs

1. Review program policies for all programs to determine that the programs are available to all eligible persons, regardless of whether the applicant receives a preference under the TBRA program, and make any revisions, if necessary.
2. Clarify this requirement with staff and program partners.

Effective Date: August 23, 2013

Tenant Leases

§92.209(g) is revised to make explicit that all tenants must have a written lease. This section retains the pre-2013 requirement that the lease must comply with the HOME lease requirements specified at §92.253(a) and (b).

Suggested Next Steps for PJs:

1. Review TBRA program policies and procedures to determine that these clearly state that all tenants receiving TBRA must have a written lease.
2. Clarify this requirement with staff and program partners.
3. Incorporate this requirement in written agreements with State recipients and subrecipients.
4. For any tenants that do not have a written lease, upon renewal of TBRA assistance, be sure a written lease is signed.
5. Amend monitoring materials so that monitors verify compliance with this requirement in on-site project visits.
6. See §92.253(a) and (b) for additional lease requirements.

Effective Date: August 23, 2013

TBRA Rent Standard

Under the pre-2013 Rule, when using HOME for tenant-based rental assistance, the PJ is required to establish both a minimum tenant contribution to rent and a rent standard for the unit size. The pre-2013 Rule described two options for how the PJ could determine the rent standard—either by basing it on local market conditions, or by setting it at no less than 80 percent of the Section 8 existing housing Fair Market Rent, and no more than the HUD-approved community-wide exception rents. The 2013 Rule does not change the requirement to have a rent standard. However, §92.209(h)(3)(ii) is revised so that the PJ can use either local market conditions, or base the rent standard on those established in 24 CFR part 982, which govern the Section 8 Housing Choice Voucher Program.

Suggested Next Steps for PJs

1. Review TBRA program policies and procedures to determine whether the PJ's rent standard is that used for the Section 8 Housing Choice Voucher Program in its jurisdiction, and ensure that this policy is clear.
2. Clarify this requirement with staff and program partners as needed.
3. Incorporate this requirement in written agreements with State recipients and subrecipients.
4. Amend monitoring materials so that monitors verify compliance with this requirement in on-site visits.

Effective Date: August 23, 2013

Technical Change

A minor wording change is made to §92.209(l) to clarify the existing provision requiring that households on a PHA's Section 8 waiting list that accept HOME TBRA must be permitted to remain on the Section 8 waiting list with the same preference status and must be offered Section 8 Housing Choice Voucher assistance when it becomes available to them.

Suggested Next Steps for PJs

None needed.

Effective Date: August 23, 2013

§92.210 Troubled HOME-Assisted Rental Housing Projects (new provision)

A new section is added at §92.210 of the 2013 Rule. This section addresses the efforts of PJs to preserve HOME-assisted rental housing projects that are no longer financially viable during the period of affordability and are at-risk of foreclosure. §92.210(a) specifies that a HOME-assisted rental unit is no longer financially viable when its operating costs significantly exceed its operating revenue.

For troubled projects, the PJ may take the following actions with HUD approval:

- **Investment of additional HOME funds**. §92.210(b) allows PJs to invest additional HOME funds in financially troubled projects, making an exception to the restriction on investing additional HOME funds in a project after the first 12 months following project completion. The use of these funds can be in the form of additional funds to rehabilitate the HOME-assisted units or to recapitalize project reserves for the HOME units. The total HOME funding for the project (initial investment amount plus the additional funds) may not exceed the maximum per unit subsidy, established at §92.250(a). This determination is made using the maximum per unit subsidy that is in effect at the time the additional funds are invested. HUD's approval for this action must be in the form of a written memorandum of agreement.

  In granting approval for an additional investment of funds, HUD may require an extension of the affordability period and/or an increase in the number of HOME-assisted units.

- **Reduction of the number of HOME-assisted units**. A new §92.210(c) permits a reduction in the number of HOME-assisted units in the project, but only if the project contains more than the minimum number of units required to be designated as HOME-assisted units under §92.205(d). This strategy must be approved, in writing, by HUD Headquarters.

§92.210(a) specifies that HUD Headquarters must approve of the permitted actions outlined in the section. HUD's approval will be based on its assessment of the market needs, available resources, and the likelihood of the project's return to financial viability.

The pre-2013 Rule did not anticipate the need for these provisions; however, as the inventory of HOME-assisted housing has grown nationwide, there have been a number of instances where HOME-assisted projects became troubled due to excessive debt, unsustainable high operating costs, poor physical conditions, or weak market conditions. The financial workouts to return these projects to financial viability and preserve the affordable units have involved any number of actions: restructuring of private debt, investing of additional owner equity, and altering the terms of existing HOME financing. In many

instances, these workouts required HUD waivers, which are sometimes time-consuming to develop and process. The addition of these provisions to the 2013 Rule eliminates the need for PJs to pursue regulatory waivers, thereby speeding up the workout process.

Suggested Next Steps for PJs

1. Where a project is no longer financially viable or is at risk of foreclosure during the period of affordability, analyze the financial and physical status of the project and consider whether any of these actions might assist in workout efforts when intervening in a situation:
    a. Investment of additional HOME funds per §92.210(b), to rehabilitate the HOME-assisted units or to recapitalize project reserves for the HOME units.
    b. A reduction in the number of HOME-assisted units in the project to prevent the loss of affordable housing, but only if the project contains more than the minimum number of units required to be designated as HOME-assisted units under §92.205(d).
2. Because HUD Headquarters' approval is required, PJs should contact their Field Office to determine what project information may be required. The PJ and HUD Field Office will work with HUD Headquarters to determine what remedies and actions may be appropriate for a project.

Effective Date: August 23, 2013

§92.213 HOME Funds and Public Housing

The 2013 Rule adds a new §92.213 to the HOME regulations to address the use of HOME funds with public housing funds. These provisions are based on a longstanding legal interpretation of the three programs' authorizing statutes: the National Affordable Housing Act (HOME); section 24 of the Housing Act of 1937 (HOPE VI); and section 9 of the 1937 Act (public housing Capital and public housing Operating Funds). This provision clarifies existing policy. This section addresses three issues, the details of which are outlined below:

1. HOME funds cannot be used, alone or in combination with Capital Funds, for public housing units. HOME units cannot receive public housing Capital Fund or Operating Fund assistance.
2. HOME funds can, however, be used to develop a new unit that will serve as public housing, if that unit also receives HOPE VI funding ***and*** no Capital Funds (section 9) are used to develop the unit. Such a unit may receive Operating Fund assistance.
3. HOME funds may be used in a project that also contains public housing units, provided that HOME funds are not used in the public housing units and the HOME units are separately designated.

- **General rule prohibiting the use of HOME funds in public housing**. §92.213(a) prohibits: (1) the use of HOME funds for public housing modernization or operating assistance, (2) a HOME-

assisted unit from receiving Operating Fund or Capital Fund assistance under section 9 of the Housing Act of 1937 during the period of affordability, and (3) the use of HOME funds for public housing units, whether funded under section 9 of the 1937 Act or another source.

- **Exception for HOPE VI public housing units**. §92.213(b) establishes an exception to this prohibition that permits the use of HOME funds to develop a unit that also receives HOPE VI funds for development, as long as no Capital Funds are used in the unit. In projects receiving HOME, HOPE VI, and Capital funds for the development of units, the separation of public housing units that receive HOME and HOPE VI funds from units receiving Capital Funds under section 9 must be accomplished through the cost allocation process for multi-unit HOME projects that is established at §92.205(d).

    - ***Rent limits when HOME funds are invested in HOPE VI public housing units.*** §92.213(d) makes clear that when HOME funds are used in a public housing unit, the HOME rent requirements of §92.252(a) and (b) apply. Consequently, the gross rent (tenant contribution and operating subsidy) for any public housing unit that receives HOME funds that is occupied by a household with an income above 50 percent of area median income may not exceed the High HOME rent established under §92.252(a). Public housing operating assistance may be provided to units that were developed with HOME and HOPE VI.
    - ***Relocation requirements when HOME is invested in HOPE VI public housing units***. When HOME funds are invested in a project that involves demolition, the requirements for a residential anti-displacement and relocation assistance plan [at §92.353(e)] and for one-for-one replacement of units [as required by section 104(d) of the Housing and Community Development Act] ***apply to the entire project***. Therefore, while these requirements do not to apply to HOPE VI projects the addition of HOME funds to a HOPE VI project may trigger the section 104(d) requirements.

- **Using HOME funds in public housing projects**. §92.213(c) makes clear that HOME funds may be used to develop or rehabilitate affordable housing units that are not public housing units in projects that also contain public housing units funded by section 9, HOPE VI, or other funds. The units must be separated through the cost allocation process required for units that are not comparable (allocation is based on actual unit costs rather than proration) under §92.205(d). In such projects, the HOME and public housing units would have separate waiting lists and rent structures. This means that the units must be designated as fixed units. The residential anti-displacement and relocation assistance plan requirements of §92.353(e) are applicable to the entire project.

Suggested Next Steps for PJs

1. Review and revise project selection policies or Request for Proposal language for all projects that contain public housing units.
2. Ensure compliance with all statutory requirements.

Effective Date: August 23, 2013

§92.214 Prohibited Activities and Fees

Several amendments are made to §92.214(b) to specify allowable and prohibited fees.

Fees Charged by PJs, State Recipients, and Subrecipients

- **Administrative fees are not allowable**. §92.214 (b)(1) is revised to clarify that PJs and other program participants cannot charge fees to cover their administrative costs, especially fees charged directly to low-income program beneficiaries. Prohibited fees include loan servicing, origination, or other fees related to the cost of administering the HOME program. This paragraph also requires PJs to extend the prohibition to State recipients, subrecipients, and CHDOs. See related changes at §92.206(d)(6) and §92.207(b).

Suggested Next Steps for PJs

1. Review and revise program policies and procedures for rental and homeowner development projects to ensure that no prohibited fees are permitted or charged in the program.
2. Notify and instruct staff and program partners of this clarification/change in regulations.
3. Incorporate this prohibition on administrative fees in written agreements with State recipients, subrecipients, and project owners, developers, and sponsors, as required by §92.504(c)(1)(xiii) for State recipients; §92.504(c)(2)(xi) for subrecipients; and §92.504(c)(3)(xi) for owners, developers, and sponsors.
4. Incorporate this requirement in monitoring checklists to ensure that compliance is verified during monitoring reviews.

Effective Date: August 23, 2013

- **Exceptions:**
    - ***Rental Compliance Monitoring Fees***. §92.214(b)(1)(i) permits PJs to charge fees to cover the cost of ongoing monitoring and physical inspection of HOME projects during their period of affordability. This is a reversal of pre-2013 HOME requirements, when such fees were prohibited. Charging monitoring fees is standard industry practice in other programs that require ongoing inspections, including the Low-Income Housing Tax Credit program. PJs can begin to charge reasonable annual monitoring fees to owners

of rental housing projects to which a commitment of HOME funds is made on or after August 23, 2013, the effective date of the Final Rule.

This provision specifies that the amount of the monitoring and inspection fees:

- Must be included in the cost of the project as part of the project underwriting;
- Must be based upon the average actual cost of monitoring HOME-assisted rental property. The PJ must document how it makes this determination.

- ***Application Fees***. §92.214(b)(1)(ii) restates the pre-2013 Rule to specify that PJs, subrecipients, and State recipients can charge nominal application fees (although these fees are not an eligible HOME cost) to discourage frivolous applications. This paragraph is revised to clarify that the fees must be appropriate to the type of application and may not create an undue impediment to participation in the PJ's program by a low-income family, a jurisdiction, or entity.

- ***Homebuyer Counseling Fees***. §92.214(b)(1)(iii) is a new provision that permits PJs, subrecipients, and State recipients to charge homebuyers a fee for the cost of housing counseling. Note, the 2013 Rule imposes a new requirement at §92.254(a)(3) that all homebuyers that receive HOME assistance or purchase a HOME-assisted unit must receive housing counseling.

Suggested Next Steps for PJs

1. Consider the advantages and disadvantages to charging permitted fees (rental compliance monitoring fees, application fees, and/or homebuyer counseling fees).
2. If a decision is made to charge any or all of the permitted fees, determine the best method for establishing a reasonable and appropriate fee.
    a. For rental compliance monitoring and homebuyer counseling fees, evaluate the monitoring or counseling costs for recent years and document the basis for the fees. [Note, adjust the past monitoring costs for any anticipated changes in monitoring activities, such as changes to the financial inspection requirements in §92.504(d).]
    b. If using third parties, solicit several price quotes to determine the reasonable amount.
    c. For application fees, research what other agencies charge for similar types of applications and use that information to assist in the determination of reasonable fees that will be sufficient to discourage frivolous applications.
    d. Document the basis of the each of the fee amounts.
3. Notify staff and program partners of any change in policy related to allowable fees.
    a. If rental compliance monitoring fees will be charged, work with underwriters to ensure that these fees are reflected in project operating pro formas.

4. Incorporate the revised policy on allowable fees in public documents such as program marketing materials, application documents, and written agreements with State recipients; subrecipients; and owners, developers, and sponsors.

Effective Date: August 23, 2013 (PJs can begin to charge reasonable annual monitoring fees to owners of rental housing projects to which a commitment of HOME funds is made on or after August 23, 2013.)

Fees Charged by Project Owners

§92.214(b)(3) has been added to clarify that PJs must prohibit project owners from charging fees to tenants that are not reasonable or customary, such as a monthly fee for access to pay laundry facilities. This provision also clarifies what fees are allowable, including reasonable application fees to prospective tenants, parking fees in neighborhoods where such fees are customary, and the cost of nonmandatory services such as meal or bus service.

Suggested Next Steps for PJs

1. Review and revise the rental program policies and procedures to ensure that no prohibited fees are permitted in the program.
2. Notify and instruct staff and program partners of this clarification/change in regulations.
3. If reasonable and customary fees are permitted in the program, be sure these are reflected as revenue in the project's operating pro forma during the underwriting process.
4. Incorporate the policy on fees in the written agreements with State recipients; subrecipients; and project owners, developers, and sponsors, as required by §92.504(c).
5. Incorporate this requirement in monitoring checklists to ensure that compliance is verified during project monitoring reviews.

Effective Date: August 23, 2013

§92.221 Match Credit

§92.221(d) is a new provision that addresses the issue of match credit in the development of homeownership projects for sale to homebuyers. This provision clarifies that contributions to the development of HOME-assisted or HOME-eligible homeownership projects can "count" toward match credit only (1) in the amount by which the investment reduced the sales price to the homebuyer, or (2) if development costs exceed the fair market value of the housing, in an amount by which the contribution enabled the housing to be sold for less than its development cost. This provision ensures that match credit is a permanent contribution to the housing, and not provided for the value of contributions that are included in the homebuyer's mortgage (e.g., donated land or construction materials).

This new provision applies only to donations to the development cost of homebuyer housing. Contributions that directly benefit the homebuyer (e.g., downpayment or closing cost assistance from

non-federal sources, the yield foregone on below-market interest rate mortgage financing, the direct cost of donated homebuyer counseling) continue to be eligible at face value.

Suggested Next Steps for PJs

1. Review the program administrative policies related to match contributions to determine how the PJ currently counts contributions to homebuyer projects toward match.
2. Revise the policies and procedures for recording match.
3. Notify and instruct staff and program partners of this clarification/change in regulations.

Effective Date: August 23, 2013

§92.222 Reduction of Matching Contribution Requirement

§92.222(b) addresses the reduction of match for PJs in disaster areas. §92.222(b)(1) has been added to require HUD to consider the extent of a disaster's fiscal impact on a PJ when determining whether to grant a match reduction, as well as the amount and duration of any match reduction.

Suggested Next Steps for PJs

None needed. The determination of match reduction is considered by HUD.

Effective Date: August 23, 2013

§92.250 Maximum Per-Unit Subsidy Amount, Underwriting, and Subsidy Layering

Maximum Per-Unit Subsidy

§92.250(a) is revised to clarify that the maximum HOME per-unit subsidy may not be increased above 240 percent of the base limits authorized by §221(d)(3)(ii) of the National Housing Act [12 U.S.C. 17151(d)(3)(iii)]. Congress increased the maximum exceptions that HUD may grant for the 221(d)(3) mortgage insurance program to up to 315 percent of the base limits. However, the HOME statute, which establishes the 221(d)(3) mortgage insurance limits as the per-unit cost limits for HOME-assisted units, was not amended. This continues to limit the HOME subsidy to the lesser of a PJ's actual high cost percentage or to 240 percent of the base limit. (**NOTE: These provisions will be the subject of an interim policy to be announced shortly and of future rulemaking, due to the discontinuance of the 221(d)(3) Mortgage Insurance Program.)**

Suggested Next Steps for PJs

1. Review the rental and homebuyer development program and homebuyer assistance (downpayment) program policies to determine the maximum per-unit subsidy in use.
2. Determine the current maximum per-unit subsidy limits for the jurisdiction, at http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/programs/home/limits/subsidylimits.
3. Update program policies and procedures such as underwriting and project application reviews as needed to reflect any changes to the PJ's subsidy limits.
4. Notify and instruct staff and program partners of any new limits in effect.
5. Incorporate this requirement in monitoring checklists to ensure that compliance is verified during subrecipient monitoring reviews.

Effective Date: August 23, 2013

Underwriting and Subsidy Layering

The 2013 Rule amends §92.250(b) by requiring underwriting of ***all*** HOME projects (rental and homebuyer) whether or not the projects are assisted with other governmental assistance. The subsidy layering requirements of the pre-2013 Rule are unchanged. The PJ's subsidy layering and/or underwriting must demonstrate that it is not investing any more HOME funds, alone or in combination with other funds, than are necessary to provide quality, affordable, and financially viable housing for at least the duration of the affordability period. The evaluation must determine a reasonable level of profit or return on the owner's or developer's investment in a project.

§92.250(b)(1),(2), and (3) state that the PJ's subsidy layering and underwriting guidelines must require the PJ to:

- Establish standards to assess the reasonableness of profit or return to the owner or developer, for the size, type, and complexity of the project.
- Examine the sources and uses for each project and determine whether the costs are reasonable.
- Assess the market conditions of the neighborhood in which the project will be located.
- Assess the experience and financial capacity of the developer.
- Determine whether there are firm financial commitments for the project.

These requirements do not apply to all activities:

- **Applicability to homeowner rehabilitation programs.** §92.250(b)(3) clarifies that the underwriting requirement does not apply to homeowner rehabilitation projects unless HOME funds are provided as an amortizing loan. Further, it exempts homeowner rehabilitation projects from the market analysis and developer capacity assessment.

- **Applicability to downpayment assistance**. §92.250(b)(4) exempts projects that provide ***only*** downpayment assistance from the market analysis and developer capacity analysis

requirements. (See §92.254 for new underwriting requirements when providing downpayment assistance.

Under the pre-2013 Rule, PJs were required to adopt subsidy layering guidelines and conduct a subsidy layering review only for projects with other public subsidies. These additional requirements represent an expansion of the PJ's obligation to evaluate the financial soundness of a potential project, including the marketability of a project site, prior to making an investment of HOME funds.

HUD will issue guidance on these requirements.

Suggested Next Steps for PJs

1. Review the current subsidy layering guidelines and any underwriting guidelines and standards the PJ (and State recipients or subrecipients) may have in place.
2. Develop or revise subsidy layering and underwriting guidelines to address the required elements, listed above.
3. Notify and instruct staff and program partners of the changes.
4. Train staff in: (1) conducting underwriting (including assessing cost reasonableness and evaluating return to the developer); (2) reviewing market studies and marketing plans; (3) evaluating developer capacity.
5. Incorporate these changes in project selection policies and solicitations for projects (i.e., Requests for Proposals).
6. Incorporate the new requirements in the written agreements with State recipients; subrecipients; and project owners, developers, and sponsors, as required by §92.504(c).
7. Incorporate these requirements in subrecipient monitoring checklists to ensure that compliance is verified during monitoring reviews.
8. Look for additional HUD guidance in this area and amend policies and procedures as needed.

Effective Date: August 23, 2013

§92.251 Property Standards

The changes to §92.251 reorganize the presentation of the property standards requirements and clarify and update the standards. The reorganization is intended to minimize confusion about the applicability of the codes and standards across different housing activities. It creates separate requirements for projects involving:

- New construction [§92.251(a)]
- Rehabilitation [§92.251(b)]
- Acquisition of standard housing [§92.251(c)]
- Housing occupied by tenants receiving HOME tenant-based rental assistance [§92.251(d)]
- Manufactured housing [§92.251(e)]

- Ongoing property standards for rental projects [§92.251(f)]
- Inspection procedures [§92.251(g)].

Revisions to the property standards also address the codes cited in the pre-2013 HOME Rule that have been superseded and/or updated. The 2013 Rule provides additional specificity to the rehabilitation standards requirements in order to ensure that adequate improvements are made to support the long-term viability of HOME-funded rehabilitation projects. For new construction and rehabilitation, the 2013 Rule requires a higher degree of oversight by the PJ. It imposes requirements for the PJ to review and approve construction-related documents prior to construction, and to monitor construction progress.

New Construction Projects

§92.251(a)(1) requires new construction projects to meet State and local codes, ordinances, and zoning requirements. This requirement is not new. In the absence of an applicable State or local code for new construction, HOME-assisted projects must meet the International Code Council's (ICC's) International Residential Code or International Building Code, whichever is applicable to the type of housing being developed. In the pre-2013 Rule, PJs were directed to use one of the three national model codes, whose issuing groups merged to form the ICC. (These were the Building Officials and Code Administrators International, Inc.; International Conference of Building Officials; and Southern Building Code Congress International, Inc.)

§92.251(a)(2) incorporates or specifies additional standards:

- Accessibility requirements as applicable, in accordance with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act. These requirements are not new.
- Disaster mitigation standards, in accordance with State and local requirements or as established by HUD, where they are needed to mitigate the risk of potential disasters (such as earthquakes, hurricanes, flooding, and wildfires). This is a new requirement.

§92.251(a)(iv) and (v) adds requirements for PJs to improve project oversight for new construction. PJs must:

- Review and approve written cost estimates, construction contracts, and construction documents.
- Conduct construction progress and final inspections to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.

Rehabilitation Projects

<u>Written Rehabilitation Standards</u>

§92.251(b)(1) requires PJs to establish and comply with written rehabilitation standards. The pre-2013 Rule required a written rehabilitation standard, but provided minimal regulatory guidance about what

this standard needs to address. The 2013 Rule provides specificity about what elements are required in the PJ's rehabilitation standards.

- The rehabilitation standards must be of sufficient detail to determine the minimal level of work required and the methods and materials for rehabilitation work (either by referring to applicable codes or standards or establishing requirements that exceed the minimum code requirements).

- The rehabilitation standards must address the following (the new requirements are so noted):
    - ***Health and safety.*** The rehabilitation standard must specify the life threatening deficiencies that must be addressed immediately if a housing unit is occupied. [NEW]
    - ***Major systems for rental housing***. The PJ must require an estimate of the remaining useful life of major systems. [Major systems include structural support, roofing, cladding, and weatherproofing (e.g., windows, doors, siding, gutters), plumbing, electrical and heating, ventilation, and air conditioning.] This must be done with a capital needs assessment for projects with 26 or more units (see last bullet below). If the remaining useful life is less than the affordability period, the PJ must require replacement reserve deposits to ensure that the project's major systems and physical needs can be adequately maintained and addressed throughout the affordability period. [NEW]
    - ***Major systems, for homeownership housing.*** The PJ must require that upon project completion, major systems must have a useful life of at least five years. [NEW]
    - ***Lead-based paint requirements,*** in accordance with 24 CFR part 35.
    - ***Accessibility requirements*** as applicable, in accordance with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act.
    - ***Disaster mitigation standards,*** in accordance with State and local requirements or as established by HUD, where they are needed to mitigate the risk of potential disasters (such as earthquakes, hurricanes, flooding, and wildfires). [NEW]
    - ***State and local codes, ordinances, and zoning requirements.*** In the absence of a State or local building code that applies to rehabilitation, the PJ must use the International Existing Building Code of the ICC. (This is not a new requirement, but the applicable code, absent State and local codes, has been updated.)
    - ***Uniform Physical Condition Standards (UPCS),*** in accordance with 24 CFR 5.703. UPCS is an inspection protocol that is used to evaluate the condition of housing. PJs must use this inspection protocol to establish minimum property condition standards for rehabilitation standards. Note, in general UPCS includes a more comprehensive list of inspectable items and areas than Housing Quality Standards, which applied to rehabilitation in the absence of State and local codes in the pre-2013 Rule. [NEW]
        - **Note:** HUD will issue additional guidance on this requirement. This guidance will establish which critical deficiencies (based on the list of inspectable items and areas of UPCS) must be corrected as a minimum requirement for each type of

rehabilitation — rental, homebuyer, and homeowner housing — and, therefore, must be included in the PJ's rehabilitation standards.

- ***Capital needs assessment for multifamily rental housing with 26 or more units,*** to ensure that the PJ determines all work that will be performed and identifies and addresses long-term physical needs of the project. [NEW]

For additional information on how written rehabilitation standards differ from property standards, see *HOMEfires* Vol. 3, No. 1, January 2001, which is posted on HUD's website at http://www.hud.gov/offices/cpd/affordablehousing/library/homefires/volumes/vol3no1.cfm.

Construction Documents and Work Write-ups

§92.251(b)(2) requires PJs to review and approve work write-ups (i.e., plans and specifications) and written cost estimates. The PJ must determine that the work write-up or plans are in compliance with the PJ's written rehabilitation standards and that costs are reasonable. This provision clarifies this requirement. While these steps were not explicitly required in the pre-2013 Rule, compliance with the existing requirements already necessitated these kinds of review and approval.

Frequency of Inspections

§92.251(b)(3) explicitly requires the PJ to conduct: (1) an initial property inspection to determine deficiencies that must be addressed, (2) progress inspections to monitor construction progress, and (3) a final inspection to ensure that work is done in accordance with the project's approved work write-up or plans. For these inspections, a PJ can either use qualified in-house staff or secure a qualified third party that is independent of the developer. This is a new requirement. HUD plans to provide additional training and guidance in this area.

Acquisition of Standard Housing Property Standards

When HOME funds are used to purchase existing rental housing, such housing must be in good condition or it must be rehabilitated to ensure that the housing is in standard condition at the time of project completion. In the pre-2013 Rule, for acquisition of property (without rehabilitation) HOME required that housing to be acquired in standard condition, must meet State and local housing property standards or codes, or in their absence, Housing Quality Standards. §92.251(c) of the 2013 Rule revises property standards for housing in standard condition that is acquired using HOME funds.

Newly Constructed or Recently Rehabilitated Housing

§92.251(c)(1) requires that housing that has been newly constructed or rehabilitated within one year of the date of commitment of HOME funds meet the applicable property standards [§92.251(a) for new construction and §92.251(b) for rehabilitation]. If the property does not meet the applicable standard, it cannot be acquired unless it is rehabilitated to meet the rehabilitation standards at §92.251(b). PJs must document this compliance based on a review of approved building plans and certificates of occupancy and a property inspection that is conducted no earlier than 90 days before the commitment

of HOME funds. This provision differs somewhat from the pre-2013 Rule in which housing that was acquired (without rehabilitation) with HOME funds needed to meet State and local codes, or in their absence, Housing Quality Standards. However, documentation of compliance with these property standards was not prescribed, and inspections were not required.

All Other Existing Housing – Rental

For all other housing (that is, housing that is not recently rehabilitated or newly constructed) that will be acquired (without rehabilitation) for rental housing, the property must meet the applicable standard for rehabilitation at §92.251(b). The PJ must document compliance based upon a current inspection that is conducted no earlier than 90 days before the date of commitment of HOME assistance, in accordance with the PJ's inspection procedures. If the property does not meet these standards, it cannot be acquired with HOME funds unless it is rehabilitated to meet this standard.

All Other Existing Housing - Homeownership (Downpayment) Assistance

The 2013 Rule states that the PJ must establish standards to ensure that existing housing that is acquired for homeownership (e.g., downpayment assistance) is decent, safe, sanitary, and in good repair. At a minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements. In addition, the housing must be free of any deficiencies identified by HUD in the UPCS (pursuant to 24 CFR 5.705) based on the inspectable items and inspected areas in HUD-determined physical inspection procedures. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards or it cannot be acquired with HOME funds. Note, HUD will issue guidance that specifies which components of UPCS will apply.

Tenant-Based Rental Assistance Property Standards

§92.251(d) requires that units occupied by households receiving HOME TBRA must meet the Housing Quality Standards at 24 CFR 982.401. This is not a new requirement.

Manufactured Housing Property Standards

The property standards for manufactured housing are now found at §92.251(e). The 2013 Rule requires that newly constructed manufactured housing and housing that replaces an existing substandard unit (under the definition of "reconstruction") must be on a permanent foundation. The definition of "permanent foundation" means a foundation system of supports that is capable of transferring all design loads to the ground and meets the requirements of 24 CFR 203.43f(c)(i). This definition is consistent with the FHA mortgage insurance requirements for all manufactured homes.

For all rehabilitated manufactured housing, the foundation and anchoring must meet all applicable State and local codes and other requirements. Foundation systems for existing units must be inspected and meet the applicable State or local codes, subject to the approval of the PJ's building officials. In the absence of local or State codes, the PJ must use the Model Manufactured Home Installation Standards at 24 CFR part 3285.

The other property standards for manufactured housing are consistent with the pre-2013 requirements:

- All new construction of manufactured housing (including reconstructed units that replace a substandard unit) must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280.
- All new manufactured housing (including units that are reconstructed) must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned (or leased for a period at least as long as the affordability period) by the manufactured housing unit owner.
- Existing manufactured housing that is rehabilitated with HOME funds must meet the property standards applicable to rehabilitation, as outlined in §92.251(b). The PJ must document this in its inspections procedures.

Suggested Next Steps for PJs

1. HUD plans to issue guidance regarding how to incorporate UPCS into the property standards for rehabilitation and acquisition. Until guidance is issued, PJs can begin to update their property standards for new construction by reviewing their applicable State or local property standards for each housing activity type. If there are no State and/or local codes, update the required property standard for new construction to the applicable ICC, or IRC codes.

2. Develop or review and amend procedures related to inspecting properties to ensure compliance with property standards.
    a. For new construction and rehabilitation, procedures must include:
        i. An initial property inspection to determine the extent of work to be completed, for rehabilitation projects
        ii. PJ review and approval of project plans (work write-ups) and cost estimates
        iii. Construction progress and final inspections to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.
3. Develop inspection checklists for new construction that reflect the applicable property standards to ensure consistency in implementation among staff and inspectors.
4. Train staff and program partners in the new construction property standard requirements and the inspection procedures. Identify how staff qualifications will be determined for review and approval of construction documents, as well as inspection work.
5. Incorporate these new requirements in the written agreements with State recipients; subrecipients; and project owners, developers, and sponsors, as required by §92.504(c).
6. Incorporate these requirements in monitoring checklists to ensure that compliance is verified during project monitoring reviews.
7. See §92.251(d) (below) and §92.504(d) related to project completion inspections and ongoing property inspections for additional guidance in these areas.

8. Look for additional guidance from HUD on property standards for rehabilitation and acquisition, and update and revise policies and procedures as additional guidance is provided.

Effective Date: January 24, 2015 (The new property standards apply to projects to which funds are committed on or after this date, which is 18 months after publication of the Final Rule.)

Ongoing Property Standards during the Period of Affordability

The 2013 Rule revises the property standard requirements for rental housing during the period of affordability. The new §92.251(f) establishes several new requirements related to ongoing property standards and inspection procedures.

Ongoing Property Standards

The 2013 Rule, at §92.251(f)(1), requires PJs to establish ongoing property standards for rental housing that will apply throughout the affordability period. The PJ's ongoing property standards must be in sufficient detail to establish the basis for a uniform inspection of projects. At a minimum, these standards must ensure that the housing is maintained as decent, safe, and sanitary housing in good repair.

The PJ's ongoing property standards, at a minimum, must state that:

- Properties must be maintained to meet all applicable State and local codes, if available. This is not a new requirement. However, the 2013 Rule has replaced Housing Quality Standards with UCPS as the standard in the absence of State or local codes (as discussed above under property standards).
- Housing must be free of all health and safety defects and the PJ must identify life-threatening deficiencies that the owner must correct immediately. [NEW]
- Housing must meet the lead-based paint requirements in 24 CFR part 35.

Procedures

The PJ is required to establish procedures for inspection and implementation of these requirements. These requirements are all new:

- The PJ must have procedures in place to ensure that the property owner addresses deficiencies in a timely manner.
- The PJ must establish written inspection standards that include detailed inspection checklists, a description of how and by whom inspections will be carried out, and procedures for training and certifying inspectors.
- The PJ must conduct periodic property inspections in accordance with §92.504(d). The PJ's inspection procedures must state how frequently each property will be inspected, consistent with §92.504(d) and, for TBRA units, §92.209. The requirement for a periodic inspection is not

new, but the minimum required inspection schedule has been amended; every TBRA units must be inspected annually, and every HOME-assisted rental project must be inspected at least once every three years during the affordability period. [See §92.504(d) for a more detailed discussion of these inspection requirements.]

Suggested Next Steps for PJs

1. Ascertain which State or local property codes apply to HOME-assisted rental housing during its affordability period. In the absence of State or local codes, follow the existing regulation until HUD issues guidance on how to implement UPCS for ongoing property standards.
2. See §92.504(d) related to project completion inspections and ongoing property inspections.
3. Look for additional guidance in this area from HUD and update and revise policies and procedures as additional guidance is provided.

Effective Date: §92.251 is effective as of January 24, 2015, and applies to projects to which HOME funds are committed after this date (which is 18 months after publication of the Final Rule). The changes to §92.504(d) related to property inspections, such as frequency of inspections and sampling, are effective July 24, 2014 (12 months after publication of the Final Rule). For existing HOME-assisted rental projects and for projects to which funds are committed before the effective date of the new ongoing property standards, the inspections should be based on the standards that were in effect at the time the HOME funds were committed. (In other words, the new ongoing property inspection requirements must be implemented by July 24, 2014 but until the new property standards in §92.251 are in effect on January 24, 2015, PJs will use their existing property standards.)

§92.252 Qualification as Affordable Housing: Rental Housing

A number of new requirements and clarifications have been made to this section.

Initial Occupancy of Vacant Units

The introductory paragraph to §92.252 is revised to adopt two deadlines within which HOME-assisted rental housing must be occupied by low-income households:

- Within six months from the date of project completion, if a rental unit remains unoccupied, the PJ must provide to HUD information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible.
- Within 18 months from the date of project completion, if efforts to market the unit are unsuccessful and the unit is not occupied by an eligible tenant, HUD will require repayment of all HOME funds invested in the unit. A unit that has not served a low- or very low-income household has not met the purposes of the HOME program. Therefore, the costs associated with the unit are ineligible.

In the pre-2013 Rule, rental housing was required to be occupied by low-income households in order to

be considered HOME-assisted affordable housing; however no deadlines were associated with this requirement. The six-month marketing review and the 18-month deadline that triggers repayment of funds for vacant units are new requirements.

Suggested Next Steps for PJs

1. Revise rental program policies and procedures to incorporate these new requirements.
2. Develop tracking procedures to identify vacant units prior to the six-month and 18-month deadlines and notify owners of the need to take action.
3. Track compliance with the deadline using the "Vacant Units Reports," available online at http://www.hud.gov/offices/cpd/affordablehousing/reports/vacantunits.cfm
    a. Before committing funds, evaluate the market demand for the proposed housing and review the developer's marketing strategy to evaluate the likelihood that rental housing units will be able to be rented and occupied within these new deadlines.
    b. For projects with remaining vacancies at six months, work with the developer to evaluate marketing efforts and enhance the strategies in an effort to identify qualified tenant(s).
    c. If units remain vacant at 18 months, follow repayment procedures.
4. Notify staff and program partners of this new requirement.
5. Incorporate these new requirements in written agreements with State recipients; subrecipients; and project owners, developers, and sponsors, as required by §92.504(c).
6. Incorporate these requirements in project monitoring checklists to ensure that compliance is verified during monitoring reviews.
7. Look for additional HUD guidance in this area, and make changes to program policies and procedures as needed.

Effective Date: August 23, 2013

Leases Required for Rental Units

A sentence is added to §92.252 to make explicit that leases are required for all HOME-assisted rental units, consistent with §92.209(g). This is a clarification of existing policy.

Suggested Next Steps for PJs:

1. Review rental development and tenant-based rental assistance program policies to ensure that written leases are required in all HOME-assisted housing.
2. Clarify this requirement with staff and program partners.
3. Notify owners of HOME-assisted rental projects that leases are required, and inform owners of prohibited lease provisions. Establish deadlines by which all lessees in HOME-assisted units have executed leases.
4. Incorporate this requirement in written agreements with State recipients; subrecipients; and owners, developers, and sponsors, as required by §92.504(c).

5. Amend monitoring materials so that monitors verify compliance with this requirement in on-site project monitoring visits.
6. See §92.253(a) and (b) for additional lease requirements.

Effective Date: August 23, 2013

Additional Clarifications of Existing Policies

Several revisions are made to §92.252(a) and (b) that clarify or codify existing requirements.

- The 2013 Rule clearly states that rent limits include both the rent and utilities (or the utility allowance).
- §92.252(a) and (b) incorporate the terminology of "High HOME rent" (i.e., "maximum HOME rent") and "Low HOME rent" (i.e., "additional requirements"). These terms are commonly used by HUD, PJs, and other HOME program participants including owners, developers, and property managers.
- The 2013 Rule clearly states that the PJ may designate more than the required minimum number of units (i.e., 20 percent of HOME units in projects with five or more HOME units) as Low HOME rent units.

Suggested Next Steps for PJs

1. Review and revise existing rental program policies and procedures to ensure that the PJ is in compliance with these requirements.

Effective Date: August 23, 2013

Single Room Occupancy (SRO) Unit Rents

The 2013 Rule redesignates paragraph §92.252(c) to address the rent limits imposed on SRO housing. These requirements codify long-established administrative guidance setting the applicable rent limits for SRO units, as are conveyed in HUD Notice CPD 94-01, *Using HOME Funds for Single Room Occupancy (SRO) and Group Housing*, issued January 1994.

Rent limits for SRO units with no sanitary or food preparation facilities, or only one of the two:

- The maximum rent that can be charged for a SRO unit is 75 percent of a zero-bedroom fair market rent (FMR). There are no Low HOME rent limits established for these SRO projects. However, in SRO projects with five or more HOME-assisted units, at least 20 percent of the units must be occupied by very low-income households. If a unit in a SRO project has a project-based voucher and the occupant is very low-income, the project-based voucher rent may be charged in accordance with the HOME Low HOME rent requirements in §92.252(b)(2).

Rent limits for SRO units that have both sanitary and food preparation facilities

- The High HOME rent limit is set at the lesser of the FMR or the HUD-issued High HOME rent for the area, for a 0-bedroom unit.
- The Low HOME rent limit is set at the lesser of the HOME-issued Low HOME rent limit, 30 percent of the monthly adjusted income for a very low-income family, or the FMR for a 0-bedroom unit. If a unit in a SRO project has a project-based voucher and the occupant is very low-income, the project-based voucher rent may be charged in accordance with the HOME Low HOME rent requirements in §92.252(b)(2).
- In projects with five or more HOME-assisted units, at least 20 percent of the units must be occupied by very low-income tenants who pay no more than the Low HOME rent.

Suggested Next Steps for PJs

1. Review and revise existing rental program policies and procedures to ensure compliance with these requirements.

Effective Date: August 23, 2013

Utility Allowances

PJs are required to establish monthly allowances for utilities and services (excluding telephone) and to update them annually.

A new provision at §92.252(d) requires the PJ to determine an individual utility allowance for each HOME rental project, either (1) by using the HUD Utility Schedule Model, or (2) by otherwise determining the allowance based upon the specific utilities used at the project.

The HUD Utility Schedule Model was developed by HUD and enables the user to calculate utility schedules by housing type after inputting utility rate information. The IRS uses this model to determine utilities for the LIHTC program. The model can be found at: http://huduser.org/portal/resources/utilmodel.html.

Under the pre-2013 Rule, PJs were required to adopt utility allowances, either by developing their own utility allowances, adopting the utility allowance of the public housing authority, or establishing project-specific allowances. PJs are no longer permitted to use a single utility allowance (such as that established by the local PHA) for every HOME-assisted rental project. This is because as more projects are constructed or rehabilitated to higher energy-efficiency standards, the use of a standard utility allowance that may not represent actual utility costs and is difficult to justify.

Suggested Next Steps for PJs

1. Revise existing rental program policies and procedures to adopt new utility allowance determination procedures.
2. Train staff on how to use the HUD Utility Schedule Model.
3. Notify program partners and owners of HOME-assisted rental projects of this change.

4. Incorporate this new requirement in written agreements with State recipients; subrecipients; and project owners, developers, and sponsors, as required by §92.504(c).

Effective Date: August 23, 2013

Nondiscrimination for Rental Assistance Subsidy Holders

The provision prohibiting discrimination against rental assistance subsidy holders previously found at §92.252(d) has been moved to §92.253(d)(4). There is no substantive change to the existing requirement.

Suggested Next Steps for PJs

None needed, provided the PJ is in compliance with this requirement.

Effective Date: August 23, 2013

Periods of Affordability and Repayment Obligation

Several revisions were made to §92.252(e).

- **Repayment obligation**. §92.252(e)(1)(i) and §92.252(e)(4) have been revised to expressly state that the termination of affordability restrictions does not relieve a PJ of its repayment obligation for housing that does not remain affordable for the required period under §92.503(b).
- **Mechanisms to secure affordability**. §92.252(e)(1)(ii) is amended to permit PJs to use agreements restricting the use of the property to secure affordability restrictions. PJs continue to have the option to use deed restrictions or covenants running with the land, as required in the pre-2013 Rule.
- **Recordation**. In order to be effective, the mechanisms to secure affordability restrictions must be recorded in accordance with State recordation laws. The pre-2013 did not expressly state this requirement.

Suggested Next Steps for PJs

1. Consult with legal advisor about whether there are advantages to using a ***use restriction*** to enforce affordability in the jurisdiction. If so, make changes accordingly.
2. Review existing policies and procedures for rental housing programs and be sure that deed restrictions, covenants running with the land, and use restrictions are recorded.
    a. If not, amend procedures to ensure that documents are submitted for recordation and evidence of recordation is inserted in the project file.
    b. Assign this specific responsibility to a PJ staff person to ensure that it is carried out.

Effective Date: August 23, 2013

Rent Review and Approval during the Affordability Period

The 2013 Rule amends §92.252(f)(2) to require that a PJ must review and approve the rents for each

HOME-assisted rental project ***each year*** to ensure that they comply with the HOME limits and do not result in undue increases from the previous year. In the pre-2013 Rule, PJs were required to approve initial rents, then provide the published maximum HOME rents to project owners, and examine reports submitted by owners that report the rents and occupancy data of all HOME-assisted units on an annual basis. The new requirement ensures that PJs expressly examine and approve the rents for each project annually.

Suggested Next Steps for PJs

1. Revise existing rental program policies and procedures to ensure that this new requirement is incorporated.
2. Notify staff and owners, developers, and sponsors of HOME-assisted rental housing of this new requirement.
3. Incorporate this new requirement in the written agreements with State recipients; subrecipients; and project owners, developers, and sponsors, as required by §92.504(c).
4. Notify monitoring staff of this change and incorporate this requirement into monitoring procedures for rental projects during the ongoing affordability period.

Effective Date: August 23, 2013

Fixed and Floating Units

§92.252(j) requires PJs to specifically state in their written agreements with owners whether HOME units are fixed or floating. This is consistent with the pre-2013 requirement that the fixed or floating determination be made at the time of project commitment. The 2013 Rule further clarifies that the determination about which specific units are HOME-assisted or non-assisted units must be made no later than the time of initial occupancy.

The 2013 Rule does not change the definitions of fixed or floating units, and does not make changes to the requirements that the project's unit mix must be maintained throughout the affordability period.

Suggested Next Steps for PJs

1. Review and revise existing rental program policies and procedures to ensure that these two steps are incorporated into the process: (1) the designation of the fixed or floating HOME units in a rental project is made and documented in the written agreement with the project owner(s), and (2) the designation of assisted and non-assisted units is made by initial occupancy.
2. Incorporate the designation of fixed or floating HOME units in the written agreements with State recipients; subrecipients; and project owners, developers, and sponsors, as required by §92.504(c).

Effective Date: August 23, 2013

Cross-References to Other Requirements for Rental Housing

§92.252(k) cross-references and incorporates the tenant selection requirements located in §92.253(d) to clarify that these requirements apply to tenants of HOME-assisted rental housing. This is not a new requirement.

§92.252(l) incorporates the PJ's ongoing responsibilities for on-site inspections and financial oversight of rental projects located in §92.504(d). Under the pre-2013 Rule, PJs had inspection responsibilities, but the specific inspection requirements have been revised. The PJs' obligation to oversee the financial viability of a project during the period of affordability is new.

Suggested Next Steps for PJs

1. Refer to "Suggested Next Steps for PJs" for the cross-referenced citations at §92.253(d) and §92.504(d).

Effective Date: August 23, 2013

§92.253 Tenant Protections and Selection

Lease Requirements

§92.253(a) is revised to require that in all HOME- assisted rental housing, as well as in units occupied by recipients of HOME TBRA, there must be a written lease between the tenant and the owner of the rental housing. The lease term must be for a period of at least one year, unless a shorter period is mutually agreed upon. The lease requirement is based in the HOME statute and is not new; the Rule clarifies this requirement because it was sometimes misunderstood.

Prohibited Lease Terms: Mandatory Supportive Services

A new paragraph §92.253(b)(9) is added to prohibit lease terms that require tenants to accept supportive services (with an exception for residents of transitional housing). This clarification is consistent with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of disability in federally funded programs and activities and HUD's implementing regulations at 24 CFR part 8. The additional prohibited lease terms of the pre-2013 Rule are retained without revision.

Termination of Tenancy

Generally, the provisions of §92.253(c) remain unchanged. Owners may only refuse to renew or terminate the lease of a tenant residing in a HOME-assisted unit, if there is good cause. Good cause is defined as: repeated violation of lease terms; violations of federal, State or local law; or for completion of the tenancy period for transitional housing. The 2013 Rule makes two revisions:

- A new provision specifies that a tenant's failure to participate in any required supportive services of transitional housing is a permissible basis for terminating a tenancy or refusing to renew a lease. This provision ensures that transitional housing can be made available to individuals who use the transitional housing for its intended purpose.
- The 2013 Rule expressly states that an increase in a tenant's income does ***not*** constitute good cause for termination of, or refusal to renew, a lease. Terminating the occupancy of a tenant whose income increases could result in creating a disincentive for tenants to increase their incomes, in fear that they could lose their housing. This was never the intended HOME program policy and this new provision clarifies this point.

The requirement of 30-day written notice to the tenant in the event of lease termination or non-renewal remains unchanged.

Suggested Next Steps for PJs

1. Review and revise existing rental program and tenant-based rental assistance policies and procedures to ensure that they reflect these requirements:
    a. There must be written leases.
    b. Leases must be for one year unless otherwise mutually agreed between the tenant and the project owner/landlord.
    c. Prohibited lease clauses should be specified, and should be updated to prohibit owners and landlords from requiring tenants to accept supportive services (with an exception for residents of transitional housing).
    d. Termination or nonrenewal of leases may occur for good cause only and good cause does not include nonparticipation in supportive services (unless it is transitional housing) or tenant increases in income.
2. Incorporate these new requirements in written agreements with State recipients; subrecipients; and project owners, developers, and sponsors, as required by §92.504(c).

Effective Date: August 23, 2013

Tenant Protections and Selection

The most significant revision to the tenant selection requirements is the addition of §92.253(d)(3), that provides that the owner's tenant selection policies must comply with requirements governing how and when HOME funds may be used for special needs populations. The new regulatory provisions also permit the owner of HOME-assisted rental housing to limit eligibility or give a preference to a particular segment of the population ***only if*** the PJ permits this in its written agreement.

§92.253(d)(3)(i) provides that, while a limitation or preference is permitted, it must not violate nondiscrimination requirements listed in §92.350. The paragraph clarifies that if HOME-assisted housing also receives funding from a federal program that limits eligibility to a particular segment of the population, then that limitation is not in violation of the nondiscrimination requirements. Examples of

such federal programs include the Housing Opportunity for Persons with AIDS program, HUD's homeless programs, HUD's Section 202 supportive housing for the elderly, and HUD's Section 811 housing for persons with disabilities.

§92.253(d)(3)(ii) provides that preferences may be given to disabled families who need services offered at a project, if certain conditions are met: (1) the preference must be limited to the population of families (including individuals) with disabilities whose disabilities significantly interfere with their ability to obtain and maintain housing; (2) such families are not be able to obtain and maintain themselves in housing without appropriate supportive services; and (3) such services cannot be provided in a nonsegregated setting.

While this provision in the Rule is new, it reflects current HUD policy on this issue. Generally, separate or different housing or services for individuals with disabilities are not permitted. However, 24 CFR 8.4 permits different or separate housing, aid, benefits, or services to individuals with disabilities (or to any class of individuals with disabilities) from that provided to others in extremely limited circumstances: that is, when necessary to provide qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others. Even when separate housing or services are permitted, individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different.

Suggested Next Steps for PJs

1. If pursuing a policy to target housing and/or services to persons with disabilities, review and revise existing rental development and tenant-based rental assistance program policies and procedures to ensure that they reflect the new requirements described above. The policies and procedures should answer the following questions:
    a. Who is the targeted population?
    b. Does the proposed project meet the standard that it provides qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others?
    c. How will an applicant's eligibility as a member of this population be determined?
    d. What services will be provided to support the tenants with disabilities and how will these be provided?
2. Specifically state that the housing will be targeted to the special population in the written agreement with owners, developers, or sponsors, in accordance with §92.504(c)(3).

Effective Date: August 23, 2013

Other Tenant Selection Requirements

Several additional changes are made to §92.253(d) that clarify existing requirements.

- §92.253(d) references the affirmative marketing requirements of §92.351(a) and clarifies that owners must comply with these requirements and expressly states that owners are expected to adopt and ***follow*** tenant selection policies and criteria.
- §92.253(d)(1) and (2) are revised for clarity and specificity. §92.253(d)(1) specifies that tenant selection criteria must limit occupancy in HOME-assisted rental housing to income-eligible (low- and very low-income) families. §92.253(d)(2) specifies that tenant selection criteria must be reasonably related to program eligibility and the applicant's ability to meet the obligations of the lease. This refers to the applicant's ability to pay rent, to maintain the unit in reasonable condition, and not to interfere with the rights of other tenants.
- The provision prohibiting discrimination against rental assistance subsidy holders has been moved from §92.252(d) in the pre-2013 Rule to §92.253(d)(4). No change has been made to the requirement.

The requirements that the tenant selection criteria provide for a written waiting list, and give written notification to rejected tenants are renumbered, but otherwise unchanged. These are now found at §92.253(d)(5) and (6), respectively.

Suggested Next Steps for PJs

1. Review rental housing development and tenant-based rental assistance program policies and procedures to determine if these requirements are clear in current documentation.
    a. If not, revise policies and procedures accordingly.
2. If the PJ provides written guidance to project owners, developers, and sponsors about how to develop tenant selection procedures and what HOME requirements apply to tenant selection procedures, revise this guidance.
3. For project owners, developers, and sponsors working with the PJ for the first time, or using new property management staff/entity for the first time, consider requiring PJ review and approval of tenant selection procedures to confirm compliance.
4. Notify staff and project owners, developers, and sponsors of these clarifications.
5. When applicable, specifically state that the housing will be targeted to the special population in written agreement with owner, developer, or sponsor.
6. Notify monitoring staff of these clarifications and incorporate these requirements into project monitoring checklists for compliance reviews.

Effective Date: August 23, 2013

§92.254 Qualification as Affordable Housing: Homeownership

New Purchase Price Limits

§92.254(a)(2)(iii) is revised so that PJs are no longer permitted to use the FHA Single Family Mortgage

Limit [known as the 203(b) limit] as a surrogate for 95 percent of area median purchase price, as was permitted in the pre-2013 Rule. This change was necessitated by statutory changes to the 203(b) statute, which, over time, increased the FHA Section 203(b) floor. With these increases, the Section 203(b) limits became a less reliable surrogate for 95 percent of area median purchase price. The HOME program statute requires that no housing have a purchase price or after-rehabilitation value that exceeds 95 percent of area median purchase price, in order to ensure that HOME-assisted housing is modest and non-luxury.

In the 2013 Rule, §92.254(a)(2)(iii) is amended to eliminate the use of the 203(b) limit and to change the methods for determining 95 percent of area median purchase price. HUD will determine and issue limits that represent 95 percent of the area median purchase price separately for newly constructed and existing single family housing units.

- **HUD-determined limits for newly constructed single family housing** units to be developed or acquired with HOME funds, will be based on 95 percent of the median purchase price for the area using FHA single family mortgage program data for newly constructed housing. PJs can use the greater of this limit or 95 percent of the statewide nonmetropolitan area median purchase price for newly constructed housing, which will also be provided by HUD.
- **HUD-determined limits for existing single family housing** units being acquired and/or rehabilitated with HOME funds, will be based on 95 percent of the median purchase price of existing housing in the area using data from the FHA single family mortgage program data for existing housing and other appropriate data that are available nationwide for sales of existing housing. PJs can use the greater of this limit or 95 percent of the statewide nonmetropolitan area purchase price using this data, which will also be provided by HUD.

PJs also continue to have the option to determine the actual 95 percent of area median value limit for their jurisdiction using the methodology in the regulation [at §92.254(a)(2)(iii)], which remains unchanged.

Suggested Next Steps for PJs

1. Review the homebuyer development program, homebuyer assistance (downpayment) program, and homeowner rehabilitation program policies and procedures to determine the current sales price / after-rehabilitation limits in effect.
2. Go to the HOME program website to determine the applicable sales price / after-rehabilitation values for the jurisdiction, at

   http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/programs/home/limits/maxprice

3. Notify and instruct staff and program partners of any new limits in effect.
4. Determine whether the PJ will use the HUD-issued limits, or if it will determine its own limits. [If the latter, adopt the methodology outlined in the HOME Rule at §92.254(a)(2)(iii).]

5. Incorporate this requirement in monitoring checklists to ensure that compliance is verified during subrecipient and project monitoring reviews.

Effective Date: August 23, 2013

Conversion of Unsold Homeownership Units to Rental Housing

§92.254(a)(3) imposes a new requirement that PJs must convert homebuyer housing to rental housing if it does not have a ratified sales contract with an eligible homebuyer within nine months of the completion of construction or rehabilitation. If converted, this rental housing must comply with all provisions of §92.252. If an unsold homebuyer unit is not converted to rental housing, the PJ must repay the HOME funds expended on it.

This new requirement is meant to address the concern that some markets cannot support a homeownership program or absorb units that were meant to address a perceived need but upon completion, there are no eligible buyers to purchase the units. This might be the result of a number of things, such as changes in the market demand during the development process, or invalid assumptions about marketability. The aim of the requirement is to prevent newly developed and decent housing units from sitting vacant.

Suggested Next Steps for PJs

1. Revise homebuyer development program policies and procedures to reflect this requirement.
2. In the project review and selection process, review the market study and the developer's marketing strategy carefully to ensure that the homebuyer project is marketable and there is market demand for for-sale units in the target neighborhood.
3. Carefully track housing units against this deadline using the "HOME Homebuyer Activities Report" available online at http://www.hud.gov/offices/cpd/affordablehousing/reports/#buy.
4. Work with rental housing entities to develop a process for identifying potential tenants and/or transferring ownership to an entity able to manage single family rental units, in the event a homebuyer unit must be converted.
5. Notify staff and project owners, developers, and sponsors of this requirement.
6. Consider incorporating a provision in written agreements with project owners, developers, and sponsors to impose the risk of repayment with these entities if the project remains vacant.
7. Notify monitoring staff of these clarifications and incorporate these requirements into monitoring checklists for compliance reviews.

Effective Date: August 23, 2013 (This requirement applies to projects to which HOME funds are committed on or after this date. It does not affect units that are already built or under construction. HOME homebuyer projects funded with FY 2012 and FY 2013 HOME funds will be subject to the more stringent provisions of Public Law 112-55, *Consolidated and Further Continuing Appropriations Act, 2012,* which established a 6-month period for selling HOME homebuyer units or converting them to rental.)

Income of All Persons Residing in the Housing

§92.254(a)(3) and §92.254(b)(2) are revised to specify that to the extent a person's income "counts" in accordance with the definition of income the PJ has adopted, the income of all persons residing in the HOME-assisted housing must be included when determining the income of a family applying for homebuyer or homeowner rehabilitation assistance. This clarification is intended to address situations where not all household members are related, or where several adult members will reside in a HOME-assisted unit. It is not intended to supersede the income determination requirements of the definition the PJ has adopted. For instance, if the PJ adopts the Part 5 definition of income, then the earned income of a minor is not included in the determination of income, even though the minor will reside in the housing unit. This codifies existing HUD policy.

Suggested Next Steps for PJs

1. Review homebuyer development and homeowner rehabilitation program policies and procedures to be sure that this requirement is clear.
2. Revise any related application forms to be sure these requirements are clear to the applicant reporting the household income.
3. Notify monitoring staff of these clarifications and incorporate these requirements into project monitoring checklists for compliance reviews.
4. Communicate these requirements to State recipients, subrecipients, and other partners tasked with determining income eligibility. Incorporate these new requirements into written agreements with these partners.

Effective Date: August 23, 2013

Housing Counseling

§92.254(a)(3) imposes a new requirement that all homebuyers that receive HOME assistance or purchase a unit developed with HOME funds receive housing counseling.

§92.206(d)(6), §92.207(b), and §92.214(b)(1)(iii) are revised to make clear that homebuyers may be charged reasonable fees to cover the cost of housing counseling. The HOME statute prohibits PJs from using HOME funds for a homebuyer counseling program. However, the counseling costs of a homebuyer that is assisted with HOME funds (through downpayment assistance) or that purchases a HOME-assisted unit can be charged as eligible project costs. As project costs, these must be included in the maximum per-unit subsidy limit. When housing counseling is provided to a homebuyer that is not assisted with HOME funds, these costs can be charged as administrative costs, and as such are subject to the ten percent administrative cost cap.

Suggested Next Steps for PJs

1. Revise homebuyer development program and homebuyer assistance (downpayment assistance) program policies and procedures to incorporate the new requirement for homebuyer counseling.

2. Make decisions about:
    a. What level (amount) of housing counseling will be required?
    b. Who will provide the counseling (e.g., PJ, subrecipient, developer), what qualifications will counselors need, and how will they be identified?
    c. How will the housing counseling be funded (through fees to homebuyers or public subsidy)?
3. Revise any related application forms to be sure these requirements are clear to the applicant.
4. Notify monitoring staff of these clarifications and incorporate these requirements into subrecipient and project monitoring checklists for compliance reviews.

Effective Date: August 23, 2013 (This means that any buyer that enters into a written agreement for HOME assistance or a sales contract for the purchase of a HOME-assisted unit after August 23, 2013 must receive housing counseling. Note that changes to §92.254(f) require PJs to develop and adopt homebuyer program policies, including written policies related to underwriting, responsible lending, and refinancing, by January 24, 2014.)

HUD Approval of Resale and Recapture Provisions

§92.254(a)(5) is revised to require PJs to obtain HUD's specific and written approval of its resale and/or recapture requirements. PJs shall continue to follow the pre-2013 Rule procedures to submit their resale and recapture provisions for HUD approval as part of their consolidated plan or annual action plan. However, rather than provide implicit approval as part of the consolidated plan or annual action plan approval, this amendment requires HUD to issue separate, written approval of these provisions. PJs must provide sufficient detail to enable HUD to assess their appropriateness. It is a statutory requirement that HUD approves a PJ's resale or recapture provisions.

Suggested Next Steps for PJs

1. Review existing resale and recapture provisions, including the clarifications of the requirements in the following paragraphs, and determine whether they sufficiently meet the requirements of the HOME program.
    a. If no, revise accordingly.
2. Submit resale and/or recapture provisions to HUD for review and approval, as part of the consolidated planning review and approval process.

Effective Date: August 23, 2013

Resale Restrictions: Fair Return and Affordability to a Reasonable Range of Low-income Homebuyers

For PJs adopting resale restrictions in their homebuyer programs, §92.254(a)(5)(i) is amended to require them to define "fair return on investment" and "affordability to a reasonable range of low-income buyers," in their restrictions. The PJ must also address how it will make the housing affordable if the resale price that is needed for a fair return on investment is too high to be within the affordable range.

In order to meet the statutory and regulatory requirements of the resale restriction, these terms must be defined. Historically, however, many PJs have not defined these terms in sufficient detail to ensure compliance. This new requirement will improve PJs' ability to design resale requirements that are understandable to potential homebuyers and reflect the local housing market.

Other key requirements related to resale restrictions remain unchanged:

- Resale restrictions must be imposed at the time that the HOME-assisted purchase takes place, and secured through deed restrictions, covenants running with the land, or other similar mechanisms.
- Restrictions may terminate upon foreclosure, transfer in lieu of foreclosure, and assignment of FHA mortgage, in order to clear title. This does not eliminate the PJ's obligation to provide affordable housing throughout the affordability period; failure to do so results in the PJ's repayment of HOME funds to its Trust Account.
- PJs may use purchase rights and other legal mechanisms to purchase HOME-assisted housing before foreclosure.
- PJs can make a "presumption of affordability," through the analysis process described in the regulation at §92.254(a)(5)(i)(B), rather than impose resale restrictions.

Suggested Next Steps for PJs

1. Review existing resale restrictions, and determine whether they sufficiently define "fair return on investment" and "affordability to a reasonable range of low-income buyers," as described and whether they meet the other key requirements listed above.
    a. Notify staff, State recipients, subrecipients, contractors, project developers, lenders, and other program partners of any revisions made to the PJ's resale restrictions.
2. Seek HUD approval, as specified at §92.254(a)(5).

Effective Date: August 23, 2013

Recapture Provisions: Assumption of Recapture Obligations by Subsequent Homebuyer

§92.254(a)(5)(ii) is revised to permit a subsequent low-income purchaser of a HOME-assisted homeownership unit to assume the existing HOME loan and recapture obligation entered into by the original buyer when no additional HOME assistance is provided to the subsequent homebuyer.

In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

No other changes have been made to the regulatory requirements related to recapture provisions.

Suggested Next Steps for PJs

1. Determine if the PJ will change its policies to incorporate this new provision and revise recapture provisions, if needed, to make this policy clear.
2. Notify staff, State recipients, subrecipients, contractors, project developers, lenders, and other program partners of this clarification.

Effective Date: August 23, 2013

Exceptions to Qualification as Homeowner for Homeowner Rehabilitation Programs

When a PJ provides rehabilitation assistance to an existing homeowner, the housing must meet the definition of "homeownership" at §92.2. §92.254(c) is amended to permit the PJ to provide rehabilitation assistance in four additional situations:

- **Inherited property with multiple owners**. This provision is for housing for which title has passed, by inheritance, to several heirs, not all of whom reside in the housing. This most often occurs when siblings inherit a family home that is occupied by one sibling. The PJ is able to provide rehabilitation assistance to the owner-occupant when he/she: (1) is low-income, (2) occupies the housing as his or her principal residence, and (3) pays all the costs associated with ownership and maintenance of the housing (e.g., mortgage, taxes, insurance, utilities).

- **Life estate.** Under a life estate, the occupant of the property has the right to live in the housing for the remainder of his or her life and does not pay rent. This might be a situation where a disabled adult occupies a dwelling owned by another family member under a life estate, or in which a deceased spouse leaves a property to the children of a previous marriage but permits the other spouse to occupy the property for the remainder of his or her life. PJs are permitted to provide rehabilitation assistance to the person holding the life estate, provided the person is low-income and occupies the housing as his or her principal residence.

- **Inter vivos trust, also known as a living trust.** A living trust is created when the owner of property conveys his or her property to a trust for his or her own benefit or for that of a third party (the beneficiaries). The trust holds legal title and the beneficiary holds equitable title. The trustee is under a fiduciary responsibility to hold and manage the trust assets for the beneficiary. This is a common estate planning tool. The regulation is revised to permit PJs to provide rehabilitation assistance to a property if all beneficiaries of the trust qualify as a low-income family and occupy the property as their principal residence. The contingent beneficiaries, who receive no benefit from the trust and have no control over the trust assets until the beneficiary is deceased, need not be low-income. The trust must be valid and enforceable and must ensure that each beneficiary has the legal right to occupy the property for the remainder of his or her life.

- **Beneficiary deed.** A beneficiary deed conveys an interest in real property, including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that

expressly states that the deed is effective on the death of the owner. Upon the death of the owner, the grantee beneficiary receives ownership in the property, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime. The PJ may assist the owner if he or she qualifies as low-income and occupies the property as his or her principal residence.

In these situations, the PJ has the right to establish the terms of assistance.

Suggested Next Steps for PJs

1. Determine whether the PJ will opt to expand its definition of applicable homeowners for its homeowner rehabilitation programs.
2. If yes, revise homeowner rehabilitation program guidelines to include these permissible forms of ownership interest.
3. Determine what type of documentation (such as a title search) the applicant will need to provide to demonstrate these types of ownership interest. Specify this in program materials and application forms.

Effective Date: August 23, 2013

Providing HOME Homeownership Assistance through Lenders

A new provision is included at §92.254(e) to govern situations in which HOME homeownership assistance (e.g., downpayment assistance) is provided through a nonprofit or for-profit entity that also provides first mortgage financing to the homebuyer. There is an inherent conflict in this situation, since the first mortgage lender may have an incentive to provide assistance to buyers. This might jeopardize the lender's objectivity in assessing the qualifications of the buyer or the eligibility of a property.

The new provision imposes several safeguards in these situations:

1. The assistance may be provided only as specified in a written agreement between the PJ and the lender. This agreement must specify the forms, amounts, and any conditions of homeownership assistance that the lender is authorized to provide.
2. Before any HOME assistance is provided, the PJ must verify that the family is eligible for HOME assistance (low-income) and must inspect the housing for compliance with applicable property standards in §92.251.
3. The for-profit or nonprofit organizations are not permitted to charge fees (such as origination fees or points) to the family for the HOME homeownership assistance that the organization provides. (Reasonable administrative costs may be charged to the HOME program as a project cost.)

This provision also addresses situations whereby a PJ contracts with a for-profit or nonprofit lender to make eligibility determinations, but another entity (the PJ or otherwise) is providing the HOME financial assistance. In these situations, items 2 and 3 apply. It is in the public interest to include these

safeguards because these organizations earn fees for originating non-HOME mortgages to borrowers also receiving HOME funds.

Suggested Next Steps for PJs

1. If the PJ has programs in which it provides HOME homeownership assistance (e.g., downpayment assistance) through a nonprofit or for-profit entity that also provides first mortgage financing to the homebuyer, be sure that these safeguards are put into place. Modifications to the written agreements or memoranda of agreements with these entities may be necessary.
2. Notify monitoring staff of the requirements, and incorporate these safeguards on monitoring checklists to ensure compliance is reviewed during program monitoring.

Effective Date: August 23, 2013

Sustainable Homeownership Program Design

New requirements are imposed on PJs administering homebuyer assistance programs to strengthen program design and administration. The 2013 Rule adds a new paragraph §92.254(f) that requires PJs to have and follow written policies for:

- **Underwriting.** Underwriting standards for homeownership assistance must address housing debt, overall household debt, the appropriateness of the amount of assistance, recurring household expenses, assets available to acquire the housing, monthly expenses of the household, and financial resources available to the household to sustain homeownership.

- **Predatory lending.** The PJ must have a policy to protect against predatory lending. Recent rulemaking by the Consumer Financial Protection Bureau (CFPB) resulted in guidelines about how federal agencies that insure or guarantee mortgages evaluate a buyer's ability to repay a mortgage. These guidelines are not specific to low-income borrowers and their ability to sustain a mortgage. HUD will issue guidance on preventing predatory lending that explains the CFPB ability-to-pay principles and will suggest additional considerations that would be appropriate to include in an anti-predatory lending policy applicable to low-income homebuyers.

- **Refinancing.** The refinancing policy must address refinancing loans to which HOME loans are subordinated to ensure that the terms of the new loan are reasonable.

Suggested Next Steps for PJs

1. If administering homebuyer assistance programs, review current policies and procedures and revise them, as needed, to address underwriting standards for homebuyers, protections for buyers against predatory lending, and refinancing policies.
2. Provide written notification to staff and program partners of the new policies and procedures.

3. Incorporate underwriting requirements into applications and other materials for homebuyers to ensure that the required information is collected from potential buyers in order to evaluate their creditworthiness and to ensure that they understand the requirements.
4. Work with housing counseling agencies, as appropriate, to ensure they understand the PJ's underwriting criteria and policies.
5. Notify monitoring staff of these requirements, and incorporate the requirements on monitoring checklists to ensure compliance review during project monitoring process.
6. Incorporate the homebuyer program policies and procedures in written agreements with State recipients; subrecipients; and project owners, developers, and sponsors, in accordance with §92.504(c), as appropriate.

Effective Date: January 24, 2014 (six months following the publication of the Final Rule)

§92.255 Converting Rental Units to Homeownership Units for Existing Tenants

The pre-2013 Rule, at §92.255, permits rental units to be converted to homeownership units for existing tenants. This provision was intended to facilitate efforts of in-place tenants to purchase the rental unit in which they reside. In some instances, owners or PJs have pursued the conversion of an entire HOME-assisted multifamily rental project to condominium ownership during the period of affordability. The 2013 Rule revises this section to make clear that the refusal of a tenant to purchase the housing does not constitute grounds for eviction.

This section is further revised to specify that if no additional HOME funds are used to enable a tenant to purchase the unit, the minimum period of affordability is equal to the remainder of the affordability period if the property had remained rental property. If additional assistance is provided to assist the tenant/new homeowner, then the affordability period is based on the amount of direct homeownership assistance provided, in accordance with §92.254(a)(4).

Suggested Next Steps for PJs

1. Include this requirement in written agreements with owners, developers, and sponsors of rental housing.
2. In situations where an owner is converting a project to homeownership, require owners to inform tenants of their right to not be evicted in the event of a conversion of the property. Further, require owners to explain to tenants the HOME requirements that will apply to them should they purchase the unit (principal residency requirement, the PJ's resale or recapture provisions, remaining affordability period).
3. Should the tenant choose to purchase the unit, and if additional HOME funds will be invested to assist the tenant to make the purchase, execute a written agreement with the

tenant that imposes the HOME requirements and specifies the affordability period (based on the direct homeownership assistance provided).

Effective Date: August 23, 2013

§92.257 Faith-Based Organizations

The provisions at §92.257 that govern the use of HOME funds by faith-based organizations have been revised to conform to 24 CFR 5.09 which provides guidance in this area for all HUD programs. Substantively, these changes do not reflect new policy or requirements under the HOME program.

Suggested Next Steps for PJs

1. In the project or subrecipient selection process, be sure that faith-based organizations receive equal consideration. State this policy in project solicitations (i.e., Requests for Proposals).
2. When funding faith-based organizations, clarify in the written agreement that HOME funds and activities must be separate (in terms of time and location) from explicitly religious activities.
3. Notify monitoring staff of these requirements, and incorporate into monitoring guidance and checklists to ensure compliance review.

Effective Date: August 23, 2013

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

A number of revisions have been made to the CHDO set-aside requirements.

Determining Qualification as a CHDO

To ensure that PJs provide CHDO set-aside funds only to organizations that qualify as CHDOs, §92.300(a) is revised to require PJs to:

> (1) Certify that a nonprofit organization meets the definition of "community housing development organization."
>
> (2) Document that the organization has the capacity to own, develop, or sponsor housing (as required by the revised definition of CHDO in §92.2) ***each time*** it commits CHDO funds to an organization for a specific project.

These provisions require a higher level of PJ scrutiny of CHDOs than was required under the pre-2013 Rule. Previously, a PJ was required to review documentation from the nonprofit organization in order to make a determination that it met the requirements for CHDO designation, including demonstrated

capacity for carrying out HOME activities. The new certification requirement increases PJ accountability and formalizes this process. The documentation of CHDO capacity each time there is a commitment of funds is a new requirement.

Effective Date: August 23, 2013 (The certification and documentation requirements apply to commitments of funds to any CHDO after this date.)

Reservation of CHDO Funds

§92.300(a)(1) redefines "reservation of funds" to a CHDO as occurring when a PJ enters into a written agreement with the CHDO committing HOME funds to a specific project to be owned, developed, or sponsored by the CHDO. This revision conforms to the revised definition of "commitment" at §92.2.

This change alters the previous requirements for reserving funds to a CHDO. Rather than permitting a general agreement between a PJ and a CHDO for a project to be identified at a future time, the Rule now requires a commitment of funds to a specific project to be undertaken by a CHDO.

Qualification as "Set-Aside" Funds: Definition of Owned, Developed, Sponsored

With respect to the CHDO set-aside, it is statutorily required that the PJ provide a minimum of 15 percent of its annual HOME allocation for housing that is "owned, developed, or sponsored" by CHDOs. The pre-2013 Rule required a CHDO to have "effective project control" to qualify as a set-aside project. In 1994, HUD issued detailed guidance to clarify what qualified as housing owned, developed, or sponsored by a CHDO. The 2013 Rule codifies these definitions, with a significant modification to the definition of "owner" of rental housing as detailed below.

- **Owner of rental housing.** A CHDO that is an "owner" of rental housing is defined at §92.300(a)(2). The CHDO is required to own (in fee simple absolute or long-term ground lease) multifamily or single family housing that is rented to low-income families, in accordance with §92.252. The CHDO must own the HOME project during development and throughout the period of affordability, and is required to oversee all aspects of the development process. At a minimum, the CHDO can own the property and hire a project manager or contract with a development contractor to oversee all aspects of the development. Under the 2013 Rule at §92.300(a)(2), a CHDO is also permitted to acquire housing that is in standard condition (and meets the property standards at §92.251) provided it owns the housing throughout the affordability period. This new definition facilitates participation of community-based nonprofit organizations that have the capacity to own and operate affordable rental housing in their communities, but do not have the capacity to develop such housing. Consequently, this new definition creates additional opportunities for nonprofit organizations to access the CHDO set-aside funds to address their neighborhoods' affordable housing needs. The new definition of "owner" should also assist rural States, which consistently experience great difficulty in developing and retaining capable CHDOs.

- **Developer of rental housing.** A CHDO that is a "developer" of rental housing is defined at §92.300(a)(3). The CHDO is the owner (in fee simple absolute or long-term ground lease) and developer of the project and must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME funds, selecting contractors, overseeing the progress of work, and determining reasonableness of costs. The CHDO must own the HOME-assisted housing during the development process and throughout the period of affordability. This is a change from the pre-2013 Rule in that the CHDO must own the property; it no longer has the option to be under contract with an owner to develop the property.

- **Sponsor of rental housing.** The 2013 Rule provides two definitions of a "sponsor" of HOME-assisted rental housing:
  1. §92.300(a)(4) clarifies the requirement for CHDOs to maintain effective project control when acting as "sponsor" of rental housing. A CHDO "sponsors" rental housing when the property is "owned" or "developed" by:
     a. A subsidiary of the CHDO (in which case the subsidiary, which may be a for-profit or nonprofit organization, must be wholly owned by the CHDO);
     b. A limited partnership (in which the CHDO or its wholly owned subsidiary must be the sole general partner); or
     c. A limited liability company (in which the CHDO or its wholly owned subsidiary must be the sole managing member).

     If the limited partnership or limited liability company agreement permits the CHDO to be removed as sole general partner or sole managing member, respectively, the agreement must require that the removal be "for cause" and that the CHDO must be replaced by another CHDO. In addition, HOME funds must be provided to the entity that owns the project.

  2. §92.300 (a)(5) codifies the pre-2013 Rule definition of "sponsor." It states that a CHDO "sponsors" HOME-assisted rental housing in situations in which the CHDO owns and develops the housing and agrees to convey the housing to a private nonprofit organization (that does not need to be a CHDO but cannot be created by a governmental entity) at a predetermined time after completion of the project development. Such arrangements typically occur when a CHDO has development expertise and the nonprofit organization has the capacity to own and operate the housing. The CHDO is required to own the property before the development phase of the project and is required to select the nonprofit organization before entering into an agreement with the PJ that commits HOME funds to the project. The nonprofit organization assumes the CHDO's HOME obligation (including any repayment of loans) for the project. If the property is not transferred to the nonprofit organization, the CHDO sponsor remains liable for the HOME assistance and the HOME project.
- **Developer of housing for homeownership.** For HOME-assisted homebuyer projects, the housing is "developed" by the CHDO if it is the owner (in fee simple absolute) and developer of

new housing that will be constructed or existing substandard housing that is owned or will be acquired by the CHDO and rehabilitated for sale to low-income families, in accordance with §92.254. To be the "developer," the CHDO must arrange financing for the project and be in sole charge of construction. As part of its set-aside funds, the CHDO can provide direct downpayment assistance to a buyer of the housing it has developed with HOME funds in an amount not to exceed 10 percent of the amount of HOME development funds. In this role, the CHDO is not a subrecipient. This definition is very similar to the pre-2013 definition.

- **Sponsor of housing for homeownership.** Under the pre-2013 Rule a CHDO was able to serve as a "sponsor" of homebuyer housing. There is no equivalent "sponsor" role for homebuyer housing in the 2013 Rule.

Qualification as "Set-Aside" Funds: Other Regulatory Changes

The 2013 Rule also makes minor changes at §92.300(a)(e) to reference and/or conform to other provisions related to the use of CHDO set-aside funds:

- The written agreement between the PJ and the CHDO must state the actual sales prices of the housing or describe the method that will be used to determine the sales price. [See §92.504(c)(3)(ii).] This is a new requirement.
- The written agreement must state whether the proceeds of sale must be returned to the PJ or may be retained by the CHDO, and whether the proceeds must be used for HOME-eligible activities or other housing activities to benefit low-income families. [See §92.504(c)(3)(x).] This is not a new requirement.
- Funds that are recaptured during the period of affordability [because housing no longer meets the affordability requirements under §92.254(a)(5)(ii)] must be reinvested in HOME-assisted activities in accordance with §92.503. This is not a new requirement.

The 2013 Rule does not change the requirement that CHDO set-aside funds may only be used for housing owned, developed, or sponsored by a CHDO. When a CHDO administers a TBRA, direct homebuyer assistance (except in conjunction with development activity, as defined above), or a homeowner rehabilitation program, it is serving as a subrecipient and cannot use CHDO set-aside funds for those activities.

Suggested Next Steps for PJs

1. See "Suggested Next Steps for PJs" at §92.2, definition of CHDO. Be sure that policies and procedures reflect a process for:
    a. Certifying that the CHDO meets the definition of "community housing development organization"
    b. Documenting that the CHDO has capacity relevant to its role as owner, developer, or sponsor
    c. Performing this certification and assessment each and every time the PJ commits CHDO set-aside funds to a CHDO for a specific project.

2. Refer to "Suggested Next Steps for PJs" at §92.2, definition of commitment. Be sure that policies and procedures related to selecting CHDOs are revised so the PJ commits funds to specific projects within the 24-month time limit.
3. Revise and update procedures related to CHDO selection and qualification and/or Requests for Proposals to reflect the new requirements for selecting and qualifying CHDOs.
4. Review and publicize through the citizen participation process the revised definitions of "owner, developer, and sponsor." If desired, identify and reach out to any nonprofit organizations that might qualify as CHDOs but have previously been unable to participate due to lack of development expertise.
5. See changes at §92.2, definition of commitment regarding the elimination of CHDO reservations; §92.2 definition of community housing development organization regarding criteria to qualify a nonprofit organization as a CHDO, §92.208 regarding CHDO operating funds, and §92.504(c)(3) related to written agreements with project owners, developers, and sponsors.

Effective Date: August 23, 2013 (Any CHDO set-aside projects to which the PJ makes a commitment after this date are subject to the new definitions of owner, developer, and sponsor. However, the requirement that PJs make a commitment of CHDO set-aside funds to a specific project, rather than a reservation of funds to a project to be determined at a later date becomes effective on October 22, 2013).

§92.351 Affirmative Marketing; Minority Outreach Program

§92.351 is revised to extend the applicability of affirmative marketing procedures to all HOME-funded programs, including TBRA and downpayment assistance programs. The pre-2013 affirmative marketing requirements were applicable only to HOME-assisted projects with five or more HOME units. The previous exception to the affirmative marketing requirements for tenants receiving Section 8 rental assistance has been eliminated. The specific affirmative marketing procedures to be used will depend on the type and size of the program or project. For instance, a PJ administering a downpayment assistance program must affirmatively market the program (i.e., the availability of federal funds for downpayment assistance), rather than units available for purchase.

This section is further modified to specify that to the extent that a project is implementing tenant preferences, the PJ must have affirmative marketing procedures that apply in the context of limited/preferred tenant selection policies. For example, a project for homeless persons must be marketed to the universe of persons who would meet the preference. The project could not rely solely on referrals from a specific homeless provider when there are other homeless providers with potential applicants in the market area.

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

Suggested Next Steps for PJs

1. Develop guidance on affirmatively marketing tenant-based rental assistance and homebuyer assistance programs that were previously not covered by the HOME Rule.
    a. The policies must state the specific actions that staff, subrecipients, or State recipients must take in order to attract eligible persons in the market area without regard to race, color, national origin, sex, religion, familial status, or disability.
    b. Refer to §92.351(b) for specific items that the procedures must address.
2. Revise policies and procedures for tenant-based rental assistance programs and homebuyer development programs to incorporate this new guidance.
3. Review existing guidance in the rental and homebuyer housing development programs to make sure these policies reflect that this requirement applies to projects with five or more HOME-assisted units, and make required revisions.
4. Be sure any written agreements with State recipients; subrecipients; and owners, developers, or sponsors, in accordance with §92.504(c), include the affirmative marketing requirements.

Effective Date: August 23, 2013

§92.352 Environmental Review

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

This change is a clarification of existing policy.

Suggested Next Steps for PJs

1. Review environmental review policies and procedures to confirm that the PJ is in compliance.
    a. If in compliance, no action is needed.
    b. If not in compliance, revise policies and procedures and train the Environmental Review Officer in the requirements.

Effective Date: August 23, 2013

§92.354 Labor

There are no changes to the labor-related regulations that relate to HOME. §92.354(a)(3) is revised only

to remove a reference to HUD Handbook 1344.1, *Federal Labor Standards Compliance in Housing and Community Development Programs*. In place of this reference, the regulation now describes the PJ's monitoring and oversight responsibilities, which were addressed in the handbook. This is intended to make clear that PJs retain these responsibilities. The procedures and processing provisions of the handbook remain applicable to PJs.

Suggested Next Steps for PJs

None needed.

Effective Date: August 23, 2013

§92.356 Conflict of Interest

Financial Interest or Benefit

The conflict of interest provision of §92.356(b) is revised to specify that the type of covered conflict is a ***financial*** benefit or interest. It further specifies that covered familial relationships are limited to ***immediate family*** members. These changes align the HOME conflict of interest provisions with the CDBG regulations.

This change narrows the interpretation of the previous regulatory language. For instance, it is common for State and local governments to designate elected or appointed officials to serve on the boards of nonprofit organizations that may provide affordable housing within their communities. Under the pre-2013 Rule, an official might have a personal interest in this appointment, and if interpreted broadly the previous regulations might have prohibited this type of arrangement. The change in the Rule clarifies that in such situations, if the public official does not receive a salary or any other financial compensation for serving on the board, the official's interest would be a personal one only. This kind of public participation often is beneficial and should not be discouraged.

Occupancy of HOME-Assisted Units

The conflict of interest provisions at §92.356(f)(1) prohibit certain persons from occupying HOME-assisted housing. This provision has been revised to clarify that ***immediate*** family members of an officer, employee, agent, elected or appointed official or consultant of an owner, developer, or sponsor are prohibited from occupying a HOME-assisted affordable housing unit in a project. This amendment further clarifies that the restriction on occupancy applies during the period of affordability only, and not to the entire period of ownership by the entity that received the HOME assistance.

HUD plans to issue additional guidance on the issue of conflict of interest.

Suggested Next Steps for PJs

1. Review and revise conflict of interest policies to clarify that:

   a. The type of conflict covered is a financial benefit or interest.
   b. Covered familial relationships include immediate family members, as defined in the regulation for both the prohibition against gaining a financial benefit or interest, and from occupying a HOME-assisted unit.
2. Notify staff and program partners of these clarifications.
3. Be sure the written agreements [as required by §92.504(c)] with State recipients, subrecipients, owners, developers, and sponsors include the conflict of interest provisions as amended by this Rule.
4. Notify monitoring staff of these clarifications, and be sure that conflicts of interest are included in monitoring checklists to verify compliance.
5. Look for additional HUD guidance in this area and update PJ policies as needed.

Effective Date: August 23, 2013

§92.500 The HOME Investment Trust Fund

Interest Bearing Local HOME Accounts

§92.500(c)(1) creates a new requirement that local HOME accounts be interest bearing.

Suggested Next Steps for PJs

1. Determine whether or not the local HOME account is interest-bearing. If it is not, create a new local account.
2. Verify that the PJ's internal accounting system is set up to track and record in IDIS interest to be earned as program income.

Effective Date: August 23, 2013

Separate Expenditure Deadline for CHDO Set-Aside Funds

To provide an incentive for PJs to proactively manage CHDO set-aside funds by moving them from nonperforming CHDOs to performing CHDOs before they expire, HUD has added a new requirement at §92.500(d)(1)(C) to establish a separate 5-year expenditure deadline for CHDO set-aside funds. HUD will deobligate amounts equal to the shortfall and reallocate them in accordance with the provisions of the National Affordable Housing Act (NAHA, the HOME statute) and implementing regulations.

Suggested Next Steps for PJs

1. Review existing projects in the development pipeline to flag any projects that might be stalled or at risk of not being completed by the five-year expenditure deadline.
2. Review and revise policies and procedures for committing and tracking CHDO set-aside projects to ensure that set-aside funds are committed and expended timely. (See §92.2, definition of

commitment.) The "Deadline Compliance Status Reports" are available online at http://www.hud.gov/offices/cpd/affordablehousing/reports/deadlinecompliance.cfm.

3. Incorporate a "checkpoint" in the program procedures to ensure that stalled CHDO projects are identified early enough that funds can be reallocated if needed.

Effective Date: HUD will implement the five-year deadline for expenditure of CHDO set-aside funds beginning January 1, 2015. HUD will begin posting "Deadline Compliance Status Reports" significantly in advance of this date, so that PJs have an opportunity to reallocate funds among CHDOs as necessary.

Reducing or Recapturing CHDO Set-Aside Funds

The 2013 Rule revises §92.500(d)(2) to better describe the method of calculation that HUD uses to determine compliance with commitment (including CHDO commitment) and expenditure deadlines.

Suggested Next Steps for PJs

None needed.

Effective Date: August 23, 2013

§92.502 Program Disbursement and Information System

Program Income

Modifications to §92.502(a) clarify and codify existing HOME policy that PJs must report all program income earned on HOME funds in IDIS.

Suggested Next Steps for PJs

1. Review financial policies and procedures related to the deposit and expenditure of program income to be sure that all program income earned is recorded in IDIS.
    a. If it is, no action is needed.
    b. If it is not, establish a system for recording program income in IDIS and a verification procedure to ensure that this step is taken.
2. See §92.500(c)(1) and ensure that interest is included in the determination of program income, and is also recorded in IDIS.

Effective Date: August 23, 2013 (PJs must record in IDIS all program income received after this date.)

Access to IDIS

Revisions to §92.502(e) clarify that although other program participants may be permitted to access IDIS, only PJs and State recipients (if permitted by the State) may access IDIS to request disbursement. This provision codifies HUD's longstanding IDIS administrative guidance.

Suggested Next Steps for PJs

1. Review the IDIS policies and procedures and review IDIS report PR30, "Security Administrator User Profile List," to verify that only PJs and State recipients (if approved by State) have access to request disbursement in IDIS.
    a. If this is the case, no action is needed.
    b. If it is not, notify affected program partners of clarification and limit IDIS access immediately.

Effective Date: August 23, 2013

§92.503 Program Income, Repayments, and Recaptured Funds

§92.503 is revised to provide that, when a PJ is required to repay HOME funds, HUD will instruct the PJ whether to repay funds to the HOME Investment Trust Fund Treasury account or the local account. Under the pre-2013 Rule, the PJ was required to repay funds to the account from which they were initially drawn.

Suggested Next Steps for PJs

1. Revise financial policies and procedures to state that when HOME funds must be repaid, the PJ ***must*** contact HUD to determine to which account the funds must be repaid.
2. Notify affected staff of this change.

Effective Date: August 23, 2013

§92.504 Participating Jurisdiction Responsibilities; Written Agreements; On-Site Inspections

Required Policies and Procedures Related to PJ Responsibilities

The 2013 Rule revises §92.504(a) to:

- Require PJs to develop and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects, and a system for monitoring entities (e.g., subrecipients, CHDOs and project owners), to ensure that HOME requirements are met.
- Make explicit that State recipients are included in the entities that must be evaluated annually.
- Clarify that the evaluation must include a review of each entity's compliance with HOME program requirements.

Under the pre-2013 Rule, PJs were responsible for ensuring that all program funds were used in compliance with HOME requirements and for reviewing the performance of HOME-funded entities. The changes to this provision impose more specific requirements on PJs to strengthen their performance in this area and improve oversight of program partners.

Suggested Next Steps for PJs

1. Develop or revise written policies, procedures, and systems for monitoring HOME-funded entities; include a process to assess risk of activities and projects that will guide decisions about which entities to monitor on-site, and the nature of the monitoring visit. The policies and procedures should reflect:
   a. All HOME-funded entities must be monitored at least annually: State recipients, subrecipients, developers, owners, sponsors, and contractors.
   b. PJs can use a combination of site visits and desk reviews to undertake monitoring efforts.
   c. The plan and system should identify the staff responsible for monitoring efforts, when the monitoring will be done, the nature of the monitoring effort (program administration, financial, project monitoring, etc.) and how it will be done (on-site vs. desk review).
2. Consider the monitoring needs of projects that are in process, and those that are completed and in the affordability period. [For the latter, be sure to incorporate the on-site inspection requirements of §92.504(d).]
3. Look for additional HUD guidance to be issued in this area and update policies and procedures as needed.

Effective Date: July 24, 2014 (12 months following the publication of the Final Rule)

Written Agreements

A number of additions and revisions have been made to the required written agreement provisions established in §92.504(c). The provisions listed in this section must be included in PJs' written agreements committing HOME funds to State recipients, subrecipients, owners, developers, sponsors, contractors, and CHDOs. Many of these changes are intended to improve HOME written agreements so that they are more effective tools for program compliance, management, and enforcement. Other changes are made to conform to programmatic changes made by this Rule.

State recipient

The following amendments have been made to the provisions required in the agreement between a PJ and a State recipient:

- **Overview.** Under the pre-2013 HOME Rule, a State PJ has the option to impose requirements on State recipients to ensure that they comply with HOME requirements or to allow the State

recipient to develop its own requirements to ensure compliance with the program. This option has not changed. However, this section is revised to clarify that the State must specify the following HOME requirements in its agreement: income determinations, underwriting and subsidy layering review, rehabilitation standards, refinancing standards, homebuyer program policies, and affordability.

- **Use of HOME funds.** §92.504(c)(1)(i) is revised to require that written agreements include greater detail about the State recipient's use of HOME funds, including amounts and uses for specific programs and activities (downpayment assistance, affordable housing development, tenant-based rental assistance, etc.), the number of housing projects to be funded or loans to be made, and any requirements for matching contributions. The State PJ must also include the elements established in the pre-2013 Rule: tasks to be performed, schedule for completion, and budget for each program.

- **Affordability.** §92.504(c)(1)(ii) is revised to require that the written agreement specify whether repaid and recaptured HOME funds must be returned to the State PJ or retained by the State recipient and expended on eligible activities.

- **Written agreements.** §92.504(c)(1)(xi) requires a State recipient to enter into a written agreement that complies with the provisions of §92.504(c) with any other entity or individual to which it disburses HOME funds. This is not a new requirement. The revision to this section specifies that this agreement must be in place ***before*** the HOME funds are provided.

- **Fees.** §92.504(c)(1)(xiii) is a new provision that requires the written agreement to include a provision to implement the prohibition against charging fees in §92.214(b), as revised under this Rule.

Suggested Next Steps for PJs

1. If the PJ is a State and uses State recipients, review the standard language of the agreement used with State recipients.
2. Revise the written agreement template to reflect these new requirements.
3. Notify State recipients of the changes to future written agreements to be sure that the new requirements are clearly understood.
4. Notify monitoring staff of these changes and be sure that the new requirements are reflected on any monitoring checklists for monitors when they review compliance with written agreements executed after the effective date of these requirements.

Effective Date: August 23, 2013 (PJs must use the new written agreement for all projects to which HOME funds are committed after this date.)

Subrecipients

§92.504(c)(2) is revised to require that written agreements with subrecipients contain the same new or revised provisions that are modified in the State recipient agreements, described above. In addition, agreements with subrecipients must include requirements that subrecipients must follow to enable PJs to carry out their environmental review responsibilities before HOME funds are committed to a project. The specific amendments include:

- **Overview.** §92.504(c)(2) is revised to specify that the PJ's written agreement with the subrecipient must set forth requirements applicable to the subrecipient. These must include requirements for: income determinations, underwriting and subsidy layering guidelines, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability requirements.

- **Use of HOME funds.** §92.504(c)(2)(i) is revised to require that written agreements include greater detail about the subrecipient's use of HOME funds, including amounts and uses for specific programs and activities (downpayment assistance, affordable housing development, tenant-based rental assistance, etc.), the number of housing projects to be funded or loans to be made, and any requirements for matching contributions. The PJ must also include the elements established in the pre-2013 Rule: tasks to be performed, schedule for completion, and a budget for each program.

- **Other program requirements.** §92.504(c)(2)(iv) requires the written agreement to state that the subrecipient must comply with all federal laws and regulations that are described in subpart H of the HOME Rule, with the exception of the environmental review responsibilities, which reside with the PJ. This requirement has not changed. However, this provision is revised to clarify that the agreement must specify the requirements imposed on the subrecipient to enable the PJ to carry out the environmental review before HOME funds are committed.

- **Written agreements.** §92.504(c)(2)(x) requires a subrecipient to enter into a written agreement that complies with the provisions of §92.504(c) with any other entity or individual to which it disburses HOME funds. This is not a new requirement. The revision to this section specifies that this agreement must be in place ***before*** the HOME funds are provided. The revision also clarifies that the written agreement must specify whether repaid and recaptured HOME funds must be returned to the PJ or retained by the subrecipient and expended for additional eligible activities.

- **Fees.** §92.504(c)(2)(xi) is a new provision that requires the written agreement to include a provision to implement the prohibition on charging fees in §92.214(b), as revised under this Rule.

Suggested Next Steps for PJs

1. If the PJ uses subrecipients, review the standard language of the agreement used with subrecipients.
2. Revise the written agreement template to reflect these new requirements.
3. Notify subrecipients of the changes to future written agreements to be sure that the new requirements are clearly understood.
4. Notify monitoring staff of these changes and be sure that the new requirements are reflected on any monitoring checklists for monitors when they review compliance with written agreements executed after the effective date of these requirements.

Effective Date: August 23, 2013 (PJs must use the new written agreement for all projects for which HOME funds were committed after this date).

For-profit or nonprofit housing owner, sponsor, or developer (other than single family owner-occupant)

In addition to the inclusion and clarifications of the provisions common to the subrecipient and State recipient agreements, §92.504(c)(3) clarifies that the preliminary award of HOME funds (i.e., early awards of HOME funds before other necessary sources of financing have been secured) does not constitute a "commitment" pursuant to the definition at §92.2 and may not be entered into IDIS until a legally binding written agreement containing all required provisions is executed. The specific amendments include:

- **Use of HOME funds.** §92.504(c)(3)(i) provides additional information that is needed to describe the use of HOME funds, including the address or legal description of the project site, use of both HOME funds ***and other funds*** in the project, and a ***complete*** budget. (Emphasis added reflects the Rule revisions.) The previous elements of this provision still must be included: tasks to be performed and schedule for completion.

- **Affordability.** This provision, at §92.504(c)(3)(ii), is revised to specify that the written agreement must state that the affordability requirements must be imposed by deed restriction, ***use restrictions***, covenants running with the land or other legal mechanisms approved by HUD under which the PJ has the right to seek specific performance. (Emphasis added to reflect the Rule revision.)
    - ***For rental projects,*** the 2013 Rule amends §92.504(c)(3)(ii)(A) to require that the written agreement specify the number and size of HOME-assisted units and the designation of units as "fixed" or "floating." In addition, the agreement must require the owner, developer, or sponsor to provide the address of each unit to the PJ by the time of project completion. In the pre-2013 Rule, the PJ was required to specify the initial rents and the procedures for rent increases in the written agreement. The written agreement must also specify that the PJ must review rents for compliance and

approve/disapprove them each year, in accordance with the new requirement at §92.252(f)(2).

- ***For homeownership projects,*** the existing requirement for the agreement to state the resale or recapture provisions that must be imposed on the housing remains unchanged. The 2013 Rule amends §92.504(c)(3)(ii)(B) to add several new provisions to the agreement. The agreement must clearly state the sales price or, if it is not known, the basis on which the sales price will be established; the required disposition of sales proceeds; and that any funds that are recaptured must be returned to the PJ.

- **Project requirements.** In general, this provision at §92.504(c)(3)(iii) remains unchanged and requires compliance with all HOME project requirements at subpart F of the regulation. This provision is amended, however, to state that the written agreement may permit the owner to limit the eligibility or give a preference to a particular segment of the population in accordance with changes made to §92.253(d).

- **Records and reports.** This provision, at §92.504(c)(3)(vi), is revised to list a number of specific reports that the PJ must require the owner to submit:
  - Annual report on rents and occupancy of HOME-assisted units to verify compliance with affordability requirements
  - If the project has floating HOME units, information on unit substitution and filling vacancies to ensure that the project maintains the required unit mix
  - Reports (including financial reports) that enable the PJ to determine the financial condition and continued financial viability of the rental project.

- **Enforcement of the agreement.** §92.504(c)(3)(vii) is amended to add use restrictions as an eligible enforcement mechanism so that the PJ has the right to demand specific performance. The pre-2013 Rule permitted only deed restrictions and covenants running with the land, and other mechanisms approved by HUD. These options continue to be eligible.

- **Community housing development organizations.** §92.504(c)(3)(x) is amended to add several specific provisions that must be included in an agreement with a CHDO that develops homeownership housing:
  - Whether the CHDO may retain proceeds from the sale of units
  - Whether the proceeds are to be used for HOME-eligible or other housing activities to benefit low-income families
  - Recaptured funds are subject to §92.503(c)—that is, the funds must be returned to the PJ and used for other HOME-assisted housing activities.

  The other CHDO requirements of the pre-2013 Rule have not changed. These require the written agreement to specify the terms of CHDO set-aside funds (§92.300) and project-specific assistance funds (§92.301). The 2013 Rule adds the requirement that the written agreement

clearly state the requirements for tenant grievance procedures and a tenant participation plan (§92.303).

- **Fees.** §92.504(c)(3)(xi) is a new provision that requires the written agreement to prohibit owners from charging fees that are not customary. For rental housing, owners can charge: reasonable application fees to prospective tenants; other fees (such as parking fees) only to the extent that they are reasonable and customary for the project area; and fees for services provided to tenants, provided that these services are not mandatory. For homeownership projects, the developer ***cannot*** charge servicing, loan origination, processing, inspection, or other fees that represent the cost of providing HOME assistance.

Suggested Next Steps for PJs

1. Review the standard language of the agreement used with owners, developers, and sponsors of HOME-assisted housing.
2. Revise the written agreement template to include the new HOME requirements.
3. Notify owners, developers, and sponsors of the changes to future written agreements to be sure that the new requirements are clearly understood.
4. Notify monitoring staff of these changes and be sure that the new requirements are reflected on any monitoring checklists for monitors when they review compliance with written agreements executed after the effective date of these requirements.

Effective Date: August 23, 2013 (PJs must use the new written agreement for all projects for which HOME funds were committed after this date.)

Contractors

A minor revision is made to §92.504(c)(4) to clarify the applicability of the provision. A written agreement is required with contractors that are administering all or some of the PJ's HOME program (the pre-2013 regulatory requirement) and for contractors who are undertaking ***specific services for one or more programs.*** For instance, a contractor that is hired to underwrite rental projects is not administering part of the HOME program, but is carrying out a specific service for the program. This revision clarifies that these types of contractors are covered by this provision.

Suggested Next Steps for PJs

1. Confirm that there is a written agreement with all contractors to whom the PJ will provide HOME funds, including those that provide specific services for one or more programs.
2. Verify that these written agreements meet the requirements of §92.504(c)(4).

Effective Date: August 23, 2013 (PJs must use the new written agreement for all projects for which HOME funds were committed after this date.)

CHDOs Receiving Assistance for Operating Expenses

A new paragraph §92.504(c)(6) is added that enumerates the required provisions for written agreements when a PJ is providing operating expense funds to CHDOs, pursuant to §92.208. The new paragraph requires that the agreement with the CHDO describes the uses of operating funds. These might include salaries, wages, employee training, rent, and utilities and other operating costs. The agreement must state that the CHDO is expected to received HOME funds for a project that it is to own, develop, or sponsor within 24 months, as required in §92.300(e). The written agreement must also describe the terms and conditions upon which this expectation is based, and the consequences of failure to receive funding for a project. If the CHDO is also receiving CHDO set-aside for a specific project, a separate agreement must be executed.

This is a new provision. Under the pre-2013 Rule, a PJ was required to execute an agreement with a CHDO receiving operating assistance, in accordance with §92.504(a). However, the pre-2013 Rule did not specify what provisions were required in that agreement.

Suggested Next Steps for PJs

1. If the CHDO provides operating assistance to CHDOs, develop a standard written agreement to use to govern these funds.
2. Be sure the nonprofit is a qualified CHDO, in accordance with the revised requirements at §92.2, definition of a CHDO.

Effective Date: August 23, 2013 (PJs must use the new written agreement for all projects for which HOME funds were committed after this date.)

On-Site Inspections

§92.504(d) is revised substantially to provide PJs more flexibility in designing risk-based inspection strategies. The revisions include:

- **Required inspections.** The PJ must inspect each HOME project at the time of completion and during the period of affordability to determine compliance with the property standards applicable under §92.251.
- **The inspection schedule.** The 2013 Rule specifies the frequency of property inspections.
- **Sample sizes.** The 2013 Rule specifies the sample size required for inspection of HOME-assisted units.

These changes align the HOME inspection requirements more closely with the Low-Income Housing Tax Credit requirements, in terms of frequency and sample sizes.

These requirements differ significantly from the requirements of the pre-2013 Rule. Previously, PJs were permitted to determine how many units (sample size) to inspect at each property and the frequency of inspections was based on the number of units in the project.

Each of these requirements is described in more detail below.

Required Inspections

The new §92.504(d)(1) requires PJs to conduct on-site inspections of HOME-assisted properties.

- **Project completion inspections.** Upon completion of the project, the PJ must conduct an on-site inspection to confirm that contracted work is completed and the property meets the property standards specified in §92.251.

- **Ongoing property inspections.** On an ongoing basis throughout the period of affordability, the PJ must conduct on-site inspections to determine that the property meets the property standards adopted by the PJ pursuant to §92.251(f) and to verify the information submitted by the owners regarding rent, occupancy, and unit mix. The inspections must be done in accordance with the PJ's inspection procedures required at §92.251.

Inspection Schedule

The 2013 Rule provides the following requirements related to timeframes and schedules for inspections.

- **Frequency of inspections.** The first on-site ongoing inspections must occur within 12 months after project completion, and an inspection must be conducted at least once every three years thereafter.
- **Follow up to address deficiencies.** If any deficiencies are identified for any inspectable items (as established in the PJ's inspection procedures), a follow-up on-site inspection is required within 12 months. For non-hazardous deficiencies, the PJ can either conduct an on-site inspection or accept third party documentation (such as a paid invoice for work completed).
- **Health and safety deficiencies.** Health and safety deficiencies identified during inspections must be corrected immediately. The PJ must adopt a more frequent inspection schedule for these properties.
- **Annual certification.** Property owners must submit an annual certification to the PJ that each building and all HOME-assisted units in the project are suitable for occupancy.

Sample Sizes

For each inspection visit, the PJ must determine how many HOME-assisted units must be inspected in the project (for inspectable items--site, building exterior, building systems, and common areas) within these parameters:

- For projects with one to four units, the inspectable items for each building with HOME-assisted units and 100 percent of the HOME units must be inspected.

- For projects with more than four HOME-assisted units, the inspectable items for each building with HOME-assisted units and at least 20 percent of the HOME-assisted units in each building, but not fewer than four units in each project and one HOME-assisted unit in each building.

HUD plans to issue guidance about appropriate sampling for the purposes of ongoing physical inspections of HOME-assisted units. PJs may contract with third parties to conduct these inspections and, in the future, inspections performed by other funders may be permitted once administrative alignment of inspection standards and guidelines at the federal level has been achieved. PJs may establish inspection schedules that involve more frequent inspections or larger sample sizes.

Annual Inspections for TBRA Units

§92.504(d)(1)(iii) is revised to conform the reference to the applicable property standards at 24 CFR 982.401 (HQS) or any successor requirements imposed by HUD. The requirement for annual on-site inspections of housing occupied by TBRA recipients to determine compliance with property standards has not changed.

Financial Oversight

A new requirement is imposed pertaining to annual financial oversight of HOME-assisted rental properties during the affordability period in §92.504(d)(2). At least annually, the PJ must examine the financial condition of HOME-assisted rental projects with 10 or more HOME-assisted units to determine the continued financial viability of the project.

The purpose of this requirement is to enable PJs to identify HOME-assisted projects that may become financially troubled before problems become severe. If the financial review indicates potential problems, PJs must take actions to correct those problems, to the extent feasible.

HUD will provide guidance and training on how to implement this requirement.

Suggested Next Steps for PJs

1. Prior to the effective date of this requirement (12 months following publication of 2013 Rule), look for HUD guidance in this area.
2. Review the PJ's current policies and procedures on monitoring projects that are in the affordability period. [This may be part of the PJ's monitoring plan or may be stand-alone procedures.]
3. Begin informal assessment of the current inventory of HOME-assisted housing with 10 or more HOME units, and start to think about which properties should be given priority for a review of financial condition.
4. Begin to plan for how staff will be trained in the new inspection and financial monitoring functions.
5. The TBRA inspections procedures should remain the same, with annual inspections to ensure conformance with HQS.

6. Look for additional guidance from HUD on this issue, and revise and update policies and procedures as needed.

Effective Date: July 24, 2014 (PJs must conduct physical inspections following the new procedures and evaluate the financial condition of all projects to which funds are committed on or after this date.)

§92.505 Applicability of Uniform Administrative Requirements

§92.505(a) and (b) are revised slightly to add a reference to the regulations that implement OMB Circular No. A-87 (2 CFR part 225) and OMB Circular No. A-122 (2 CFR part 230). This is a technical revision that makes no changes to the applicability of the uniform administrative requirements.

Suggested Next Steps for PJs

1. In written agreements with State recipients and subrecipients that are subject to these uniform administrative requirements, use the updated regulatory references.

Effective Date: August 23, 2013 (Use the updated regulatory citations in written agreements for all projects for which HOME funds are committed after this date.)

§92.508 Recordkeeping

Revisions to §92.508 require PJs to maintain records that correspond to the new requirements that are established under the 2013 Rule. These are necessary for HUD to monitor compliance with these new requirements. The following revisions have been made to the recordkeeping requirements:

Program Records

- §92.508(a)(2)(ii) is revised to specify that program records must include HUD's written approval if the PJ uses a form of assistance that is not listed in the HOME regulation, as required by §92.205(b).

- §92.508(a)(2)(iii) is revised to specify that the program records must include underwriting guidelines to correspond to changes in §92.250 that require PJs have underwriting and subsidy layering guidelines.

Project Records

- §92.508(a)(3)(i) is revised to specify that the project records must include the location (address or legal property description) of the HOME-assisted units.

- §92.508(a)(3)(ii) is revised to specify that project records must include documentation for the eligibility and permissibility of project costs, including documentation of actual HOME-eligible

development costs of each HOME-assisted unit (through cost allocation, if applicable) in projects with both HOME-assisted and non-assisted units.

- §92.508(a)(3)(iii) is revised to specify that the project records must include the underwriting evaluation that is performed in accordance with §92.250(b).

- §92.508(a)(3)(iv) is revised to specify that project records must include records (copies of inspections reports) that demonstrate that HOME-assisted properties are in compliance with property standards upon project completion. During the period of affordability, records must be retained that document compliance with ongoing property inspections and annual financial reviews.

- §92.508(a)(3)(vi) is updated to specify that project records must reflect the option in §92.209(c)(2) for PJs to target certain populations for TBRA and to clarify record requirements related to property inspections.

- §92.508(a)(3)(xiv) is added to specify that project records must include copies of written agreements with funded entities to document compliance with the written agreements requirements of §92.504.

Program Administration Records

- §92.508(a)(6) has been added to require PJs to document that program administration requirements have been met; records should contain copies of written policies, procedures, and systems, including risk assessment and a system for monitoring entities.

Suggested Next Steps for PJs

1. Update the following documentation to include the additional records requirements, to ensure that these records are retained to demonstrate compliance with the new HOME requirements:
    a. Policies and procedures related to retaining program, project, and administrative records
    b. Written agreements with program partners, to ensure that partners retain the necessary records to demonstrate compliance with the new requirements
    c. Checklists and tools used by staff to help them ensure they retain the necessary records.
2. Notify the monitoring staff of these new requirements and update monitoring checklists to ensure compliance reviews.

Effective Date: August 23, 2013

§92.551 Corrective and Remedial Actions

§92.551(c)(1) is revised to add to the possible remedial actions available to HUD to impose on a PJ in order to correct, mitigate, or prevent performance deficiency. These additional remedial actions include:

- Establishing procedures to ensure compliance with HOME requirements
- Establishing a remedial action plan to make up a match contribution deficit (added to the existing requirement for requiring match contributions be made)
- For a metropolitan city, forming a consortium with the urban county if the urban county is willing to implement the HOME program in the metropolitan city.

§92.551(c)(2) is amended to broaden HUD's rights to take corrective action in regards to the payment process. The pre-2013 Rule gives HUD the right to change how it pays the PJ (changing from an advance payment system to a reimbursement system). This section is amended to give HUD the right to require submission of supporting documentation before payment is made and to determine that the PJ is high-risk and impose special conditions or restrictions on the next year's allocation, in accordance with 24 CFR 85.12.

Suggested Next Steps for PJs

None needed.

Effective Date: August 23, 2013

§92.552 Hearing Proceedings

A technical revision is made to §92.552(b) to remove the reference to subpart B of 24 CFR part 26 that governs hearing proceedings.

Suggested Next Steps for PJs

None needed.

Effective Date: August 23, 2013

§92.614 Other Federal Requirements

A minor technical change is made to §92.614. The 2013 Rule moves the reference to the affirmative marketing requirements in §92.351(a) from §92.614(b) to §92.614(a)(3).

Suggested Next Steps for PJs

None needed.

Effective Date: August 23, 2013