

HOME Program 2013 Final Rule

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Presenter

- Steve Gartrell

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Background

- September 1996: HOME Final rule published
- January 2010: HUD held two listening sessions on possible proposed HOME rulemaking in Washington, DC
- April 2011: Washington Post Article blasts HOME Program
- November 18, 2011: P.L. 112-55, *The Consolidated and Further Continuing Appropriations Act, 2012*, signed by President (2012 HOME Appropriation Requirements)

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Background

- December 16, 2011: HUD publishes a comprehensive proposed rule for HOME
- February 14, 2012: Public comments on proposed rule due to HUD
- May 8, 2012: HUD publishes CPD 12-007, *Implementing 2012 Appropriation Law (a similar law was passed for 2013)*
- July 2013: Publication of final rule governing HOME and HTF

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Purpose of Final Rule

- Accelerate the timely production and occupancy of assisted housing,
- Strengthen the performance of PJs and their partners in producing and preserving affordable housing units,
- Provide PJs with greater flexibility in the design and implementation of their programs, and
- Increase administrative transparency and accountability.

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Comparison with 2012 & 2013 Appropriations Law Requirements

- Similarities and differences between the Final Rule and the 2012 & 2013 Appropriations Law Requirements will be highlighted parenthetically in red type.
 - For example: (2012: conduct an underwriting review)
- The Final Rule adopted most of the 2012 & 2013 Requirements, though some were modified.

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Changes to Definitions [§92.2] in the Final Rule

All changes effective August 23, 2013
unless otherwise noted.

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Commitment Definition:

- PJs can no longer “reserve” CHDO funds generally.
- PJs must commit CHDO set-aside funds to specific projects for a specified amount of HOME funds within 24 months of signing their HUD HOME grant agreement.
 - Effective October 22, 2013 for all new reservations.
 - Effective for current reservations with a deadline on or after January 1, 2015.

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Commitment Definition:

- PJs 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.
- All signatories to written agreements must date the document in order for it to constitute a valid commitment.

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Commitment Definition:

- Excludes an agreement between a PJ and a subrecipient that the PJ controls, such as a redevelopment agency or public housing authority that is part of the local government.
- Also excludes an agreement between the lead entity of a consortium and a consortium member.

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CHDO Definition:

- The 2013 Rule expands 501(c)(3) rule 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 when the owner organization has a tax exemption ruling from the IRS under section 501(c)(3) or 501(c)(4) of the IRC.

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CHDO Definition:

- CHDO Board of Directors:
 - Officers & employees of a for-profit CHDO sponsor can serve on its board (< 1/3RD) but not be officers or employees of the CHDO
 - Officers & employees of a government CHDO sponsor can serve on its board (< 1/3RD) but not be officers or employees of the CHDO

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CHDO Definition:

- CHDO Capacity & Staffing:
 - Must have paid employees with housing experience in project development or management to do either development or management (2012: same; PJ many not reserve 2012 CHDO funds to a project unless CHDO has experienced, paid staff and must certify same in IDIS)
 - See change of “owner” definition at §92.300 - can own and manage property it doesn’t develop
 - Can’t use consultants (except 1st year), volunteers, or other organization’s staff (2012: same and includes board members)
 - 2012: PJ’s must develop & implement written policies and procedures for assessing CHDO staff capacity; maintain assessment documentation; and ensure that those who complete IDIS certification are authorized to certify

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Homeownership Definition

- 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)

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Homeownership Definition

- Sales involving contracts for deed, installment contracts, or land sales contracts (deed is not given until the final payment is made) *do not meet the definition of homeownership.*
- Mutual housing or cooperatives:
 - PJ must determine if mutual housing or coop constitutes homeownership under state law
 - That receive Low Income Housing Tax Credits *do not meet the definition of homeownership (they are rental under HOME).*

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Student Housing & Dorms

- The definition of **housing** is revised *to exclude all forms of student housing.* Dormitories of any kind (including for farmworkers) are also *explicitly excluded from the definition.* (These are not permanent or transitional housing)

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Student Eligibility

- The definitions of **low-income family** and **very-low-income family** are revised to exclude any student that (Same as Sec. 8 Housing Choice Voucher):
 1. Is enrolled at an institution of higher learning,
 2. Is under 24 years of age,
 3. Who is not a veteran,
 4. Is not married
 5. Does not have a dependent child,
 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.

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Program Income

- Program income *does not include gross income from the use, rental, or sale of real property* received by the project owner, developer, or sponsor,
 - *Unless* the funds are paid by the project owner, developer, or sponsor to the PJ, subrecipient, or State recipient.

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Project Completion Definition

- Project completion means that all construction work and title transfer (if applicable) is completed, property standards have been met, and the final draw of HOME funds has been disbursed. In addition,
 - for homeownership projects: means that beneficiary data is entered into IDIS (Note conversion of unsold HO units after 9 months req.);
 - for rental projects: means that the units must be ready for occupancy but
 - tenant data input in IDIS is not required for completion of rental projects (The rental units may be marked vacant when completing the project the project in IDIS) (Note that costs for unit still vacant after 18 months must be repaid);
 - for tenant-based rental assistance projects, all HOME funds associated with the TBRA contract have been disbursed.

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Public Housing Definition

- §92.2 refers “Public Housing” to the definition at 24 CFR 5.100:
 - Housing assisted under the 1937 Act, other than under Section 8.
 - “Public housing” includes dwelling units in a mixed finance project that are assisted by a PHA with capital or operating assistance.
 - *This term does not include state or locally funded public housing in which there are no federal funds.*

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Reconstruction Definition

- Provides an *exception* to the reconstruction requirement that housing must be standing on a site at the time of commitment.
 - Allows housing that was destroyed by disaster to be rebuilt on the same lot, if the HOME funds are committed to the project within 12 months of the destruction of the housing that originally stood on the site.

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Single Room Occupancy Definition

- An SRO project must be consistent with the PJ's applicable building and zoning code classifications.
 - If local codes don't allow SROs, can't use HOME funds.
 - Consider using a "Group Home" designation (single unit with multiple bedrooms)
 - GHs get lower HOME subsidies and gross rents than SROs

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Subrecipient Definition

- Subrecipients receive funds to carry out *programs* (e.g., downpayment assistance programs, owner-occupied rehabilitation programs, etc.), while developers/owners do *projects*.

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Uniform Physical Condition Standards (UPCS) Definition

- New definition: UPCS are national standards established by HUD for housing that is decent, safe, sanitary, and in good repair.
- Acquisition, TBRA, and Rehab. program standards must meet this standard [§92.251(b)]

Effective January 24, 2015

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Overview of Major Changes to the HOME Program Regulations

All changes effective August 23, 2013
unless otherwise noted.

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Distribution of Assistance [§92.201]

- **HOME Assistance Limited by Area**
 - A PJ must use HOME funds within its boundaries; or
 - **Exception:** A PJ may do a joint project within a contiguous local jurisdiction which serves residents from both the PJ and the contiguous jurisdiction and *where each jurisdiction make a financial contribution to the project, which each contributes to its feasibility [§92.201(b)].*

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Income Determinations [*§92.203*]

- **Source Documentation for Income Determinations**
 - PJs must 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. [*§92.203(a)(1)(i)* and (a)(2)]

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Income Determinations [*§92.203*]

- **Elimination of Census Long Form as Definition of Income [*§92.203(b)(2)*]**
- PJs continue to have the option to use either:
 1. the income definition in HUD's regulations at 24 CFR part 5 (often referred to as "the Section 8 definition")
or
 2. the definition of adjusted gross income of the IRS, both of which are broadly used in other housing and supportive service programs.

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Income Determinations [*§92.203*]

- **Single Income Definition for Each HOME-Funded Program or Rental Project [*§92.203(c)*]**
 - PJs must 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*.

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Income Determinations [*§92.203*]

- **Counting All Household Members' Income [*§92.203(d)(1)*]**
 - PJ must count the income of all persons in the household, including nonrelated individuals.
 - This does not 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.

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Eligible Activities: General [§92.205]

- **Housing Must Meet Property Standards to Be Eligible**
 - Activities and costs are eligible for HOME funding only if the housing meets the property standards in §92.251 upon project completion [§92.205(a)(1)] .

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Eligible Activities: General [§92.205]

- **Acquisition of Vacant Land or Demolition Are Not Eligible Stand-Alone Activities [§92.205(a)(2)]**
 - 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.
 - *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.*

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Eligible Activities: General [§92.205]

- **Using Alternative Forms of Assistance [§92.205(b)(1)]**
 - A PJ is required to get HUD approval before using HOME funds in any form of assistance that is not specified in the regulation. is revised to state that HUD must approve alternative forms of investment ***in writing.***
 - ***The PJ must seek and receive written approval from HUD independent of its consolidated plan.***

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Eligible Activities: General [§92.205]

- **On-Site Manager's Unit [§92.205(d)(2)]**
 - 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.
 - With this decrease in HOME-assisted units, the costs of the project must 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.

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Eligible Activities: General [§92.205]

- **Terminated Projects [§92.205(e)(1)]**
 - 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.
 - 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.

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Eligible Activities: General [§92.205]

- **Project Completion Deadline [§92.205(e)(2)]**
 - 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. (2012: same)
 - PJ may request 1 year extension, by submitting project status, steps being taken to overcome obstacles, proof of adequate funding to complete, and schedule for completion including milestones. (2012: Same, no authority for further extensions)

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Eligible Project Costs [§92.206]

- **Refinancing**
- Only in projects where rehabilitation is the primary activity.
 - §92.206(b)(1) - the rehabilitation cost must exceed the amount of debt that is refinanced with HOME funds.
 - Refinancing alone is not an eligible HOME activity!
 - PJ must adopt refinancing guidelines
 - §92.206(b)(2) - Above also covers all rental housing.

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Costs Incurred Before Commitment of HOME Funds [§92.206(d)(1)]

- Architectural and engineering and other professional services costs may be incurred before commitment of HOME funds.
 - *Reimbursed (after commitment)* when 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.
 - 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.

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Prohibition on Charging PJ “Soft” Costs to Beneficiaries [§92.206(d)(6)]

- PJ’s, or subrecipient’s staff and overhead costs related to carrying out a project **cannot be charged to, or paid by, low-income families.** (Also in §92.207(b) Program Admin. Costs)
 - Can 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.
 - Can charge nominal application fees to applicants for assistance [§92.214(b)].

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

- Payment of utility deposits is an eligible HOME cost:
 - Only in conjunction with the provision of HOME tenant-based rental assistance or security deposit assistance. [§92.209(a)]
- Costs of inspecting housing units and determining income eligibility of the family eligible as:
 1. Administrative cost under §92.207(a), or
 2. TBRA project-related soft cost under §92.206(d)(6).

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Targeted Assistance in Tenant-Based Rental Assistance [§92.209(c)]

- PJ may establish a preference for individuals with special needs. [§92.209(c)(2)(i)] :
 - Both for individuals with special needs (such as homeless persons or elderly persons) *and persons with disabilities, in certain situations.*
 - §92.209(c)(2)(ii) continues to allow preferences for the specific category of persons with disabilities.
- 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). [§92.209(c)(2)(i)]
- 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.

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Self-Sufficiency Programs in TBRA [§92.209(c)(2)(iii)]

- 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.
 - PJs may not require persons with disabilities to participate in medical or disability-related services as a part of a self-sufficiency program.

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TBRA in Homebuyer Programs

- PJ may select tenants to participate in a lease-purchase homebuyer program. [§92.209(c)(2)(iv)]
 - TBRA payment may not be used to accumulate a downpayment or closing costs for the purchase.
 - TBRA 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.

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TBRA Rent Standard

- §92.209(h)(3)(ii) is revised so that the PJ must 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.
 - Can no longer use 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.

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Troubled HOME-Assisted Rental Housing Projects [§92.210]

- Definition – when HARU is no longer financially viable when its operating costs significantly exceed its operating revenue. [§92.210(a)]
- PJ May (with HUD’s written approval) either:
 - Invest Additional HOME Funds – in exception to 12 month rule – to:
 - Rehab. HARU; or to
 - Recapitalize project reserves for HOME Units.
 - Funds can’t exceed Max. Per Unit Subsidy at time of new funds
 - Reduce number of HARU

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HOME Funds and Public Housing [§92.213]

- General rule: HOME funds may not be used for *Federal Public Housing*
 - §92.2 refers “Public Housing” to the definition at 24 CFR 5.100
 - Exception: HOPE VI and no section 9(d) Capital Fund assistance
 - HOME funds may also be used in a project that has federal PH units but not for those PH units
- *Prohibition does not include state or locally funded public housing in which there are no federal funds.*

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Prohibited Fees and Activities

[§92.214]

- Administrative fees (e.g., for loan servicing) are not allowable, especially to low-income [§92.214(b)(1)]
- Eliminates prohibition against PJs imposing fees on rental projects to cover cost of HOME-related compliance monitoring/inspections during affordability period. [§92.214(b)(1)(i)]
 - PJs may charge reasonable, annual monitoring fees to owners of rental projects to which HOME funds are committed on or after the effective date of the final rule

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Prohibited Fees and Activities

[§92.214]

- PJs can still charge nominal **application fees** [§92.214(b)(1)(ii)]
- PJs can also charge homebuyer counseling fees [§92.214(b)(1)(iii)]
 - Note: All HOME homebuyers must receive housing counseling
- Project owners can't charge tenants fees that aren't reasonable or customary [see reg for list - §92.214(b)(3)]

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Match Credit [§92.221]

- 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.

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Maximum Per-Unit Subsidy

[§92.250(a)]

- 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
 - 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.

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Underwriting and Subsidy

Layering [§92.250(b)]

- ***All HOME projects (rental and homebuyer) must have underwriting whether or not the projects are assisted with other governmental assistance.***

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Underwriting and Subsidy

Layering [§92.250(b)]

- PJ must adopt underwriting guidelines:
 - That it must not invest more HOME funds, alone or with other ~~governmental~~ assistance:
 - than necessary to provide quality affordable housing that is financially viable for a reasonable period of time (at a minimum, the period of affordability).
 - that provides return that exceeds PJ's established standards for the size, type, and complexity of the project.
 - For determining reasonable level of profit or return on owner/developer's investment in project and evaluate projects before committing HOME funds. (2012: PJ must develop, implement & certify that it has followed written policies & procedures which address Project Underwriting, Developer Capacity, & Market Need)

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Underwriting and Subsidy

Layering [§92.250(b)]

- PJ's Guidelines must require:
 - Examination of sources and uses for each project and determination of whether the costs are reasonable; (2012: **conduct an underwriting review**)
 - Assessment, at minimum, of:
 - Market conditions of the neighborhood where project will be located (2012: **same**);
 - Housing development experience and financial capacity of developer (2012: **assess developer's capacity and fiscal soundness**);
 - Firm financial commitments for the project.
- PJs will be required certify that these assessments have been completed at the time of project funding in IDIS (2012: **same**)

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Underwriting and Subsidy

Layering [§92.250(b)]

- Underwriting requirement does not apply to:
 - Homeowner rehab (unless HOME funds are provided as amortizing loan); or
 - Downpayment assistance only projects
 - See §92.254 for new underwriting requirements when providing downpayment assistance.

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Property Standards [§92.251]

- New Property Standards & Requirements For:
 - 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 Housing [§92.251(f)]

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Property Standards [§92.251(a)]

- *New Construction* Building Standards
 - State/local code or ICC
 - Written standards for methods and materials required
 - Written “Work Write-Ups” and progress inspections required
 - Tie progress/final payments schedule to inspections
 - Initial, Progress, Final
 - Accessibility requirements standards
 - Disaster mitigation standards required, where needed

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Property Standards [*§92.251(b)*]

- *Rehabilitation Standards*
 - PJs must establish written rehabilitation standards, specifying methods and materials, including new requirements for:
 - Health and safety
 - Major systems for rental & ownership housing
 - Disaster mitigation standards
 - Capital needs assessment for multifamily (26+) rental housing
 - Written “Work Write-Ups” and progress inspections required
 - Tie payment schedule to inspections:
 - Initial, Progress, Final
 - Standards must ensure that upon completion of rehabilitation unit meets UPCS standards

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Property Standards [*§92.251(c)*]

- Acquisition of existing rental housing (without rehabilitation):
 - New Construction Projects or Recently Rehabbed Projects (completed within past 12 months) must meet New Construction standards at §92.251(a) or be rehabbed to rehab. standard §92.252(b)
 - All other rental acquisition: PJs required to inspect and document units meet minimum property standards established for rehabilitated units at §92.252(b)
- Homebuyer (D/P) Assistance - housing:
 - Must meet all applicable state and local HQS and code requirements.
 - Must be free from health & safety defects identified in the UPCS inspection
 - If not, must be rehabbed to meet standards or cannot be acquired.

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Property Standards

- *Manufactured Housing [§92.251(e)]*
 - Newly Constructed
 - Must meet *Manufactured Home Construction and Safety standards* (24 CFR 3280)
 - Permanent Foundation Required (must meet 24 CFR 203.43f(c)(i))
 - 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.
 - Rehabbed
 - Foundation and anchoring must meet state/local code or if none, *Model Manufactured Home Installation Standards* (24 CFR 3285)
 - If Rehabbed with HOME funds, must meet HOME rehab. standards.

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Ongoing Property Standards [§92.251(f) and §92.504(d)]

- PJs must establish ongoing property standards for rental housing applicable during affordability period
- PJs must inspect each HOME project at completion and during affordability period
- For rental projects, PJ must establish ongoing inspection procedures to meet §92.251 standards
 - Inspect within 12 months of completion and at least once every 3 years thereafter [§92.504(d)]
 - Minimum standard will be UPCS, not HQS
 - Must meet State/local code or UPCS, whichever is more stringent

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Qualification as Affordable Housing: Rental Housing [*§92.252*]

- **Initial Occupancy of Rental Units**
 - If HOME rental unit not leased to an initial income-eligible tenant within 6 months of project completion, PJ must:
 - Submit to HUD current marketing plan, and if appropriate, a plan for more aggressive marketing
 - PJ must *repay HOME funds invested in rental unit that has not been leased to initial tenant within 18 months.*

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Qualification as Affordable Housing: Rental Housing [*§92.252*]

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

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Qualification as Affordable Housing: Rental Housing [*§92.252*]

- **Single Room Occupancy (SRO) Unit Rents [*§92.252(c)*]**
 - Rent limits for SRO units with no sanitary or food preparation facilities, or only one of the two:
 - Maximum rent is 75 percent of a zero-bedroom fair market rent (FMR).
 - Rent limits for SRO units that have both sanitary and food preparation facilities
 - High HOME Rent - the lesser of the FMR or the HUD-issued High HOME rent for a 0-bedroom unit.
 - Low HOME rent - 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.

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Qualification as Affordable Housing: Rental Housing [*§92.252*]

- **Utility Allowances**
- PJs are required to establish monthly allowances for utilities and services (excluding telephone) and to update them annually.
 - *§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 (see <http://huduser.org/portal/resources/utimodel.html>), or
 2. by otherwise determining the allowance based upon the specific utilities used at the project.

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Qualification as Affordable Housing: Rental Housing [§92.252]

- **Rent Review and Approval during the Affordability Period**
 - §92.252(f)(2) requires 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.
- **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.
 - Determination of which specific units are HOME-assisted or non-assisted units must be made no later than the time of initial occupancy.

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Tenant Protections and Selection [§92.253]

- **Lease Requirements**
 - §92.253(a) requires that for all HOME- assisted rental housing, 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
- **Prohibited Lease Terms: Mandatory Supportive Services**
 - §92.253(b)(9) prohibits lease terms that require tenants to accept supportive services (with an exception for residents of transitional housing).
- **Tenant's Increase in Income**
 - An increase in a tenant's income does ***not constitute good cause for termination of, or refusal to renew, a lease.***

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Tenant Protections and Selection

[§92.253]

- §92.253(d)(3) – Tenant selection for **special needs populations**
 - HOME-assisted rental housing may 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.
 - 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.

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Tenant Protections and Selection

[§92.253]

- §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.

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Qualification as Affordable

Housing: Homeownership [§92.254]

- **New Purchase Price Limits**
 - §92.254(a)(2)(iii) - No longer permitted to use the 203(b) limit as a surrogate for 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
 - **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
 - **PJ determined actual 95 percent of area median value limit** for their jurisdiction may still be used.

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Qualification as Affordable

Housing: Homeownership [§92.254]

- **Homebuyer Unit Transfer Deadline** [§92.254(a)(3)]
 - Units acquired, rehabilitated or newly constructed with HOME funds for homeownership purposes must be sold to an eligible buyer within **9 months** of construction completion. (2012: 6 months, completion means Cert. of Occupancy issued or owner rehab: PJ & owner's signoff)
 - If transfer has not occurred, the unit must be converted to a HOME rental unit and operated in compliance with § 92.252 for the affordability period applicable to rental projects. (2012: same, transfer defined as ratified sales contract between buyer and developer; if not converted must repay HOME funds; HUD has no exception authority)
 - 20 years for new construction
 - Effective date: Projects committed on or after 8/23/2013. Doesn't effect units built or under construction before then
 - Projects funded with **2012 or 2013** funds subject to those Laws

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Qualification as Affordable

Housing: Homeownership [§92.254]

- **Income of All Persons Residing in the Housing**
 - §92.254(a)(3) and §92.254(b)(2) require that 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.
 - 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.

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Qualification as Affordable

Housing: Homeownership [§92.254]

- **Homebuyer Program Design** [§92.253(a)(3)]
 - All HOME-assisted homebuyers must receive housing counseling
 - HUD does not specify extent or form
 - Counseling should be comprehensive, including post-purchase counseling, if feasible
 - Homebuyers may be charged a reasonable fee for counseling [§92.206(d)(6), §92.207(b), and §92.214(b)(1)(iii)]
 - HOME funds can't be used, except that counseling costs for a HA homebuyer (through d/p assistance or who purchases a HAU), can be eligible project costs (included in max. per unit subsidy) or as admin cost (10% cap)

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Qualification as Affordable Housing: Homeownership [§92.254]

- **HUD Approval of Resale and Recapture Provisions** [§92.254(a)(5)]
 - PJs must obtain HUD's specific and written approval of its resale and/or recapture requirements, submitted as a part of their Con Plan or AAP
 - HUD must issue separate written approval

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Qualification as Affordable Housing: Homeownership [§92.254]

- **Resale Restrictions: Fair Return and Affordability to a Reasonable Range of Low-income Homebuyers** [§92.254(a)(5)(i)]
 - PJs must define "fair return on investment" and "affordability to a reasonable range of low-income buyers," in their restrictions.
 - 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.

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Qualification as Affordable

Housing: Homeownership [§92.254]

- **Recapture Provisions: Assumption of Recapture Obligations by Subsequent Homebuyer [§92.254(a)(5)(ii)]**
 - Subsequent low-income purchaser of a HA homeownership unit may 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.
 - Where the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME assistance 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.

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Qualification as Affordable

Housing: Homeownership [§92.254]

- **Exceptions to Qualification as Homeowner for Homeowner Rehabilitation Programs [§92.254(c)] – Rehab. assistance may be provided to:**
 1. **Inherited property with multiple owners, when:**
 - 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).

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Qualification as Affordable

Housing: Homeownership [§92.254]

- **Exceptions to Qualification as Homeowner for Homeowner *Rehabilitation* Programs [§92.254(c)]** – Rehab. assistance may be provided to:
 2. **Life estate** - Provided the person is low-income and occupies the housing as his or her principal residence.
 3. **Inter vivos trust, also known as a living trust** - If all beneficiaries of the trust qualify as a low-income family and occupy the property as their principal residence. Contingent beneficiaries need not be low-income.
 4. **Beneficiary deed** – If the owner qualifies as low-income and occupies the property as his or her principal residence.

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Qualification as Affordable

Housing: Homeownership [§92.254]

- **Providing HOME Homeownership Assistance through Lenders [§92.254(e)]** – When 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.
 1. May only be provided only as specified in a written agreement between the PJ and the lender.
 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.)

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Homebuyer Program Design

[\$92.254(f)]

- PJs that use HOME funds for homebuyer activities are required to develop and follow **written policies**:
 1. **Underwriting standards** for homeownership assistance that take into account housing debt, overall household debt, appropriateness of the amount of assistance, assets available to acquire the housing, and financial resources to sustain homeownership.

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Homebuyer Program Design

[\$92.254(f)]

2. **Anti-predatory lending policies** to ensure that other mortgage debt on HOME unit has reasonable terms to facilitate sustainable homeownership for assisted household.
3. **Refinancing policies** that ensure that terms of any loans that refinance debt to which HOME assisted is subordinated are reasonable and consistent with sustainable homeownership.

80

Converting Rental Units to Homeownership Units for Existing Tenants

[§92.255]

- §92.255 continues to permit rental units to be converted to homeownership units for existing tenants. New provisions:
 - The refusal of a tenant to purchase the housing does not constitute grounds for eviction.
 - 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).

81

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

- **CHDO Capacity** [§92.300(a)]
 - PJ must certify that the organization meets the definition of CHDO each time it commits funds.
 - PJ must document that the CHDO has the capacity to own, develop or sponsor housing each time it commits funds for a specific project.

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

- **CHDO Reservations** [§92.300(a)(1) & §92.2]
 - Definition of “CHDO Reservations” revised to require a written project specific agreement
 - CHDO set-aside funds must be committed to a specific project by legally binding written agreement within 24 month of obligation in order for the funds to be counted.
 - **2012: Did not change existing, but HUD recommended following above policy**
 - Effective October 22, 2013

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

- Qualification as “Set-Aside” Funds: Definition of Owned, Developed, Sponsored
 - **Owner of rental housing** [§92.300(a)(2)]
 - CHDO required to own (in fee simple absolute or long-term ground lease) multifamily or single family housing that is rented to low-income families
 - CHDO must own the HOME project during development and throughout the period of affordability
 - CHDO must 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.

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

- Qualification as “Set-Aside” Funds: Definition of Owned, Developed, Sponsored
 - **Developer of rental housing** [§92.300(a)(3)]
 - CHDO is 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
 - CHDO must own the HOME-assisted housing during the development process and throughout the period of affordability.

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

- Qualification as “Set-Aside” Funds: Definition of Owned, Developed, Sponsored
 - **CHDOs may no longer have a Sponsor role in Homebuyer housing**
 - **Sponsor of rental housing** – 2 definitions:
 1. §92.300(a)(5) – (Original) - 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.
 - Nonprofit needs to be named prior to commitment of funds to project and must assume HOME obligation

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

- Qualification as “Set-Aside” Funds: Definition of Owned, Developed, Sponsored
 - **Sponsor of rental housing** – 2 definitions:
 2. §92.300(a)(4) – (New definition) - A CHDO “sponsors” rental housing when the property is “owned” or “developed” by:
 - 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) Limited partnership (in which the CHDO or its wholly owned subsidiary must be the sole general partner); or
 - c) Limited liability company (in which the CHDO or its wholly owned subsidiary must be the sole managing member).

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

- Qualification as “Set-Aside” Funds: Definition of Owned, Developed, Sponsored
 - **Developer of ownership housing** [§92.300(a)(6)]
 - CHDO is owner (in fee simple absolute) and developer of the project and must be in sole charge of all aspects of the development process
 - CHDO can provide direct downpayment assistance to buyers of developed property – not to exceed 10% of development funds
 - CHDO is not a subrecipient in this case

88

Affirmative Marketing; Minority Outreach Program [§92.351]

- §92.351 affirmative marketing procedures now apply to *all HOME-funded programs*, including TBRA and downpayment assistance programs.
 - PJs, owners, and subrecipients must have *and follow* affirmative marketing procedures
 - Including those that apply in the context of limited/preferred tenant selection policies.
 - E.g., a homeless 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.

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Conflict of Interest [§92.356]

- **Financial Interest or Benefit [§92.356(b)]**
 - Type of covered conflict is a *financial* benefit or interest.
 - Public official may serve on board if doesn't receive salary or other financial compensation
 - Covered familial relationships are limited to immediate family members.
- **Occupancy of HOME-Assisted Units [§92.356(f)(1)]**
 - 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 during affordability period.

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The HOME Investment Trust Fund

[§92.500]

- **Interest Bearing Local HOME Accounts**
 - §92.500(c)(1) creates a new requirement that local HOME accounts be *interest bearing*.
- **Commitment Compliance**
 - §92.500(d)(2) – Codifies existing method of CHDO, Commitment, & Expenditure requirements to determine compliance with deadlines (looks at IDIS totals)

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CHDO Expenditure Deadline

[§92.500(d)(1)(C)]

- A **separate 5-year deadline** is established for CHDO set-aside funds.
 - Expenditure of funds committed to CHDOs will be measured separately from other HOME funds.
 - Any CHDO set-aside funds not expended within 5 years of obligation by HUD will be deobligated.

92

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

- **PJ Policies and Procedures** [§92.504(a)]
 - PJs are required to develop and follow **written policies** and procedures for administering all aspects of its HOME Program, including systems for:
 - Assessing risk of activities and projects ;
 - Monitoring performance/compliance of funded entities to ensure that the HOME requirements are met.

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

- **Written Agreements** [§92.504(c)] - A number of additions and revisions have been made:
 - **Subrecipients** [§92.504(c)(2)] agreements must include:
 - Overview
 - Use of HOME Funds – requires greater detail
 - Other Program Requirements (except ERR – stay w/ PJ)
 - Written agreement must be in place before HOME funds provided
 - Fees – implement prohibitions

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

- **Written Agreements [§92.504(c)]**
 - **For-profit or nonprofit housing owner, sponsor, or developer (other than single family owner-occupant) [§92.504(c)(3)]** agreements must include:
 - Overview
 - Use of HOME Funds – requires greater detail, other funds, complete budget
 - Affordability - greater detail about rental & ownership projects
 - Project Requirements
 - Records & Reports
 - Enforcement of Agreement
 - CHDO requirements – including proceeds
 - Fees – implement prohibitions

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

- **Written Agreements [§92.504(c)]**
 - **Contractors [§92.504(c)(4)]**
 - Requires written agreements
 - More clearly defines contractors (carry out specific services) vs. subrecipients (administer part of HOME program)
 - E.g. – Contractor underwriting rental projects is contractor

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

- **Written Agreements [§92.504(c)]**
 - **CHDOs Receiving Op. Assistance [§92.504(c)(6)]**
 - Requires agreement to describe use of op. funds
 - Must state that CHDO expected to receive Set-aside funds w/in 24 months for a specific project; and describe basis

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

- **On-Site Inspections [§92.251(f) and 92.504(d)]**
 - PJs must inspect each HOME project at completion and during affordability period to meet Property Standards
 - For rental projects, PJ must establish ongoing inspection procedures to meet §92.251 standards
 - Inspect within 12 months of completion
 - At least once every 3 years thereafter, w/ follow-up as necessary
 - Sample size
 - 1-4 HAU – 100% of units & inspectable items
 - 5+ units – Statistically valid sample (HUD will send notice)
 - TBRA – All units annually
 - Financial – 10+ Rental Unit Projects – To determine continued viability

98

Recordkeeping [§92.508]

- **Program Records** [§92.508(a)(2)] - Must include:
 - HUD's written approval if the PJ uses a form of assistance that is not listed in the HOME regulation
 - Underwriting guidelines.
- **Program Administration Records** [§92.508(a)(6)]
 - PJs must 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.

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Recordkeeping [§92.508]

- **Project Records** [§92.508(a)(3)] - Must include:
 - Location (address or legal property description) of the HOME-assisted units.
 - 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.
 - Underwriting evaluation that is performed in accordance with §92.250(b).
 - 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.
 - 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.
 - Copies of written agreements with funded entities to document compliance with the written agreements requirements of §92.504.

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Questions?

Steve Gartrell, sgartrell1@gmail.com

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