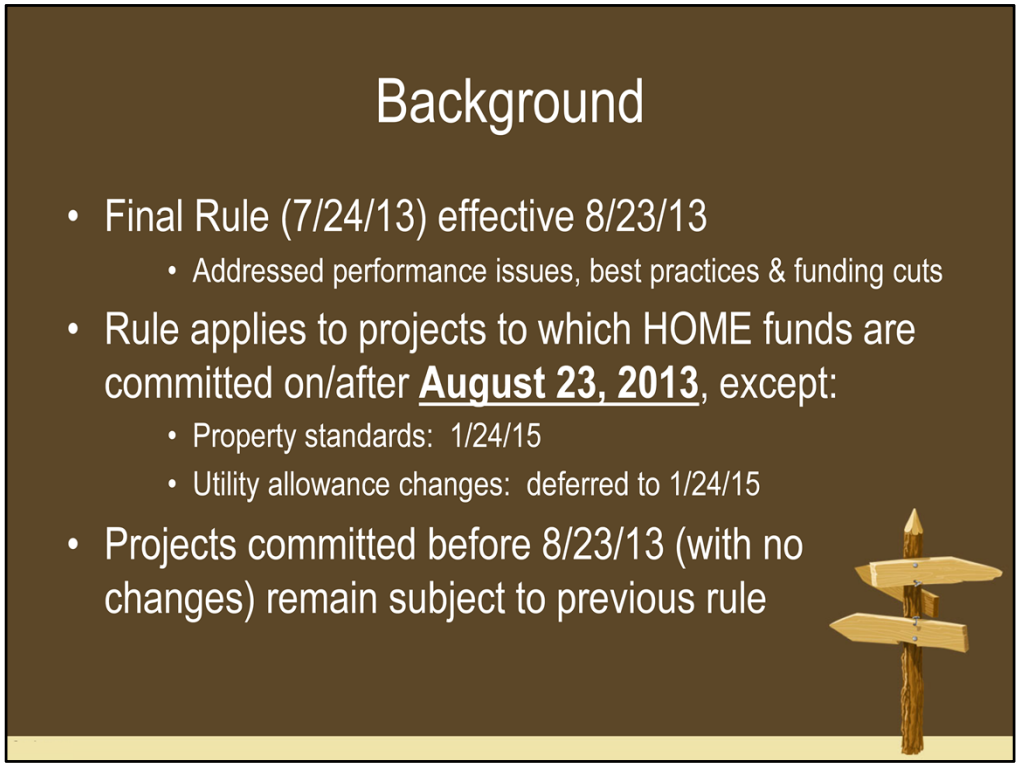
This presentation covers the major 2013 HOME rule changes and was developed by Monte Franke, Franke Consulting, of behalf of the New York State Housing Trust Fund Corporation.

In the short time available, not all of the changes can be presented, so only the most significant are highlighted.

This is not a discussion of the State's HOME Program or any policies the State may implement in response to the rule. PJs, including the state, have discretion in implementing HOME rules. As long as minimum or maximums established by the rule are observed, PJs can implement requirements that are more stringent or above and beyond the federal requirements.



The HOME Program was created in 1990, and has been funded since 1992. This is the first major set of rule changes since 1996, and reflect concerns that HUD and the Congress have about performance – concerns that have led to over a 50% in program funding since 2009.

The changes, which became effective in August of 2013, addresses the performance issues with new requirements and best practices.

IT IS IMPORTANT TO STRESS THAT, IF THESE CHANGES DO NOT IMPROVE PERFORMANCE, WE COULD SEE FURTHER FUNDING CUTS OR EVEN TERMINATION OF THE PROGRAM.

The Rule applies to any project to which HOME funds are committed on/after **August 23, 2013**. Any project that received a commitment prior to 8/23/13 remains subject to the prior rule, and not the new changes, except as HUD may later announce. However, note that, if the project receives additional funding or a revised commitment, the new rules take effect.

The only significant new requirements that have not yet taken effect are:

- Revised property standards, which take effect 1/24/15 (and only after HUD issues guidance); and
- Changes in the way utility allowances are calculated, which have been deferred by HUD until 1/24/2015, pending further HUD guidance.

There are many changes in the 2013 HOME Rule. Many of them are relatively minor corrections, clarifications or codification of existing HUD policies that were not previously in the rule. In the limited time available for this presentation, 4 key changes will be highlighted.

1. Underwriting – Every project will be subject to underwriting prior to it receiving a commitment of HOME funds, to ensure that the project can be compliant and sustainable for at least the affordability period.
2. CHDOs – The set-aside funding can only be reserved for a CHDO when it has a project that is eligible for receiving a commitment, and the CHDO must be certified at time of commitment to have paid staff capacity to implement the project.
3. Project completion & occupancy deadlines – In addition to all other program deadlines, every project will have a 4 year deadline to be completed.
4. Property standards – HUD has substantially revamped the property standards, primarily to encourage communities to help ensure quality housing through the affordability period.

The new rule adds provisions that address what is required when committing HOME funds to a project. These requirements are included in the definition of "commitment" at 92.2.

The new provisions are intended to ensure that the project is a real, viable project that can successfully be completed within a reasonable timeframe BEFORE the commitment of HOME funds is made.

- When committing HOME funds to a project that consists of rehabilitation or new construction, the PJ must ensure that there is a specific (identifiable) project, all necessary financing is secured, a budget and schedule has been established, and underwriting has been completed. There must be a reasonable expectation that construction will begin within 12 months, and that it can be completed within 4 years, and the project schedule must reflect this.

REMEMBER: IF FUNDS ARE NOT COMMITTED WITHIN 24 MONTHS, THOSE FUNDS ARE LOST TO THE PJ.

- This new definition of commitment will very likely create the need for PJs to change their program design, in the way they take in applications and announce awards of funds.

Recognizing that recipients often rely upon early commitments of public funds to entice other funders to participate, PJs may wish to make "preliminary awards" of funds before actual HOME commitments, that meet the new definition of

commitment. An award letter or other such preliminary award will enable an applicant to demonstrate the interest of the PJ in funding the project, and that, in effect, the PJ is holding funds for the project if other requirements are met. However, a preliminary award is not a “commitment” and cannot be entered into IDIS.

The new rule places a significant emphasis on improving performance – particularly project performance. PJs must ensure that HOME funds are invested in projects that are sustainable for the long term.

Previously, the rule required "subsidy layering" – which in effect is a version of underwriting – only when another public source in addition to HOME was committed to a project. However, the new rule effectively requires the underwriting of every HOME development project – rental or homebuyer.

PJs are required to develop and implement project underwriting guidelines, which ensure that:

- The project will be viable for at least the period of affordability
- HOME investment should be sufficient but not more than necessary;
- The investment should not result in excess profit to owners/developers; and
- PJs must review all project costs for cost reasonableness.

The Rule adds several other specific elements PJs must consider when underwriting projects.

- market demand in the project's neighborhood,
- developer's experience and financial capacity, and
- Project feasibility & sustainability, including whether all funding has been firmly committed to the project.

In many respects, these items were implicit in existing requirements and have been promoted for years as best practices. Changes to the HOME Rule makes these explicit requirements.

Note that while the underwriting requirement applies to ALL projects, certain types of projects – that is, owner-occupied rehab, and stand-alone homebuyer assistance/DPA) – are exempted from certain elements. Because both of these activities are not “development” activities and the beneficiary is already identified and there is no developer involved, market assessment and developer experience don’t apply.

- For Owner-occupied rehab: subsidy layering applies if another public source is used in addition to HOME; and owner underwriting is only required if the HOME loan is amortizing.
- For homebuyer assistance activities: again, subsidy layering applies if there is another public source in addition to HOME; homebuyer underwriting standards (discussed later) apply.

HUD made several changes to CHDO requirements. While the set-aside represents 15% of funds, at the time of the Final Rule, CHDOs represented 50% of the unspent funds, and 40% of the unsold homebuyer units. That is, CHDOs disproportionately underperformed, so HUD made changes to project requirements and CHDO qualification requirements to improve performance.

The statute has always required that CHDO set-aside funds be used only for projects that CHDOs own, develop or sponsor. Since 1994, guidance on what constituted housing owned, developed, or sponsored by a CHDO was contained in CPD Notices. (Most recent is CPD-97-11). The new rule incorporates some existing definitions and changes others.

- For homebuyer projects: the CHDO must be the owner and developer in sole charge during the development process, until it sells to an eligible homebuyer. The written agreement between the PJ and the CHDO must specify:
    - Sales prices or explain the specific process that will be used for establishing the price.
    - How any CHDO proceeds may be used.
    - That recaptured funds received from homeowners upon sale/transfer of ownership are not CHDO proceeds and must be reused as "recaptured funds" which are subject to HOME rules.
- For rental projects: two important changes:
    - The new rule now permits a CHDO to be a HOME rental project owner without the CHDO having to also be the developer.

- For Tax Credit housing: if the housing is being “owned” or “developed” by a limited partnership, the CHDO (or its wholly owned subsidiary) must be the sole general partner of the LP; or if LLC, must be sole managing member. Joint ventures with for-profit entities is no longer permitted.

The PJ must certify the CHDO at the time of project commitment and, as part of the certification, that the CHDO has the necessary paid staff capacity to complete the project based on the CHDO’s proposed role as owner, developer, or sponsor.

Previously, individual projects did not have a deadline. As long as the PJ's overall program was committing and spending most of the funds, some projects could remain uncompleted.

The final rule now gives a project 4 years from date of "commitment" (as defined earlier) to "completion", which will be defined below.

The 2013 rule amends the definition of "project completion" at 92.2 to clarify the conditions that must be met for a project to be considered "complete":

- Construction work is complete & property standards have been met
- Final drawdown of HOME funds has occurred and funds are disbursed
- Project completion information have been entered in IDIS

Project completion is defined differently for homebuyer and rental projects:

- For homebuyer projects, a project is complete when all title transfer requirements have been met, all construction work is completed, the applicable property standards have been met, the final drawdown of HOME funds has been disbursed for the project, and project completion information has been entered into IDIS (including beneficiary information). Note that HUD made changes to IDIS in 2012 so that the PJ can never enter an initial completion date that is earlier than the date of the original data entry – so it is particularly important to make sure that your procedures ensure prompt data entry.

- For rental projects, project completion occurs when construction is finished, the project is ready for occupancy, the final drawdown of HOME funds has been disbursed for the project, and completion has been recorded in IDIS. PJs may not have beneficiary information for all the units. Units can be marked as vacant but the PJ must update beneficiary information periodically until all required data has been reported.

IF PROJECTS ARE NOT COMPLETED ON TIME, THE HOME FUNDS MUST BE REPAID.

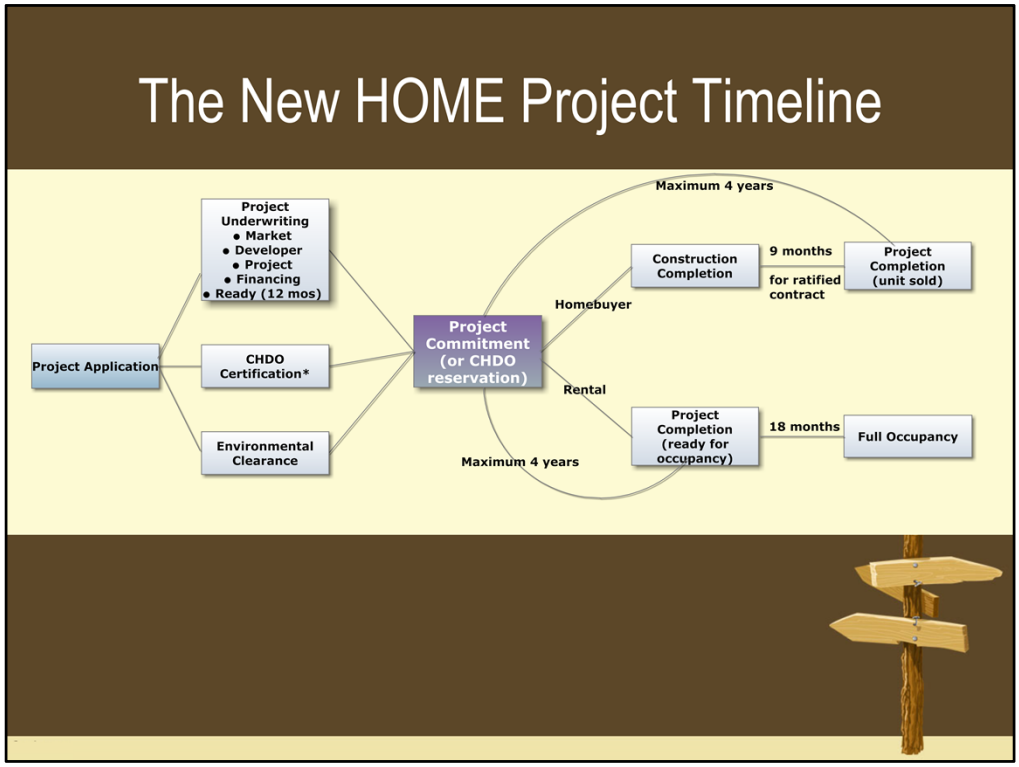
- HUD will grant up to a one year extension with cause.
- Because of this risk, PJs are likely to impose shorter deadlines, so that they can re-program funds rather than lose them.

HUD established new deadline requirements to ensure that the projects are completed and occupied within a reasonable timeframe. PJs need to incorporate these into their program design.

In addition to the 4 year project completion deadline, there is:

- A 9 month deadline for sale of homebuyer units – running from construction completion to ratified sales contract; and
- A 18 month rental occupancy deadline.

Note that the sales deadline is within the 4 years to complete the project, since a homebuyer project is not considered complete until it is sold. On the other hand, rental projects can be completed in IDIS without occupancy, so the 18 months is in addition to, or not part of, the 4 year completion deadline.



Key points:
We have introduced several changes to the rule that are designed to get us to our production goal of "completed and occupied units". This flowchart is intended to connect these key changes and milestones into a flowchart of the production timeline we now have for projects.

This applies to both CHDO and non-CHDO projects.

A commitment is the key focus date, when (1) the project must be underwritten and meet the requirements for a project commitment, (2) if it is a CHDO project, the CHDO is certified by the PJ as meeting the CHDO definition, and (3) environmental review has been completed and a release of funds (if needed) has been received. Only then can a "project commitment" be entered into and recorded in IDIS. When commitment occurs, the 4 year project completion time line begins.

- As noted in the previous slides, the 4 year completion deadline is a bit different for homebuyer and rental projects. Hopefully, this exhibit depicts that. The 4 year completion deadline for homebuyer requires the sale to the homebuyer to have occurred; for rental, occupancy is not required within 4 years, although it is required within 18 months after project completion.

The 2013 HOME Rule substantially revised the property standards.

- These requirements were established in part due to the lack of consistent quality in construction, particularly in rehabilitation of both rental and homebuyer/homeowner projects.
- The main changes were in the addition of useful life standards to rehabilitation and the change in inspection requirements.
- In addition, HUD tried to clarify that different standards apply to different types of activities, so they separated out the activity types for clarity.

Implementation of these new requirements is delayed because HUD plans to issue guidance to PJs about rehab standards (models) and using UPCS (as a floor for rehab standards and for on-going rental inspections).

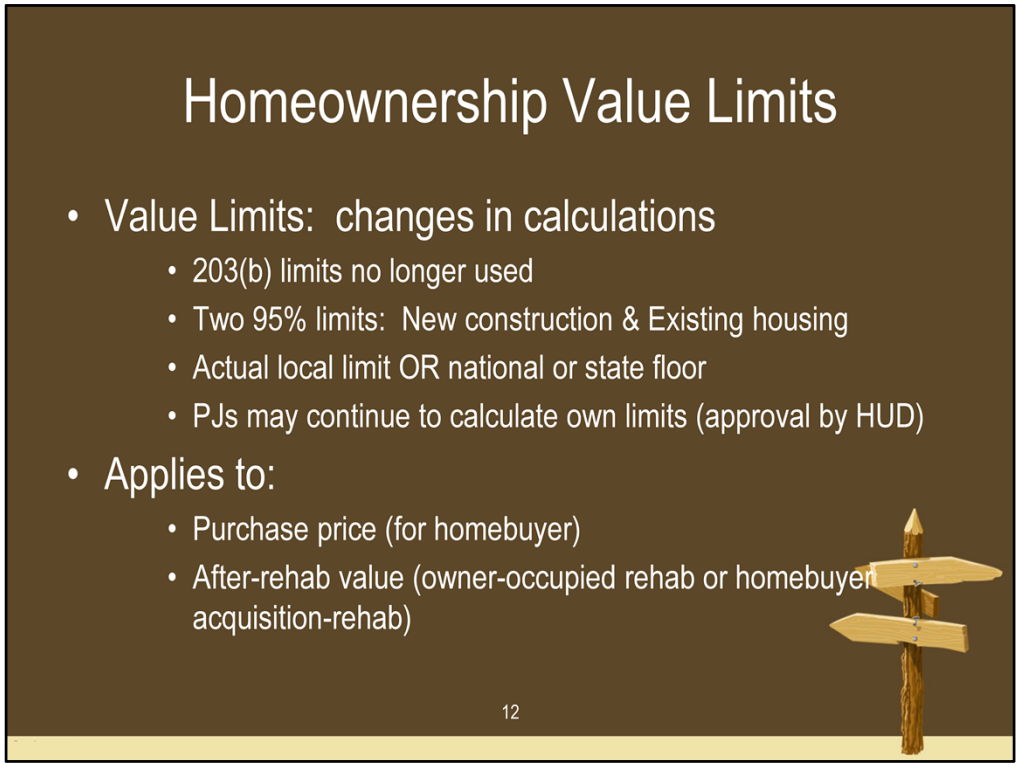
- <u>Effective date : January 2015 !</u>

HUD clarified the forms of ownership that are permitted or not permitted.
For homebuyer programs:

- The prohibition on contracts for deed, etc. is now explicit in the rule. This is not a change in HUD policy. They have always not permitted these, but they added them to the rule to make it explicit.
- Contract for deed is an ineligible form of homeownership under the HOME program because it fails to provide equitable title to the contracting party, who remains vulnerable to forfeiting the property until the final payment is made.

For owner-occupied rehab:

- HUD has permitted the listed forms to be considered ownership to be eligible for housing rehabilitation. Most of these are cases of estate planning, and HUD intends to permit the occupant – often elderly or disabled – to have access to rehab based on the fact that they retain the right of occupancy for their life in the property.
- If there are any variations other than those listed, HUD approval is required.



The statute requires HUD to assist housing of modest means, defined by its price or value in homeownership to not exceed 95% of the median value of homes sold in the previous year in that local market. While historically FHA calculated this and used it in its 203(b) program, the stimulus acts increased the limit, so HUD could no longer rely on the calculations for 203(b) and needs to do its own.

- PJs are no longer permitted to use the FHA 203(b) limit as a surrogate for 95 percent of area median purchase price.
- HUD issued interim guidance in 2008 that permitted PJs to use the pre-Economic Stimulus single family mortgage limits as a measure of 95% of median purchase price until the regulatory changes issued by this new rule could be promulgated.
- Now, as a result of the 2013 final rule, HUD calculates two limits for each market – one for new construction and one for existing. For rural areas experiencing low volumes or low prices, HUD has allowed state or local floors to be used.
- PJs have always had the opportunity to do their own calculations, but as before, this must be statistically defensible and is subject to HUD review and approval.

These limits have two distinct applications:

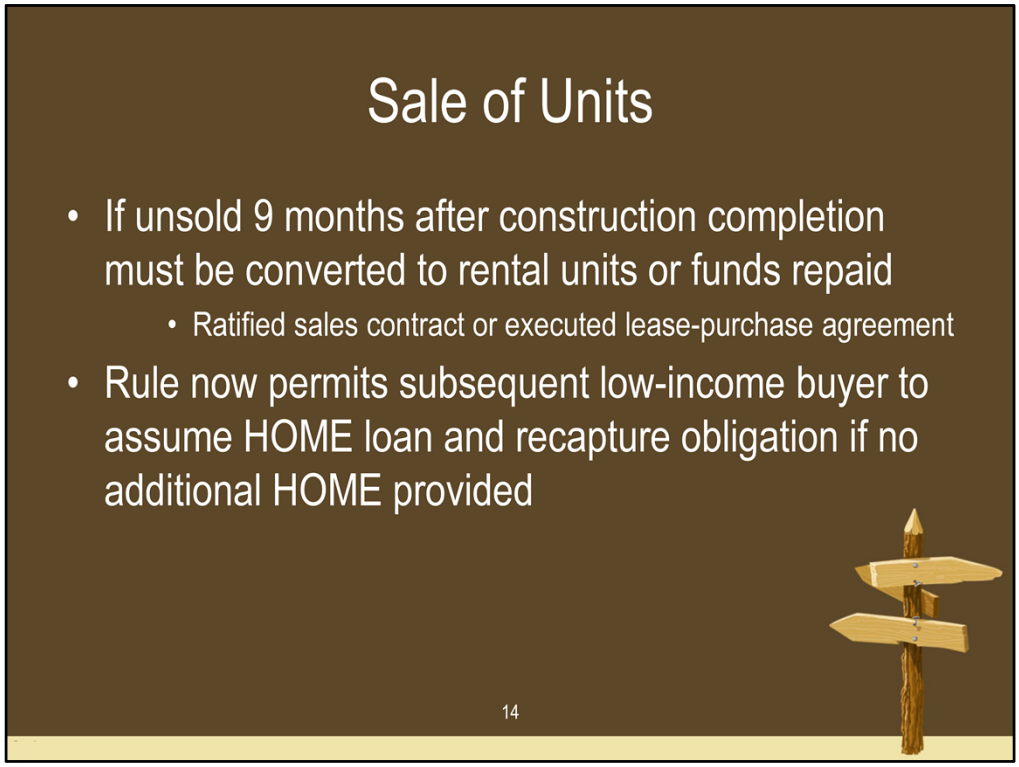
- For homebuyer activities, these limits apply to the sales price, or if the house needs rehab after purchase, it applies to the after-rehab value.
- For owner-occupied rehab, these limits apply to the value after rehab.

The 2013 Rule adds a new paragraph §92.254(f) that requires PJs to have and follow written policies for:

- Underwriting each assisted homebuyer to ensure that they are receiving the assistance needed to sustain homeownership, including such standards as front and back end lending ratios, housing expenses, assets to purchase, and financial ability to sustain homeownership (e.g., post-purchase cash);
- Responsible lending policies to ensure that primary mortgages are reasonable for the buyer (and that subordinated HOME assistance is not put at risk); and
- Resubordination – that is, the terms under which the PJ will agree to subordinate to a new primary mortgage in a refinancing, including such terms as whether the owner can take out equity and under what circumstances.

HUD has also added the requirement that all homebuyers receive pre-purchase counseling, but has not specified the type, length or source of the counseling. It is the intent of HUD to require compliance with the Consumer Financial Protection Bureau rules when they take effect.

- HUD has permitted a range of options to pay for the counseling, as noted on the slide.



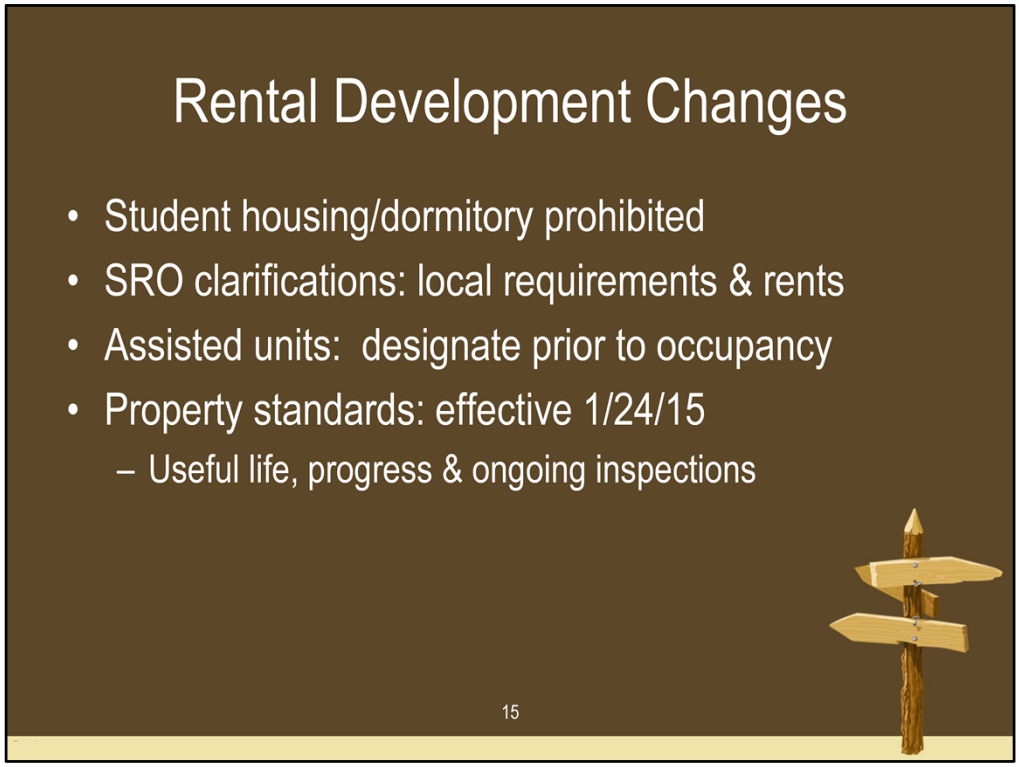
The new rule imposes a 9 month deadline for sale of homebuyer units.

- 9 Month Requirement is a regulatory requirement that applies to any homebuyer project to which HOME funds are committed on or after the effective date of the rule AND is not set up in IDIS under 2012 or 2013 Consolidated Plan/Annual Action Plan project.
- The FY 2012 and 2013 Appropriations Acts require PJs to convert homebuyer housing to rental housing within 6 months of the project completion, but this applies only to 2012/2013 projects that were committed prior to 8/23/13. All 2012/2013 projects committed after that date may follow the 2013 Rule.

The "sale" deadline is met either by a sale or having a "ratified" sales contract with a buyer. Closing does not have to have occurred within the period.

However, remember that the sale must have occurred within 4 years of project commitment based on the "project completion deadline."

The other big change is that the rule now permits the PJ to allow recapture notes/mortgages to be assumed by a successive eligible low-income buyer. This will not be applicable to previous sales.



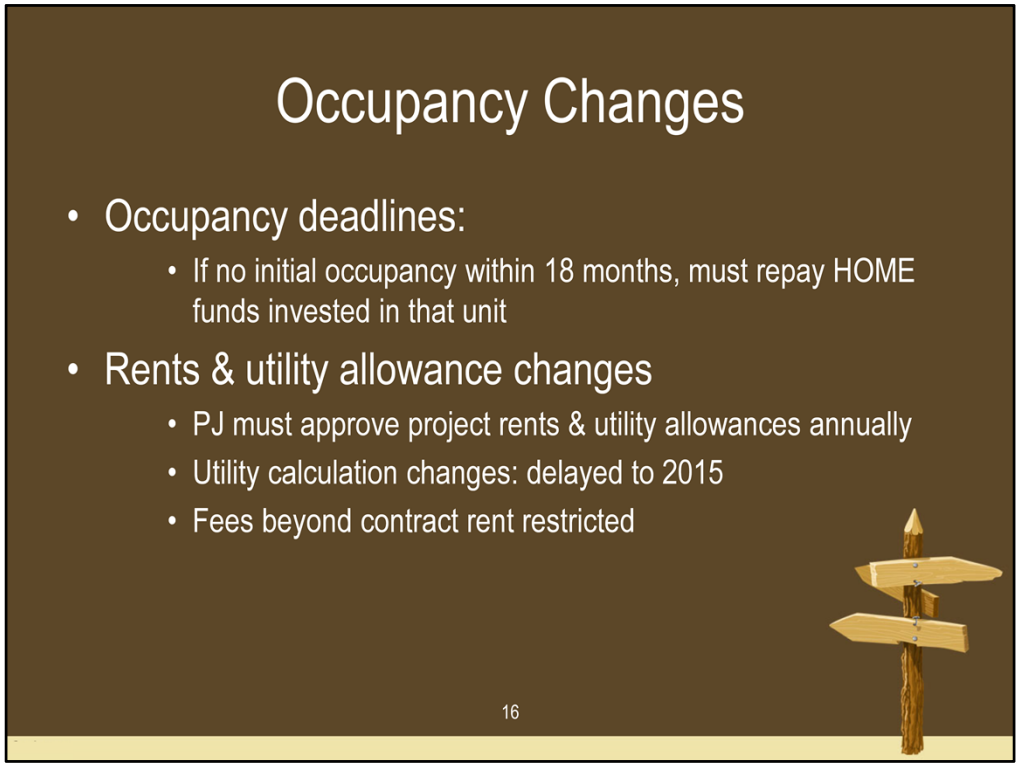
Changes to rental development were generally very limited. Here are a few of the changes:

HUD has made it clear that HOME funds may not be used to assist student housing or any dormitory type housing. In addition, HOME will follow Section 8 and other programs that allow a student-headed household only to be eligible if it is independent household, and the student is not a dependent of a family.

SROs (lodging house, rooming house, Y-type buildings) have always been eligible under HOME, but HUD added that SROs must meet any local code or other requirements that pertain to SRO structures, and also added to the rule, the long standing policy that SRO rents are limited to 75% of the zero-bedroom FMR for that jurisdiction.

The rule now requires the HOME-assisted units to be designated prior to occupancy. In effect, if assisted units are floating, the initial units must still be designated and reserved for LI/VLI occupancy, before the project is occupied (to ensure those units are “set aside” and not rented to the wrong income levels).

Finally, as noted earlier, property standards are changing in January 2015. There are specific useful life requirements pertaining to rental housing, and changes in the standards and timing of ongoing inspections.



The 18 month occupancy deadline was noted earlier.

IF A HOME ASSISTED UNIT IS NOT INITIALLY OCCUPIED WITHIN 18 MONTHS OF COMPLETION, THE HOME FUNDS FOR THAT UNIT MUST BE REPAID.

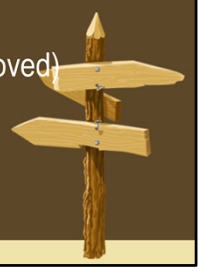
HUD also changed the requirement for rent approval. PJs must now approve that actual rent schedule each year of the affordability period before it is implemented. Previously, the PJ was only required to publish the rent limits, and then monitor the rents charged. Now actual contract rents must be approved.

This was put into place in part because PJs will have to also calculate and approve utility allowances, although this has been deferred to 2015 for HUD to issue more guidance.

Finally, HUD has limited the additional “fees” that can be charged to a tenant beyond the contract rent. Such fees must reasonable, customarily charged in the market, and charged to all tenants, not just HOME tenants.

Rental Monitoring & Workouts

- Monitoring
  - Property standards inspection schedule: within first 12 months & every 3 years
  - PJ must also conduct financial oversight
- Workouts
  - New standards for permitting additional investment & changing unit designations in workouts
  - HOME unit can be used for manager's unit (if approved)



This was just a quick overview; not complete. Participants really need to stay tuned and read more as it becomes available.

These are the critical links to more online information.

There will be a lot of information flowing from HUD in the coming months on the final rule, so they need to be on the mailing list. Also, they should note the upcoming Building HOME trainings that will be offered in New York. Monte Franke will be one of the trainers.