



## HOMEfires - Vol. 17 No. 1, January, 2023

### **Q. May participating jurisdictions (PJs) revise an extended period of affordability for HOME-assisted rental housing once the minimum period of affordability has been completed?**

A. Yes, PJs are permitted to revise an extended period of affordability for HOME-assisted rental housing once the minimum period of affordability and related requirements established by the HOME regulations have been satisfied.

Pursuant to 24 CFR 92.252(e), HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the table in the regulation at 24 CFR 92.252, beginning after project completion (the “period of affordability”). The HOME regulations at 24 CFR 92.252 impose the minimum period of affordability to ensure housing is occupied by eligible low-income families for a specified minimum time period after project completion, as defined at 24 CFR 92.2. If the housing does not meet the required minimum period of affordability, the PJ must repay any HOME funds invested in the housing.

HOME requirements permit a PJ to impose a period of affordability that is longer than the minimum period of affordability (an “extended period of affordability”) and many PJs do so in structuring a project’s financing and to maintain essential affordable housing in their communities. While imposing extended periods of affordability increases the long-term supply of affordable housing, an extended period of affordability may later prevent a project’s necessary recapitalization and rehabilitation. HOME regulations prohibit investment of additional HOME funds in a project during the period of affordability (including an extended period of affordability). As title II of the National Affordable Housing Act (NAHA or “HOME statute”) (42 U.S.C. 12721 *et. seq.*) and HOME regulations do not prohibit revisions to an extended period of affordability once the minimum period of affordability has been met, a PJ may revise an extended period of affordability, if requested to do so by the project owner, without HUD review and approval, as described below.

To revise an extended period of affordability, a PJ must:

1. Verify and document that the project satisfied the minimum period of affordability required under 24 CFR 92.252(e) by complying with HOME requirements currently (at the time of the review to revise the period of affordability) and throughout the period of affordability prior to

the review, including written agreement requirements at 24 CFR 92.504 and that all applicable recordkeeping requirements under 24 CFR 92.508 have been met;

2. Review its policies and procedures on amending HOME written agreements.
3. Verify that there are no outstanding OIG audit and/or HOME monitoring findings associated with the project;
4. Review the HOME written agreement to determine the terms and conditions of the HOME assistance and the process for any amendments to the agreements; and,
5. Satisfy all legal requirements, including any lender requirements on the property triggered by a revision to the extended period of affordability, state and local laws, and any necessary approvals by the PJ's governing body (i.e., council or board approval).

The steps a PJ will undertake to revise the extended period of affordability will also depend on the terms of the written agreement and satisfaction of local notification requirements/processes. If the written agreement includes an amendment clause for revising the agreement, the PJ must revise the extended period of affordability in accordance with the amendment clause and the PJ's policies and procedures on amending written agreements. The PJ should also consult its legal counsel to determine how to proceed with a revision to the written agreement.

As the extended period of affordability may not be reduced retroactively, the extended period of affordability may only be reduced to end, at the earliest, on the signature date of the PJ's authorized official on the written agreement's amendment to reduce the extended period of affordability.

Any amendment to the written agreement that revises the extended period of affordability must be in writing; clearly identify the new, revised period of affordability; restate all record retention requirements; and be signed and dated by the PJ's authorized official and the project owner. The amendment must be incorporated into and attached to the original HOME written agreement.

A PJ may therefore revise the HOME written agreement with an owner to change the extended period of affordability in accordance with the above requirements and the PJ's policies and procedures on amending written agreements.

HUD recommends that a PJ develop policies and procedures to implement any revision of the extended period of affordability. The policy should outline the rationale for the revision to the extended period of affordability. If the PJ is reducing the period of affordability, the policy should include the PJ's steps to mitigate and/or prevent the displacement of existing low-income residents and how the PJ will maintain affordable rental units in the community.