November 23, 2026

Submitted electronically via www.regulations.gov

U.S. Department of the Treasury
Office of Capital Markets
Attention: Ethan Fallang
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Restrictions on Large Institutional Investor Purchases of Single-Family Homes — Notice of Proposed Rulemaking, 21st Century ROAD to Housing Act Prohibition on Large Institutional Investor Purchases of Single-Family Homes, 31 CFR Part 36 (Docket No. TREAS-DO-2026-0529; RIN 1505-AC96)

Dear Deputy Assistant Secretary Fallang:

The National Rental Home Council ("NRHC") welcomes the opportunity to provide comments in response to the Department of the Treasury's ("Treasury") proposed rule implementing Section 1001 of the 21st Century ROAD to Housing Act (the "Act").

The NRHC is a Washington, D.C.-based nonprofit trade association that serves as the leading voice for the single-family rental and build-to-rent housing industry. NRHC's members include owners, operators, and builders in the single-family rental ("SFR") and build-to-rent ("BTR") housing industry, ranging from small local operators to large institutional providers of professionally managed rental housing. The NRHC is dedicated to raising the standards for rental housing, advancing access to high-quality single-family homes, particularly in areas where the high cost of homeownership limits residents' housing options, and developing and sharing best practices throughout the single-family rental industry. Through advocacy, policy engagement, and public education, the NRHC works to ensure that professionally managed rental home providers can contribute to housing security, resident well-being, and the vitality of the communities they serve.

NRHC thanks Treasury for publishing the proposed rule on an expedited timeline. Our members appreciate your thoughtful approach and commitment to clarify open questions surrounding Section 1001, and we look forward to working with you to ensure the final rule promotes a strong and healthy rental marketplace for the residents our member companies serve.

The proposal reflects a careful reading of the statute, a genuine effort to minimize market disruption as the Act directs, and a recognition that market participants need clear, objective, and administrable rules in order to plan, invest, and comply in a manner that advances the Act's overarching goal of expanding housing options and opportunities for American families. Our comments build on that approach but recommend a series of targeted revisions that reflect Congress' goal underlying the Act.

NRHC's comments are guided by a simple premise: the nation faces a severe shortage of housing, and of quality, affordable housing in particular. Congress did not prohibit institutional

investment in single-family homes outright; it paired the purchase prohibition with a set of excepted purchases designed to increase housing supply, improve the quality of the existing housing stock, and create pathways to homeownership. Those goals will be achieved only if the exceptions are workable in practice.

Congress also directed Treasury to issue regulations that "minimize market disruptions" and "mitigate, to the extent possible, negative impacts on consumers and communities." NRHC therefore urges Treasury to finalize the exceptions in a manner that limits unnecessary impediments and encourages participation.[1]

[1] NRHC's comments are presented in the order in which they appear in the proposal. For each, NRHC identifies the relevant questions presented by Treasury, describes the proposal and the issues it raises, sets out the approach NRHC urges Treasury to consider, and proposes revisions to the regulatory text, which are shown in blue underlined text and proposed deletions in ~~red struck-through text~~.

I. Build-to-Rent Program (Proposed § 36.5)

A. Relevant Questions Presented

Question 25: Is the proposed definition appropriately tailored to identify purchases made pursuant to build-to-rent programs? Should the definition provide additional terms relating to single-family homes that a large institutional investor constructs or constructs and retains?

Question 32: Are the proposed conditions for no prior owner-occupancy and purchases within 18 months appropriate and administrable indicators for determining whether a home is newly constructed? What alternatives should Treasury consider to either or both of these factors?

Question 34: Is 18 months after the certificate of occupancy (or equivalent) an appropriate period of time for determining whether a single-family home is newly constructed?

Question 37: Should the rule be revised to reflect circumstances in which a single-family home is held unoccupied by a large institutional investor after the purchase, before being occupied by a renter?

NRHC respectfully concludes that Section 1001(a)(2)(B) of the Act, which establishes the "build-to-rent" ("BTR") excepted purchase category, does not support Treasury's 18-month test in proposed Section 36.5. Treasury should remove this artificial timeline test in keeping with Congress' intent and the overall purpose of the statute.

Section 1001(a)(2)(B) of the Act excepts purchases made pursuant to a build-to-rent program in which a large institutional investor ("LII") "purchases, constructs, or constructs and retains newly constructed single-family homes to be managed as a rental property." This statutory language recognizes three distinct scenarios in which the BTR exception would be available. The first is where a large institutional investor "purchases" a single-family home from a third party. The second is where a large institutional investor acts as a builder that "constructs" a single-family home, ostensibly to sell to a third party. The third is where the large institutional investor "constructs and retains" the single-family home, such that the large institutional investor acts as both the builder and the owner of the single-family home that will be rented. A large institutional investor that engages or funds a homebuilder to construct homes for the investor's rental use falls within these scenarios as well, whether it takes title during or after construction. Notably, under the second and third scenarios, the large institutional investor's actions as a builder also constitute a purchase under Section 1001(a)(4)'s statutory definition because the definition of "purchase" includes "construction."

Proposed § 36.5 would make the BTR exception available only for purchases of genuinely new homes. Under the proposal, a build-to-rent "program" (as defined in § 36.3) must satisfy three conditions: (1) the home has not been occupied by an owner-occupant before the purchase; (2) *the home is purchased within 18 months after it receives its certificate of occupancy (or equivalent)*; and (3) after the purchase, the home is first occupied by renters. Under the proposed

rule, once 18 months have passed, a home generally cannot be purchased under the BTR exception, even if it was built as a rental and has only ever been renter-occupied.

NRHC supports the requirement that a home never have been occupied by an owner-occupant, which keeps the exception from reaching homes that have already entered the owner-occupied housing stock. **The fixed 18-month window, however, is extra-statutory, unnecessary, does not achieve the statute's stated purpose, creates ambiguity where the BTR exception is used by builders who "construct" or "construct and retain," is not flexible enough in cases involving Acts of God/Force Majeure, and will impede the new rental construction that Congress sought to protect.** As noted above, the build-to-rent excepted purchase test would operate better without the 18-month requirement for the following reasons:

1. **Extra-statutory.** Congress could have imposed a timeline requirement by which a single-family home purchased under the BTR exception had to be put into service as a rental following completion of construction. Congress did not do this. As such, Treasury's proposal would impose an arbitrary timeline in a manner that is extra-statutory and is not supported by the Act.

2. **Unnecessary**. Treasury's proposed requirement that the "purchase" occur "*within 18 months of the... certificate of occupancy*" is unnecessary. The real estate industry and local government agencies that oversee the industry all understand what "newly constructed" means—**newly constructed** means, with respect to a single-family home, a dwelling that meets both of the following conditions: (a) it has been built or substantially constructed and is fit for its intended use as a residence; and (b) it is offered for sale by the original builder or developer, such that they would be conveying it for the first time. This definition tracks closely with BTR's statutory language, and no further conditions are required for the BTR exception to work as Congress intended.

3. **Ambiguity**. Treasury's proposal recognizes only one of the three BTR permitted scenarios where an LII purchases a home from a builder, but the 18-month requirement will likely frustrate the two other scenarios, where the builder is an LII. Under the first BTR scenario, construction occurs and is completed; a certificate of occupancy is issued, and then the purchase occurs—in that order, such that the "purchase" is the last in a linear set of events. Treasury's proposal, however, is ill-suited to the two other scenarios contemplated in the statute, where a "purchase" under the statute's definition of such term can be one of the events that occurs before the certificate of occupancy is issued. In cases where a large institutional investor attempts to obtain a post-purchase certificate of occupancy, the investor faces a varied and often complex inspection regime, lacks sufficient control over the timing of inspection, and often faces significant delays between the inspection and the issuance of the certificate of occupancy, which can leave the investor unable to obtain a certificate of occupancy within the 18-month timeframe. This highlights that Treasury's 18-month requirement is, at best, ambiguous, because it seemingly overlooks two of the three BTR scenarios, but it also speaks further to the extra-statutory nature of the requirement because it could preclude two of the three BTR scenarios expressly permitted by statute from working as Congress intended.

4. **Lacks Flexibility.** The 18-month requirement could also have unintended consequences, serving to deny the availability of the BTR exception if a single-family home is damaged after a certificate of occupancy has been issued. For example, assume that a builder who is a large institutional investor built a home with the intent of selling it. The builder obtains a certificate of occupancy, but before the home can be sold, it is damaged by a hurricane. In that case, the large institutional investor would be operating under the 18-month clock to sell the home, during which it must rebuild the home while facing material and manpower shortages and would have to obtain a new certificate of occupancy at a time when local inspectors are stretched thin performing inspections to get people back in their homes across the region following a natural disaster. Through no fault of its own, the builder/large institutional investor might be unable to rebuild, reinspect, and sell the property within the 18-month timeframe required under the proposed rule. This scenario is not hypothetical: a substantial share of BTR activity is concentrated in regions that regularly experience hurricanes, tornadoes, and other severe weather events.

5. **Impede Construction.** Congress intended to permit BTR so that industry could continue to add to the overall housing stock, including where new stock is owned and operated by large institutional investors. It is a common business model for a builder/developer who is not a large institutional investor to build out a community over time and to lease out completed units during the remainder of construction as this generates needed cashflow that can be used to continue to finance construction. During the build-out, the builder-developer will typically retain ownership of the individual units until the community can be sold as a collective to an investor. This is a classic example of a "community made up exclusively of renter-occupied single-family homes," which the BTR exception speaks to. Builder/developers of these types of communities typically hold the newly constructed housing stock beyond the 18 months before selling the community. Imposing the 18-month requirement on the small- and mid-size builder/developers who use this model would unnecessarily preclude these businesses from engaging in BTR sales to a large institutional investor. The 18-month requirement, therefore, would have an outsized negative impact on small- and mid-size businesses, substantially narrowing the available buyer pool, thereby giving an unfair competitive advantage to large participants while jeopardizing small businesses that build homes. A home built for rental and never owner-occupied does not compete with owner-occupants, regardless of when it is sold and regardless of whether it is sold vacant or occupied. Treasury should therefore confirm in the final rule that a home already leased at purchase, or held vacant while being marketed for rent, satisfies the first-occupant requirement.

B. NRHC's Recommended Approach

The Act's focus is on whether a home adds to rental supply rather than removing a home from the stock available to owner-occupants. The most objective and administrable indicator of that distinction is whether the home has ever been owner-occupied. Recognizing this goal, NRHC recommends Treasury eliminate the fixed 18-month purchase window, which, for the reasons

above, is unworkable in practice. Treasury should: (1) retain the requirement that the home never have been occupied by an owner-occupant; (2) eliminate the fixed 18-month purchase window; (3) in response to *Question 37*, clarify that a home held vacant after the purchase while being marketed for rent remains eligible; (4) confirm that a home already occupied by a renter at the time of purchase, including a home acquired from a builder or developer in a bulk or community-wide sale, satisfies the first-occupant requirement; and (5) in response to Question 25, confirm that the exception covers bulk purchases of new homes from builders and homes built by a builder that the large institutional investor engages or funds.

In addition, in response to *Question 25*, NRHC urges Treasury to define "structure" for purposes of the Act's definition of "single-family home" so that rental communities developed on a single parcel are not treated as single-family homes, consistent with the legislative intent reflected in Chairman Tim Scott's *Congressional Record* supporting and providing context for Senate passage of the Act,[2] while ordinary detached homes, duplexes, and a house with an accessory dwelling unit remain within the definition. NRHC's proposed language is set out below.

C. Proposed Revisions to §§ 36.2 and 36.5

§ 36.5 Build-to-rent program.

(a) A build-to-rent program as described in section 1001(a)(2)(B) of the Act is a program pursuant to which single-family homes—

~~(a)~~(1) have not been occupied by an owner-occupant before being purchased; ~~(b) are purchased within 18 months of the single-family home receiving its certificate of occupancy (or equivalent);~~ and

~~(c) are, after the purchase,~~(2) are first occupied by renters, including following a period in which the home is held vacant while being marketed for rent, or where the home is occupied by a renter at the time of purchase, whether as part of a community made up exclusively of renter-occupied single-family homes or as part of a community made up of single-family homes that are both owner- and renter-occupied.

Proposed definition of "structure" (§ 36.2):

"Structure" means a building that, together with the land on which it is situated, can be conveyed under applicable law separately from any other building, without subdivision, partition, or other governmental approval. Notwithstanding the preceding sentence, two or more buildings that cannot be so conveyed separately from one another are a single structure containing all of their dwelling units.

[2] 72 Cong. Rec. S1202–03 (daily ed. Mar. 18, 2026) (statement of Sen. Scott) (providing the Chairman's intent underlying Section 901 of the original Senate-passed bill, later enacted as Section 1001).

II. Renovate-to-Rent Program (Proposed §§ 36.2 and 36.6)

A. Relevant Questions Presented

Question 19: How should Treasury distinguish a structural or core system rehabilitation from cosmetic improvements, routine maintenance, ordinary turnover work, or discretionary upgrades?

Question 41: Should any additional conditions or requirements be added to the proposed interpretation of "renovate-to-rent program"? For example, should the final rule require that the renovations be completed within a specified time after the purchase (e.g., six months)?

Question 44: Should the final rule provide additional guidance on how a large institutional investor should determine whether a home does not meet structural or core system elements of local building codes?

Question 47: Should the final rule define ''substantially rehabilitates''? If so, what definition would be appropriate to fulfill the purposes of the Act? Should such a definition use quantitative or qualitative factors?

Question 49: Is a 10 percent threshold an appropriate safe harbor for the substantial-rehabilitation requirement? Should it be higher or lower, or should it be calculated in a different manner than as proposed? Should the 10 percent threshold alternatively be calculated only including improvements to resolve material deficiencies in structural or core system elements?

Question 51: Should the final rule distinguish between costs directly related to structural or core system work and other renovation costs? For mixed-scope renovation projects, what costs should count toward the statutory requirement that improvements equal at least 15 percent of the purchase price of the single-family home?

Congress' goal underlying the renovate-to-rent exception is to promote restoration of deficient homes to safe, quality rental housing. To that end, NRHC members agree that substantial rehabilitation should be distinguished from cosmetic work, routine maintenance, and ordinary turnover. However, the proposed rule implementing this excepted purchase category goes beyond the statute in two respects. It adds a second financial test, the 10 percent safe harbor, to a requirement that Congress framed qualitatively, and it ties eligibility to whether a system fails code at the time of purchase rather than to whether a structural or core system needs substantial work. **NRHC urges Treasury to define substantial rehabilitation by reference to HUD's existing substantial-rehabilitation standard, to use local building codes to identify which systems are structural or core systems rather than as a pass-fail test, and to leave the statutory 15 percent improvement requirement as the only financial test.** All work and improvements to the home should count toward the 15 percent threshold, not just work on structural or core systems. NRHC also supports a clear, tenant-friendly timeframe for completing the work.

Section 1001(a)(2)(C) of the Act excepts purchases made pursuant to a renovate-to-rent program that "(i) substantially rehabilitates single-family homes that do not meet structural or core system elements of local building codes; and (ii) makes improvements in an aggregate dollar amount of not less than 15 percent of the purchase price of the single-family home." Proposed § 36.2 would define "structural or core system" by reference to the categories in HUD's residential building-code comparison framework. Proposed § 36.6 would require the investor to resolve all material deficiencies in homes that do not meet structural or core system elements of local building codes at the time of purchase and to meet the 15 percent improvement threshold, and proposed § 36.6(b) would provide a safe harbor for the substantial-rehabilitation requirement where improvements to structural or core system elements equal at least 10 percent of the purchase price of the single-family home. The proposal does not specify when the required work must be completed. Treasury asks in *Question 41* whether the final rule should require that renovations be completed within a specified time after purchase, such as six months.

The Act imposes one financial test on renovate-to-rent purchases: improvements of not less than 15 percent of the purchase price of the single-family home. The proposal adds a second. By conditioning the substantial-rehabilitation safe harbor on spending at least 10 percent of the purchase price on structural or core systems, the proposal effectively converts the qualitative substantial-rehabilitation requirement into a two-tier test that includes a second dollar threshold. **That test is extra-textual; nothing in the statute authorizes it.** Treasury drew its definition of structural or core systems from HUD's framework, but HUD's regulatory definition of substantial rehabilitation is qualitative: it looks to whether a property is improved to decent, safe, and sanitary condition, expressly reaches the repair or replacement of major building systems or components in danger of failure, and excludes cosmetic improvements, all without a dollar threshold.[3] Treasury should adopt HUD's substantial-rehabilitation test as it exists, rather than importing HUD's framework and adding a financial test to it.

The proposal also ties eligibility to whether a home's systems fail to meet code at the time of purchase. Local building codes are a sound guidepost for identifying which systems are major or core systems and for setting a baseline in terms of assessing where work might be needed, but compliance with the exception should not turn on whether a system currently violates code, and the improvements made should not have to be undertaken to bring a system into code compliance. A home need not be in full distress to need substantial rehabilitation. Many homes have roofs, HVAC, plumbing, or electrical systems at or near the end of their useful lives that have not yet failed. According to the National Association of Home Builders, the median age of owner-occupied homes climbed to 42 years in 2024, up from 31 years in 2005, and about one-third of owner-occupied homes were built before 1970.[4] Investment to improve those systems is

[3] 24 C.F.R. pt. 883, subpt. C (defining "substantial rehabilitation" as "[t]he improvement of a property to decent, safe and sanitary condition . . . from a condition below these standards," which "may vary in degree from gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance" and "may also include . . . the repair or replacement of major building systems or components in danger of failure," and providing that "[c]osmetic improvements alone do not qualify").

[4] Na Zhao, Almost Half of the Owner-Occupied Homes Built Before 1980, Eye on Housing (Nat'l Ass'n of Home Builders, Mar. 24, 2026) (analyzing 2024 American Community Survey data; reporting that around 34% of owner-occupied homes were built before 1970), https://eyeonhousing.org/2026/03/almost-half-of-the-owner-occupied-homes-built-before-1980-2/.

exactly the reinvestment in the existing housing stock that Congress sought to encourage, and it should count toward both the rehabilitation requirement and any safe harbor. Discouraging that investment would not avoid the cost of rehabilitation; it would shift that cost to the eventual homebuyer.

Finally, the proposal does not address the scenario where a home is renter-occupied at the time of purchase. Rehabilitation of an occupied home requires access, coordination with the resident, and work that can disrupt daily life. A rule that required all work to be completed on a fixed schedule regardless of occupancy could force investors to displace residents or to perform invasive work while a family is living in the home. The rule should be tenant-friendly: it should ensure that repairs affecting health and safety are made promptly, while giving investors reasonable time to schedule other work in a manner that respects the resident's right to quiet enjoyment of the home.

B. NRHC's Recommended Approach

In response to *Questions 47* and *49*, NRHC urges Treasury to (1) adopt HUD's substantial-rehabilitation test, without an additional financial test; and (2) withdraw the 10 percent threshold, which has no basis in the statutory text, leaving the 15 percent improvement requirement as the only financial test, as Congress provided. NRHC supports Treasury's measurement of the 15 percent threshold against the purchase price of the structure, net of the value of the land. In response to *Questions 19* and *44*, NRHC urges Treasury to confirm that local building codes, organized by the HUD categories, serve to identify which systems are structural or core systems, and that a home qualifies where such a system requires repair, replacement, or improvement, including by reason of age or deterioration, whether or not the system currently fails to meet code and whether or not the improvement is undertaken to achieve code compliance. If Treasury retains a dollar-based safe harbor, NRHC urges Treasury, in response to *Questions 49* and *51*, to count toward it all costs associated with an investment to improve a structural or core system, including costs of permits, design, project management, and other costs directly associated with the improvement.

In response to *Question 41*, NRHC supports a clear, tenant-friendly timeframe for completing rehabilitation work. For a home that is vacant at purchase, repairs should be completed within a reasonable timeframe after the purchase. For a home that is occupied by a renter at purchase, repairs affecting health or safety should be completed as soon as practical after the purchase, with consideration given to minimizing any disruption to the renter, and the remaining work should be completed within twelve months after the renter's move-out. Any work performed while the renter remains in the home should be scheduled so as to minimize disruption and respect the resident's right to quiet enjoyment. Each period should be extended for delays outside the investor's control, such as permitting, inspection, materials availability, the renter's refusal of access, or other circumstances beyond the reasonable control of the large institutional investor.

C. Proposed Revisions to §§ 36.2 and 36.6

§ 36.2 Definitions.

"Does not meet structural or core system elements of local building codes" means that one or more structural or core systems of a single-family home, identified by reference to the categories of applicable local building codes described in the definition of "structural or core system," requires repair, replacement, or improvement at the time of purchase, including by reason of age, obsolescence, deterioration, or the end of its useful life, whether or not the system then fails to comply with applicable local building codes. A repair, replacement, or improvement of such a system need not be required by, or undertaken to achieve compliance with, applicable local building codes.

§ 36.6 Renovate-to-rent program.

(a) A renovate-to-rent program as described in section 1001(a)(2)(C) of the Act is a program pursuant to which the large institutional investor—

(1) substantially rehabilitates ~~(including by resolving all material deficiencies in)~~ single-family homes that do not meet structural or core system elements of local building codes ~~at the time of purchase~~, whether or not a structural or core system complied with applicable local building codes at the time of purchase, as determined under the HUD substantial-rehabilitation standard, without regard to the cost of such rehabilitation; ~~and~~

(2) makes improvements, including those under paragraph (1) and all costs associated with the repair, replacement, or improvement of a structural or core system (including permits, design, and project management); finish work; and other improvements, to each single-family home in an aggregate dollar amount of not less than 15 percent of the purchase price of the single-family home~~.~~; and

(3) completes (i) any repair or replacement under paragraph (1) of a structural or core system that affects the health or safety of occupants before the single-family home is first occupied by a renter following the purchase or, if the single-family home is occupied by a renter at the time of purchase, as soon as practical after the purchase, with consideration given to minimizing any disruption to the renter; and (ii) all rehabilitation and improvements under paragraphs (1) and (2) within a reasonable timeframe after the purchase or, if the single-family home is occupied by a renter at the time of purchase, within twelve months after the date the renter vacates the single-family home. Work on a single-family home occupied by a renter shall be performed in a manner that minimizes disruption to the renter's quiet enjoyment of the single-family home. Each period shall be extended for any delay resulting from permitting, inspection, materials availability, the renter's refusal of access, or other circumstances beyond the reasonable control of the large institutional investor.

~~(b) A large institutional investor that makes improvements to structural or core system elements of a single-family home that does not meet structural or core system elements of local building codes at the time of purchase in an aggregate dollar amount of not less than 10 percent of the purchase price of the single-family home, and that resolves all material deficiencies in such structural or core system elements, shall be deemed to have satisfied paragraph (a)(1).~~

Alternative recommendation (if Treasury retains a safe harbor):

(b) A large institutional investor that makes improvements to structural or core system elements of a single-family home that does not meet structural or core system elements of local building codes in an aggregate dollar amount of not less than 10 percent of the purchase price of the single-family home, including all costs associated with the repair, replacement, or improvement of a structural or core system, whether or not such system complied with applicable local building codes at the time of purchase, ~~and that resolves all material deficiencies in such structural or core system elements,~~ shall be deemed to have satisfied paragraph (a)(1).

III. Meaningful Financial Support (Proposed §§ 36.7 and 36.8)

A. Relevant Questions Presented

Question 67: Should the final rule define "fair market value" or specify how fair market value must be determined?

Question 68: Is the proposed formula an appropriate safe harbor for meaningful financial support? Are the 2.5 and 3.5 percent amounts appropriate? Is the $5,000 cap on the amount required to rely on the safe harbor an appropriate amount? Do the five- and seven-year thresholds appropriately balance the considerations Treasury describes? Should Treasury provide a safe harbor for support provided before five years? Should the final rule provide a mechanism to ensure that a large institutional investor cannot evade the meaningful financial support provision by materially altering the terms of the rental agreement to discourage the renter from renewing the rental agreement? Is it appropriate to use the lesser of the purchase price of the property and the Federal Housing Administration mortgage limit for a one-unit property in the relevant county? Should additional safe harbors be provided?

Question 81: Is it appropriate for Treasury to define a program to boost homeownership to require the provision of meaningful financial support? Is the proposed formula an appropriate safe harbor for meaningful financial support under a program to boost homeownership? Should the formula for meaningful financial support be the same for homeownership programs and programs to boost homeownership?

Proposed §§ 36.7(a)(4) and 36.8(a)(3) would require homeownership programs and programs to boost homeownership to provide meaningful financial support for a renter's purchase of a home. Proposed §§ 36.7(b) and 36.8(b) would provide a safe harbor under which support equal to the lesser of $5,000 or 2.5 percent (for renters of at least five years) or 3.5 percent (for renters of at least seven years) of the applicable purchase price, capped by reference to the FHA one-unit mortgage limit, would be deemed meaningful.

NRHC appreciates Treasury's effort to provide an objective, FHA-benchmarked standard, which is consistent in concept with the approach NRHC previously recommended, and

agrees with Treasury's use of five years as the threshold for the safe harbor. However, while the safe harbor applies only to renters with at least five years of tenancy, the operative requirement in §§ 36.7(a)(4) and 36.8(a)(3) contains no minimum tenancy. Market participants may reasonably read the proposal to require meaningful financial support for a renter who has been in place for as little as one year. Programs structured on that basis would not be feasible, and few, if any, investors would offer them.

B. NRHC's Recommended Approach

In response to *Questions 68* and *81*, NRHC urges Treasury to make explicit that the obligation to contribute meaningful financial support applies to renters who have rented a single-family home for at least five consecutive years under one or more rental contracts that provide for the program, consistent with the safe harbor's own five-year threshold. Because program obligations pass to, and must be assumed by, a transferee large institutional investor, a sale of the home between large institutional investors should not restart the renter's five-year period. A clear minimum tenancy directs the benefit to renters who have established a meaningful tenancy, gives investors the certainty needed to offer these programs, and encourages the broad participation that will translate into actual homeownership.

In response to *Question 67*, Treasury should also confirm that fair market value is determined at the time of the renter's purchase, not when the rental contract is executed.

NRHC also urges Treasury to confirm that (i) for a single-family home purchased subject to an existing rental contract, the program terms may be offered at the first renewal of that contract or the next new rental contract, and (ii) program terms may be incorporated into a rental contract by reference to a written program document that the large institutional investor may update prospectively. A purchaser cannot unilaterally change an existing lease, and a home purchased vacant should include the program terms from the first lease.

C. Proposed Revisions to §§ 36.7 and 36.8

§ 36.7(a)(4): require the large institutional investor to contribute meaningful financial support for the purchase of the single-family home by the renter, if the renter has rented a single-family home for at least 5 consecutive years under one or more rental contracts that provide for a homeownership program, and provide the renter the right, exercisable no later than the termination of the contract, to purchase the single-family home from the large institutional investor at a price no greater than fair market value, determined as of the date of the renter's purchase, minus the amount of such meaningful financial support, if any; and

§ 36.8(a)(3): if the program provides for meaningful financial support, provide for the large institutional investor to contribute meaningful financial support for the purchase of a single-family home by the renter (whether it is the home the renter occupies or another home), if the renter has rented a single-family home for at least 5 consecutive years under one or more rental contracts that provide for a program to boost homeownership, in accordance with this section; and

IV. Right of First Refusal and Portfolio Transfers (Proposed § 36.8(f))

A. Relevant Questions Presented

Question 91: Does proposed § 36.8(f) appropriately implement the right of first refusal and 30-day first-look period? What changes, if any, should be made? Should any additional safe harbors be provided?

Question 94: Should the right of first refusal apply only to third-party offers at or below the renter's first-look offer, as proposed, or should it apply more broadly? Should the right of first refusal apply to any type of offer to purchase, including portfolio and bulk sales?

Section 1001(a)(2)(E)(ii) of the Act requires a program to boost homeownership to provide "the right of first refusal and a 30-day 'first look' period." Proposed § 36.8(f) would implement this through a written notice, a 30-day exclusive first-look period, and a five-business-day right to match certain third-party offers. Separately, proposed § 36.8(a)(4) would require that, upon a transfer to another large institutional investor, all program obligations automatically pass to, and be expressly assumed by, the transferee. Treasury asks in *Question 94* whether the right of first refusal should apply to any type of offer to purchase, "including portfolio and bulk sales."

NRHC does not read the Act to require a right of first refusal when a home is sold as part of a portfolio or bulk transaction and urges Treasury to say so. A portfolio or bulk sale is not a sale of an individual home to the public, and it involves a fundamentally different bundle of rights than a sale to an individual. Portfolio and bulk transfers commonly include the assumption of debt and other contractual obligations, the assumption of program obligations to residents, common areas and associated tax and assessment obligations, and different tax consequences. Requiring a seller to offer each home individually to each resident before such a transfer would make portfolio transfers impracticable and could force operators to sell homes one at a time to maximize value, which would be far more disruptive to residents. Residents would be fully protected if the purchasing entity is required to honor the terms of their leases and the financial incentives to which they are entitled.

The proposed first-look and right-of-first-refusal mechanics also leave unclear when a renter's rights end. As proposed, the rights run until the earlier of 90 days after the rental contract terminates and the date the home is rented to another person, and the rule does not address whether later repairs or rehabilitation revive them. An investor that cannot determine when the rights have expired cannot market, renovate, finance, or sell the home with confidence, which discourages participation in these programs.

B. NRHC's Recommended Approach

In response to *Questions 91* and *94*, NRHC urges Treasury to clarify that the right of first refusal and first-look period do not apply to portfolio and bulk sales. In such a sale, the purchasing entity's only obligation should be to offer the renter the terms of the renter's existing lease and

the financial incentives to which the renter is entitled under the program. This approach allows residents to remain in place with their rights intact, supports market stability, and preserves the liquidity on which continued investment in these programs depends. NRHC further urges Treasury to (1) specify the events that terminate the renter's first-look and right-of-first-refusal rights, including that the right of first refusal ends 30 days after the first-look period expires; and (2) confirm that repairs, rehabilitation, or other changes to the home after the renter's rights expire do not revive or create new rights.

C. Proposed Revisions to § 36.8

~~(f) For purposes of paragraph (a)(2), a large institutional investor shall be deemed to provide the renter with a right of first refusal and a 30-day first-look period if, until the earlier of 90 days after the renter's rental contract terminates and the date the single-family home is rented to a person other than such renter—(1) before the large institutional investor lists, markets, solicits offers for the purchase of, negotiates for the potential sale of, or accepts from any person other than the renter any offer to purchase the single-family home occupied by such renter, the large institutional investor provides the renter with written notice of the large institutional investor's intent to sell the single-family home, the proposed sale or list price, any proposed material sale terms known to the large institutional investor, the amount of any meaningful financial support to which the renter is entitled under paragraph (a)(3), and the manner and date by which the renter may submit an offer to purchase the single-family home; (2) during the 30-day period beginning on, but not including, the date the notice described in paragraph (f)(1) is provided, the large institutional investor does not list, market, solicit offers for the purchase of, negotiate for the potential sale of, or accept from any person other than the renter any offer to purchase the single-family home; and (3) if, after the 30-day period described in paragraph (f)(2), the large institutional investor receives a bona fide offer from any person other than the renter that the large institutional investor is prepared to accept and that is less than or equal to a price offered by the renter during the 30-day period described in paragraph (f)(2), then, before accepting such offer, the large institutional investor provides the renter with written notice of all material economic terms of the offer and not less than five business days to elect to purchase the single-family home on terms that match the material economic terms of such offer (before giving effect to any meaningful financial support required under paragraph (a)(3)), and if the renter timely elects to match such terms, the large institutional investor sells the single-family home to the renter on such terms, subject to customary closing conditions applicable to an owner-occupant purchaser.~~

(f) Right of first refusal and first-look period. (1) Before marketing or offering a single-family home for sale to a third party, the large institutional investor shall provide the renter written notice of its intent to sell the single-family home and provide the renter an exclusive period of not less than 30 calendar days after receipt of such notice to submit an offer to purchase the single-family home.

(2) The large institutional investor shall not solicit or accept an offer from a third party during the 30-day period described in paragraph (f)(1). The renter may waive the remainder of such period by written notice.

(3) If the renter timely submits a bona fide written offer during the period described in paragraph (f)(1), and the large institutional investor does not accept such offer, the renter shall have a right of first refusal with respect to a bona fide third-party offer that the large institutional investor is prepared to accept at a purchase price equal to or less than the purchase price offered by the renter. Such right shall continue for 30 days following expiration of the period described in paragraph (f)(1). Upon receipt of such qualifying third-party offer, the large institutional investor shall provide the renter written notice of the material economic terms and not less than five business days to elect to purchase the single-family home on substantially equivalent material economic terms.

(4) Any right provided under this paragraph shall terminate upon the earliest of: (i) the renter's purchase of the single-family home; (ii) the renter's written waiver or rejection of the applicable right; (iii) the renter's failure to exercise the applicable right within the period provided; (iv) 30 days after expiration of the first-look period; or (v) the commencement of a new rental contract with another renter. Following termination of the rights under this paragraph, the large institutional investor may market, renovate, reprice, finance, sell, or otherwise dispose of the single-family home without providing any additional first-look or right-of-first-refusal opportunity to the former renter.

(5) A material change in the condition of the single-family home resulting from repairs, rehabilitation, improvements, casualty, or other events occurring after expiration of the renter's rights under this paragraph shall not revive or create a new first-look period or right of first refusal.

* * * * *

(h) Paragraphs (a)(2) and (f) of this section shall not apply to a sale or other transfer of a single-family home as part of a portfolio, bulk, or other multi-property transaction, provided that the purchaser offers the renter the terms of the renter's existing rental contract and the meaningful financial support and other benefits to which the renter is entitled under the program to boost homeownership.

V. Alternatives to Foreclosure (Proposed § 36.10)

Question 105: Are the specified default-related events appropriate? Should additional events be included?

Section 1001(a)(2)(G) of the Act excepts a purchase undertaken by a mortgage servicer, lender, or other entity with a legal right to a single-family home, for the purpose of loss mitigation or compliance with servicing or investor obligations, solely as a result of a foreclosure, a deed-in-lieu of foreclosure, enforcement of a security interest, or operation of law following borrower default. Proposed § 36.10 tracks that text. NRHC encourages Treasury to recognize that

alternatives to foreclosure can serve the same loss-mitigation purpose while keeping families in their homes. Consequently, in response to Question 105, NRHC urges Treasury to consider treating alternatives to foreclosure, such as lease buybacks in which a homeowner facing default sells the home and remains in it as a renter with the opportunity to repurchase, as acceptable excepted purchases. Such arrangements avoid the displacement and credit consequences of foreclosure and preserve a path back to homeownership, consistent with the purposes of the Act.

VI. Purchases from Another Large Institutional Investor (Proposed § 36.11)

A. Relevant Questions Presented

Question 107: Does proposed § 36.11 appropriately implement section 1001(a)(2)(H) of the Act? Would additional clarifications be beneficial? Does the proposed rule sufficiently clarify that a single-family home purchased in compliance with the Act may be transferred among large institutional investors more than once?

Question 109: Should Treasury require specific documentation showing that the selling large institutional investor owned the home on the date of enactment of the Act or purchased the home in compliance with the Act? Is the date-of-enactment standard sufficiently clear?

Question 110: What records should a selling or purchasing large institutional investor maintain to demonstrate ownership on the date of enactment?

Question 111: What due diligence should a purchasing large institutional investor be expected to perform to determine whether the selling large institutional investor purchased the home in compliance with the Act? Should the final rule permit reliance on seller representations, certifications, covenants, or indemnities? If so, under what circumstances? Should large institutional investors be required to divest single-family homes acquired in reliance on false representations, certifications, covenants, or indemnities?

Section 1001(a)(2)(H) of the Act excepts a purchase from another large institutional investor that owned the home on the date of enactment or purchased it in compliance with the Act. Proposed § 36.11 would implement this exception and would clarify that a compliant home may be transferred among large institutional investors more than once. Treasury asks in *Questions 107* through *111* whether additional clarification would be beneficial, what documentation and due diligence should be expected, and whether purchasers may rely on seller representations, certifications, covenants, or indemnities.

NRHC strongly supports Treasury's confirmation that compliant homes may be transferred among large institutional investors more than once. Two gaps remain, however.

First, as drafted, the exception reaches only purchases from a seller that is itself a large institutional investor. It does not reach purchases from other holders of professionally managed single-family rental portfolios that fall outside the definition, such as passive investors or government entities. These homes are already professionally managed rentals, so their sale to a large institutional investor does not reduce the homes available to individual homeowners.

Leaving this gap would make it harder for passive and other non-LII investors to commit capital to new supply, because their ability to divest later would be limited and uncertain.

Second, the exception will function as intended only if purchasers can rely on it in practice. A buyer cannot independently verify a seller's status or the acquisition history of each individual home, and lenders and insurers will not finance or cover a home that carries penalty exposure based on facts the buyer cannot confirm.

B. NRHC's Recommended Approach

In response to *Question 107*, NRHC urges Treasury to treat a purchase from a seller that, alone or in concert with one or more other entities, holds interests in 350 or more single-family homes the same way whether or not the seller is designated a large institutional investor. This clarifies the drafting, is consistent with the purpose of exception (H), and gives passive and government investors the certainty of an exit that they need to invest in new supply.

In response to *Questions 109* through *111*, NRHC urges Treasury to protect a purchase made in good-faith reliance on written representations or certifications of the seller, or on an optional certification issued by a Treasury-approved third party, and to confirm that a purchaser that so relied will not be required to divest the home if a representation or certification later proves inaccurate. Seller representations, supported by customary covenants and indemnities, are how the market already allocates this risk, and they are available today. Either form of reliance gives the buyer a good-faith basis to proceed, gives lenders and insurers the certainty they need, and preserves the deterrence Congress intended.

C. Proposed Revisions to § 36.11

> A large institutional investor purchases a single-family home from another large institutional investor pursuant to section 1001(a)(2)(H) of the Act if the other large institutional investor either—
>
> (a) owned the single-family home on the date of enactment of the Act; or
>
> (b) purchased the single-family home in compliance with the Act, including in a purchase from a large institutional investor that purchased the home under section 1001(a)(2)(H) of the Act.
>
> (c) A purchase from an entity that alone or in concert with 1 or more other entities holds direct or indirect interests in 350 or more single-family homes but is not a large institutional investor shall be deemed to be a purchase from a large institutional investor for purposes of this section.
>
> (d) A large institutional investor purchasing a single-family home pursuant to section 1001(a)(2)(H) of the Act shall be entitled to rely on a written certification from either the seller or a third party approved by the Department of the Treasury that the seller (i) is a large institutional investor or an entity described in paragraph (c), and (ii) either owned the single-family home on the date of enactment, or purchased the single-family home in compliance with the Act.

VII. Passive Investor and Property Control Rights (Proposed §§ 36.2 and 36.16)

A. Relevant Questions Presented

Question 1: Is the proposed definition appropriate? How could it be modified to better accomplish the statutory purposes while minimizing market disruptions and mitigating negative impacts on consumers and communities? Are there ways in which the definition is either overinclusive or underinclusive?

Question 4: Should the definition include examples of rights that do or do not constitute property control rights? If so, what examples would be appropriate?

Question 5: Should any exclusions be added to the definition? How should such exclusions be framed to avoid creating opportunities for evasion of the statutory requirements?

Question 130: Is prohibiting property control rights appropriate for determining an entity's status as a passive investor? Should alternative standards or criteria apply? Should property control rights be treated differently if they are exercised through a subsidiary or other intermediate entity?

Under the Act, an entity that owns or controls more than 25 percent of any class of equity interests of an entity that owns single-family homes has investment control "unless such entity is a passive investor." Proposed § 36.16 would treat an entity as a passive investor only if (a) none of its directors, officers, employees, or designees serves as a director or officer of the second entity, and (b) it holds no "property control right," defined in proposed § 36.2 as any right "that gives an entity the ability to make, direct, or prevent a second entity's decisions, directly or indirectly, related to the purchase, sale, holding, leasing, renovation, or management of a single-family home." Treasury declined to propose a safe harbor for minority-investor protective rights.

NRHC appreciates Treasury's effort to identify administrable criteria and its recognition that payment rights, information rights, default remedies, and the right to reduce or liquidate an investment are not property control rights. As drafted, however, the definition is broad enough to reach the customary portfolio-level rights that institutional and pension fund investors hold in every other real estate investment. Housing competes with other real estate for that capital. If investing in additional single-family supply means either giving up those customary portfolio-level rights or being treated as an active manager and a large institutional investor, that capital will be directed elsewhere, reducing the funding available for build-to-rent development, rehabilitation, and homeownership programs.

B. NRHC's Recommended Approach

In line with the Act's intent, NRHC urges Treasury to confirm that, where another entity has investment control of a single-family home, an investor qualifies as a passive investor when its rights relate only to portfolio-wide decisions or investor protective rights rather than to the day-to-day or ordinary course purchase, sale, holding, leasing, renovation, or

management of the home. NRHC does not ask Treasury to disregard the statutory definition of "large institutional investor." Rather, this clarification falls within Treasury's own definition of "property control right." Consistent with *Question 4*, the definition should identify illustrative portfolio-wide decisions and investor protective rights, such as approval of investment criteria, business plans and budgets, financing, the selection or removal of a manager, liquidation of assets, or a sale of the holder's interest or of one or more portfolios. Consistent with *Question 5*, the definition should also exclude consent rights that exist because an action would otherwise have adverse tax, legal, or regulatory consequences for the holder. Such protective rights do not give the holder control over the operation of any home. Because the exclusion applies only where another entity has investment control of the home, it does not create an opportunity for evasion: an entity with investment control remains responsible under the Act.

This approach also aligns with the compliance framework the Act establishes through the Department of Housing and Urban Development. Section 1001(c) of the Act directs HUD to administer annual notices from large institutional investors regarding the single-family homes over which they have direct or indirect investment control. A passive investor that holds no property control right, as NRHC proposes to define it, would not be responsible for the administration of the Act with respect to those homes; that responsibility would rest with the responsible large institutional investor that exercises control over the homes.

C. Proposed Revision to § 36.2

> "Property control right" means a right, including a consent, approval, veto, or other right, that gives ~~an~~ a first entity the ability to make, direct, or prevent a second entity's decisions, directly or indirectly, related to the day-to-day or ordinary course purchase, sale, holding, leasing, renovation, or management of a single-family home. Notwithstanding the foregoing, a right is not a property control right if another entity has investment control of the single-family home, and: (i) the first entity's right relates only to portfolio-wide decisions or investor protective rights, including but not limited to the approval of investment criteria, business plans and budgets, financing, the selection or removal of a manager, liquidation of assets, or a sale of the holder's interest in the second entity or of one or more of the second entity's portfolios; or (ii) it is a consent right arising due to otherwise negative tax, legal, or regulatory ramifications for the holder of such consent right.

VIII. Enforcement and Opportunity to Cure (Proposed § 36.17)

A. Relevant Questions Presented

Question 131: Is it appropriate to treat a single purchase involving multiple large institutional investors as one violation for purposes of calculating the maximum civil penalty, as contemplated by proposed § 36.17? Should the maximum civil penalty for a single prohibited purchase be calculated on a per-purchase or per-entity basis?

Section 1001(d)(1) of the Act authorizes Treasury, or the Department of Justice at Treasury's request, to bring an action for a civil penalty of up to the greater of $1 million per violation or

three times the purchase price of the property. Proposed § 36.17 would treat a purchase that violates the Act with respect to more than one large institutional investor as a single violation for purposes of the maximum penalty. Treasury notes that it does not propose investigative or enforcement procedures at this time and may address them in the future.

NRHC supports proposed § 36.17. Given the size of the potential penalties, however, absent a notice-and-cure process, the risk of such penalties will substantially reduce investment in single-family homes for at least two reasons. First, such penalty exposure will cause many investors to view any ambiguity in the statute or the regulations as presenting undue risk. The inherent complexity of the renovate-to-rent and homeownership program requirements will, in light of penalty exposure, result in fewer homes being rehabilitated and fewer renters receiving assistance towards homeownership. Second, investors and builders require a reliable exit strategy that includes potential future sales to large institutional investors. Congress recognized this need by expressly permitting such transactions in section 1001(a)(2)(H). But the practical difficulty of verifying the history of each home in a portfolio transaction means it will be exceedingly difficult for a large institutional investor to establish with certainty that the seller acquired every home in compliance with the Act, as the provision requires. The threat of penalties of $1 million per home for unintentional violations could impede these transactions between large institutional investors and, therefore, disincentivize investors and builders from adding new housing supply. The Act's use of "may bring an action" makes enforcement discretionary and supports Treasury's authority to establish a notice-and-cure process.

B. NRHC's Recommended Approach

In connection with *Question 131*, and because Treasury has indicated that it may address investigative and enforcement procedures in the future, NRHC urges Treasury to establish a mandatory notice-and-cure process before any penalty enforcement action against a large institutional investor. Before bringing an action, Treasury (or the Attorney General, as applicable) should provide written notice of the alleged violation. The large institutional investor should then be permitted to respond in writing either by rebutting the allegations or by agreeing to list the home for sale to a purchaser that is not a large institutional investor (or, if the home is occupied by a renter, to do so after the renter vacates). No enforcement action should be brought if the investor agrees to dispose of the home and does so in compliance with the rule. This approach preserves Treasury's ability to address violations while avoiding disproportionate penalties, places the home with an individual buyer or smaller rental operator, which is the result the Act is designed to produce, and, together with the good-faith reliance safe harbor proposed for § 36.11, creates certainty for market participants while preserving the deterrence Congress intended.

C. Proposed Revision to § 36.17

> (a) A purchase of a single-family home that violates section 1001(b) of the Act with respect to more than one large institutional investor shall be deemed a single violation for purposes of calculating the maximum civil penalty under section 1001(d)(1) of the Act.

(b) In advance of bringing an action to enforce any violation of section 1001(b) of the Act against a large institutional investor, the Secretary of the Treasury, or the Attorney General, as applicable, shall provide written notice to the large institutional investor of the alleged violation.

(c) The large institutional investor may provide a written response either (1) rebutting the allegations; or (2) agreeing to list the single-family home for sale, and to sell it, to a purchaser that is not a large institutional investor within 180 days after receipt of the notice or, if the single-family home is occupied by a renter, within 180 days after the renter vacates the single-family home.

(d) No action shall be brought to enforce a violation of section 1001(b) of the Act if the large institutional investor agrees to dispose of the single-family home under paragraph (c)(2) and subsequently disposes of the single-family home in compliance with this section.

IX. Consumer Credit Transaction (Proposed § 36.7(a)(2))

A. Relevant Questions Presented

Question 61: Is the proposed rule sufficiently clear regarding the requirement that the contracts be considered consumer credit transactions secured by a dwelling or real property? What additional clarification regarding the treatment of contracts in the manner required by the Act would be beneficial?

Question 62: Are additional clarifications needed to promote consistency with other federal or state consumer financial laws or otherwise to reduce burdens on the parties? What types of rent-to-own contracts may constitute "consumer credit transactions secured by a dwelling or real property" under existing federal or state law?

Section 1001(a)(2)(D)(ii) of the Act requires a homeownership program to be subject to a contract between the large institutional investor and the renter "that is considered a consumer credit transaction secured by a dwelling or real property." Proposed § 36.7(a)(2) would restate that requirement. Treasury explains that the provision "is not intended to alter the application of federal or state consumer financial laws" and that the contract instead must "have the treatment specified in section 1001(a)(2)(D) of the Act."

Neither the Act nor the proposal explains what that treatment entails. Most homeownership program contracts are leases paired with a purchase right, not extensions of credit, and disclosures built around finance charges and annual percentage rates cannot be calculated meaningfully for these arrangements. Left undefined, the requirement gives investors no clear compliance standard and gives renters no defined protections. It also creates a risk that a renter, regulator, or court could argue that a contract's compliance with the Act, or the features the Act

itself requires, is evidence that the arrangement is a credit or mortgage transaction under other law.

B. NRHC's Recommended Approach

In response to *Questions 61* and *62*, NRHC recommends that Treasury give the statutory phrase a defined, limited meaning that respects Treasury's stated intent not to alter other consumer financial laws, while ensuring that renters receive meaningful information and protection. NRHC's proposed text is set out below.

Proposed paragraph (a)(2)(i) gives the statutory phrase a defined meaning confined to the Act's exception. It carries out the statute by attaching concrete obligations to that status, set out in paragraphs (a)(2)(ii) through (vii), and does not import an undefined body of law.

Proposed paragraphs (a)(2)(ii) and (iii) implement Treasury's stated intent that the rule is not intended to alter the application of federal or state consumer financial laws. Where a contract is consumer credit under existing law, existing law applies in full, and the exception creates no gap in consumer protection. Where state landlord-tenant or foreclosure law governs a renter's default, it continues to do so.

Proposed paragraphs (a)(2)(iv) through (vi) supply the treatment for the far more common case in which the contract is not otherwise consumer credit. Instead of disclosures built around finance charges and annual percentage rates, the renter receives the information needed to evaluate the program: what it will cost to rent, what the home is likely to cost to buy, how much the investor's support will help, the process for actually buying the home, and what happens if the renter does not buy. The timing, acknowledgment, model-form, and good-faith-error provisions give investors a clear compliance standard and ensure that minor errors do not undo a qualifying purchase. The baseline protections ensure that the consumer-credit status the Act confers carries substance for the renter.

Proposed paragraph (a)(2)(vii) addresses a risk the proposed rule creates on its own. Without it, a renter, regulator, or court could argue that a contract's compliance with the Act, or the features the Act itself requires, is evidence that the arrangement is a credit or mortgage transaction. The "solely because" standard preserves the ordinary analysis of any other credit-like features a contract may contain. It removes only the inference that participation in the federal program itself supplies the basis for recharacterization.

NRHC further encourages Treasury to coordinate with the Consumer Financial Protection Bureau and to confirm in the preamble to the final rule that the features required by section 1001(a)(2)(D), standing alone, do not involve a deferral of debt.

C. Proposed Revision to § 36.7(a)(2)

> § 36.7(a)(2): ~~are considered a consumer credit transaction secured by a dwelling or real property;~~ Consumer credit transaction treatment.

(i) General. Solely for purposes of section 1001(a)(2)(D) of the Act and this section, the contract between the large institutional investor and the renter shall be considered a consumer credit transaction secured by a dwelling or real property, and shall have the treatment specified in paragraphs (a)(2)(ii) through (a)(2)(vii) of this section.

(ii) Other law not altered. Whether the Truth in Lending Act, Regulation Z (12 CFR part 1026), or any other federal or state law governing consumer credit secured by a dwelling or real property applies to the contract shall be determined in accordance with the terms of that law. Nothing in this paragraph (a)(2) expands, limits, or otherwise alters the application of any such law.

(iii) Contracts that are otherwise consumer credit transactions. If the contract constitutes a consumer credit transaction under law described in paragraph (a)(2)(ii) of this section, the large institutional investor shall comply with that law according to its terms, and compliance with that law satisfies paragraph (a)(2)(i) of this section.

(iv) Contracts that are not otherwise consumer credit transactions. If the contract does not constitute a consumer credit transaction under law described in paragraph (a)(2)(ii) of this section, the large institutional investor satisfies paragraph (a)(2)(i) of this section by providing the disclosures required by paragraph (a)(2)(v) of this section and the protections required by paragraph (a)(2)(vi) of this section.

(v) Disclosures.

(A) Content. The large institutional investor shall provide the renter a clear and conspicuous written disclosure that states:

(1) The amount and frequency of rental payments, any scheduled rent adjustments, and any fees or other charges payable by the renter;

(2) A good-faith projection of the total rental payments over the term of the program, assuming no rent adjustments other than those scheduled in the contract;

(3) The term of the homeownership program and the period during which the renter may exercise the right to purchase the single-family home under paragraph (a)(4);

(4) The methodology for determining the fair market value of the single-family home for purposes of setting the purchase price under paragraph (a)(4), including who determines it and when;

(5) The amount or method of calculating the meaningful financial support to be provided by the large institutional investor, and its effect on the purchase price of the single-family home offered to the renter under paragraph (a)(4);

(6) A good-faith illustrative range of the purchase price of the single-family home, based on its fair market value, stated both before and after application of the meaningful

financial support, together with a statement that the actual price will depend on the fair market value at the time of purchase and may fall outside the range;

(7) Whether any portion of the rental payments will be credited toward the purchase price;

(8) The allocation between the parties of responsibility for maintenance, repairs, property taxes, and insurance during the rental period;

(9) The conditions for exercising the right to purchase under paragraph (a)(4), including the execution of a standard purchase and sale agreement providing terms customary for the location of the property, which may include customary contingencies such as for financing and inspection, and a closing subject to customary closing conditions, including the renter's payment of customary closing costs and the delivery by the large institutional investor of a warranty deed reflecting marketable title, subject only to customary permitted exceptions; and

(10) The consequences of the renter's default, of termination of the contract, or of the renter's decision not to purchase, including the disposition of any meaningful financial support.

(B) Timing and delivery. The disclosure shall be provided not later than three business days before the renter signs the contract. It may be provided electronically in accordance with the Electronic Signatures in Global and National Commerce Act. The large institutional investor shall obtain the renter's written or electronic acknowledgment of receipt.

(C) Model form. Use of a model disclosure form published by the Department, if accurately completed, satisfies paragraph (a)(2)(v)(A) of this section.

(D) Good-faith errors. A purchase does not cease to qualify for the exception in section 1001(a)(2)(D) of the Act because of an error in the disclosure if the large institutional investor acted in good faith and corrects the error by written notice to the renter within [30] days after discovering it.

(vi) Baseline protections. A contract described in paragraph (a)(2)(iv) of this section shall:

(A) Require written notice to the renter of any default and a period of not less than 30 days to cure the default before the large institutional investor terminates the contract or the renter's right to purchase, except where a shorter period is required or permitted by applicable law for nonpayment of rent or for health or safety reasons; and

(B) State in writing the disposition of any meaningful financial support if the contract terminates or the renter does not purchase the home.

(vii) No recharacterization. A contract, lease, purchase option, right of first refusal, or other arrangement shall not be considered credit, a credit sale, a residential mortgage transaction, a residential mortgage loan, a mortgage, or a consensual security interest in a dwelling or real property under federal or state law solely because:

(A) It is considered a consumer credit transaction under paragraph (a)(2)(i) of this section; or

(B) It complies with section 1001(a)(2)(D) of the Act or this section, including because it provides meaningful financial support, a right to purchase the dwelling, or a purchase price determined by reference to fair market value.

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NRHC again thanks Treasury for its work on this proposed rule and for the opportunity to comment. NRHC shares the goals of increasing the nation's housing supply, improving the quality of existing homes, and expanding pathways to homeownership. The revisions proposed above are intended to ensure that the exceptions Congress created can be used as Congress intended, in a manner that is clear, administrable, and faithful to the statute. NRHC would welcome the opportunity to discuss these comments with Treasury staff.

Respectfully submitted,



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