



DEPARTMENT OF THE TREASURY

31 CFR Part 36

[TREAS-DO-2026-0529]

RIN 1505-AC96

21st Century ROAD to Housing Act Prohibition on Large Institutional Investor Purchases of Single-Family Homes

AGENCY: Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed rule to carry out the purposes of section 1001 of the 21st Century ROAD to Housing Act (the Act or the ROAD Act). Section 1001 of the ROAD Act prohibits large institutional investors from purchasing single-family homes, subject to certain exceptions. The proposed rule would clarify certain terms relevant to those restrictions, including “large institutional investor”; clarify the application of certain exceptions from the statutory prohibition; and clarify the statutory enforcement mechanism. The proposed rule is intended to provide clarity to market participants and other stakeholders on the application of the statute before the effective date of the ROAD Act.

DATES: Comments on this notice of proposed rulemaking must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal Government eRulemaking portal at <https://www.regulations.gov>.
- *Mail:* Send to U.S. Department of the Treasury, Attention: Office of Capital Markets, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Given potential delays in the receipt of comments by mail, we strongly encourage all comments to be submitted via <https://www.regulations.gov>. All comments should be captioned “Restrictions on Large Institutional Investor Purchases of Single-Family Homes.” Please include your name, organizational affiliation, address, email address, and telephone number in your comment. In general, all comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: William Hicks, Office of Domestic Finance, 202-622-0148; Eric Froman, Office of the General Counsel, 202-622-1942; or OGC_ROADAct@Treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Overview

A. Statutory Background and Authority

Section 1001 of the ROAD Act,¹ enacted on July 11, 2026, is intended to promote homeownership opportunities for American families by prohibiting purchases of single-family homes by large institutional investors,² subject to specified “excepted purchases.” The statute defines “excepted purchase” to include purchases made pursuant to a build-to-rent program, renovate-to-rent program, homeownership program, or program to boost homeownership, among others.³ In appropriate circumstances, these excepted activities can support or increase the nation’s housing supply without reducing the availability of single-family homes for families and other owner-occupants.

The ROAD Act authorizes Treasury, in consultation with the Secretary of Housing and Urban Development, the Director of the Federal Housing Finance Agency, and the Chair of the

¹ 42 U.S.C. 19521.

² These and other terms are defined in section 1001(a) of the ROAD Act.

³ See Section 1001(a)(2) of the ROAD Act

Securities and Exchange Commission, to issue regulations to carry out the purposes of section 1001, including regulations to “(i) minimize market disruptions upon identifying a risk of material negative impact on the housing market, including an impact on the ability of market participants to dispose of single-family homes in an orderly fashion; and (ii) mitigate, to the extent possible, negative impacts on consumers and communities.”⁴ Treasury’s regulations may not “amend the definitions” of certain terms that are defined in the statute.⁵

The statute’s requirements and prohibitions take effect on the date that is 180 days after the date of enactment of the Act (i.e., on January 7, 2027).

B. Purpose of the Proposed Rule

Treasury is issuing this proposed rule in order to promote clarity for market participants and other stakeholders regarding the restrictions in section 1001 of the ROAD Act. Treasury may subsequently engage in additional rulemakings regarding other aspects of the statute.

This proposed rule is intended to clarify the meaning and application of certain terms that are used but not defined in the Act. Specifically, the proposed rule clarifies terms used in the statutory definitions of “excepted purchase” and “large institutional investor”: “program,” “build-to-rent program,” “renovate-to-rent program,” “homeownership program,” “program to boost homeownership,” “engaged in the business of,” “passive investor,” “purchase price of the single-family home,” and “structural or core system.” Treasury also proposes to clarify the scope of excepted purchases made pursuant to sections 1001(a)(2)(F), (G), and (H) of the Act, which relate to certain purchases in connection with the satisfaction of debts previously contracted; certain purchases for the purpose of loss mitigation or compliance with servicing or investor obligations; and certain purchases from another large institutional investor. Finally, Treasury proposes to clarify the calculation of the maximum civil penalty for a purchase made in violation of the Act by more than one large institutional investor.

⁴ *Id.* at section 1001(b)(4)(A).

⁵ *Id.* at section 1001(b)(4)(B).

The proposed rule is intended to assist market participants and other stakeholders in determining whether particular acquisition structures, contractual arrangements, and purchase programs are consistent with the ROAD Act.⁶

C. Phased Rulemaking Approach

The purchase prohibition in section 1001 of the ROAD Act becomes effective 180 days after enactment.⁷ Given this short implementation period and the need for market participants to make decisions regarding homebuilding, acquisitions, ownership structures, investment arrangements, and compliance systems, Treasury currently intends to take a phased rulemaking approach.

This proposed rule is the first phase, focusing on issues that Treasury believes would be beneficial to address as soon as possible to provide clarity and minimize market disruptions.

Treasury expects to consider engaging in future rulemakings to address other aspects of section 1001 of the ROAD Act, such as other statutory excepted-purchase categories, compliance procedures, reporting and recordkeeping, and enforcement actions.

D. Overview of the Proposed Rule

Following are brief summaries of the provisions of the proposed rule. For further explanation, see the discussion in section II below.

Proposed § 36.1 sets forth the authority, purpose, and scope of Part 36.

Proposed § 36.2 defines certain key terms for use in Part 36. Proposed § 36.2 defines “property control right” to mean a right, including a consent, approval, veto, or other 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. As discussed below, this term is relevant within the proposed definition of “passive

⁶ Section 1001(c)(8) of the Act requires a large institutional investor to submit an annual notice to the Department of Housing and Urban Development (HUD) with certain information about single-family homes over which the large institutional investor has direct or indirect investment control. HUD will prescribe the form and manner of that notice, which this proposed rule does not address.

⁷ *Id.* at section 1001(f)(1).

investor.” Proposed § 36.2 also defines “purchase price of the property” and “purchase price of the single-family home.” These definitions are intended to distinguish the total amount paid to purchase a property, including the land on which the single-family home is situated, from the portion of that amount attributable to the structure for purposes of applying the renovate-to-rent exception. Proposed § 36.2 also defines “structural or core system,” based on the Department of Housing and Urban Development’s (HUD’s) residential building-code comparison framework for identifying systems or areas that affect structural integrity, habitability, life safety, or major building systems.

Proposed § 36.3 would define “program” for purposes of the statutory definition of “excepted purchase,” which refers to four categories of program-based excepted purchases: build-to-rent programs, renovate-to-rent programs, homeownership programs, and programs to boost homeownership. Under the proposal, a program would mean a set of written policies or written procedures that are adopted before the purchase of single-family homes pursuant to such program and are reasonably designed and implemented to ensure that all purchases of single-family homes pursuant to the program satisfy the applicable requirements of the Act, Part 36, and the program.

Proposed § 36.5 would clarify when a build-to-rent program meets the statutory requirements. Under the proposed rule, a build-to-rent program is a program pursuant to which purchased single-family homes have not been occupied by an owner-occupant before being purchased, are purchased within 18 months of the single-family home receiving its certificate of occupancy, and, after the purchase, are first occupied by renters.

Proposed § 36.6 would clarify when a renovate-to-rent program meets the statutory requirements. Under the proposal, a renovate-to-rent program is a program pursuant to which a large institutional investor substantially rehabilitates single-family homes that do not meet structural or core system elements of local building codes at the time of purchase, resolves all material deficiencies, and makes 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.

Proposed § 36.6 also would provide a non-exclusive safe harbor for the substantial-rehabilitation requirement, if the large institutional investor makes improvements in an aggregate amount of not less than 10 percent of the purchase price of the single-family home on structural or core system elements and resolves all material deficiencies in such elements.

Proposed § 36.7 would clarify when a homeownership program meets the statutory requirements for that program. Under the proposal, a homeownership program would be a program pursuant to which a large institutional investor enters into contracts with renters to rent single-family homes purchased by the large institutional investor, where those contracts include certain terms relating to rental payments and fees and provide for specified consumer-credit treatment, positive reporting of rental payments, meaningful financial support for the purchase of the single-family home, the renter's right to purchase the single-family home, and the continuation of the homeownership program's terms in the event the home is sold to another large institutional investor. Proposed § 36.7 would also provide a non-exclusive safe harbor for determining whether a large institutional investor has provided meaningful financial support for the purchase of the single-family home.

Proposed § 36.8 would clarify when a program to boost homeownership meets the statutory requirements. Under the proposal, such a program would be a program pursuant to which a large institutional investor enters into contracts with renters to rent single-family homes purchased by the large institutional investor, where those contracts include certain terms relating to positive reporting of rental payments, a right of first refusal and 30-day first-look period, meaningful financial support for the renter's purchase of a single-family home, and the continuation of the program's terms in the event the home is sold to another large institutional investor. Proposed § 36.8 would also provide a non-exclusive safe harbor for determining whether a large institutional investor has provided meaningful financial support, a right of first refusal, and 30-day first-look period.

Proposed § 36.9 would clarify when a large institutional investor purchases a single-family home under the statutory exception for the satisfaction of certain debts previously contracted. Under the proposed rule, this category would include certain direct purchases by a large institutional investor in connection with the satisfaction of debts previously contracted by that large institutional investor, and certain indirect purchases by a large institutional investor from another person or entity that purchased the single-family home in connection with the satisfaction of debts previously contracted.

Proposed § 36.10 would clarify when a large institutional investor purchases a single-family home in accordance with the statutory exception for purchases for the purpose of loss mitigation or compliance with servicing or investor obligations. Under the proposed rule, this category would apply where the purchase is undertaken by a mortgage servicer, lender, or other entity that has a legal right to a single-family home for the purpose of loss mitigation or compliance with servicing or investor obligations, and not as a long-term investment strategy, and is solely as a result of specified default-related events. The proposed rule would also address purchases directly (by such a mortgage servicer, lender, or other entity) or indirectly (from such a mortgage servicer, lender, or other entity).

Proposed § 36.11 would clarify when a large institutional investor purchases a single-family home from another large institutional investor pursuant to section 1001(a)(2)(H) of the Act. Under the proposal, such a purchase would be an excepted purchase if the selling large institutional investor either owned the single-family home on the date of enactment of the Act or purchased the single-family home in compliance with the Act, including in a purchase from another large institutional investor under section 1001(a)(2)(H).

Proposed § 36.15 would clarify when an entity is engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes for purposes of section 1001(a)(3)(A)(i)(I) of the Act. Under the proposal, an entity would fall within this scope if it invests, directly or indirectly, in, owns, rents, manages, or holds single-family homes

for the purpose, in whole or in part, of receiving investment gains, rental income, management fees, or any other type of income or financial gain. Proposed § 36.15 would also clarify that an entity is not engaged in that business if the entity, directly or indirectly, invests in, owns, rents, manages, or holds single-family homes solely on a temporary and incidental basis in furtherance of a different bona fide business, only to the extent reasonably necessary for the conduct of such other bona fide business, and not as a regular or continuing investment strategy or portfolio management activity.

Proposed § 36.16 would define “passive investor” for purposes of section 1001(a)(3)(B)(iv) of the Act. Under the proposed rule, an entity would be a passive investor in a second entity only if it satisfies certain conditions relating to director and management overlap and property control rights.

Proposed § 36.17 would clarify enforcement of the statutory restrictions under section 1001(d) of the Act, which provides for civil penalties of up to the greater of \$1 million or three times the purchase price of the property. Under the proposed rule, a purchase of a single-family home that violates section 1001(b) of the Act with respect to more than one large institutional investor would be deemed a single violation for purposes of calculating the maximum civil penalty under section 1001(d)(1) of the Act. This provision is intended to prevent any single purchase of a single-family home from resulting in total penalties exceeding the statutory limit due to more than one large institutional investor being involved in the purchase.

Finally, proposed § 36.18 includes a severability provision.

II. Section-by-Section Discussion

A. Authority, Purpose, and Scope (Proposed § 36.1)

Proposed § 36.1 sets forth the authority, purpose, and scope of proposed Part 36.

The authority for Part 36 is section 1001 of the Act. Paragraph (b) notes that the Act authorizes Treasury to issue regulations to carry out the purposes of section 1001 of the Act.

B. Definitions (Proposed § 36.2)

1. Act or ROAD Act

The proposed rule defines “Act” or “ROAD Act” to mean the 21st Century ROAD to Housing Act, as amended from time to time.

2. Property Control Rights

The proposed rule defines “property control right” as “a right, including a consent, approval, veto, or other 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.” This term is used in proposed § 36.16, which relates to passive investors for purposes of section 1001(a)(3)(B)(iv) of the Act, as discussed in section II.L below.

The proposed definition is intended to identify rights that provide an investor with an ability to control an entity’s decisions regarding single-family homes it owns. An investor may have such authority, and therefore not be a passive investor, even if the investor does not own a majority of the entity’s voting interests and does not have formal management authority over the entity.

The proposed formulation is intended to encompass the variety of rights that arise under investment agreements, limited partnership agreements, and other relevant structures. An investor may have the ability to make a decision itself, to direct the second entity or its manager to make or not make a decision, or to prevent a decision through a consent, approval, veto, or other right. Such rights appear to be inconsistent with passive investor status. The proposed definition focuses on rights related to a second entity’s decisions to purchase, sell, hold, lease, renovate, or manage a single-family home. These decisions are central to the statutory framework because they affect whether and how a large institutional investor acquires, operates, retains, improves, or disposes of single-family homes.

Under the proposed rule, the definition would focus on rights related to single-family homes; as a result, investor rights unrelated to single-family homes would not generally be considered a property control right. Similarly, an investor's right to reduce or liquidate its investment would not generally be considered a property control right, even if it indirectly results in the sale of single-family homes by the second entity. Commercial contracts include various rights that protect the parties' interests, such as payment rights, default remedies, information rights, audit rights, inspection rights, and standard covenants, that would not generally be considered property control rights under the proposed definition. This approach is intended to avoid disrupting an investor's portfolio-level control of its investments.

The proposed definition focuses on the effect of the right rather than the label assigned to the right. A right may constitute a property control right even if it is described as a consent right, approval right, veto right, consultation right, covenant, restriction, or similar arrangement. The proposed definition does not set forth an exhaustive list of types of relevant rights. Contractual arrangements vary widely, and a fixed list would be both overinclusive and underinclusive.

Treasury is not proposing a safe harbor for minority-investor protective rights, because such arrangements may provide an entity with control over a second entity's purchases, sales, holdings, leases, renovations, or management of single-family homes.

Treasury invites comments on all aspects of the definition of "property control right." In particular, Treasury seeks comment on the following aspects of the proposed rule:

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 2: Is it appropriate for the definition of "property control right" to focus on an entity's decisions to purchase, sell, hold, lease, renovate, or manage a single-family home?

Question 3: Are the terms “make,” “direct,” and “prevent” in the proposed definition sufficiently clear?

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 6: Should rights that become exercisable only after default, or a similar event, be treated differently from rights exercisable in the ordinary course of business?

Question 7: Should rights held by lenders, mortgage servicers, vendors, or similar entities be treated differently from rights held by investors?

3. Purchase Price of the Property

Treasury is proposing to define “purchase price of the property” to mean “the total amount paid by an entity to purchase a single-family home, including the amount paid for the land on which the single-family home is situated.” This definition is used (i) to calculate the “purchase price of the single-family home,” (ii) in the proposed rule’s provisions regarding homeownership programs and programs to boost homeownership, and (iii) to calculate the statutory limit on civil penalties in enforcement actions.

Purchases of single-family homes generally include both the residential structure and the land on which the structure is situated. Accordingly, the statutory exception for renovate-to-rent programs requires “improvements in an aggregate dollar amount of not less than 15 percent of the purchase price of the single-family home,”⁸ while the statutory limit on civil penalties is based on “the purchase price of the property involved.”⁹ Treasury believes it is appropriate to distinguish between these statutory terms as contemplated by the proposed definition, which distinguishes between the total amount paid in a real estate transaction and the portion of that

⁸ *Id.* at section 1001(a)(2)(C)(ii).

⁹ *Id.* at section 1001(d)(1).

amount attributable to the single-family home itself. Treasury preliminarily believes the Act's reference to "purchase price of the property" refers to the amount paid for both the single-family-home structure and the associated land.

The proposed definition of "purchase price of the property" refers to the amount paid by the purchaser, which provides an objective and administrable figure.

Treasury invites comments on all aspects of the definition of "purchase price of the property." In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 8: Is the proposed definition of "purchase price of the property" appropriate and clear? How could it be modified to better accomplish the statutory purposes while minimizing market disruptions and mitigating negative impacts on consumers and communities? Should the rule distinguish between "purchase price of the property" and "purchase price of the single-family home"?

Question 9: Should the definition be modified to address whether the "total amount paid" includes factors such as non-cash consideration, assumed liabilities, closing costs, transaction costs, seller credits, or other adjustments? If so, how? How should the definition account for the full scope of the definition of "purchase" including "mergers, acquisitions, construction, foreclosures, or bulk purchases, whether or not for cash consideration"?

Question 10: Should the definition be modified to provide different rules for portfolio purchases, bulk purchases, purchases involving multiple structures, or purchases involving a single contract price for multiple single-family homes?

Question 11: Is it practicable to calculate the purchase price of the property, as defined in this proposed rule, in an objective and consistent manner? What modifications to the definition could be made to increase its administrability and consistent application?

4. Purchase Price of the Single-Family Home

Treasury is proposing to define "purchase price of the single-family home" to mean "the portion of the purchase price of the property attributable to the value of the structure, as

calculated by subtracting the tax-assessed value of the land at the time of the purchase on which the single-family home is situated from the purchase price of the property.” This term is used in the exception for renovate-to-rent programs.

This definition is intended to provide a clear and simple method for calculating the purchase price of a single-family home. As noted above in the context of the definition of “purchase price of the property,” Treasury believes it is appropriate, in the purchase of a single-family home, to distinguish between the purchase price of the structure and the total amount paid for the structure and land together. Further, the Act’s definition of “single-family home” refers to “a structure,” so it is appropriate for the “purchase price of the single-family home” to mean the purchase price of the “structure,” rather than the value of associated land. In addition, the renovate-to-rent exception is focused on substantial rehabilitation of single-family homes that do not meet structural or core system elements of local building codes, and a denominator focused on the value of the structure is better aligned with that statutory construct than a denominator that includes the value of the purchased land.

The proposed definition, which subtracts the tax-assessed value of land at the time of purchase, is intended to provide an administrable method for determining the portion of the purchase price attributable to the structure. Tax-assessed land values generally provide a transaction-specific, location-specific measure that may be more reliable and administrable than other valuation methods, such as appraisals.

Treasury recognizes, however, that tax assessment practices vary across jurisdictions. In some jurisdictions, land and improvement values may be separately assessed. In others, the relevant assessed values may not be current, may be subject to assessment limitations, may be under appeal, or may not be available at the time of purchase. Treasury alternatively considered deducting from the purchase price of the property an amount that is proportionate to the amount of the total tax-assessed value attributable to land, but that approach creates the risk of overly complicating the calculation and creating more uncertainty than the proposed definition.

Treasury invites comments on all aspects of the definition of “purchase price of the single-family home.” In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 12: Is the proposed definition of “purchase price of the single-family home” appropriate and clear? How could it be modified to better accomplish the statutory purposes while minimizing market disruptions and mitigating negative impacts on consumers and communities?

Question 13: Is it appropriate to define the purchase price of the single-family home by subtracting the tax-assessed value of the land from the purchase price of the property? What alternative calculation methodologies would be more appropriate, more administrable, or more reliable? Should the definition instead use another method, such as an appraisal, an assessed improvement value, a purchase agreement allocation, an insurance replacement-cost estimate, or another measure?

Question 14: Should the definition provide for an alternative calculation method in cases where the tax-assessed value of land is unavailable, not separately stated, not current, under appeal, or otherwise unreliable?

Question 15: Should the final rule address circumstances in which the tax-assessed value of land equals or exceeds the purchase price of the property?

5. Structural or Core System

a. Overview of Definition

Proposed § 36.2 would define “structural or core system” to mean “systems or areas of a single-family home that substantially affect structural integrity, habitability, life safety, or the functioning of major building systems, which may include fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, and electrical.” This definition is intended to clarify the scope of the renovate-to-rent exception in section 1001(a)(2)(C) of the Act, which applies to

purchases made pursuant to a renovate-to-rent program that substantially rehabilitates single-family homes “that do not meet structural or core system elements of local building codes” and makes improvements in an aggregate dollar amount of not less than 15 percent of the purchase price of the single-family home.¹⁰

The proposed definition is intended, for purposes of the Act’s renovate-to-rent exception, to clarify the types of building-code deficiencies that qualify as structural or core system elements and distinguish these improvements from cosmetic improvements, ordinary turnover work, routine maintenance, or discretionary upgrades. A deficiency would not qualify merely because the home is outdated, requires routine repairs, could benefit from modernization, or fails to satisfy a building-code requirement not related to structural integrity, habitability, life safety, or the functioning of major building systems. For example, ordinary painting, flooring replacement, landscaping, appliance upgrades, cabinet or countertop replacement, or other cosmetic or marketability improvements generally would not involve structural or core systems.

Treasury recognizes that renovation projects may include both qualifying and non-qualifying work under this definition. A project that involves substantial repairs to structural or core systems as well as incidental related demolition, finish work, restoration, or other work necessary to complete the rehabilitation would also qualify. Cosmetic work or other work unrelated to repairs to structural or core systems would not fall within the proposed definition.

A large institutional investor seeking to rely on the renovate-to-rent exception would need to identify deficiencies that result in the single-family home not meeting structural or core system elements (as defined in the proposed rule) of applicable local building codes. Notably, this definition and the related excepted purchase standard do not replace or displace applicable local building codes.

b. Use of HUD Residential Building-Code Comparison Framework

¹⁰ Section 1001(a)(2)(C) of the ROAD Act.

The proposed definition is based on HUD's residential building-code comparison framework under 24 CFR 200.926 and 200.926a. Treasury believes that incorporating existing standards from HUD will minimize administrative burdens and potential disruptions to existing construction practices. HUD's regulations provide that, when evaluating local building codes, HUD compares those codes to the areas listed in 24 CFR 200.926a. The listed major areas include fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, and electrical.

Treasury is not proposing to incorporate HUD's minimum property standards wholesale or to make eligibility for the renovate-to-rent exception dependent on whether a property satisfies standards applicable to HUD mortgage insurance or other HUD programs. Rather, as reflected in the proposed definition, Treasury proposes to use the categories in HUD's framework as a reference point for identifying the types of local building-code elements that should be treated as structural or core systems for purposes of the renovate-to-rent category of excepted purchases under the Act.

Treasury believes this approach would promote consistency across jurisdictions nationwide. Local codes vary in terminology, organization, and scope. The proposed definition would provide a federal reference for the relevant categories of code requirements.

The proposed definition is intended to exclude single-family homes that have only cosmetic deficiencies or need only routine repairs rather than repairs to structural or core system deficiencies. For example, ordinary painting, flooring replacement, landscaping, appliance upgrades, cabinet replacement, countertop replacement, or other cosmetic or marketability improvements generally would not, standing alone, involve structural or core systems unless the work is necessary to address a covered local building-code deficiency relating to structural integrity, habitability, life safety, or a major building system.

At the same time, Treasury recognizes that renovation projects may include both qualifying and non-qualifying work. A project may involve repairs to structural or core systems

as well as related demolition, finish work, restoration, or other work necessary to complete the rehabilitation, which would also qualify. Purely cosmetic work or other work unrelated to repairs to structural or core systems would not be considered within scope for purposes of this definition.

Treasury invites comments on all aspects of the “structural or core system” definition. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 16: Is the proposed definition of “structural or core system” appropriate and clear? How could it be modified to better accomplish the statutory purposes while minimizing market disruptions and mitigating negative impacts on consumers and communities? Is the proposed definition appropriately tailored to identify areas that affect structural integrity, habitability, life safety, or the functioning of major building systems?

Question 17: Is incorporating the categories from HUD’s residential building-code comparison framework appropriate for identifying structural or core systems?

Question 18: Should any additional categories of structural or core systems be added to the definition? Should any proposed categories be removed?

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

C. Program (Proposed § 36.3)

1. Overview of “Program”

Proposed § 36.3 would define “program” to mean a set of written policies or written procedures that are (i) adopted before the purchase of single-family homes pursuant to such program; and (ii) reasonably designed and implemented to ensure that all purchases of single-family homes pursuant to the program satisfy the applicable requirements of the Act, Part 36, and the program.

The Act uses the term “program” in the context of excepted purchases under build-to-rent programs, renovate-to-rent programs, homeownership programs, and programs to boost homeownership. The proposed definition of “program” would apply to each of these categories and reflects Treasury’s view of the best interpretation of the statutory term, given the context in the Act and the need for a clear and objective standard.

Under the proposed definition, the relevant program must be tailored to the excepted-purchase category on which the large institutional investor intends to rely. For example, a build-to-rent program should be reasonably designed and implemented to ensure that all purchases satisfy the new-construction and rental property requirements; a renovate-to-rent program should be reasonably designed to ensure that all purchases satisfy applicable rehabilitation, local building-code deficiency, structural or core system, and improvement requirements; a homeownership program should be reasonably designed to ensure that all purchases satisfy the rental payment, consumer-credit treatment, positive rent reporting, meaningful financial support, purchase-right, and transfer-related requirements; and a program to boost homeownership should be reasonably designed to ensure that all purchases satisfy the positive rent reporting, right of first refusal and first-look, meaningful financial support, and transfer-related requirements. Therefore, the proposed definition of “program” would apply to proposed §§ 36.5, 36.6, 36.7, and 36.8, which address the Act’s program-based excepted-purchase categories.

2. Written Policies or Written Procedures

The proposed definition would require a program to be codified in “written policies or written procedures.” Treasury believes that documentation of policies and procedures is necessary to distinguish a program from an ad hoc or post hoc characterization of purchases. For the same reason, Treasury proposes to require that a program be “adopted before the purchase of single-family homes pursuant to such program”: a purchase cannot be made “pursuant to” a program, as the statute requires,¹¹ if the program does not yet exist at the time of the purchase.

¹¹ See Sections 1001(a)(2)(B), (C), (D), (E) of the ROAD Act.

The proposed definition does not prescribe a specific form for a program's written policies and procedures. Large institutional investors vary in size, structure, geography, property type, business model, and acquisition strategy. The proposed definition is intended to provide an appropriate degree of flexibility to avoid undue burdens.

While the proposed definition does not specify in detail the content of the required policies and procedures, Treasury generally expects that such documentation would include a combination of eligibility criteria, purchase criteria, property criteria, renter criteria, rehabilitation criteria, sales criteria, approval standards, compliance standards, review workflows, transaction checklists, approval processes, escalation procedures, certifications, training materials, monitoring procedures, and audit processes.

3. Reasonably Designed and Implemented

The proposed definition would require that the program be reasonably designed and implemented to ensure that all purchases of single-family homes pursuant to the program satisfy the applicable requirements of the Act, Part 36, and the program.

A reasonably designed program should be tailored to the requirements under the Act and part 36 for the relevant category of excepted purchase. The program should include policies and procedures sufficient to identify whether a purchase is eligible, document the basis for eligibility, and prevent purchases that do not satisfy the applicable requirements from being treated and reported as excepted purchases.

Treasury expects that large institutional investors seeking to rely on program-based excepted purchases would maintain records sufficient to demonstrate that the program was implemented and that relevant purchases were made pursuant to the program. The specific records may vary depending on the program and purchase.

This definition is intended to require meaningful compliance controls without disqualifying all purchases made pursuant to a program due to isolated, good-faith failures in the effectiveness of that program with respect to other purchases. This approach is intended to

preserve the availability of the statutory exceptions and to avoid unnecessary disruption to housing supply, home building, and capital formation.

Treasury invites comments on all aspects of the “program” definition. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 20: Is the definition of program appropriate and clear? If not, what changes should be made? How could it be modified to better accomplish the statutory purposes while minimizing market disruptions and mitigating negative impacts on consumers and communities?

Question 21: Should Treasury adopt specific minimum program components, or is a flexible standard preferable? For example, minimum program components could include governance, audit, training, and other requirements. Should the Act’s different program-based excepted-purchase categories have different required program components?

Question 22: How should Treasury consider the extent to which failures in the effectiveness of a program or in its implementation indicate that the program was not “reasonably designed and implemented”?

Question 23: Should a one-time or small-scale initiative qualify as a program if it includes written policies or written procedures? Does the proposed definition create other risks of evasion that should be mitigated in the rule?

Question 24: Should large institutional investors be required to certify or otherwise affirm that each purchase of a single-family home pursuant to a program satisfies the requirements under the Act and Part 36?

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

1. Overview

Proposed § 36.5 would clarify when a build-to-rent program meets the requirements for an excepted purchase under section 1001(a)(2)(B) of the Act. That statutory provision states that a purchase of a single-family home is an excepted purchase if it is made “pursuant to a build-to-rent program where the large institutional investor purchases, constructs, or constructs and

retains newly constructed single-family homes to be managed as a rental property, 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.”

As proposed, a build-to-rent program is a program (as defined in proposed § 36.3) pursuant to which purchased single-family homes (i) have not been occupied by an owner-occupant before being purchased, (ii) are purchased within 18 months of the single-family home receiving its certificate of occupancy (or equivalent); and (iii) are, after the purchase, first occupied by renters, 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.¹² The proposed rule interprets “newly constructed” as excluding homes previously occupied by an owner-occupant and “to be managed as a rental property” as requiring initial rental use, and proposes the 18-month certificate-of-occupancy criterion as an administrable line for applying those statutory standards.

The proposed rule is intended to provide an administrable means for investors to make build-to-rent purchases that maintain liquidity in the build-to-rent market and do not reduce the availability of owner-occupant housing stock.

Treasury invites comments on all aspects of the build-to-rent program definition. In particular, Treasury seeks comment on the following aspects of the proposed rule:

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 26: Are there any additional conditions that should be included?

Question 27: Should the final rule adopt one of the alternative interpretations described below?

¹² Treasury interprets the latter part of this provision, relating to different types of “communities,” as clarifying that qualifying single-family home purchases are not limited to those in a particular kind of community, including if that community includes homes other than single-family homes.

The proposal focuses on objective indicators that a home was added to rental supply through a build-to-rent arrangement rather than acquired from existing housing stock. If a purchase of a single-family home does not meet the conditions in the proposed rule, the purchase would not be pursuant to a build-to-rent program and would not qualify for that category of excepted purchase.

2. Newly Constructed

The statutory build-to-rent exception applies to “newly constructed”¹³ single-family homes. Proposed § 36.5(a) and (b) would implement this concept by requiring (i) that the home has not previously been occupied by an owner-occupant and (ii) is purchased within 18 months of the home receiving its certificate of occupancy (or equivalent).

A purchase of a home that has previously been occupied by an owner-occupant would not qualify as a purchase pursuant to a build-to-rent program. This distinction is important because the build-to-rent exception is directed at homes that are newly constructed for rental use, rather than homes that have already been part of the existing stock of owner-occupied housing. The proposed requirement would apply to occupancy before the single-family home was purchased.

Treasury preliminarily believes that a certificate of occupancy provides a clear, administrable standard for when a single-family home has been constructed. The 18-month standard in the proposed provision is intended to be an appropriate length of time for a single-family home to have been constructed before it may no longer be considered newly constructed in accordance with the Act.

Treasury has alternatively considered interpreting the statutory term “newly constructed” to be time-bound, such as covering homes constructed after enactment of the ROAD Act or homes that received their certificate of occupancy within a certain number of years. Treasury preliminarily believes that the approach in the proposed rule more appropriately construes the

¹³ See Section 1001(a)(2)(B) of the ROAD Act.

term “newly constructed” and covers the kinds of homes that are intended to be eligible for purchase by large institutional investors under the ROAD Act.

Treasury also considered an alternative under which a purchase of a single-family home could be made pursuant to a build-to-rent program if the single-family home was originally constructed to be rented and has remained rented. In effect, this would include existing build-to-rent properties in the scope of the build-to-rent program excepted purchase. However, interpreting “newly constructed single-family home” to include older homes that have been renter-occupied for potentially decades appears to be inconsistent with the statutory text and purpose. Because “newly constructed” and “originally constructed” are not equivalent, such an interpretation would effectively render “newly constructed” meaningless. In addition, focusing the exemption on single-family homes that are not pre-existing is consistent with the ROAD Act’s goal to increase overall housing supply.

3. Managed as a Rental Property

Proposed § 36.5(c) would require that a single-family home is, after the purchase by a large institutional investor, first occupied by renters. This requirement is intended to ensure that purchases pursuant to a build-to-rent program meet the statutory requirement that they be single-family homes purchased “to be managed as a rental property”¹⁴ – not homes purchased for resale, land banking, speculative appreciation, or other purposes. To effectuate this statutory language, the proposal would require more than a general intention to rent the single-family home. Treasury preliminarily believes that the strongest, most objective evidence that a large institutional investor purchased the single-family home “to be managed as a rental property” is that the large institutional investor actually rents the home. At the same time, proposed § 36.5 would not prohibit the large institutional investor from selling the home.

Treasury invites comments on all aspects of the “build-to-rent program” provision. In particular, Treasury seeks comment on the following aspects of the proposed rule:

¹⁴ See Section 1001(a)(2)(B) of the ROAD Act.

Question 28: Is this provision appropriate and clear? If not, what changes should be made? How could it be modified to better accomplish the statutory purposes while minimizing market disruptions and mitigating negative impacts on consumers and communities? Is it appropriately tailored to identify purchases made pursuant to build-to-rent programs?

Question 29: Should any additional conditions or requirements be added to the proposed interpretation of “build-to-rent program”?

Question 30: Should the final rule adopt one of the alternative interpretations described above?

Question 31: Should the rules implement the statutory references to communities in a different manner than as proposed?

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 33: Should the final rule include additional or alternative indicators of new construction, such as the date of certificate of occupancy, date of substantial completion, date of construction permit issuance, or date of first utility activation? Is Treasury’s interpretation that a home is considered a single-family home only once it has received a certificate of occupancy (or equivalent) appropriate? Is there a different threshold that Treasury should use? Are there any jurisdictions where reference to “certificate of occupancy” is not appropriate or unworkable, and if so, what would be a suitable replacement in the rule?

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 35: Is the requirement that a single-family home be first occupied by a renter an appropriate and administrable indicator of the intended use of the single-family home?

Question 36: Should the final rule specify a minimum period for which a single-family home must be rented after the purchase to satisfy this requirement?

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?

4. Documentation of Build-to-Rent Program Eligibility

Treasury expects that a large institutional investor seeking to rely on the build-to-rent exception would maintain documentation sufficient to demonstrate that the purchase was made pursuant to a build-to-rent program and that the purchase of the single-family home satisfied the requirements of proposed § 36.5, including that the single-family home was purchased within 18 months of the certificate of occupancy and never previously owner-occupied. Relevant documentation may include program policies and procedures, acquisition approvals or checklists, purchase agreements, certificates of occupancy or construction records, records showing that the home was not previously occupied by an owner-occupant, leasing records demonstrating that the first occupant was a renter, and other transaction records showing that the purchase was reviewed and approved under the build-to-rent program.

Appropriate documentation may vary depending on the property, jurisdiction, and program structure. Treasury is not proposing specific documentation requirements in proposed § 36.5, but expects that documentation will be important for determining whether a purchase was made pursuant to a build-to-rent program and whether the requirements of the exception were satisfied.

Treasury invites comments on documentation related to the build-to-rent exception. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 38: What records should a large institutional investor be expected to maintain to demonstrate that a home was purchased pursuant to a build-to-rent program? Should Treasury require specific documentation – such as certificate of occupancy, title records, or

contracts with a builder or developer – to establish that a single-family home was newly constructed? What records should a large institutional investor maintain to demonstrate that a home was rented after being purchased?

E. Renovate-to-Rent Program (Proposed § 36.6)

1. Overview

Proposed § 36.6 would clarify when a renovate-to-rent program meets the requirements for an excepted purchase under section 1001(a)(2)(C) of the Act. That statutory provision states that a purchase of a single-family home is an excepted purchase if it is 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.”

As proposed, a renovate-to-rent program is a program (as defined in proposed § 36.3) pursuant to which the large institutional investor (i) 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; and (ii) makes improvements, including those made to resolve such deficiencies, 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.

Proposed § 36.6 largely reflects the text of the Act, with limited clarifications intended to promote the purposes of the statute and provide an administrable framework for applying the renovate-to-rent exception. As specified by the Act, the exception would apply only to purchases of single-family homes that require meaningful rehabilitation of structural or core system elements, not those requiring only cosmetic improvements, ordinary turnover work, routine maintenance, or discretionary upgrades. The exception is intended to be available for purchases that restore deficient single-family homes to a condition in which they may be safely used as

rental housing. Therefore, the proposed rule would require the large institutional investor to resolve all material deficiencies in single-family homes under a renovate-to-rent program.

A purchase would not qualify as made pursuant to a renovate-to-rent program merely because it is later described as having involved rehabilitation work. Instead, consistent with the proposed approach for each type of “program” described in the Act, the large institutional investor must have a program that satisfies proposed § 36.3 and must make the purchase pursuant to that program. Appropriate activities for each single-family home purchased under this exception would generally be expected to include identifying, before or at the time of purchase, whether the single-family home does not meet structural or core system elements of local building codes; determining whether those deficiencies are material; resolving all material deficiencies; and ensuring that the 15 percent threshold described above is satisfied.

Treasury invites comments on all aspects of the proposed clarification of “renovate-to-rent program.” In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 39: Is this provision appropriate and clear? If not, what changes should be made? How could it be modified to better accomplish the statutory purposes while minimizing market disruptions and mitigating negative impacts on consumers and communities? Is it appropriately tailored to identify purchases made pursuant to renovate-to-rent programs? What alternatives should Treasury consider?

Question 40: Does the proposed definition appropriately distinguish substantial rehabilitation of deficient single-family homes 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 42: Should the final rule provide additional required components for renovate-to-rent programs, such as inspection procedures, purchase approval standards, contractor review procedures, completion tracking, or internal certification requirements?

2. Structural or Core System Deficiencies at the Time of Purchase

Proposed § 36.6(a)(1) would require that the single-family home not meet structural or core system elements of local building codes at the time of purchase. Making this determination as of the time of purchase is intended to comply with the Act, which contemplates the renovate-to-rent exception applying only to the purchase of single-family homes that are materially deficient when acquired. A home would not become eligible for the exception solely because of post-purchase deterioration or damage. Conversely, a single-family home that has no material deficiencies in structural or core system elements of local building codes at the time of purchase could not be substantially rehabilitated for purposes of the proposed rule.

Local building codes vary across jurisdictions, and the manner in which deficiencies are identified, documented, and resolved differs depending on local law and practice. Treasury is not proposing to establish a federal building-code enforcement regime or to displace local building officials. Rather, proposed § 36.6 would use local building codes to determine whether the home has relevant deficiencies, and proposed § 36.2 would identify the categories of local building-code elements that constitute structural or core systems for purposes of the renovate-to-rent exception.

Treasury invites comments on the proposed requirement that the home not meet structural or core system elements of local building codes at the time of purchase. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 43: Is the time of purchase the appropriate time to determine whether a single-family home does not meet structural or core system elements of local building codes?

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 45: Should the final rule provide additional guidance on what constitutes a “material deficiency”? If so, how should the rule distinguish material deficiencies from minor or technical noncompliance with local building codes?

Question 46: Should the final rule require a particular form of evidence that a home does not meet structural or core system elements of local building codes, such as an inspection report, code violation notice, contractor certification, engineer certification, architect certification, permit record, or other documentation?

3. Substantial Rehabilitation, Improvements, and Safe Harbor

Proposed § 36.6(a)(1) would require the large institutional investor to substantially rehabilitate the single-family home, including by resolving all material deficiencies in structural or core system elements of local building codes. This requirement is consistent with the text of the Act and is intended to ensure that the purchaser in fact rehabilitates the single-family home. A renovation that leaves material deficiencies in structural integrity, habitability, life safety, or major building systems unresolved would not constitute substantial rehabilitation for purposes of the Act or the proposed rule. The requirement for substantial rehabilitation would not be satisfied by work that merely improves marketability or increases rental value.

Proposed § 36.6(a)(2) would require the large institutional investor to make improvements, including the improvements described in proposed § 36.6(a)(1), 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. This requirement largely reflects the statutory text, with limited additions. First, the proposed rule clarifies the Act by applying this requirement to each relevant single-family home to ensure that the exception only applies as contemplated by the Act. Second, the proposed rule provides that improvements made under proposed § 36.6(a)(1) (regarding

substantial rehabilitation) count toward the 15 percent threshold. Under proposed § 36.6(a)(2), all improvements by the large institutional investor, not only the improvements related to the substantial rehabilitation of the single-family home, would count toward the 15 percent threshold.

Proposed § 36.6(b) would provide that 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, will be deemed to have satisfied proposed § 36.6(a)(1), which sets forth the requirements related to substantial rehabilitation. This non-exclusive safe harbor is intended to provide a clear standard for determining when a large institutional investor has substantially rehabilitated a deficient single-family home. In general, determining whether a large institutional investor has substantially rehabilitated a single-family home may depend on the facts and circumstances. Proposed § 36.6(b) would provide greater certainty in cases where a large institutional investor makes a meaningful level of improvements specifically to structural or core system elements and resolves all material deficiencies in such elements.

The proposed safe harbor provision would not reduce the statutory 15 percent improvement requirement. A large institutional investor that satisfies proposed § 36.6(b) would be deemed to have satisfied proposed § 36.6(a)(1) but would still need to satisfy proposed § 36.6(a)(2). Accordingly, if the investor makes improvements equal to 10 percent of the purchase price of the single-family home to structural or core system elements and resolves all material deficiencies in such elements, the investor would still need to make total improvements to the single-family home in an aggregate dollar amount of not less than 15 percent of the purchase price of the single-family home.

As discussed above in section II.B, proposed § 36.2 would define the term “purchase price of the single-family home,” which proposed § 36.6 would use both for the 15 percent improvement requirement in proposed § 36.6(a)(2) and for the 10 percent safe harbor threshold in proposed § 36.6(b). Using the purchase price of the single-family home, rather than the purchase price of the entire property including land, is intended to focus the renovate-to-rent exception on rehabilitation of the home itself. Land values vary significantly across jurisdictions and may bear little relationship to the cost or extent of rehabilitation needed to resolve structural or core system deficiencies. By using the purchase price of the single-family home, the proposed rule is intended to align the two percentage thresholds with the value of the structure that is being rehabilitated.

Treasury invites comments on all aspects of the substantial-rehabilitation and improvement requirements and the proposed safe harbor. In particular, Treasury seeks comment on the following aspects of the proposed rule:

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 48: Is resolving all material deficiencies in structural or core system elements an appropriate component of substantial rehabilitation and a renovate-to-rent program?

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 50: Should the final rule further clarify what costs count as “improvements” for purposes of the 15 percent threshold?

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?

Question 52: Should “soft” costs, such as permitting, architectural and engineering costs, inspection, contractor overhead, or project-management costs, count toward the 15 percent threshold?

Question 53: Is it appropriate to apply both the 15 percent improvement requirement and the 10 percent safe harbor threshold by reference to the purchase price of the single-family home? Should one or both of these include the cost of the land associated with the single-family home?

4. Documentation of Renovate-to-Rent Program Eligibility

Treasury expects that a large institutional investor seeking to rely on the renovate-to-rent exception would maintain documentation sufficient to demonstrate that the purchase was made pursuant to a renovate-to-rent program and that the purchase of the single-family home satisfied the requirements of proposed § 36.6, including that the single-family home did not meet structural or core system elements of applicable local building codes and that the rehabilitation addressed those deficiencies. Relevant documentation may include program policies and procedures, inspection reports, code violation notices, contractor assessments, engineer or architect reports, permit records, photographs, rehabilitation scopes of work, invoices, proof of payment, records of completed work, purchase-price calculations, and records supporting the calculation of the applicable improvement thresholds.

Appropriate documentation may vary depending on the property, jurisdiction, program structure, and type of rehabilitation performed. Treasury is not proposing specific documentation requirements in proposed § 36.6, but expects that documentation will be important for determining whether a purchase was made pursuant to a renovate-to-rent program and whether the requirements of the exception were satisfied.

Treasury invites comments on documentation related to the renovate-to-rent exception. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 54: What records should a large institutional investor maintain to demonstrate that a home did not meet structural or core system elements of local building codes at the time of purchase? Should Treasury require specific documentation – such as an inspection, permit, code citation, contractor certification, or engineer certification – to establish that a deficiency relates to structural or core systems? What records should a large institutional investor maintain to demonstrate that all material deficiencies were resolved?

Question 55: What records should a large institutional investor maintain to demonstrate that the 10 percent and 15 percent thresholds were satisfied?

F. Homeownership Program (Proposed § 36.7)

1. Overview

Proposed § 36.7 would clarify when a homeownership program meets the requirements for an excepted purchase in section 1001(a)(2)(D) of the Act. That statutory provision states that a purchase of a single-family home is an excepted purchase if it is made pursuant to a homeownership program that (i) requires rental payments and other fees not greater than those on other similarly situated single-family homes not covered by the program; (ii) is subject to a contract between the large institutional investor and renter that is considered a consumer credit transaction secured by a dwelling or real property; (iii) provides for positive reporting of rental payments to consumer reporting agencies; and (iv) requires contribution of meaningful financial support from the large institutional investor, including price concessions, for the purchase of the single-family home by the renter.

As proposed, a homeownership program is a program (as defined in proposed § 36.3) that generally includes the provisions as described in section 1001(a)(2)(D) of the Act. The proposed rule also includes several clarifications, described below, of the statutory requirements in order

to provide an administrable framework for determining when a purchase of a single-family home is made pursuant to a homeownership program.

Treasury invites comments on all aspects of the proposed provision regarding homeownership programs. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 56: Is the proposed definition appropriately tailored to identify purchases made pursuant to a homeownership program? What changes, if any, should be made?

Question 57: Are the proposed contract requirements sufficient to distinguish homeownership programs from ordinary rental arrangements? Should additional conditions for rental contracts be added?

Question 58: Should the final rule include additional conditions for homeownership programs? Should any of the proposed conditions be modified or removed?

2. Rental Payments and Fees

As set forth in the Act, proposed § 36.7(a)(1) would require that contracts under a homeownership program require rental payments and any other fees that are not greater than those collected by the large institutional investor on other similarly situated single-family homes not covered by the homeownership program.

Determining whether single-family homes are similarly situated may require consideration of facts and circumstances. Relevant factors may include location, size, number of bedrooms and bathrooms, property condition, amenities, lease term, market rent, timing of lease execution, and other features that affect rental value. Treasury is not proposing a specific comparison methodology at this time, but expects that a large institutional investor seeking to rely on the homeownership program exception would maintain records sufficient to support its determination that the renter's rental payments and other fees are not greater than those collected on other similarly situated single-family homes not covered by the program.

Treasury invites comments on all aspects of the rental-payment and fee limitation. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 59: Should Treasury define “similarly situated” for purposes of this requirement?

Question 60: Should the final rule provide guidance as to how to compare rental payments and fees where the large institutional investor does not own or rent comparable single-family homes in the same market? What would be an appropriate reference point?

3. Consumer-Credit Transaction

As set forth in the Act, proposed § 36.7(a)(2) would require that contracts under a homeownership program are considered consumer credit transactions secured by a dwelling or real property.

Proposed § 36.7(a)(2) is not intended to alter the application of federal or state consumer financial laws. Instead, the proposed rule would require that the contract under the homeownership program have the treatment specified in section 1001(a)(2)(D) of the Act.

Treasury invites comments on all aspects of the consumer-credit treatment requirement. In particular, Treasury seeks comment on the following aspects of the proposed rule:

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?

4. Positive Reporting of Rental Payments

As set forth in the Act, proposed § 36.7(a)(3) would require contracts under a homeownership program to require the large institutional investor to inform the renter of the option for positive reporting of rental payments to consumer reporting agencies and to provide for such positive reporting for any renter who opts into such reporting.

The proposed rule would require the large institutional investor to provide positive reporting at no charge or expense to the renter. This proposed requirement is intended to ensure that the renter actually receives the intended benefit of the program, as contemplated by the Act, and that such benefit is not offset by additional charges or expenses.

Treasury invites comments on all aspects of the positive-rent-reporting requirement. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 63: Should the final rule specify when and how the renter must be informed of the option for positive reporting? If so, what terms should be included in the rule? Should “positive reporting of rental payments” be defined as “paid-as-agreed” or an alternative definition?

Question 64: Should the final rule specify any standards for the accuracy, frequency, or duration of rental payment reporting?

Question 65: Is the requirement that positive reporting be provided at no charge or expense to the renter appropriate for a homeownership program and beneficial to renters?

5. Meaningful Financial Support and Right to Purchase

As set forth in the Act, proposed § 36.7(a)(4) would require contracts under a homeownership program to require the large institutional investor to contribute meaningful financial support for the purchase of the single-family home by the renter. In addition, the proposed rule states that the contract must 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 minus the amount of such meaningful financial support.

The requirement to contribute meaningful financial support is central to distinguishing a homeownership program from an ordinary rental program. A homeownership program should provide the renter with real economic assistance in purchasing the single-family home, rather than merely providing the renter with a right to make an offer at market price. Proposed § 36.7(a)(4) would require that the renter's purchase price be reduced by the amount of meaningful financial support, ensuring that the support is reflected in the economics of the purchase.

The proposed rule would require that the renter have a right to purchase the single-family home and that such right be exercisable no later than the termination of the contract. Treasury preliminarily believes that the renter having a right to purchase the single-family home at a price no greater than fair market value minus the amount of any meaningful financial support is necessary for a homeownership program described in the Act to be meaningful. Absent such a requirement, the provision of meaningful financial support could be obviated by a large institutional investor refusing to accept an offer from a renter. The timing of this requirement is intended to ensure that the renter has a meaningful opportunity to exercise the purchase right before the contractual arrangement ends, regardless of the duration or structure of the contract. Large institutional investors could choose whether to provide the right during the term of the rental contract, at termination of the contract, or a combination thereof.

Relatedly, proposed § 36.7(b) would provide a non-exclusive safe harbor for meaningful financial support. Under the proposal, a large institutional investor would be deemed to contribute meaningful financial support for the purchase of the single-family home by a renter who has rented the single-family home for at least 5 years if, in the event the renter purchases the single-family home from the large institutional investor, the amount of such financial support is at least the lesser of (i) \$5,000 or (ii) 2.5 percent if the renter has rented the single-family home for at least five years and at least 3.5 percent if the renter has rented the single-family home for at least seven years. In each case, the applicable percentage would be calculated using the lesser of (a) the purchase price of the property purchased by the renter or (b) the Federal Housing

Administration's mortgage limit for a one-unit property that applies to the county where the single-family home is located and that is in effect on the date the renter purchases the single-family home. Thus, the applicable safe-harbor percentage would increase when the renter's rental reaches five and seven years.

This safe harbor is intended to promote clarity and administrability, as the statute does not specify the amount of financial support that should constitute "meaningful financial support" in a homeownership program. The proposed approach would increase with the duration of the renter's rental of the single-family home, up to a maximum of seven years, while using a county-specific reference to account for regional differences in home prices. The use of the lesser of the purchase price of the property and the applicable Federal Housing Administration mortgage limit is intended to promote meaningful financial support while limiting the extent to which the amount of support increases solely because the renter purchases a higher-priced property. This lesser-of approach is intended to provide large institutional investors with greater certainty for long-term financial projections, which may support the use of homeownership programs. The 3.5 percent amount in the proposed rule is based on the Federal Housing Administration's minimum down payment amount, as described below in the context of programs to boost homeownership. Although meaningful financial support provided pursuant to a homeownership program may not be eligible to supplement a renter's down payment under federal mortgage standards, because it may be considered an interested party contribution, Treasury believes that using the same approach for meaningful financial support in each program will simplify the rules and therefore minimize market confusion. For purposes of the safe-harbor calculation, the purchase price of the property would be determined before applying or crediting meaningful financial support. This treatment would avoid a circular calculation in which the amount of support reduces the purchase price used to calculate that same support.

The proposed rule would increase the safe-harbor amount in stages based on the renter's completed rental period. This approach is intended to balance the goal of providing progressively

greater assistance to longer-term renters with the goal of encouraging large institutional investors to offer homeownership programs. Making the full 3.5 percent safe harbor amount available at the beginning of the rental relationship could discourage large institutional investors from offering such programs. Conversely, providing no safe-harbor amount until the renter has completed seven years of rental could delay the renter's transition to homeownership or reduce the number of renters who ultimately receive meaningful financial support.

Treasury also believes it is appropriate to cap the amount of financial support required to satisfy the safe harbor at \$5,000. This amount is intended to ensure that the financial support will be impactful for the renter's purchase of the single-family home, without making the program cost-prohibitive for large institutional investors.

Under proposed § 36.7(b)(2), to qualify for the safe harbor, the large institutional investor must not directly or indirectly recover any portion of the meaningful financial support from the renter, including by increasing the purchase price of the single-family home or imposing any expense, charge, or fee in connection with the financial support. This requirement is intended to ensure that the financial support provides a net economic benefit to the renter, as contemplated by the Act, and is not offset through an increase in the purchase price or through separately imposed costs.

Because proposed § 36.7(b) would provide a non-exclusive safe harbor, a contribution that does not satisfy the safe-harbor formula may nevertheless constitute meaningful financial support based on the facts and circumstances. This could include support provided where a renter purchases the single-family home before completing five years of the rental or where the support is structured differently than contemplated by the safe harbor, provided that the support gives the renter a real economic benefit and is not directly or indirectly recovered from the renter.

Treasury invites comments on all aspects of the meaningful financial support and purchase-right requirements and the related safe harbor. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 66: Is the proposed requirement that the renter be able to purchase the single-family home at a price no greater than fair market value minus meaningful financial support appropriate?

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 69: Should the final rule provide additional guidance or examples regarding when a large institutional investor has directly or indirectly recovered meaningful financial support, including through an increase in the purchase price of the single-family home? What other factors should be used to indicate whether support constitutes meaningful financial support under a homeownership program?

6. Termination of Financial Support

Proposed § 36.7(c) would provide that a homeownership program does not fail to satisfy proposed § 36.7(a) solely because the program allows the large institutional investor’s obligation to contribute meaningful financial support under proposed § 36.7(a)(4) to terminate in any of three circumstances: (i) if, as of the scheduled date for the renter’s purchase of the single-family home, the renter has failed to pay all rent then due and payable to the large institutional investor,

other than amounts lawfully withheld; (ii) if the renter breaches the rental contract in a manner that permits the large institutional investor to terminate the contract under applicable law; or (iii) if the renter elects to terminate the rental contract for a purpose other than purchasing the single-family home. Proposed § 36.7(c) would not require or automatically cause the obligation to contribute meaningful financial support to terminate; instead, it would permit a homeownership program to include contractual terms allowing termination of that obligation in the specified circumstances without causing the program to fail to satisfy proposed § 36.7(a).

This approach is intended to avoid situations in which a large institutional investor is required to provide meaningful financial support to a renter who has failed to pay their rent, breached other material contractual obligations, or chosen to end the rental for a purpose other than purchasing the single-family home. The condition would not include future rent that is contemplated by the rental contract but is not yet due and payable. The proposed breach condition would not require that the large institutional investor actually evict the renter. A breach that does not permit termination of the rental contract under applicable law would not satisfy this condition. Treasury believes that the alternative of requiring a large institutional investor to actually terminate the rental contract or evict the renter in order to eliminate the requirement for meaningful financial support would create adverse incentives.

Treasury invites comments on all aspects of the proposed termination provision. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 70: Is it appropriate to permit the obligation to provide meaningful financial support to terminate if, as of the scheduled purchase date, the renter has failed to pay all rent then due and payable, other than amounts lawfully withheld? Should this provision be conditioned or otherwise modified? Should the final rule provide additional guidance regarding what amounts constitute rent “then due and payable” or what amounts have been “lawfully withheld”?

Question 71: Is it appropriate to permit the obligation to provide meaningful financial support to terminate if the renter breaches the rental contract in a manner that permits the large institutional investor to terminate the contract under applicable law? Is the standard for breach that permits termination of the rental contract sufficiently clear across jurisdictions? Would a different standard be more appropriate?

Question 72: Is it appropriate to permit the obligation to provide meaningful financial support to terminate if the renter elects to terminate the rental contract for a purpose other than purchasing the single-family home? Should the final rule provide additional guidance regarding when a renter terminates a rental contract “for a purpose other than purchasing the single-family home”? Should the rule provide other grounds on which the obligation should be permitted to terminate?

7. Transfer to Another Large Institutional Investor

Proposed § 36.7(a)(5) would require contracts under a homeownership program to provide that, if the large institutional investor sells or otherwise transfers the single-family home to another large institutional investor before termination of the contract, the transferring large institutional investor’s obligations under proposed § 36.7(a)(1) through (4) are automatically deemed to be assigned to, and enforceable by the renter against, the transferee large institutional investor. The transferring large institutional investor also would be required to cause the transferee large institutional investor expressly to assume those obligations in writing and effective upon consummation of the transfer.

The relevant provision of the Act does not expressly address the continuation of homeownership program obligations when a large institutional investor sells the single-family home to another large institutional investor. Proposed § 36.7(a)(5) is intended to preserve the renter protections associated with a homeownership program and contemplated by the Act. Without such a requirement, a large institutional investor could transfer the home to another large institutional investor in a manner that eliminates the renter’s rights under the program.

Such a result would be inconsistent with the purpose of the statutory exception for homeownership programs.

The proposed rule would require both automatic assignment and express written assumption of the large institutional investor's obligations. Automatic assignment is intended to ensure that the renter's rights are not dependent on the parties' actions, while express written assumption would provide additional clarity and mitigate the risk of disputes regarding the transferee's obligations.

Treasury invites comments on all aspects of the transfer-related requirements. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 73: Are the automatic-assignment and express-assumption requirements appropriate and workable under applicable law? Would they pose undue burdens? Should they be modified or replaced in a way that preserves the intended benefit for renters participating in homeownership programs?

Question 74: Should the final rule address transfers of single-family homes other than to large institutional investors?

Question 75: Should the final rule specify remedies, notice requirements, or documentation requirements in connection with transfers?

G. Program to Boost Homeownership (Proposed § 36.8)

1. Overview

Proposed § 36.8 would clarify when a program to boost homeownership meets the requirements for an excepted purchase under section 1001(a)(2)(E) of the Act. That statutory provision states that a purchase of a single-family home is an excepted purchase if it is pursuant to a program to boost homeownership that (i) provides for positive reporting of rental payments to consumer reporting agencies for any renter, who must be informed of and opts into such reporting; (ii) provides for the right of first refusal and a 30-day "first look" period; and (iii) may entail meaningful financial support from the large institutional investor, including price

concessions, for the purchase of a single-family home by the renter (whether it is the home the renter occupies or another home).

As proposed, a program to boost homeownership is a program (as defined in proposed § 36.3) that generally includes the provisions as described in section 1001(a)(2)(E) of the Act. The proposed rule also includes several clarifications, described below, of the statutory requirements intended to provide an administrable framework for determining when a purchase of a single-family home is made pursuant to a program to boost homeownership, while preserving the practical availability of programs that support renters' transition to homeownership.

Under the Act and the proposed rule, a program to boost homeownership differs from a homeownership program in several important respects. Under section 1001(a)(2)(D) of the Act, a homeownership program provides for the renter to purchase "the single-family home" rented by the renter from the large institutional investor; in contrast, section 1001(a)(2)(E) of the Act provides for the renter to purchase "a single-family home," not necessarily the home occupied by the renter.

Treasury invites comments on all aspects of the proposed provision regarding programs to boost homeownership. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 76: Is the proposed definition appropriately tailored to identify purchases made pursuant to a program to boost homeownership? What changes, if any, should be made?

Question 77: Are the proposed contract requirements sufficient to distinguish programs to boost homeownership from ordinary rental arrangements and from homeownership programs? Should additional conditions for rental contracts be added?

Question 78: Should the final rule include additional conditions for programs to boost homeownership? Should any of the proposed conditions be modified or removed?

2. Positive Reporting of Rental Payments

As set forth in the Act, proposed § 36.8(a)(1) would require contracts under a program to boost homeownership to require the large institutional investor to inform the renter of the option for positive reporting of rental payments to consumer reporting agencies and to provide for such positive reporting for any renter who opts into such reporting. The proposed rule would require the large institutional investor to provide positive reporting at no charge or expense to the renter, to ensure that the renter actually receives the intended benefit of the program, as contemplated by sections 1001(a)(2)(E) and 1001(b)(4)(A)(ii) of the Act, and that such benefit is not offset by additional charges or expenses.

This requirement serves the same general purpose as the positive-reporting requirement for homeownership programs under proposed § 36.7(a)(3). The positive-reporting requirement may support renters' ability to establish or improve credit histories relevant to mortgage eligibility and a transition to homeownership. Providing that reporting without charge or expense may support homeownership.

Treasury invites comments on all aspects of the positive-reporting requirement. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 79: Should the final rule specify when and how the renter must be informed of the option for positive reporting?

Question 80: Should the positive-reporting requirements for homeownership programs and programs to boost homeownership be identical?

3. Meaningful Financial Support

Proposed § 36.8(a)(3) would require contracts under a program to boost homeownership to 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.

Section 1001(a)(2)(E)(iii) of the Act states that a program to boost homeownership may entail the provision of meaningful financial support. Its reference to such support reflects the relevance of this factor to programs to boost homeownership. The statute does not mandate excepted-purchase treatment for programs that do not provide such support. Proposed § 36.8(a)(3) specifies how Treasury proposes to evaluate meaningful financial support, in order to give effect to the statutory framework for programs to boost homeownership and to promote the purpose of increasing homeownership.

The meaningful financial support provided under a program to boost homeownership, as opposed to a homeownership program, is required regardless of whether the renter purchases the single-family home occupied by the renter or another single-family home. A renter may be interested in purchasing the home the renter occupies but may also prefer or need to purchase a different home. Proposed § 36.8 would permit meaningful financial support to be used for the purchase of another single-family home, thereby focusing on the renter's transition to homeownership rather than on only the disposition of the specific rented property.

Proposed § 36.8(b) would provide a safe harbor for meaningful financial support, similar to the safe harbor for homeownership programs, described above. Under the proposal, a large institutional investor would be deemed to contribute meaningful financial support to a renter who has rented a single-family home for at least 5 years if, in the event the renter purchases a single-family home, the amount of the support is at least the lesser of (i) \$5,000 or (ii) 2.5 percent if the renter has rented the single-family home for at least five years and at least 3.5 percent if the renter has rented the single-family home for at least seven years. In each case, the applicable percentage would be calculated using the lesser of (a) the purchase price of the property purchased by the renter or (b) the Federal Housing Administration's mortgage limit for a one-unit property that applies to the county where the single-family home rented by the renter is located and that is in effect on the date the renter purchases a single-family home. As under

proposed § 36.7(b), the safe-harbor percentage would change only when the renter reaches the specified five- and seven-year thresholds and would not be prorated between those thresholds.

Treasury preliminarily believes this formula would provide a clear and administrable standard while accounting for both the duration of the renter's rental of the single-family home and regional variation in home prices. Proposed § 36.8(b)(2) would specify how the contribution must be provided. If the seller of the single-family home is not the large institutional investor, the large institutional investor would be required to transmit the amount to the seller of the single-family home for the renter's account at or before the sale. Treasury has proposed financial support of up to 3.5 percent under this formula because, if the purchase price does not exceed the applicable Federal Housing Administration mortgage limit and applicable mortgage requirements permit, a contribution at that level could potentially satisfy the renter's minimum down payment for a Federal Housing Administration-insured mortgage. Treasury does not propose to require a specific account structure for a large institutional investor's contribution of meaningful financial support to a third-party seller. If the seller is the large institutional investor, the large institutional investor would be required to credit the amount toward the purchase price. Because a contribution by a large institutional investor that is selling the home to a renter may be considered an interested party contribution for purposes of Federal mortgage standards, the contribution would not count towards a down payment. As a result, a price concession may be an appropriate alternative in this situation. These payment mechanics are intended to ensure that the financial support is actually available for the renter's purchase and is not merely a post-closing reimbursement or unenforceable promise. For purposes of the safe-harbor calculation, the purchase price of the property would be determined before applying or crediting meaningful financial support. This treatment would avoid a circular calculation in which the amount of support reduces the purchase price used to calculate that same support.

The proposed rule would increase the safe-harbor amount in stages based on the renter's completed period of rental, to encourage large institutional investors to offer programs to boost

homeownership while providing progressively greater assistance to longer-term renters. Making the full 3.5 percent safe-harbor amount available at the beginning of the rental relationship could discourage participation by large institutional investors, while further delaying any safe-harbor amount could slow the renter's transition to homeownership or reduce the number of renters who ultimately receive support.

Treasury also believes it is appropriate to cap the amount of financial support required to satisfy the safe harbor at \$5,000. This amount is intended to ensure that the financial support will be impactful for the renter's purchase of a single-family home, without making the program cost-prohibitive for large institutional investors.

Proposed § 36.8(b)(3) would require the large institutional investor not, directly or indirectly, to recover any portion of the meaningful financial support from the renter, including by increasing the purchase price of the single-family home or imposing any expense, charge, or fee in connection with the financial support. This requirement is intended to ensure that the economic value of the support is not reduced by offsetting charges.

Treasury invites comments on all aspects of the meaningful financial support requirement. In particular, Treasury seeks comment on the following aspects of the proposed rule:

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?

Question 82: Are the proposed payment mechanics appropriate when the renter purchases a home from a third party?

4. Termination for Unpaid Rent, Material Damage, and Breach

Proposed § 36.8(c) would provide that a program to boost homeownership does not fail to satisfy proposed § 36.8(a) solely because the program allows the large institutional investor's obligation to contribute meaningful financial support to terminate (i) if the renter has not paid all rent then due and payable to the large institutional investor as of the scheduled date for the renter's purchase of the single-family home, other than amounts lawfully withheld; (ii) if the renter has caused material damage to the single-family home occupied by the renter, beyond ordinary wear and tear, excluding any damage caused by the large institutional investor's failure to maintain the single-family home, and the large institutional investor has provided the renter with written notice and a reasonable opportunity to cure; or (iii) if the renter breaches the rental contract in a manner that permits the large institutional investor to terminate the rental contract under applicable law.

These termination provisions are intended to account for unpaid rental obligations, material damage caused by the renter, and certain breaches by the renter, similar to the reasons for proposed § 36.7 described above. The proposed provision is intended to prevent the requirement to provide meaningful financial support from eliminating ordinary obligations under the rental contract. For that reason, the proposed rule would limit the termination for material damage to damage beyond ordinary wear and tear, would exclude damage caused by the large institutional investor's failure to maintain the single-family home, and would require written notice to the renter and a reasonable opportunity to cure.

The proposed breach condition would not require that the large institutional investor actually evict the renter. A breach that does not permit termination of the rental contract under applicable law would not satisfy this condition. Treasury believes that the alternative of requiring a large institutional investor to actually terminate the rental contract or evict the renter in order to eliminate the requirement for meaningful financial support would create adverse incentives.

Treasury invites comments on all aspects of these proposed termination provisions. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 83: Is it appropriate to permit meaningful financial support to be terminated where, as of the scheduled purchase date, the renter has failed to pay all rent then due and payable, other than amounts lawfully withheld? Is it appropriate to permit meaningful financial support to be terminated for material damage caused by the renter beyond ordinary wear and tear, subject to the maintenance exclusion, notice requirement, and opportunity to cure? Is it appropriate to permit meaningful financial support to be terminated where the renter breaches the rental contract in a manner that permits the large institutional investor to terminate the contract under applicable law? Should any other factors be added to the requirements in this paragraph of the proposed rule?

Question 84: Should the final rule define “material damage,” “ordinary wear and tear,” or “reasonable opportunity to cure”?

Question 85: Treasury has not proposed a similar material-damage termination for homeownership programs under proposed § 36.7 because the renter would purchase the occupied home and would thereafter be responsible for necessary repairs. Should the final rule include a similar provision for homeownership programs?

5. Termination of the Financial-Support Obligation

Proposed § 36.8(d) would provide that a large institutional investor’s obligation to contribute meaningful financial support to a renter under a program to boost homeownership may terminate beginning 90 days after the renter no longer occupies a single-family home owned by the large institutional investor. As a result, the right to terminate such obligation pursuant to the applicable contract would not render the purchase of the single-family home ineligible to be an excepted purchase under the Act.

This provision is intended to provide a reasonable transition period after the renter no longer occupies a single-family home owned by the large institutional investor. A program to

boost homeownership is tied to the renter's rental relationship with the large institutional investor. Requiring the obligation to remain available for at least 90 days after the renter no longer occupies a single-family home owned by the large institutional investor is intended to provide a reasonable transition period without requiring the investor to maintain the obligation indefinitely. During that period, the renter may have additional time to obtain financing and identify another single-family home to purchase. The 90-day provision would not prevent earlier termination to the extent separately permitted under proposed § 36.8(c).

Treasury invites comments on all aspects of this proposed termination provision. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 86: Is 90 days an appropriate period before the obligation to contribute meaningful financial support may terminate? Should termination based on other factors be permissible? Should this proposed termination right be narrowed or eliminated?

Question 87: Should the termination provision depend on the reason the renter no longer occupies the single-family home?

6. Facts-and-Circumstances Support

Proposed § 36.8(e) would provide that a contribution that does not satisfy the safe harbor may constitute meaningful financial support based on the facts and circumstances, including the economic value of price concessions, down-payment assistance, closing-cost assistance, or other support for the renter's purchase.

Programs to boost homeownership may provide meaningful financial support in forms that are not fully captured by a single formula. For example, a large institutional investor may provide support through a below-market sale price, assistance with closing costs, or similar support. These forms of support may have substantial economic value to the renter even if they do not take the form specified in proposed § 36.8(b)(1) and (2). At the same time, a facts-and-circumstances standard should not undermine the administrability of the proposed rule.

Treasury invites comments on all aspects of the facts-and-circumstances provision. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 88: Is it appropriate to provide a facts-and-circumstances path for meaningful financial support? Should the final rule provide additional examples, valuation rules, or documentation requirements for alternative forms of meaningful financial support?

Question 89: Should the final rule include additional examples of support that may constitute meaningful financial support? Should the final rule specify how to value price concessions, closing-cost assistance, or similar support?

Question 90: Should a similar facts-and-circumstances provision be included for homeownership programs under proposed § 36.7?

7. Right of First Refusal and 30-Day First-Look Period

As specified in section 1001(a)(2)(E)(ii) of the Act, proposed § 36.8(a)(2) would require contracts under a program to boost homeownership to provide the renter with a right of first refusal and a 30-day first-look period. Proposed § 36.8(f) would provide a non-exclusive safe harbor for this requirement.

Under the proposed safe harbor, a large institutional investor would be deemed to provide the required right of first refusal and 30-day first-look period if, until the earlier of 90 days after the renter's rental contract terminates or the date the single-family home is rented to a person other than such renter, the large institutional investor provides certain rights specified in proposed § 36.8(f)(1), (2), and (3).

The proposed time period for these rights is intended to prevent a large institutional investor from declining to renew a rental agreement with a renter and immediately selling the single-family home, while also not requiring the large institutional investor to offer such rights to multiple individuals at once.

During the applicable period, 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 the renter, the large institutional investor must provide the renter with written notice. The notice must include the large institutional investor's intent to sell the 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, and the manner and date by which the renter may submit an offer to purchase the home.

Proposed § 36.8(f)(2) would require that, during the 30-day period beginning on, but not including, the date the notice is provided, the large institutional investor 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. This restriction is intended to provide the renter a meaningful first opportunity to consider purchasing the home without competing against other potential purchasers during the first-look period.

Proposed § 36.8(f)(3) would address the right of first refusal. If, after the 30-day first-look period described above, 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 first-look period, then, before accepting that offer, the large institutional investor must provide 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 home on terms that match the material economic terms of the offer, before giving effect to any meaningful financial support required under proposed § 36.8(a)(3). If the renter timely elects to match such terms, the large institutional investor must sell the home to the renter on such terms, subject to customary closing conditions applicable to an owner-occupant purchaser.

This two-stage structure is intended to give effect to both the 30-day first-look period and the right of first refusal, which are not further described in section 1001 of the Act. The first-look period provides the renter an exclusive initial opportunity to make an offer. The right of first refusal protects the renter if the large institutional investor later receives a bona fide offer that it

is prepared to accept and that is less than or equal to the renter's earlier offer. Measuring the renter's ability to match the third-party offer before giving effect to meaningful financial support is intended to ensure that the renter receives the benefit of the required support.

Proposed § 36.8(g) would provide that, for purposes of the safe harbor in proposed § 36.8(f), written notice would be deemed to be provided on the date the notice is delivered personally to the renter, sent by electronic means to an electronic address designated by the renter for notices under the rental agreement, or deposited in the U.S. mail or with a commercial delivery service for delivery to the renter's address for notices under the rental agreement, at the option of the large institutional investor. If notice is provided by mail or commercial delivery service, the applicable response period would begin on the third business day after the notice is deposited.

Treasury invites comments on all aspects of the 30-day first-look period and the right of first refusal. In particular, Treasury seeks comment on the following aspects of the proposed rule:

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 92: Should the large institutional investor be prohibited from listing, marketing, soliciting offers, negotiating, or accepting offers from others during the 30-day first-look period, as proposed? Should they be prohibited from any other activities?

Question 93: Is five business days an appropriate period for the renter to elect to match a third-party offer?

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?

Question 95: Are the proposed methods of written notice appropriate?

8. Transfer to Another Large Institutional Investor

Proposed § 36.8(a)(4) would require contracts under a program to boost homeownership to provide that, if the large institutional investor sells or otherwise transfers the single-family home to another large institutional investor before the renter's rights under the program terminate, the transferring large institutional investor's obligations under proposed § 36.8(a)(1) through (3) are automatically deemed to be assigned to, and enforceable by the renter against, the transferee large institutional investor. The transferring large institutional investor also would be required to cause the transferee large institutional investor expressly to assume those obligations in writing and effective upon consummation of the transfer.

The relevant provision of the Act does not expressly address the continuation of program obligations when a large institutional investor sells the single-family home to another large institutional investor. Proposed § 36.8(a)(4) is intended to preserve the renter protections associated with a program to boost homeownership and contemplated by the Act. Without such a requirement, a large institutional investor could transfer the home to another large institutional investor in a manner that eliminates the renter's rights under the program. Such a result would be inconsistent with the purpose of the statutory exception for programs to boost homeownership.

The proposed rule would require both automatic assignment and express written assumption of the large institutional investor's obligations. Automatic assignment is intended to ensure that the renter's rights are not dependent on the parties' actions, while express written assumption would provide additional clarity and mitigate the risk of disputes regarding the transferee's obligations.

Treasury invites comments on all aspects of the transfer-related requirements for programs to boost homeownership. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 96: Are the automatic-assignment and express-assumption requirements appropriate? Would they pose undue burdens? Should they be modified in a way that preserves the intended benefit for renters participating in programs to boost homeownership?

Question 97: Should the final rule address transfers of single-family homes other than to large institutional investors?

Question 98: Should the final rule specify remedies, notice requirements, or documentation requirements in connection with transfers?

H. Satisfaction of Debts Previously Contracted (Proposed § 36.9)

Proposed § 36.9 would clarify the application of section 1001(a)(2)(F) of the Act, which states that a purchase of a single-family home is an excepted purchase if it is in connection with the satisfaction of debts previously contracted in good faith and where the large institutional investor has the right to repossess the single-family home under such contract.

The proposed rule primarily clarifies that a large institutional investor may purchase a single-family home in accordance with this category of excepted purchase either directly or indirectly. Specifically, the proposed rule provides for a large institutional investor to (i) directly purchase the single-family home, by purchasing the single-family home in connection with the satisfaction of debts previously contracted by such large institutional investor in good faith and where such large institutional investor has the right to repossess the single-family home under such contract; or (ii) indirectly purchase the single-family home, by purchasing the single-family home directly or indirectly from another person or entity that purchased the single-family home in connection with the satisfaction of debts previously contracted in good faith by such person or entity and where such person or entity had the right to repossess the single-family home under such contract.

This clarification of the statutory text is intended to ensure that the exception remains available for debt-collection and collateral-related circumstances that are distinct from ordinary investment purchases of single-family homes, while mitigating market disruptions. As set forth

in the Act, the proposed rule would require that the debt was previously contracted in good faith and that the relevant person had the right to repossess the single-family home under the contract. This excepted purchase would not apply merely because a purchaser is owed money by a seller or because proceeds of the sale may be used to satisfy a debt; instead, the debt relationship must include a right to repossess the single-family home.

Proposed § 36.9(b), regarding indirect purchases, is intended to address circumstances in which a large institutional investor acquires a single-family home through a chain of transactions following a debt-satisfaction event. For example, an entity with the right to repossess a single-family home may acquire the home in connection with satisfaction of a debt and later sell the home. Prohibiting indirect purchases of such homes may disrupt debt markets in a manner that the Act did not intend. For example, if a bank that has repossessed a single-family home enters receivership, it would not be consistent with the purposes of the Act for this restriction potentially to prevent the sale of that bank or its assets to a large institutional investor. At the same time, the indirect-purchase provision should not permit evasion of the purchase prohibition. A large institutional investor should not be able to rely on the exception solely because a transaction is routed through an intermediary. The proposed rule therefore requires that the person or entity from which the home is purchased acquired the home in connection with the satisfaction of debts previously contracted in good faith and had the right to repossess the home under the contract.

Treasury invites comments on all aspects of proposed § 36.9. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 99: Is proposed § 36.9 appropriately tailored to purchases in connection with satisfaction of debts previously contracted? Is it appropriate for this provision to encompass both direct and indirect purchases, as proposed?

Question 100: Should the final rule address whether and how the exception applies to different forms of security interests, installment contracts, lease-purchase arrangements, or other secured obligations?

Question 101: Should the final rule permit indirect purchases from persons or entities that acquired the home in connection with satisfaction of debts previously contracted, as proposed? Should Treasury impose time limits, disposition requirements, or anti-evasion conditions on indirect purchases? Should the proposed rule be modified to ensure the continued availability of appropriate transactions by government-sponsored entities?

Question 102: What due diligence should a large institutional investor be expected to perform to determine whether the seller acquired the home in connection with satisfaction of debts previously contracted?

I. Loss Mitigation or Compliance (Proposed § 36.10)

Proposed § 36.10 would clarify the application of section 1001(a)(2)(G) of the Act, which states that a purchase of a single-family home is an excepted purchase if it is undertaken by a mortgage servicer, lender, or other entity that has a legal right to a single-family home, for the purpose of loss mitigation or compliance with servicing or investor obligations, and not as a long-term investment strategy, and is solely as a result of (i) a foreclosure; (ii) a deed-in-lieu of foreclosure; (iii) enforcement of a mortgage, deed of trust, or other security interest; or (iv) operation of law following borrower default.

Proposed § 36.10(a) reflects the statutory text. Proposed § 36.10(b) provides additional clarification that the large institutional investor purchasing the single-family home under this excepted-purchase category either (i) is the mortgage servicer, lender, or other entity; or (ii) purchases the single-family home directly or indirectly from such mortgage servicer, lender, or other entity. This clarification is intended to preserve the practical operation of mortgage servicing, default management, and investor-obligation compliance processes, by accounting for circumstances in which a mortgage servicer, lender, or other covered entity acquires a single-

family home through a default-related process and later sells the home. The proposed rule would permit a large institutional investor to purchase the home directly or indirectly from such an entity where the conditions of proposed § 36.10 are satisfied. The availability of indirect purchases would be appropriate in this context for the same reasons described above with respect to proposed § 36.9.

Treasury invites comments on all aspects of proposed § 36.10. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 103: Is proposed § 36.10 appropriately tailored to purchases for loss mitigation or compliance? Should the rule provide examples of purchases that are for loss mitigation or compliance with servicing or investor obligations? Should the rule provide examples of purchases that would be considered part of a long-term investment strategy?

Question 104: Is the phrase “mortgage servicer, lender, or other entity that has a legal right to a single-family home” sufficiently clear? Should Treasury clarify whether this category of excepted purchase, or any other category of excepted purchase, is available to an entity that is not a large institutional investor at the time of purchase?

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

Question 106: Is it appropriate to permit purchases directly or indirectly from covered entities? If so, should different conditions be imposed on those purchases? Should the proposed rule be modified to ensure the continued availability of appropriate transactions by government-sponsored entities? What due diligence should a large institutional investor be expected to perform to determine whether the seller acquired the home in a manner that would enable the large institutional investor to satisfy proposed § 36.10?

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

Proposed § 36.11 would clarify the application of section 1001(a)(2)(H) of the Act, which states that a purchase of a single-family home is an excepted purchase if the home is

purchased from another large institutional investor that either owned the single-family home on the date of enactment of the Act or purchased the single-family home in compliance with section 1001 of the Act.

Proposed § 36.11 reflects the statutory text, with a clarification that the Act's reference to purchases of single-family homes in compliance with section 1001 of the Act includes a purchase from a large institutional investor that purchased the home under section 1001(a)(2)(H) of the Act. Treasury preliminarily believes this approach represents the best reading of the text and structure of section 1001(a)(2)(H). The ROAD Act permits a large institutional investor to purchase a single-family home from another large institutional investor where the selling large institutional investor purchased the home in compliance with the Act. With respect to potential means of compliance, the Act does not indicate that certain excepted purchases should be excluded. Therefore, under the proposed rule, a single-family home purchased in compliance with the Act would remain eligible for subsequent purchases by large institutional investors, provided that each transfer satisfies a purchase exemption, including section 1001(a)(2)(H). In addition to consistency with the statute, the proposed rule is intended to provide clarity and reduce market disruption by permitting orderly transfers of existing or compliant inventory among large institutional investors.

Treasury views the statutory phrase “purchased the single-family home in compliance with the Act” to include purchases made before the large institutional investor was subject to the prohibition under the Act, purchases that qualify for any category of excepted purchase, and purchases made under section 1001(b)(2)(B) of the Act (i.e., purchases in connection with a restructuring or other reorganization of ownership of single-family homes that were owned or purchased on or before the date of enactment of the Act). This interpretation gives meaning to the plain text of the statute. Further, a contrary interpretation could impair market liquidity and orderly disposition of single-family homes without materially advancing the purposes of the Act.

At the same time, the proposed rule would not permit a large institutional investor to rely on section 1001(a)(2)(H) of the Act if the selling large institutional investor acquired the single-family home in violation of the Act. If a large institutional investor acquired a single-family home in violation of the Act, a later sale of that single-family home to another large institutional investor would not satisfy proposed § 36.11 merely because the seller is a large institutional investor. The selling large institutional investor must have owned the single-family home on the date of enactment or purchased the single-family home in compliance with the Act.

Treasury invites comments on all aspects of proposed § 36.11. In particular, Treasury seeks comment on the following aspects of the proposed rule:

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 108: Is Treasury's interpretation of "purchased the single-family home in compliance with the Act" appropriate? Should the final rule identify categories of compliant purchases, such as purchases before the effective date, excepted purchases, and prior purchases under section 1001(a)(2)(H)?

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?

K. In the Business Of (Proposed § 36.15)

1. Overview

Proposed § 36.15 would clarify when an entity is engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes as described in section 1001(a)(3)(A)(i)(I) of the Act. Section 1001(a)(3)(A) of the Act defines “large institutional investor” by reference to, among other things, whether the entity “is engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes.” The Act does not further define “in the business of” for this purpose and proposed § 36.15 would do so.

The proposed rule would interpret “in the business of” in order to enable stakeholders to identify entities that participate in the single-family home market as a business or investment activity in a manner that relates to the purposes of the Act, while excluding entities that hold or manage single-family homes for reasons that are properly outside the scope of the Act’s definition of “large institutional investor.”

Under proposed § 36.15(a), an entity would be considered to be engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes if the entity, directly or indirectly, invests in, owns, rents, manages, or holds single-family homes for the purpose, in whole or in part, of receiving investment gains, rental income, management fees, or any other type of income or financial gain.

Proposed § 36.15(b) is intended to clarify the types of entities that are not considered to be large institutional investors. Specifically, that provision states that an entity would not be considered to be engaged, in whole or in part, “in the business” if the entity, directly or indirectly, invests in, owns, rents, manages, or holds single-family homes (i) solely on a temporary and incidental basis in furtherance of a different bona fide business; (ii) only to the

extent reasonably necessary for the conduct of such other bona fide business; and (iii) not as a regular or continuing investment strategy or portfolio management activity. These limits are narrowly tailored; a broad exclusion could allow entities to hold substantial single-family home portfolios while claiming that the activity is incidental to a broader enterprise.

Proposed § 36.15 would interpret only one element of the statutory definition of “large institutional investor.” It would not determine, by itself, whether an entity is a large institutional investor. An entity “in the business of” activities related to single-family homes under proposed § 36.15 is not a large institutional investor unless it also meets the other criteria under the Act and Part 36, including provisions regarding whether the entity has direct or indirect investment control over the required number of single-family homes and whether the entity is a passive investor.

Importantly, under the Act, purchases of single-family homes that would constitute excepted purchases if the purchaser were a large institutional investor should still be taken into consideration in determining whether an entity is engaged in the business of investing in, owning, renting, managing, or holding single-family homes. For example, an entity engaged in build-to-rent activities may be engaged in the relevant business even if such activities would constitute excepted purchases if the entity were a large institutional investor.

The following subsections further discuss certain key concepts related to proposed § 36.15.

Treasury invites comments on all aspects of proposed § 36.15. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 112: Is proposed § 36.15 appropriately tailored to identify entities engaged – and those not engaged – in whole or in part in the business of investing in, owning, renting, managing, or holding single-family homes? What additional considerations should be taken into account in identifying entities that are or are not engaged in such business? Does the proposed

rule appropriately distinguish business or investment activity in single-family homes from temporary and incidental holdings in furtherance of another bona fide business?

Question 113: Should Treasury define any of the terms used in proposed § 36.15, including “indirectly,” “investment gains,” “rental income,” “management fees,” “income or financial gain,” “temporary,” “incidental,” “bona fide business,” “reasonably necessary,” or “regular or continuing business”? If so, what definitions would promote clarity and the purposes of the Act, while avoiding undue burdens?

Question 114: Should Treasury further clarify the relationship between proposed § 36.15 and the other elements of the definition of “large institutional investor”? Should the final rule clarify how proposed § 36.15 applies to entities that make only excepted purchases? Should the final rule further clarify how proposed § 36.15 interacts with the definition of “passive investor” in proposed § 36.16?

2. For the Purpose of Receiving Income or Financial Gain

As noted above, proposed § 36.15(a) would provide that an entity is engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes if the entity, directly or indirectly, invests in, owns, rents, manages, or holds single-family homes “for the purpose, in whole or in part, of receiving investment gains, rental income, management fees, or any other type of income or financial gain.” This standard is intended to implement the reference in section 1001(a)(3)(A)(i)(I) of the Act to an entity engaged “in the business of investing in, owning, renting, managing, or holding single-family homes.” Each part of that statutory phrase addresses activities that are undertaken by entities for income or financial gain. Investment gains, rental income, and management fees are common forms of economic return from single-family home investment, ownership, rental, management, and holding activity. The proposed rule also would include “any other type of income or financial gain” as a catch-all to prevent opportunities for evasion based on the technical nature of the compensation or economic return, such as entities receiving income or financial gain through appreciation,

fees, carried interest, incentive compensation, servicing compensation, management compensation, affiliate arrangements, or another arrangement.

The proposed definition would apply where the relevant purpose exists “in whole or in part.” This language is intended to give effect to the statutory phrase “engaged, in whole or in part, in the business.” That statutory definition includes an entity even if its single-family home investment, ownership, rental, management, or holding activity is merely one part of a broader business. Notably, the statute does not establish any minimum threshold for the extent of an entity’s engagement in such business “in part.” Similarly, an entity should not avoid the business element solely because it receives financial gain through appreciation, fees, carried interest, incentive compensation, servicing compensation, management compensation, affiliate arrangements, or another economic arrangement rather than through direct rental income.

Proposed § 36.15(a) focuses on an entity’s purpose rather than profit. An entity may be engaged in a business even if its homes, portfolios, or business lines do not generate a profit in a particular period.

Treasury invites comments on all aspects of the proposed purpose test and income-or-financial-gain standard. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 115: Is it appropriate to define “in the business of” by reference to the purpose of receiving investment gains, rental income, management fees, or any other type of income or financial gain? Should a different standard be applied, or should different factors be considered, to determine whether an entity is “in the business” for purposes of this definition? Should the final rule further define when an entity is engaged in the business “in part” with a quantitative or qualitative threshold or standard? Should the final rule include examples of other types of income or financial gain that would be covered? Should the final rule clarify that an entity may be engaged in the business even if the activity does not generate net profit in a particular period?

Question 116: Should the final rule define “investment gains,” “rental income,” “management fees,” “financial gain,” or other terms in proposed § 36.15(a)?

3. Covered Activities

Proposed § 36.15(a) incorporates the language in section 1001(a)(3)(A)(i)(I) of the Act regarding entities engaged in the business of “investing in, owning, renting, managing, or holding” single-family homes. Treasury anticipates interpreting this phrase to give independent meaning to each of those listed activities. An entity may be engaged in the relevant business through investment activity, ownership, rental activity, management activity, holding activity, or a combination of any of these activities.

As non-exhaustive examples in the context of various business models, an entity may be engaged “in the business” if it (i) owns single-family homes and rents them for rental income; (ii) manages single-family homes for management fees but does not own the homes; (iii) holds single-family homes not currently occupied by renters for appreciation, resale, disposition, rental conversion, or portfolio strategy; or (iv) invests in single-family homes through another entity for financial gain.

Being “in the business of” one of the activities above does not, by itself, mean that an entity is a large institutional investor. To be a large institutional investor, an entity must also meet the other statutory criteria, including having direct or indirect investment control of not less than 350 single-family homes, as provided in section 1001(a)(3)(A)(i)(II) of the Act. For example, a fee-based property management company may be “in the business of” managing single-family homes, but if that entity does not have direct or indirect investment control over those single-family homes as defined in the Act, including that it does not have “primary authority... to make material...management decisions,”¹⁵ it would not be a large institutional investor.

¹⁵ See Section 1001(a)(3)(B)(i) of the ROAD Act.

Treasury invites comments on all aspects of the list of covered activities. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 117: Should Treasury provide additional examples of activities that do or do not constitute investing in, owning, renting, managing, or holding single-family homes?

Question 118: Should the final rule address entities that hold single-family homes for disposition, redevelopment, resale, or portfolio management?

4. Temporary and Incidental Holdings

Proposed § 36.15(b) would provide that an entity is not engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes if the entity directly or indirectly invests in, owns, rents, manages, or holds single-family homes “solely on a temporary and incidental basis in furtherance of a different bona fide business” and satisfies certain other criteria. As described above, the Act refers to entities that are engaged “in the business of” the relevant activities; an entity that holds or manages single-family homes solely temporarily and incidentally in furtherance of a different bona fide business, in accordance with the terms of proposed § 36.15(b), would not fall within the scope of this definition.

Treasury preliminarily believes that each of these limits is necessary to prevent the exclusion from being used to avoid the statutory definition of large institutional investor. A broad exclusion for entities with another primary business could allow entities to hold substantial single-family home portfolios while claiming that the activity is incidental to a broader enterprise. Proposed § 36.15(b) would therefore require that the activity be both incidental and reasonably necessary to the other bona fide business, and not a regular or continuing investment strategy or portfolio management activity.

Treasury invites comments on all aspects of the proposed criterion for temporary and incidental activities. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 119: Is it appropriate to exclude activities that are solely temporary and incidental to another bona fide business? Should the rule include different factors for purposes of identifying entities that are not in the relevant business?

Question 120: Should the rule define “temporary” or “incidental”? If so, how should those terms be defined? Should the rule include a maximum time period for treating ownership, rental, management, or holding activity as “temporary”? Should Treasury define “different bona fide business”? If so, what definition would be appropriate?

5. Reasonably Necessary to the Conduct of Another Bona Fide Business

Proposed § 36.15(b)(2) would provide that an entity is not engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes if the entity directly or indirectly engages in such activities “only to the extent reasonably necessary for the conduct of” the entity’s other bona fide business and satisfies certain other criteria. This criterion is intended to help appropriately limit the exclusion to circumstances where the entity’s activities related to single-family homes do not indicate the company is “in the business” of conducting such activities. The exclusion would not apply merely because the entity also conducts another bona fide business; instead, under proposed § 36.15(b)(2), the entity’s single-family home activities must be limited to activities reasonably necessary for the conduct of that other business.

Treasury recognizes that the determination of whether an activity is reasonably necessary to a business will depend on the facts and circumstances. Relevant considerations may include the nature of the business; the reason the entity acquired, holds, or manages the homes; the length of time the homes are held; whether the entity receives rental income or other financial gain as a result of its activity related to single-family homes; whether the entity markets or manages the homes as part of a continuing portfolio; and whether the entity has policies setting forth its practice of disposing of homes promptly.

Treasury invites comments on all aspects of the “reasonably necessary” criterion. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 121: Is the “reasonably necessary” standard appropriate? Is there a different standard that would better fulfill the purposes of the Act? Should the final rule specify factors for determining whether single-family home activity is reasonably necessary to another bona fide business?

Question 122: Should the final rule require an entity relying on proposed § 36.15(b) to dispose of single-family homes within a specified period?

6. Regular or Continuing Investment Strategy or Portfolio Management Activity

Proposed § 36.15(b)(3) would provide that an entity is not engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes if the entity directly or indirectly engages in such activities “not as a regular or continuing investment strategy or portfolio management activity” and satisfies certain other criteria. This criterion is intended to help avoid characterizing recurring single-family home activity as not being part of the business in which the entity is engaged, in whole or in part. Recurring acquisition, ownership, rental, management, or holding of single-family homes as an investment strategy or for portfolio management is inconsistent with the statutory exclusion for entities not in the business of activities related to single-family homes.

Treasury invites comments on all aspects of proposed § 36.15(b)(3). In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 123: Is it appropriate not to exclude, from the definition of “large institutional investor,” entities whose single-family home activity is a regular or continuing investment strategy or portfolio management activity? Should this criterion be modified to better fulfill the purposes of the Act or to address market practices?

Question 124: Should the final rule define “regular or continuing”? Should the final rule include numerical or time-based thresholds for determining whether activity is regular or continuing?

7. Documentation

Treasury expects that a large institutional investor or other entity seeking to rely on proposed § 36.15(b) would maintain records sufficient to demonstrate that its investment in, ownership, rental, management, or holding of single-family homes satisfies each of the criteria in proposed § 36.15(b).

Relevant records may include business plans, acquisition records, disposition plans, contracts, servicing or operational records, internal approvals, board or management materials, accounting records, rental records, property-management records, records showing the relationship between the homes and the entity’s other bona fide business, and documentation showing the timing and reasons for single-family home acquisitions and dispositions. Treasury is not proposing specific documentation requirements in proposed § 36.15 at this time, but expects documentation to be important to evidence an entity’s compliance with the proposed exclusion.

Treasury invites comments on documentation related to proposed § 36.15. In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 125: Should Treasury require any specific documentation or records for an entity relying on proposed § 36.15(b)? If so, what records should be sufficient to demonstrate that single-family home activity is temporary, incidental, and reasonably necessary to another bona fide business?

Question 126: Should the final rule require entities relying on proposed § 36.15(b) to maintain documentation of a disposition plan, maximum holding period, or satisfaction of other applicable criteria?

L. Passive Investor Definition (Proposed § 36.16)

1. Overview of Passive Investor Treatment

Proposed § 36.16 would clarify when one entity is a “passive investor” in a second entity. The ROAD Act uses the term “passive investor” only in the definition of “large institutional investor.” Specifically, a large institutional investor generally includes an entity that has direct or indirect investment control of not less than 350 single-family homes, and “investment control” is defined to include owning or controlling more than 25 percent of any class of equity interests of the entity that owns the single-family home, “unless such entity is a passive investor.”¹⁶ In other words, an entity that holds a significant equity interest in another entity that owns single-family homes may avoid being considered a large institutional investor if it is a passive investor. Importantly, an entity that is a passive investor may meet other criteria in the “large institutional investor” definition, in which case the entity could nonetheless be a large institutional investor.

Under the proposal, passive-investor treatment would be available only if each of two conditions is met: (i) no director, officer, employee, or designee of the first entity, or of any entity controlled by the first entity, is a director or officer of the second entity; and (ii) the first entity does not have a property control right (as defined in proposed § 36.2) with respect to single-family homes over which the second entity has direct or indirect investment control. Each of these proposed conditions is explained further below. The proposed rule uses the term “first entity” and “second entity” to refer, respectively, to the potential passive investor and the entity in which it owns or controls equity interests.

These two proposed conditions are intended to provide administrable criteria that reflect common understandings of passivity, and to exclude investors with rights, employees, or

¹⁶ *Id.* at section 1001(a)(3).

designees that provide an ability to make, direct, or prevent decisions related to single-family homes.¹⁷

Treasury invites comments on all aspects of the definition of “passive investor.” In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 127: Is the passive investor definition in the proposed rule appropriate? Would an alternative approach be more suitable and administrable? If so, what factors should apply? If Treasury adopts the Internal Revenue Code section 469 approach, how should it be applied in this context? How should Treasury limit the “passive investor” definition to prevent evasion of the requirements under the Act?

Question 128: Are the conditions in the passive investor definition appropriate? Are any conditions missing from the definition? For example, should the rule include a limit on ownership of equity securities or of voting equity securities? If so, what would be the appropriate thresholds for such limits?

2. Director and Officer Interlocks

Under proposed § 36.16(a), for a first entity to qualify as a passive investor in a second entity, no director, officer, employee, or designee of the first entity, or of any entity controlled by the first entity, can be a director or officer of the second entity. This condition is intended to prevent passive-investor treatment where the investor’s representatives participate in the governance or management of the entity that owns or controls single-family homes.

Overlapping directors or officers can provide an investor with access, influence, or control inconsistent with passive status. The proposed condition is designed to provide an administrable indicator that the investor is not passive where such overlap exists. The proposed rule uses “designee” to describe persons selected, designated, appointed, or otherwise placed by

¹⁷ Treasury considered an alternative approach for defining “passive investor” based on section 469 of the Internal Revenue Code, which provides that a “passive activity” is one where the taxpayer “does not materially participate.” 26 U.S.C. 469(c). It defines “material participation” generally to be involvement in the operations of an activity that is “regular, continuous, and substantial.” 26 U.S.C. 469(h). Adopting the approach from the Internal Revenue Code in an entirely unrelated context, without the relevant interpretive history, may cause significant uncertainty regarding how it would apply in this context.

the first entity or its controlled entities, regardless of whether the person is formally described as a representative.

Treasury invites comments on all aspects of the director and officer interlock condition.

In particular, Treasury seeks comment on the following aspects of the proposed rule:

Question 129: Should the interlock condition apply only to directors and officers of the first entity? Should the interlock condition be limited to scenarios where the first entity has a majority of the directors of the second entity? Should any other representatives or rights of the first entity be included, such as board observers, advisory committee members, consultation rights, or other mechanisms for governance or management participation?

3. No Property Control Right

Under proposed § 36.16(b), for a first entity to qualify as a passive investor in a second entity, the first entity must not have a property control right (as defined in proposed § 36.2) with respect to single-family homes over which the second entity has direct or indirect investment control. This condition is intended to ensure that an investor will not be treated as passive if it has a right to make, direct, or prevent decisions, directly or indirectly, related to the purchase, sale, holding, leasing, renovation, or management of a single-family home. An investor that can require, block, or condition decisions regarding single-family homes would not be passive even if it lacks formal management authority.

Treasury invites comments on all aspects of the property control right condition. In particular, Treasury seeks comment on the following aspects of the proposed rule:

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?

4. Documentation of Passive Investor Status

Treasury expects that an entity seeking to rely on passive-investor status under proposed § 36.16 would maintain records sufficient to demonstrate that each of the two conditions is satisfied. Relevant records may include ownership charts, capitalization tables, governing documents, voting agreements, investor rights agreements, side letters, board and officer records, employment and designation records, and service agreements.

M. Enforcement (Proposed § 36.17)

1. Overview

Section 1001(d)(1) of the Act authorizes Treasury, or the Department of Justice at Treasury's request, to bring an action against a large institutional investor that violates the Act's prohibition for a civil penalty up to the greater of \$1 million per violation or three times the purchase price of the property involved. Proposed § 36.17 would provide that a purchase of a single-family home that violates the Act's prohibition with respect to more than one large institutional investor is deemed a single violation for purposes of calculating this maximum civil penalty.

More than one large institutional investor may be involved in a transaction in which a single-family home is purchased. For example, an investment fund, an investment manager, and a general partner may each have direct or indirect investment control with respect to the same single-family home. Similarly, a large institutional investor may acquire a single-family home through a subsidiary, and an affiliated large institutional investor may have indirect investment control with respect to the same home. In those circumstances, a prohibited purchase of a single-family home could violate the statutory prohibition with respect to multiple large institutional investors. Treasury believes it is appropriate to treat each purchase as a single violation for purposes of calculating the maximum civil penalty under section 1001(d)(1) of the Act. This approach maintains consistency between the effects of the violation and the resulting penalty,

and avoids the potential for an unwarranted increase in the total penalty based merely on the number of large institutional investors involved.

Proposed § 36.17 would apply only to the calculation of the maximum civil penalty under section 1001(d)(1). It would not alter whether a purchase violates section 1001(b) of the Act, whether any particular entity is a large institutional investor, or whether more than one entity may be responsible for a violation.¹⁸ In addition, the proposed rule would not treat purchases of different single-family homes, or purchases of the same single-family home in separate transactions, as a single violation. It also does not establish procedures for investigating potential violations, which Treasury may address in the future. The proposed rule does not specify how responsibility for a violation should be allocated among large institutional investors, and does not limit Treasury's ability to pursue enforcement actions against all entities whose conduct violates section 1001(b) of the Act. The proposed rule would preserve Treasury's ability to consider the facts and circumstances of any violation, including the role of each large institutional investor, in any enforcement process. Treasury may address such issues in the future.

Treasury invites comments on all aspects of proposed § 36.17. In particular, Treasury seeks comment on the following aspects of the proposed rule:

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?

Question 132: Should the final rule provide additional guidance on when a purchase violates section 1001(b) "with respect to more than one large institutional investor"?

Question 133: Should proposed § 36.17 only apply to affiliated large institutional investors? Should the rule avoid limiting liability for all large institutional investors that directly

¹⁸ Treasury understands that agreements related to investment funds and similar arrangements may provide for indemnification against civil monetary penalties. The proposed rule does not restrict that practice.

participate in the purchase of a single-family home in violation of the Act's purchase prohibition?

Question 134: Should the final rule clarify that separate prohibited purchases remain separate violations for purposes of calculating the maximum civil penalty? If so, how?

N. Severability (Proposed § 36.18)

Proposed § 36.18 provides that the provisions of Part 36 are separate and severable from one another. If any provision, clause, or phrase of Part 36, or the application thereof to any person, entity, or circumstance, is stayed or deemed to be invalid, unlawful, or unenforceable by a court of competent jurisdiction, such determination would not affect the validity, lawfulness, or enforceability of the remaining provisions or applications of this regulation, which would remain in full force and effect to the maximum extent permitted by law.

Treasury is proposing to include a severability clause so that in the event any particular provision of the proposed rule is held to be invalid, the remainder of the rule would remain in effect, providing clarity for large institutional investors, homebuilders, and other market participants. This regulation would have been proposed independently of any provision or application that may be declared invalid.

III. Regulatory Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the Federal Register.

Section 1001 of the ROAD Act establishes a statutory framework that generally prohibits a large institutional investor from purchasing, or entering into a contract to purchase, a single-family home unless the purchase is an excepted purchase. This proposed rule is intended to provide interpretive and operational clarity for certain statutory terms and conditions. The proposed rule would not create additional categories of excepted purchases, alter the statutory definition of “large institutional investor,” or eliminate any statutory exception. Treasury’s rulemaking authority, described further below in section III.E, is limited by a rule of construction providing that no regulation issued by Treasury “may amend the definitions of the [statutorily defined terms], including to” make certain specified categories of changes.

Treasury expects that the economic effect of the proposed rule on small entities would be limited, in part because the statutory prohibition applies only to large institutional investors, although some large institutional investors may be small entities, and the rule as proposed would primarily relate to compliance review, documentation, and transaction planning. Therefore, at this time, Treasury does not expect that the proposed rule would have a significant economic impact on a substantial number of small entities as described under the RFA.

B. Unfunded Mandates Reform Act

Treasury has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA). Under this analysis, Treasury considered whether the proposed rule includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation). Pursuant to section 202 of the UMRA, if a proposed rule meets this UMRA threshold, Treasury would need to prepare a written statement that includes, among other things, a cost-benefit analysis of the proposal. This requirement does not apply to regulations to the extent they incorporate requirements specifically set forth in law.

Treasury has determined that the proposed rule would not result in a covered unfunded mandate within the meaning of UMRA. The proposed rule would not require state, local, or

Tribal governments to administer a program or expend funds. The proposed rule may result in incremental recordkeeping and planning costs for entities that evaluate whether they are large institutional investors or whether particular purchases qualify as excepted purchases, but Treasury does not expect those incremental costs to meet the UMRA threshold.

C. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023, 5 U.S.C. 553(b)(4), requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the website www.regulations.gov.

Treasury is proposing to issue regulations pursuant to section 1001 of the Act (42 U.S.C. 19521) that clarify various undefined terms in the ROAD Act. The proposal and the required summary can be found at <https://www.regulations.gov>.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The preamble to this proposed rule includes a voluntary recordkeeping collection within the meaning of the PRA. Treasury is requesting a new control number for the information collection requirements and will submit the collection to OMB for review.

Information Collection

Title: Recordkeeping; 21st Century ROAD to Housing Act Prohibition on Large Institutional Investor Purchases of Single-Family Homes

OMB Control No.: 1505-NEW

Type of Review: New collection.

Affected Public: Large institutional investors seeking to make certain types of excepted purchases of single-family homes.

Respondent Obligation: Voluntary

Estimated number of respondents: 100 to 300

Estimated frequency of response: Periodically

Estimated number of annual responses: 100 to 300

Estimated time per response: One hour

Estimated total annual burden: 100 to 300 hours

Description: The preamble states that Treasury expects a large institutional investor seeking to rely on a program-based excepted purchase to maintain records sufficient to demonstrate that the program was implemented and that relevant purchases were made pursuant to the program. Such records may assist an entity in substantiating, and Treasury in evaluating, whether a purchase qualifies as an excepted purchase. The proposed rule does not prescribe particular records or a retention period, and the records would not be routinely submitted to Treasury. Treasury expects that most relevant records would be created in the ordinary course of business.

These collections of information will be submitted to OMB for review in accordance with the PRA. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations regarding the collection should be submitted to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Treasury, through www.reginfo.gov/public/do/PRAMain by the deadline specified in the **DATES** section of this notice, with a copy to Treasury as provided in the **ADDRESSES** section of this notice. On the reginfo.gov website, find this information collection by selecting “Currently under Review—Open for Public Comments,” then by using the search function. Comments are invited on (i) whether the collection of information is necessary for the proper performance of Treasury’s functions, including whether it has practical utility; (ii) the accuracy of Treasury’s burden estimate, including the validity of the methodology and assumptions used; (iii) ways to enhance the quality, utility, and clarity of the information; and (iv) ways to

minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

E. Regulatory Planning and Review

The Office of Information and Regulatory Affairs (OIRA), within the Office of Management and Budget (OMB), has determined that this proposed rule is a significant regulatory action as defined under section 3(f) of Executive Order 12866 and, therefore, is subject to review under Executive Order 12866. Treasury's analysis conducted in connection with Executive Order 12866 is set forth below. Treasury believes that the costs of the proposal are outweighed by the benefits, as described further below, and invites comments that would help quantitatively or qualitatively analyze the costs and benefits of the proposal, as well as any alternatives and their associated costs and benefits. This rule is not considered an Executive Order 14192 regulatory action because it imposes no more than *de minimis* costs.

1. Affected Parties

Parties directly affected by this proposal are large institutional investors and entities that may be part of, or provide capital to, the investment control ownership chain for single-family homes for large institutional investors. Treasury proposes to interpret the definitions in the statute in a manner that accounts for the practical effect of ownership interests, contractual rights, and governance arrangements. Large institutional investment in single-family homes may involve layered ownership structures, special-purpose vehicles, affiliated funds, side letters, contractual consent rights, service agreements, debt covenants, and other arrangements that may make it difficult to understand who has direct or indirect investment control over a single-family home. The proposed rule is intended to account for these variations in form. Reliable data are not currently available regarding how many institutional investors and other entities may be affected.

2. Baseline

Treasury has assessed the benefits and costs of the proposed rules relative to a no-action baseline reflecting the statutory requirements in the absence of the proposed rules. Once the

prohibition in the ROAD Act becomes effective, a large institutional investor may not purchase, or enter into a contract to directly or indirectly purchase, any single-family home, unless the home is purchased pursuant to one of several exceptions defined in the ROAD Act. Section 1001 of the Act generally defines a large institutional investor as a for-profit entity engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes that, alone or in concert with one or more other entities, directly or indirectly has investment control of not less than 350 single-family homes, excluding any single-family home purchased in an excepted purchase after enactment of the Act. Section 1001 of the Act also provides several categories of excepted purchases, including purchases pursuant to a build-to-rent program, renovate-to-rent program, homeownership program, and program to boost homeownership.

In the absence of this proposed rule, large institutional investors and other market participants would face significant uncertainty over the application of section 1001 of the Act to their business models, ownership structures, equity interests, governance rights, investment management arrangements, contracts, and other business decisions associated with the ownership of or investment in single-family homes. Investors might forgo otherwise permissible transactions, expend significant resources on transaction-specific legal analysis and structures, or take inconsistent positions across similar investments.

3. Costs

Costs associated with determining whether a purchase of a single-family home is prohibited or excepted will largely be attributable to the ROAD Act itself rather than the proposed rules. Treasury expects that its proposed rulemaking will bring clarity and reduce risk for market participants. Relative to the baseline, Treasury expects that market participants will not need to expend significant time and other resources to ensure that they are in compliance with the proposed rules. The proposed definitions are designed to address potential uncertainty regarding the application of the statutory prohibition. The proposal is intended to reduce, rather

than increase, total compliance costs for many affected entities by providing clearer standards for conduct that the ROAD Act already regulates.

Compliance with the proposed rules may impose certain compliance and operational costs on large institutional investors. These market participants would need to evaluate the extent to which their businesses and activities are covered by the terms of this proposal. Treasury also expects that an entity seeking to rely on the terms in this rulemaking would maintain records sufficient to demonstrate that each condition is satisfied as outlined in the proposed rule; some of those records may already be created in the ordinary course of business for a large institutional investor.

Some large institutional investors and other market participants may choose not to engage in activities that are subject to the ROAD Act's prohibition. This proposal does not establish any obligations, and will not impose any direct costs, on entities that determine not to engage in such activities.

Question 1: What information and methodology could Treasury use to quantify the total cost of requiring that large institutional investors provide meaningful financial support if they seek to rely on the purchase exception in section 1001(a)(2)(E)?

4. Benefits

As discussed in section II of this preamble, Treasury expects the proposed definitions and clarifications to be beneficial to the housing market. The proposed rules would reduce uncertainty for large institutional investors and other market participants, support more consistent compliance and enforcement, and help prevent circumvention of the law through layered ownership structures, nominally passive arrangements, or contractual rights that confer material control. The proposed rule also would help promote the practical availability of the statutory exceptions while reducing the risk that those exceptions are used in ways inconsistent with the ROAD Act. The clarifications in the proposed rule are expected to reduce inadvertent violations, improve administrability, reduce uncertainty, support more consistent compliance and

enforcement outcomes, and avoid unnecessary disruption to housing supply, homebuilding, housing stock rehabilitation activity, and capital formation. Treasury expects that the definitions in this proposed rule will reduce the ability and incentives to evade the statutory prohibition. Treasury also expects that the rulemaking will reduce or eliminate the risk that truly passive capital providers are treated as having direct or indirect investment control, and therefore could potentially be scoped in as large institutional investors that are subject to restrictions and compliance obligations in connection with the ROAD Act.

5. Discretion and Alternatives

In establishing the statutory framework for the large institutional investor ban on purchasing single-family homes, Congress used several terms that are central to the administration and enforcement of the statute. The ROAD Act does not define these terms in detail. However, Treasury believes that these terms would benefit from clarification to support an administrable framework for large institutional investors and other market participants.

Treasury's rulemaking authority is limited by a rule of construction in section 1001(b)(4)(B) of the Act providing that no regulation issued by Treasury "may amend the definitions of [certain statutorily defined terms]," including to make certain specified categories of changes.¹⁹ The list of specified categories of prohibited changes is illustrative rather than exhaustive. The phrase "including to" indicates that the listed categories are examples of amendments that Treasury may not make, not an affirmative authorization to amend the statutory definitions in other ways. Accordingly, in the proposed rule, Treasury has sought to clarify certain statutory terms, without amending the statutory definitions themselves. Interpreting the statutory terms by regulation is intended to provide greater clarity and certainty, relative to the alternative of addressing interpretive questions through subregulatory guidance.

See Section II above for more detail on the alternatives Treasury considered.

¹⁹ ROAD Act at section 1001(b)(4)(B).

Question 2: Will the proposed rule have a significant impact on a substantial number of small entities as described under the RFA? If yes, how?

Question 3: Is any aspect of the proposed definitions too broad? Could any aspect of the proposed definitions unintentionally include conduct outside the intended scope of the statute?

Question 4: Is any aspect of the proposed definitions too narrow? Could any aspect of the proposed definitions exclude persons, activities, or circumstances that should be covered?

List of Subjects in 31 CFR Part 36

Enforcement, Excepted Purchases, Housing, Large Institutional Investors, Recordkeeping.

For the reasons stated in the preamble, the Department of the Treasury proposes to amend 31 CFR subtitle A by adding part 36 to read as follows:

PART 36—LARGE INSTITUTIONAL INVESTOR BAN

Authority: 42 U.S.C. 19521.

§ 36.1 Authority, purpose, and scope.

- (a) *Authority.* This part is issued by the U.S. Department of the Treasury (Treasury) pursuant to section 1001 of the 21st Century ROAD to Housing (ROAD) Act (42 U.S.C. 19521).
- (b) *Purpose and scope.* The ROAD Act authorizes Treasury to issue regulations to carry out the statutory purposes. This part contains those regulations. Nothing in this part limits the authority of the Secretary of Housing and Urban Development to administer Section 1001(c) of the Act.

§ 36.2 Definitions.

“Act” or “ROAD Act” means the 21st Century ROAD to Housing Act, as amended from time to time.

“Property control right” means a right, including a consent, approval, veto, or other 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.

“Purchase price of the property” means the total amount paid by an entity to purchase a single-family home, including the amount paid for the land on which the single-family home is situated.

“Purchase price of the single-family home” means the portion of the purchase price of the property attributable to the value of the structure, as calculated by subtracting the tax-assessed value of the land at the time of the purchase on which the single-family home is situated from the purchase price of the property.

“Structural or core system” means systems or areas of a single-family home that substantially affect structural integrity, habitability, life safety, or the functioning of major building systems, which may include fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, and electrical.

§ 36.3 Program.

For purposes of sections 1001(a)(2)(B) to (E) of the Act, a program is a set of written policies or written procedures that are—

- (a) adopted before the purchase of single-family homes pursuant to such program; and
- (b) reasonably designed and implemented to ensure that all purchases of single-family homes pursuant to the program satisfy the applicable requirements of the Act, this part, and the program.

§ 36.4 [Reserved]

§ 36.5 Build-to-rent program.

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) 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, first occupied by renters, 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.

§ 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; and
 - (2) makes improvements, including those under paragraph (1), 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.
- (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).

§ 36.7 Homeownership program.

- (a) A homeownership program as described in section 1001(a)(2)(D) of the Act is a program pursuant to which a large institutional investor enters into contracts with renters to rent single-family homes purchased by the large institutional investor, where the contracts—

- (1) require rental payments and any other fees that are not greater than those collected by the large institutional investor on other similarly situated single-family homes not covered by the homeownership program;
 - (2) are considered a consumer credit transaction secured by a dwelling or real property;
 - (3) require the large institutional investor to inform the renter of the option for positive reporting of rental payments to consumer reporting agencies, and provide for such positive reporting, at no charge or expense to the renter, for any renter who opts into such reporting;
 - (4) require the large institutional investor to contribute meaningful financial support for the purchase of the single-family home by the renter 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 minus the amount of such meaningful financial support; and
 - (5) provide that, if the large institutional investor sells or otherwise transfers the single-family home to another large institutional investor before the termination of the contract, (i) the transferring large institutional investor's obligations described in paragraphs (1) through (4) shall automatically be deemed to be assigned to, and enforceable by the renter against, the transferee large institutional investor, and (ii) the transferring large institutional investor shall cause the transferee large institutional investor expressly to assume, in writing and effective upon consummation of the transfer, the transferring large institutional investor's obligations described in paragraphs (1) through (4).
- (b) For purposes of paragraph (a)(4), a large institutional investor shall be deemed to contribute meaningful financial support for the purchase of the single-family home by a renter who has rented the single-family home for at least 5 years if, in the event the renter purchases the single-family home from the large institutional investor—

(1) The amount of such financial support is at least the lesser of—

(i) \$5,000; or

(ii) 2.5 percent if the renter has rented the single-family home for at least 5 years, and

3.5 percent if the renter has rented the single-family home for at least 7 years, in

each case calculated as a percentage of the lesser of—

(A) The purchase price of the property purchased by the renter, determined

before giving effect to the meaningful financial support provided under

this section; or

(B) The Federal Housing Administration's mortgage limit for a one-unit

property that applies to the county where the single-family home rented by

the renter is located and that is in effect on the date the renter purchases

the single-family home; and

(2) The large institutional investor does not, directly or indirectly, recover any portion of

the financial support from the renter, including by increasing the purchase price of the

single-family home or imposing any expense, charge, or fee in connection with the

financial support.

(c) A homeownership program does not fail to satisfy the requirements of paragraph (a)

solely because the program allows the large institutional investor's obligation to

contribute meaningful financial support under paragraph (a)(4) to terminate if—

(1) As of the scheduled date for the renter's purchase of the single-family home, the

renter has failed to pay all rent then due and payable to the large institutional investor,

other than any amounts lawfully withheld;

(2) The renter breaches the rental contract in a manner that permits the large institutional

investor to terminate the contract under applicable law; or

(3) The renter elects to terminate the rental contract for a purpose other than purchasing

the single-family home.

§ 36.8 Program to boost homeownership.

- (a) A program to boost homeownership as described in section 1001(a)(2)(E) of the Act is a program pursuant to which a large institutional investor enters into contracts with renters to rent single-family homes purchased by the large institutional investor, where the contracts—
- (1) require the large institutional investor to inform the renter of the option for positive reporting of rental payments to consumer reporting agencies, and provide for such positive reporting, at no charge or expense to the renter, for any renter who opts into such reporting;
 - (2) provide the renter with a right of first refusal and a 30-day first-look period, as described in paragraph (f);
 - (3) 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), in accordance with this section; and
 - (4) provide that, if the large institutional investor sells or otherwise transfers the single-family home to another large institutional investor before the renter's rights under the program to boost homeownership terminate, (i) the transferring large institutional investor's obligations described in paragraphs (1) through (3) shall automatically be deemed to be assigned to, and enforceable by the renter against, the transferee large institutional investor, and (ii) the transferring large institutional investor shall cause the transferee large institutional investor expressly to assume, in writing and effective upon consummation of the transfer, the transferring large institutional investor's obligations described in paragraphs (1) through (3).
- (b) For purposes of paragraph (a)(3), a large institutional investor shall be deemed to contribute meaningful financial support for the purchase of a single-family home by a

renter who has rented a single-family home for at least 5 years if, in the event the renter purchases a single-family home—

(1) The amount of such financial support is at least the lesser of—

(i) \$5,000; or

(ii) 2.5 percent if the renter has rented the single-family home for at least 5 years and 3.5 percent if the renter has rented the single-family home for at least 7 years, in each case calculated as a percentage of the lesser of—

(A) The purchase price of the property purchased by the renter, determined before giving effect to the meaningful financial support provided under this section; or

(B) The Federal Housing Administration's mortgage limit for a one-unit property that applies to the county where the single-family home rented by the renter is located and that is in effect on the date the renter purchases the single-family home; and

(2) The large institutional investor contributes the amount described in paragraph (1)—

(i) if the seller of the single-family home is not the large institutional investor, by transmitting such amount to the seller of the single-family home for the renter's account at or before the sale of such single-family home; or

(ii) if the seller of the single-family home is the large institutional investor, by crediting such amount toward the purchase price of such single-family home; and

(3) The large institutional investor does not, directly or indirectly, recover any portion of the meaningful financial support from the renter, including by increasing the purchase price of the single-family home or imposing any expense, charge, or fee in connection with the financial support.

(c) A program to boost homeownership does not fail to satisfy the requirements of paragraph (a) solely because the program allows the large institutional investor's obligation to contribute meaningful financial support under paragraph (a)(3) to terminate if—

- (1) As of the scheduled date for the renter's purchase of a single-family home, the renter has failed to pay all rent then due and payable to the large institutional investor, other than any amounts lawfully withheld;
- (2) The renter has caused material damage to the single-family home occupied by the renter, beyond ordinary wear and tear, excluding any damage caused by the large institutional investor's failure to maintain the single-family home, and the large institutional investor has provided the renter with written notice and a reasonable opportunity to cure; or
- (3) The renter breaches the rental contract in a manner that permits the large institutional investor to terminate the contract under applicable law.

(d) A large institutional investor's obligation to contribute meaningful financial support to a renter under a program to boost homeownership may terminate beginning 90 days after the renter no longer occupies a single-family home owned by the large institutional investor.

(e) A contribution that does not satisfy the safe harbor in paragraph (b) may constitute meaningful financial support based on the facts and circumstances, including the economic value of price concessions, down-payment assistance, closing-cost assistance, or other support for the renter's purchase.

(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.

(g) For purposes of paragraph (f), written notice is provided on the date the notice is delivered personally to the renter, sent by electronic means to an electronic address designated by the renter for notices under the rental agreement, or deposited in the United States mail or with a commercial delivery service for delivery to the renter's address for notices under the rental agreement, at the option of the large institutional investor. If notice is provided by mail or commercial delivery service, the applicable response period begins on the third business day after the notice is deposited.

§ 36.9 Satisfaction of debts previously contracted.

A large institutional investor purchases a single-family home in accordance with section 1001(a)(2)(F) of the Act if the large institutional investor—

- (a) directly purchases the single-family home in connection with the satisfaction of debts previously contracted by such large institutional investor in good faith and where such large institutional investor has the right to repossess the single-family home under such contract; or
- (b) indirectly purchases the single-family home, by purchasing the single-family home directly or indirectly from another person or entity that purchased the single-family home in connection with the satisfaction of debts previously contracted in good faith by such person or entity and where such person or entity had the right to repossess the single-family home under such contract.

§ 36.10 Loss mitigation or compliance.

A large institutional investor purchases a single-family home in accordance with section 1001(a)(2)(G) of the Act if—

- (a) the purchase is undertaken by a mortgage servicer, lender, or other entity that has a legal right to a single-family home, for the purpose of loss mitigation or compliance with servicing or investor obligations, and not as a long-term investment strategy, and is solely as a result of—

- (1) a foreclosure;
 - (2) a deed-in-lieu of foreclosure;
 - (3) enforcement of a mortgage, deed of trust, or other security interest; or
 - (4) operation of law following borrower default; and
- (b) the large institutional investor—
- (1) is such mortgage servicer, lender, or other entity; or
 - (2) purchases the single-family home directly or indirectly from such mortgage servicer, lender, or other entity.

§ 36.11 Purchases from another large institutional investor.

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.

§ 36.12 [Reserved]

§ 36.13 [Reserved]

§ 36.14 [Reserved]

§ 36.15 In the business of.

- (a) An entity is engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes as described in section 1001(a)(3)(A)(i)(I) of the Act if the entity, directly or indirectly, invests in, owns, rents, manages, or holds single-family homes for the purpose, in whole or in part, of receiving investment gains, rental income, management fees, or any other type of income or financial gain.

(b) An entity is not engaged, in whole or in part, in the business of investing in, owning, renting, managing, or holding single-family homes as described in section 1001(a)(3)(A)(i)(I) of the Act if the entity, directly or indirectly, invests in, owns, rents, manages, or holds single-family homes—

- (1) solely on a temporary and incidental basis in furtherance of a different bona fide business;
- (2) only to the extent reasonably necessary for the conduct of such other bona fide business; and
- (3) not as a regular or continuing investment strategy or portfolio management activity.

§ 36.16 Passive investor.

An entity is a passive investor in a second entity as described in section 1001(a)(3)(B)(iv) of the Act if—

- (a) no director, officer, employee, or designee of the first entity or of any entity controlled by the first entity is a director or officer of the second entity; and
- (b) the first entity does not have a property control right with respect to single-family homes over which the second entity has direct or indirect investment control.

§ 36.17 Enforcement.

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.

§ 36.18 Severability.

The provisions of this part are separate and severable from one another. If any provision, clause, or phrase of this part, or the application of any such provision, clause, or phrase to any person, entity, or circumstance, is stayed or determined to be invalid, unlawful, or unenforceable by a court of competent jurisdiction, such determination shall not affect the validity, lawfulness, or

enforceability of the remaining provisions or applications of this regulation, which shall remain in full force and effect to the maximum extent permitted by law.

Ethan Fallang,

Deputy Assistant Secretary for Capital Markets,

U.S. Department of the Treasury.

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