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Treasury Proposes First Rules Under the ROAD to Housing Act's Ban on Institutional Investor Purchases of Single-Family Homes

The proposed regulations will directly shape how large institutional investors that build, buy, renovate, rent and/or sell single-family homes can operate after January 7, 2027.

On October 22, 2026, the United States Department of the Treasury published a Notice of Proposed Rulemaking to implement Section 1001 of the 21st Century ROAD to Housing Act (the Act), 42 U.S.C. § 19521, which Act became law on July 11, 2026. Section 1001 of the Act bars "large institutional investors" (LII or LII's) from buying single-family homes beginning January 7, 2027, subject to a list of exceptions, several of which are interpreted by the proposed regulations. The proposed regulations were published in the Federal Register on October 23, 2026, and comments are due November 23, 2026.[1]

The proposed regulations will directly shape how LII's that build, buy, renovate, rent and/or sell single-family homes can operate after January 7, 2027; the proposed regulations provide guidance on which homes those investors may still purchase, what written programs and documentation they must have in place, and how legal documentation should be drafted and structured to avoid unintended coverage.

This alert focuses on the regulations' proposed implementation of several exceptions to the ban on LII's purchasing single-family homes enacted under the Act, which is briefly summarized in the Appendix. This alert also discusses the practical effects of the proposed regulations on developers and sponsors pursuing build-to-rent, renovate-to-rent, and renovate-to-sell strategies, on fund and joint venture investors (including preferred equity investors), and on lenders. It includes a chart showing which transactions need an exception, and model provisions for loan documents, purchase and sale agreements, and joint venture agreements. The proposed regulations do not yet address every exception. They interpret the four "program" exceptions (build-to-rent, renovate-to-rent, homeownership programs, and programs to boost homeownership); clarify the exceptions for debts previously contracted, loss mitigation, and purchases from another LII; and interpret two terms in the definition of "large institutional investor." Treasury expects to address the remaining exceptions, along with compliance, recordkeeping, and enforcement procedures, in later rulemakings.

Key Takeaways from the Proposed Regulations

- **Existing rentals are not "newly constructed."** Under the proposed regulations, an LII could buy a single-family home under the build-to-rent exception only if the home (i) has never been owner-occupied, (ii) is purchased within 18 months after its certificate of occupancy is issued, and (iii) is first occupied by renters after the purchase.[2] Treasury considered and rejected treating older homes that were built to rent and have remained rented as eligible purchases under a build-to-rent program, rendering them subject to the ban absent a different exception.[3]

- **Renovate-to-rent is limited to genuinely deficient homes.** The regulations help explain the Act's renovate-to-rent exception: to qualify for this exception to the purchase prohibition, homes under the program must fail structural or core-system elements of local building codes at the time of purchase, and the buyer must resolve all material deficiencies and spend at least 15% of the purchase price, less the tax-assessed value of the land, on improvements.[4] Cosmetic updates, turnover work, and discretionary upgrades would not qualify.[5]

- **Acquiring already-renovated homes will be harder.** A home that a seller has already brought up to code generally would not qualify for the renovate-to-rent exception when an LII buys it, so the investor would need to rely on a different exception.[6]

- **Ownership and capital structures need a fresh look.** An investor holding more than 25% of any class of equity in an entity that owns single-family homes is treated as having investment control over those homes unless it is "passive." The proposed regulations would deny passive status to any investor with a board or officer seat in the entity or with any consent, approval, veto, or similar right over the purchase, sale, holding, leasing, renovation, or management of the homes, and Treasury declined to create a safe harbor for customary minority-investor protections.[7] Many preferred equity investors and joint venture capital partners would therefore count the investee's homes toward their own 350-home threshold.[8]

- **Lenders face open questions on enforcement.** Mortgage lenders should fit within the foreclosure and loss-mitigation exception. Mezzanine lenders have a good argument that a UCC foreclosure also qualifies, but an assignment-in-lieu of foreclosure is not expressly covered. Treasury has asked commenters to address these points.[9]

- **Compliance programs must be in place before purchases.** Purchases under the build-to-rent, renovate-to-rent, and homeownership exceptions must be made under written programs adopted before the purchase, and Treasury expects LII's to keep records supporting each excepted purchase.[10]

The Proposed Regulations

The proposed regulations would add a new Part 36 to Title 31 of the Code of Federal Regulations.[11] Treasury describes it as the first phase of a multi-step rulemaking, focused on the issues it views as most urgent for market clarity before the January 7, 2027 effective date.[12] The provisions most relevant to LII's are summarized below.

The Act authorizes Treasury, in consultation with the Department of Housing and Urban Development, the Federal Housing Finance Agency, and the Securities and Exchange Commission, to issue regulations to carry out Section 1001, including regulations to minimize market disruptions and to mitigate negative effects on consumers and communities. The Act also provides that no regulation may amend the statutory definitions, for example by changing the 350-home threshold, adding categories of LII's, or altering the excepted purchases in a way that would reduce the number of homes available to individual buyers.[13] Treasury accordingly describes the proposed rule as interpreting terms that the Act uses but does not define.[14] These limits also shape what commenters can realistically ask Treasury to change.

Who Is a "Large Institutional Investor" (Proposed §§ 36.15 and 36.16)

- **"In the business of."** An entity would be in the business of investing in, owning, renting, managing, or holding single-family homes if it does so, in whole or in part, for investment gains, rental income, management fees, or any other income or financial gain.[15] The only carve-out covers holdings that are solely temporary and incidental to a different bona fide business, reasonably necessary to that business, and not a regular or continuing investment strategy. Treasury describes this carve-out as narrow.[16] Treasury also states that homes acquired in what would be excepted purchases, such as build-to-rent activity, still count when deciding whether an entity is in the business.[17]
- **"Passive investor."** An equity holder with more than 25% of any class of equity of an entity escapes investment control only if it is passive. Under the proposed regulations, an investor is passive only if (1) none of its directors, officers, employees, or designees (or those of entities it controls) serves as a director or officer of the investee, and (2) it holds no "property control right," meaning any consent, approval, veto, or similar right over purchase, sale, holding, leasing, renovation, or management decisions for the homes.[18] An investor at or below 25% of every class is not caught by this test, but it can still have investment control in other ways, for example by being or controlling the owner's general partner, managing member, or investment manager, or by otherwise controlling the owner. Treasury states that payment rights, default remedies, information, audit, and inspection rights, and an investor's right to reduce or liquidate its own investment generally would not be property control rights.[19]

Excepted Purchases Must Be Made Under a Written "Program"

Several exceptions apply only to purchases made "pursuant to" a build-to-rent, renovate-to-rent, homeownership, or boost-homeownership program. Proposed § 36.3 would define a "program" as written policies or procedures that are (1) adopted before the purchase and (2) reasonably designed and implemented to ensure that every purchase meets the requirements of the Act, the regulations, and the program.[20] A purchase cannot be recharacterized after the fact to fit within an exception. Treasury is not proposing mandatory recordkeeping rules yet, but it repeatedly states that it expects investors to maintain documentation supporting each excepted purchase.[21]

Build-to-Rent (Proposed § 36.5)

A purchase would qualify under the build-to-rent exception only if the home:

1. has not been occupied by an owner-occupant before the purchase;
2. is purchased within 18 months after receiving its certificate of occupancy (or equivalent); and
3. is, after the purchase, first occupied by renters, whether in an all-rental community or a mixed owner- and renter-occupied community.[22] The reference to communities confirms that a qualifying home may be located in either kind of community; it is not a separate requirement.[23]

Treasury explained that it considered and rejected an alternative that would have allowed LII's to buy homes that were originally constructed to be rented and have remained rented. In Treasury's view, treating older rental homes as "newly constructed" would be inconsistent with the Act.[24] Treasury also considered a time-based test, such as homes built after enactment, but proposed the 18-month certificate-of-occupancy line instead.[25]

Treasury expects purchasers to keep records such as certificates of occupancy, construction records, proof of no prior owner-occupancy, and leases showing the first occupant was a renter.[26]

Renovate-to-Rent (Proposed § 36.6)

A renovate-to-rent program would have to (1) substantially rehabilitate homes that do not meet structural or core-system elements of local building codes at the time of purchase, including by resolving all material deficiencies, and (2) make improvements to each home totaling at least 15% of the "purchase price of the single-family home."[27]

Key features of the proposed regulations include:

- **Deficiency measured at purchase.** The home must be deficient when acquired. Deterioration or damage after the purchase does not make a home eligible, and a home with no material structural or core-system deficiencies at purchase cannot qualify.[28]

- **Structural or core systems.** Defined to include systems that substantially affect structural integrity, habitability, life safety, or major building systems, such as fire safety, light and ventilation, structural loads, foundations, mechanical, plumbing, and electrical.[29]
- **Land is excluded from the threshold.** The percentage tests are measured against the purchase price minus the tax-assessed value of the land, so the thresholds are tied to the value of the structure.[30]
- **10% safe harbor.** An investor that spends at least 10% of the purchase price (less the tax-assessed value of the land) on structural or core-system work and resolves all material deficiencies is deemed to have substantially rehabilitated the home, but must still reach the 15% total-improvement threshold.[31]
- **Cosmetic work does not count toward eligibility.** Treasury states that cosmetic improvements, ordinary turnover work, routine maintenance, and discretionary upgrades do not make a home eligible. Any improvement counts toward the 15% total, but only after the home qualifies as deficient.[32]

Treasury expects supporting records such as pre-purchase inspection reports, code violation notices, engineer or contractor assessments, permits, photographs, scopes of work, invoices, and threshold calculations.[33] Treasury also asks whether the final rule should require renovations to be completed within a set period, such as six months, and whether soft costs like permitting and architectural fees should count.[34]

Homeownership Programs and Programs to Boost Homeownership (Proposed §§ 36.7 and 36.8)

These two exceptions allow an LII to buy homes that it then rents under leases giving the tenant a path to ownership. Under both, the investor must offer to report the tenant's rent payments to credit bureaus, at no cost to the tenant, and must contribute "meaningful financial support," such as a price reduction or down-payment assistance, toward the tenant's purchase of a home.[35] While neither the Act nor the proposed regulations define "meaningful financial support," the proposed regulations provide some clarity in a safe harbor provision, which, for a tenant who has rented for at least five years, would treat as meaningful financial support the lesser of $5,000 or 2.5% of the price (3.5% after seven years of renting), measured against the lower of the purchase price or the county FHA loan limit.[36] Support for shorter-term tenants may still qualify based on the facts and circumstances. Under the program to boost homeownership, the lease must also give the tenant an option to buy the rented home, exercisable no later than the end of the lease, at a price no higher than fair market value minus that support. Under the related homeownership program, the lease must be treated as a consumer credit transaction secured by the home, which may bring federal and state consumer lending laws into play.[37] Neither the Act nor the proposed regulations say whether the tenant must already be in place when the investor buys the home. What the proposed regulations require is that the purchase be made under a program adopted beforehand and that the home then be rented under qualifying leases.

For the program to boost homeownership, the renter must also receive a right of first refusal and a 30-day first-look period before the home is marketed to others, plus a five-business-day right to match a later third-party offer that the investor is prepared to accept and that is at or below the price the renter offered during the first look. These rights last until the earlier of 90 days after the

lease ends or the date the home is rented to someone else.[38] These obligations would follow the home if it is transferred to another LII.[39]

For LII's, these programs may offer a route to acquire existing homes that do not qualify as build-to-rent or renovate-to-rent. They carry ongoing tenant rights and financial-support obligations, however, that should be priced into acquisitions and that follow the home on a transfer to another LII.

Purchases from Another LII (Proposed § 36.11)

Proposed § 36.11 would implement the statutory exception permitting an LII to buy a single-family home from another LII that either (1) owned the home on the date of enactment (July 11, 2026) or (2) purchased the home in compliance with the Act.[40]

Treasury clarifies that a home bought under this exception remains eligible for later transfers, so compliant inventory may change hands among LII's multiple times, provided the seller in each transfer owned the home at enactment or bought it in compliance with the Act, which includes a purchase under this exception. Treasury reads "in compliance with the Act" to include purchases made before the buyer became subject to the prohibition, purchases under any excepted-purchase category, and purchases made in connection with a restructuring or reorganization of ownership of homes owned or purchased on or before the date of enactment.[41]

The exception does not reach homes the seller acquired in violation of the Act. A later sale of such a home does not qualify merely because the seller is an LII. Treasury has not proposed documentation requirements, but as part of the comment period, it asks what due diligence a buyer should perform, whether buyers may rely on seller representations, certifications, covenants, or indemnities, and whether homes acquired in reliance on false representations should have to be divested.[42]

LII's buying portfolios from other LII's should therefore expect to diligence each home's acquisition history and to negotiate seller representations and indemnities addressing compliance. Buyers should also confirm whether any acquired homes are subject to homeownership-program obligations, which under the proposed regulations would transfer to the buyer.[43] Neither the Act nor the proposed regulations offer a way to obtain advance confirmation that a home is compliant inventory. Treasury writes the rules for and enforces the ban, and unless Treasury's final rule adds a reliance standard, buyers may only depend on diligence and contract protections.

Other Proposed Regulations

- **Debts previously contracted and loss mitigation.** The proposed regulations would confirm that both exceptions cover homes acquired by the creditor, lender, or servicer itself and homes later bought from that party, directly or indirectly. The debts-previously-contracted exception requires a good-faith debt under which the creditor had the right to repossess the home. The loss-mitigation exception requires that the acquisition result solely from a foreclosure, deed-in-lieu, enforcement of a security interest, or operation of law after a default, be made for loss mitigation or to comply with servicing or investor obligations, and not be part of a long-term investment strategy.[44]

- **Penalties.** If a single prohibited purchase involves more than one LII, it would be treated as one violation when calculating the maximum civil penalty.[45] Treasury also notes that the proposed rule does not restrict indemnities against civil penalties in fund and similar agreements.[46]

How the Proposed Regulations May Affect Investors, Developers, and Lenders

The prohibition and its civil penalties apply to the LII that buys in violation of the Act. Because a single violation can carry a penalty of up to the greater of $1 million or three times the purchase price, LII's will need to confirm, before signing each purchase contract, that the acquisition fits an exception and that the supporting facts are documented.

Which Transactions Need an Exception

The ban applies only to the buyer, so whether a transaction needs an exception turns first on whether the buyer is an LII. For an LII buyer, it also matters whether the seller is an LII, because some exceptions depend on who the seller is. Because the Act bars both entering into a purchase contract and the purchase itself, parties should confirm their status at signing and again at closing. The chart below summarizes the four combinations.[47]

	Buyer is not an LII	**Buyer is an LII**
Seller is not an LII	**No exception needed.** The Act does not restrict the purchase. The buyer should confirm that the purchase will not itself take it to 350 or more homes, which is an open question under the proposed rule.	**Exception needed.** Through January 7, 2029, the exception for purchases from investors that are not LII's covers the purchase. After that date, the buyer must fit another exception, such as build-to-rent, renovate-to-rent, a homeownership program, or a lender exception. The exception for purchases from another LII is not available.
Seller is an LII	**No exception needed.** The Act restricts purchases, not sales, so an LII may sell to an owner-occupant or a smaller investor. If the home is in a homeownership program or a program to boost homeownership, the seller must first honor the tenant's purchase option or first-look and right-of-first-refusal rights.	**Exception needed.** Most often, the exception for purchases from another LII, which applies if the seller owned the home on July 11, 2026, or bought it in compliance with the Act. The buyer should obtain seller representations, supporting documents, and an indemnity.

		Homeownership-program obligations transfer to the buyer.

Sellers have a stake even though the ban falls on buyers. An LII buyer will need to show the seller's status and acquisition history, so sellers should expect to give the representations and documents described under "Model Provisions" below.

Build-to-Rent Investors

LII's can continue to acquire new build-to-rent homes, but only within the proposed regulations' limits: (i) the home must never have been owner-occupied, (ii) the purchase must occur within 18 months of the certificate of occupancy, and (iii) the home must be first occupied by renters after the purchase.[48] Acquisition pipelines with builders should track certificate-of-occupancy dates closely, and forward purchase agreements should account for construction delays that could push a closing past the 18-month line. Investors that are LII's that construct and retain homes themselves should confirm that their written programs cover that activity as well. Because the Act treats "construction" as a "purchase," investors should assume that they will need the build-to-rent exception for homes they build, but the 18-month certificate-of-occupancy test fits awkwardly where the LII is also the owner, a point on which Treasury has requested comment. The final rule should make it clear that, if an LII builds a home itself, its "purchase" is effectively the completion of construction, which happens before or concurrently with the issuance of a certificate of occupancy.

Seasoned rental homes are a different matter. Treasury has expressly declined to treat homes that were built to rent and have remained rented as "newly constructed," so portfolio acquisitions of existing build-to-rent communities generally will not qualify for this exception.[49] Through January 7, 2029, those acquisitions may be possible under the statutory exception for purchases from investors that are not LII's.[50] After that, absent another exception, such as a purchase from another LII, they generally would be prohibited.[51]

Renovate-to-Sell Investors

The Act excepts homes renovated for sale (or converted from rental to for-sale) by the LII, but the proposed regulations do not yet interpret that exception.[52] Until Treasury acts, LII's relying on it should document their intent to sell from the outset, and, to maintain compliance with the Act, ensure that the home is not rented pending sale.

Renovate-to-Rent Investors

Acquisitions must target homes that fail structural or core-system elements of local building codes at the time of purchase. LII's should build pre-acquisition inspections into their programs, document deficiencies before closing, resolve all material deficiencies, and track structural and core-system costs separately from cosmetic costs to support both the 10% safe harbor (which shows that the home was substantially rehabilitated) and the separate 15% total-improvement threshold, each measured against the purchase price less the tax-assessed value of the land.[53] Homes that a seller has already brought up to code generally would not qualify, so acquisitions of

renovated homes will need another exception, such as the two-year window for purchases from smaller investors.

Fund, Joint Venture, and Preferred Equity Investors

The investment-control rules reach well beyond the entity that holds title. An entity has investment control over a home if it (1) owns the home or has primary authority to make material investment or management decisions about it, (2) is, or controls, the general partner or managing member of the owner, (3) is, or controls, the owner's investment manager or adviser, (4) owns or controls more than 25% of any class of the owner's equity, unless it is a passive investor, or (5) otherwise controls the owner.[54] Homes are counted for every entity that has investment control, acting alone or in concert with others, so a sponsor's funds, separate accounts, co-investment vehicles, and joint ventures may need to be aggregated. Because the ban covers indirect purchases and the definition of "purchase" includes mergers and acquisitions, acquiring a non-passive interest in an entity that owns homes may itself be treated as a purchase of those homes. And for purposes of the "in the business of" test, Treasury would treat fees, carried interest, and incentive compensation as financial gain.

For many investors, the passive-investor test will be the central structuring question. Because the 25% test applies to any class of equity, a preferred equity investor or joint venture capital partner that holds all or most of its class will exceed it in most structures. Under the proposed regulations, that investor is passive only if none of its directors, officers, employees, or designees serves as a director or officer of the investee and it holds no right to make, direct, or prevent decisions about the purchase, sale, holding, leasing, renovation, or management of the homes.[55] Customary major-decision rights, such as approval of acquisitions, dispositions, budgets, leasing guidelines, or capital projects, would likely be property control rights. Treasury looks to the effect of a right rather than its label, so a consultation right, covenant, or restriction may also be a property control right, and Treasury expressly declined to create a safe harbor for minority-investor protective rights.

Treasury has indicated that some rights would not defeat passive status: payment rights, default remedies, information, audit, and inspection rights, standard covenants, and an investor's right to reduce or liquidate its own investment, even if that leads the investee to sell homes. Treasury has also asked whether rights that become exercisable only after a default should be treated differently, which is important for preferred equity and joint venture structures in which control rights spring on a trigger event.[56]

In practice, an investor that wants to stay outside the definition has two main paths: hold 25% or less of every class of equity in each investee, or give up board and officer seats and property-level consent rights. Even then, an investor that otherwise controls the owner, or acts in concert with others, may still have investment control, so structures designed only to avoid the 25% test carry risk. For existing portfolios, the exceptions for restructurings of homes owned on or before July 11, 2026, and for purchases from another LII may permit recapitalizations and transfers without relying on passive status.[57] Sponsors and investors should address these points at the term-sheet stage of new joint ventures and preferred equity investments and should review existing governing documents.

Lenders

The proposed regulations raise two sets of issues for lenders. First, a lender that takes title to homes after a default needs an exception if it is, or would become, an LII. The debts-previously-contracted exception requires that the lender had the right to repossess the home under the loan, and the loss-mitigation exception applies to an entity that "has a legal right to a single-family home" acting solely as a result of a foreclosure, deed-in-lieu, enforcement of a security interest, or operation of law after default, and not as a long-term investment strategy.[58] Mortgage lenders should generally fit within these exceptions. A mezzanine lender's UCC foreclosure on the pledged equity of a borrower that owns single-family homes is likely a "purchase" of those homes, because the definition reaches acquisitions of entities.[59] Nevertheless, a mezzanine lender has a good argument that a UCC foreclosure fits within the loss-mitigation exception, which covers acquisitions resulting from "a foreclosure" and from "enforcement of a mortgage, deed of trust, or other security interest," and a pledge of equity is a security interest. A mezzanine assignment-in-lieu of foreclosure raises a harder question. The Act and the proposed regulations except a "deed-in-lieu of foreclosure" but do not mention an assignment-in-lieu, so on a strict reading an assignment-in-lieu is not an excepted purchase. Read together, however, the foreclosure and deed-in-lieu prongs indicate an intent to except a consensual transfer to a lender in place of foreclosure, and an assignment-in-lieu is the mezzanine-loan equivalent of a deed-in-lieu. Treasury has asked whether the phrase "legal right to a single-family home" is sufficiently clear and whether the exception should address other forms of security interests and additional default-related events, and lenders would benefit from Treasury confirming that mezzanine foreclosures and assignments-in-lieu both qualify.[60]

Second, Treasury has asked whether the exceptions are available to a buyer that is not yet an LII when it buys, which leaves open whether the ban applies to a foreclosure or other acquisition that takes a lender over the 350-home threshold. Treasury has also asked whether rights held by lenders and servicers should be treated differently from investor rights.[61] Lenders should also expect the exit value of single-family collateral to depend on whether the likely buyers can rely on an exception, and may want loan-level diligence and borrower covenants addressing how the homes were acquired. Lenders active in single-family rental and build-to-rent finance should consider these points in their loan documents and in comments.

Model Provisions

The following provisions are starting points for loan documents, purchase and sale agreements, and joint venture agreements. Each should be tailored to the transaction, and several may need to change when Treasury issues its final rule. Bracketed text shows alternatives or items to complete. Capitalized terms not defined below have the meanings given in the applicable agreement.

Common Definitions

"ROAD Act" means Section 1001 of the 21st Century ROAD to Housing Act (42 U.S.C. § 19521), together with all regulations promulgated thereunder (including 31 C.F.R. Part 36) and all written guidance issued by the U.S. Department of the Treasury with respect thereto, in each case as the same may be amended, supplemented, or replaced from time to time.

"Large Institutional Investor," "Excepted Purchase," "Investment Control," "Passive Investor," "Program," "Property Control Right," "Purchase," and "Single-Family Home" shall have the respective meanings given to such terms (or to the corresponding lowercase terms) in the ROAD Act.

"ROAD Act Losses" means any and all civil penalties, fines, assessments, and other monetary sanctions imposed or assessed by any Governmental Authority under or in connection with the ROAD Act, together with all losses, damages, costs, and expenses (including reasonable attorneys' fees and any loss incurred in connection with any divestiture of a Single-Family Home required by any Governmental Authority) arising therefrom.

"ROAD Act Schedule" means a schedule identifying, for each Single-Family Home, (a) the date on which the applicable owner entered into the contract to Purchase, and the date on which it acquired, such Single-Family Home, and (b) the basis on which such Purchase complied with the ROAD Act, namely, that such Purchase (i) was consummated prior to January 7, 2027, (ii) was made at a time when the purchaser was not a Large Institutional Investor, (iii) was made in connection with a restructuring or other reorganization of ownership of Single-Family Homes owned or purchased on or before July 11, 2026, or (iv) constituted an Excepted Purchase, specifying the applicable category of Excepted Purchase.

A. Loan Documents

For a loan secured directly or indirectly by single-family homes, the lender will want the borrower to state which basis of compliance applies to each home, to keep supporting records, and to be liable for any penalties. In a mezzanine loan, the representations and covenants should also cover each property owner below the mezzanine borrower.

Section [__]. ROAD Act Representations. Borrower hereby represents and warrants to Lender that [either] (a) neither Borrower nor any Person that has Investment Control over any Single-Family Home owned, directly or indirectly, by Borrower (each, a "Controlling Person") is a Large Institutional Investor [because [no such Person is engaged in the business of investing in, owning, renting, managing, or holding Single-Family Homes] [such Persons, alone or in concert with others, have Investment Control over fewer than 350 Single-Family Homes]] [or] (b) each Purchase of a Single-Family Home by Borrower or any predecessor in interest complied with the ROAD Act on the basis set forth opposite such

Single-Family Home on the ROAD Act Schedule attached hereto as Schedule [__], and such ROAD Act Schedule is true, correct, and complete. Borrower further represents and warrants to Lender that (i) each Program pursuant to which any such Purchase was made was adopted in writing prior to such Purchase and has been implemented in accordance with the ROAD Act; (ii) Borrower has delivered to Lender true, correct, and complete copies of each such Program and of all documentation supporting the basis of compliance set forth on the ROAD Act Schedule; and (iii) no notice, inquiry, investigation, or proceeding by any Governmental Authority under the ROAD Act is pending or, to Borrower's knowledge, threatened against Borrower, any Controlling Person, or any Single-Family Home.

Section [__]. ROAD Act Covenants. Borrower shall (a) not, and shall cause each Controlling Person not to, Purchase or enter into any contract to Purchase any Single-Family Home on behalf of Borrower unless (i) neither Borrower nor any Controlling Person is, or as a result thereof would become, a Large Institutional Investor, or (ii) such Purchase constitutes an Excepted Purchase; (b) maintain each Program and all documentation required by, or reasonably necessary to demonstrate compliance with, the ROAD Act, and deliver copies thereof to Lender within ten (10) Business Days after Lender's request; (c) comply with all obligations under the ROAD Act applicable to Borrower or any Single-Family Home, including all notice requirements to the U.S. Department of Housing and Urban Development and to tenants and all obligations owed to tenants under any homeownership program or program to boost homeownership; (d) deliver to Lender, together with each annual financial statement required hereunder, an Officer's Certificate certifying as to the matters set forth in Section [__] (ROAD Act Representations) and attaching an updated ROAD Act Schedule; and (e) notify Lender in writing promptly after Borrower obtains knowledge of (i) any notice, inquiry, investigation, or proceeding by any Governmental Authority under the ROAD Act, or (ii) Borrower or any Controlling Person becoming a Large Institutional Investor.

Section [__]. ROAD Act Recourse. [Insert as a loss carve-out in Section [__] (Exculpation) or in the Guaranty:] Any ROAD Act Losses incurred by Lender or any of its Affiliates, or imposed upon or assessed against Borrower, any Single-Family Home, or any other Collateral, arising out of (a) any representation or warranty set forth in Section [__] (ROAD Act Representations) being untrue or misleading in any material respect, (b) any breach of Section [__] (ROAD Act Covenants), or (c) any Purchase of a Single-Family Home by Borrower or any predecessor in interest that did not comply with the ROAD Act; *provided, however*, that the acquisition by Lender or its designee of any Single-Family Home or any interest in Borrower by foreclosure, assignment-in-lieu, deed-in-lieu, or other enforcement of remedies shall not release Borrower or Guarantor from any liability under this clause.

B. Purchase and Sale Agreements

An LII buyer relying on the exception for purchases from another LII, or on the two-year window for purchases from investors that are not LII's, will want the seller to state its status and the basis of compliance for each home, deliver and stand behind the supporting documents, and back its representations with a surviving indemnity from a creditworthy affiliate.

Section [__]. Seller's ROAD Act Representations. Seller hereby represents and warrants to Buyer that: (a) [Seller is not, and at no time on or after January 7, 2027 has been, a Large Institutional Investor [because [__]]] [Seller is a Large Institutional Investor and, with respect to each Single-Family Home included in the Property, either (i) Seller [or an Affiliate of Seller from which Seller acquired such Single-Family Home in a restructuring or other reorganization] owned such Single-Family Home on July 11, 2026, or (ii) Seller Purchased such Single-Family Home in compliance with the ROAD Act]; (b) the ROAD Act Schedule attached hereto as Schedule [__] is true, correct, and complete; (c) Seller has delivered to Buyer true, correct, and complete copies of the documents listed on Schedule [__] (the "ROAD Act Deliverables"), which include each Program pursuant to which any Single-Family Home was Purchased and all documentation in Seller's possession or control supporting the basis of compliance set forth on the ROAD Act Schedule, and, to Seller's knowledge, the ROAD Act Deliverables do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein not misleading; (d) Schedule [__] identifies each Single-Family Home that is subject to any lease, option, right of first refusal, first-look right, or other obligation under a homeownership program or a program to boost homeownership, and Seller has complied with all such obligations, including in connection with the sale of the Property to Buyer; and (e) no notice, inquiry, investigation, or proceeding by any Governmental Authority under the ROAD Act is pending or, to Seller's knowledge, threatened with respect to Seller or any Single-Family Home (the representations and warranties set forth in this Section [__], collectively, the "ROAD Act Representations").

Section [__]. Survival; ROAD Act Indemnity. Notwithstanding anything to the contrary contained herein, the ROAD Act Representations shall survive the Closing until the date that is [sixty (60)] days after the expiration of the statute of limitations applicable to any action by a Governmental Authority under the ROAD Act with respect to Buyer's Purchase of the Property, and shall not be subject to [the Cap], [the Basket], or any other limitation on Seller's liability set forth herein. Seller and [Credit Party] shall, jointly and severally, indemnify, defend, and hold harmless Buyer and its Affiliates from and against any and all ROAD Act Losses arising out of (a) any ROAD Act Representation being untrue or inaccurate, or (b) any Purchase of a Single-Family Home by Seller or any predecessor in interest that did not comply with the ROAD Act.

Section [__]. ROAD Act Closing Deliveries; Cooperation. As a condition to Buyer's obligation to consummate the Closing, Seller shall deliver to Buyer a certificate, dated as of the Closing Date, confirming that the ROAD Act Representations remain true and correct as of the Closing Date, together with an updated ROAD Act Schedule. From and after the Closing, Seller shall retain copies of the ROAD Act Deliverables until the expiration of the survival period set forth in Section [__] and shall cooperate reasonably with Buyer, at no out-of-pocket cost to Seller, in responding to any inquiry by a Governmental Authority under the ROAD Act.

C. *Joint Venture and Preferred Equity Agreements*

These provisions are for an investor that holds more than 25% of any class of equity and wants to be treated as a passive investor. Treasury has not confirmed that any particular right is not a property control right, so these provisions reduce, but do not eliminate, the risk that the investor will be treated as having investment control. Rights over the purchase, sale, holding, leasing, renovation, or management of the homes, including approval of property-level budgets, leases, dispositions, and financings, should be removed or converted to parameters agreed at signing, recognizing that Treasury looks to the effect of a right and that agreed parameters carry some risk.

Section [__]. Passive Investor Status. The Members intend that [Investor Member] shall be a Passive Investor with respect to the Company and each Subsidiary that directly or indirectly owns any Single-Family Home (each, an "SFH Entity"). Accordingly, notwithstanding anything to the contrary contained in this Agreement or in any other agreement among the Members: (a) no director, officer, employee, or designee of [Investor Member] or of any Person controlled by [Investor Member] shall serve as a manager, director, or officer of the Company or any SFH Entity; (b) [Investor Member] shall not have, and shall not exercise, any Property Control Right; and (c) any provision of this Agreement that would otherwise grant [Investor Member] a Property Control Right shall be of no force or effect, and the decision in question shall be made by the [Managing Member] [in its sole discretion] [in accordance with the Business Plan].

Section [__]. Retained Rights. Nothing in Section [__] (Passive Investor Status) shall limit the following rights of [Investor Member], which the Members intend shall not constitute Property Control Rights: (a) the right to receive distributions and other payments in accordance with this Agreement; (b) the information, inspection, and audit rights set forth in Section [__]; (c) the right to Transfer, or to cause the redemption or purchase of, all or any portion of [Investor Member]'s Interest [pursuant to Section [__] (Put Right)]; (d) the right to approve [amendments to this Agreement that adversely affect the economic rights of [Investor Member]] [,] [the admission of additional Members whose Interests rank senior to or *pari passu* with the Interest of [Investor Member]] [and] [any Bankruptcy Action]; and (e) the remedies set forth in Section [__] following the occurrence of a [Trigger Event], subject to Section [__] (ROAD Act Conditions to

Remedies).

Section [__]. ROAD Act Conditions to Remedies. [Investor Member] shall not exercise any right to remove or replace the [Managing Member], to assume control of the Company or any SFH Entity, or to cause the sale of any Single-Family Home unless [Investor Member] has determined in good faith[, after consultation with counsel,] that the exercise of such right (a) will not cause [Investor Member] or any of its Affiliates to become a Large Institutional Investor, or (b) will constitute an Excepted Purchase or will otherwise comply with the ROAD Act.

Section [__]. ROAD Act Compliance by Managing Member. The [Managing Member] shall cause the Company and each SFH Entity to (a) comply with the ROAD Act; (b) not Purchase or enter into any contract to Purchase any Single-Family Home unless such Purchase constitutes an Excepted Purchase or none of the Company, any SFH Entity, or any Person having Investment Control over any of them is, or as a result thereof would become, a Large Institutional Investor; and (c) maintain each Program and all documentation required by, or reasonably necessary to demonstrate compliance with, the ROAD Act. Within [__] days after the end of each calendar year, the [Managing Member] shall deliver to [Investor Member] a certificate of an officer of the [Managing Member] confirming compliance with this Section [__] and setting forth the number of Single-Family Homes over which the [Managing Member] and its Affiliates have Investment Control.

Section [__]. Regulatory Changes. If, as a result of any amendment to the ROAD Act or the issuance of final regulations or other written guidance thereunder, (a) any right of [Investor Member] that was omitted, limited, or made ineffective under Section [__] (Passive Investor Status) would not constitute a Property Control Right or otherwise cause [Investor Member] to have Investment Control, such right shall be reinstated [automatically] [upon written notice from [Investor Member] to the [Managing Member]], or (b) any right of [Investor Member] hereunder would constitute a Property Control Right, such right shall be suspended for so long as it would constitute a Property Control Right; and, in either case, the Members shall cooperate in good faith to amend this Agreement to reflect such reinstatement or suspension.

Recommended Next Steps

- **Adopt written programs now.** Programs for build-to-rent, renovate-to-rent, and homeownership purchases must be adopted before the purchases they cover and should be in place before January 7, 2027.
- **Review pending and pipeline transactions.** Identify contracts that will be signed or close on or after January 7, 2027, confirm which exception each relies on, and consider whether timing should be accelerated or whether the two-year window for purchases from smaller investors applies.

- **Strengthen acquisition diligence.** Collect certificates of occupancy, occupancy histories, pre-purchase inspection reports, and code notices, and require seller representations on construction dates, prior occupancy, and condition. Model purchase agreement provisions appear above.
- **Build cost-tracking and recordkeeping systems.** Track improvement costs by category for each renovate-to-rent home and preserve permits, scopes of work, invoices, and proof of payment.
- **Review entity and investor documents.** Identify each entity in which the investor holds more than 25% of any class of equity and any board, officer, consent, approval, or veto rights that would defeat passive-investor status, and confirm the investor's home count across affiliated funds, separate accounts, and joint ventures. For new joint ventures and preferred equity investments, decide at the term-sheet stage whether the investor will be passive, and draft its rights accordingly. Model joint venture provisions appear above.
- **Review loan documents and enforcement plans.** Lenders should consider whether a foreclosure, deed-in-lieu, or UCC foreclosure on collateral that includes single-family homes would fit within an exception, and whether loan diligence and borrower covenants should address how the homes were acquired. Until Treasury confirms that an assignment-in-lieu qualifies, mezzanine lenders should weigh that risk when choosing between a UCC foreclosure and an assignment-in-lieu. Model loan provisions appear above.
- **Calendar the first HUD notice.** LII's must notify HUD of their status and holdings by January 7, 2027, and by each December 31 after that.
- **Consider submitting comments.** Comments are due November 23, 2026, through regulations.gov. Points worth raising include a reliance standard for buyers that rely on seller representations; the treatment of springing rights and lender rights under the passive-investor test; confirmation that mezzanine foreclosures and assignments-in-lieu qualify for the loss-mitigation exception; whether the exceptions are available to buyers that would cross the 350-home threshold; and how the 18-month test applies to homes an investor builds itself.

APPENDIX – ROAD TO HOUSING ACT SUMMARY AND KEY PROVISIONS

Section 1001 of the Act provides that, beginning January 7, 2027, an LII may not purchase, or enter into a contract to purchase, directly or indirectly, a single-family home unless the purchase is an "excepted purchase."[62]

The Act's core provisions include the following:

- **General prohibition on purchases.** The Act provides that no LII may purchase, or enter into a contract to purchase, any single-family home.[63] This general prohibition does not apply to (1) an "excepted purchase" or (2) a purchase in connection with a restructuring or other reorganization of ownership of homes that were owned or purchased on or before the date of enactment.[64] The statute does not require LII's to divest or sell any single-family home purchased before enactment.[65] The prohibition takes effect January 7, 2027, and is repealed 15 years after that date.[66]

- **Definition of large institutional investor (LII).** The Act 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 with others, "directly or indirectly has investment control" of at least 350 single-family homes. Homes acquired in excepted purchases after enactment are excluded from the count.[67]
- **Single-family home.** Defined as a structure with two or fewer dwelling units intended for residential occupancy. Manufactured homes are not included.[68]
- **Purchase.** Defined broadly as "any purchase, transfer, or other acquisition of a single-family home, including through mergers, acquisitions, construction, foreclosures, or bulk purchases, whether or not for cash consideration."[69]
- **Excepted purchases.** Include, among others, (i) homes newly constructed or renovated for sale (or converted from rental to for-sale) by the LII; (ii) build-to-rent and renovate-to-rent programs; (iii) qualifying homeownership programs and programs to boost homeownership; (iv) acquisitions to satisfy debts previously contracted; (v) foreclosure and loss-mitigation acquisitions by lenders and servicers; (vi) purchases from another large institutional investor that owned the home at enactment or bought it in compliance with the Act; (vii) purchases from investors that are not LII's until January 7, 2029; and (viii) certain age-55-and-older communities.[70]
- **Penalties and enforcement.** The Secretary of the Treasury, or the Attorney General at Treasury's request, may seek a civil penalty of up to the greater of $1 million or three times the purchase price of the property for each violation.[71]
- **Reporting requirements.** The Act also requires LII's to report their single-family holdings annually to HUD (the first notice is due January 7, 2027) and directs HUD to create a Renter Outreach Resource for tenants of those investors, which each LII must describe to its tenants at move-in and annually.[72]

[1] 21st Century ROAD to Housing Act Prohibition on Large Institutional Investor Purchases of Single-Family Homes, 91 Fed. Reg. 66,799 (proposed Oct. 23, 2026) (to be codified at 31 C.F.R. pt. 36).

[2] Proposed 31 C.F.R. § 36.5, 91 Fed. Reg. at 66,824.

[3] 91 Fed. Reg. at 66,806.

[4] Proposed 31 C.F.R. §§ 36.2, 36.6, 91 Fed. Reg. at 66,824; *see also* ROAD to Housing Act, § 1001(a)(2)(C).

[5] 91 Fed. Reg. at 66,807.

[6] *See* 91 Fed. Reg. at 66,807 (deficiency is determined at the time of purchase).

[7] Proposed 31 CFR § 36.16, 91 Fed. Reg. at 66,827.

[8] ROAD to Housing Act, § 1001(a)(3)(B); Proposed 31 C.F.R. § 36.16, 91 Fed. Reg. at 66,827.

[9] Proposed 31 C.F.R. §§ 36.9, 36.10, 91 Fed. Reg. at 66,826; 91 Fed. Reg. at 66,802, 66,816–17 (Questions 7 and 104).

[10] Proposed 31 C.F.R. § 36.3, 91 Fed. Reg. at 66,824; 91 Fed. Reg. at 66,804–05.

[11] 91 Fed. Reg. at 66,824–27.

[12] *Id.* at 66,800.

[13] ROAD to Housing Act, § 1001(b)(4); 91 Fed. Reg. at 66,800, 66,824.

[14] 91 Fed. Reg. at 66,800.

[15] Proposed 31 C.F.R. § 36.15(a), 91 Fed. Reg. at 66,826; *see* ROAD to Housing Act, § 1001(a)(3)(A)(i)(I).

[16] Proposed 31 C.F.R. § 36.15(b), 91 Fed. Reg. at 66,826–27; 91 Fed. Reg. at 66,818.

[17] 91 Fed. Reg. at 66,818.

[18] Proposed 31 C.F.R. §§ 36.2, 36.16, 91 Fed. Reg. at 66,824, 66,827; *see* ROAD to Housing Act, § 1001(a)(3)(B).

[19] ROAD to Housing Act, § 1001(a)(3)(B); 91 Fed. Reg. at 66,802 (preamble § II.B.2).

[20] Proposed 31 C.F.R. § 36.3, 91 Fed. Reg. at 66,824; *see* ROAD to Housing Act, § 1001(a)(2)(B)–(E).

[21] *See, e.g.*, 91 Fed. Reg. at 66,806–07, 66,809.

[22] Proposed 31 C.F.R. § 36.5, 91 Fed. Reg. at 66,824; *see* ROAD to Housing Act, § 1001(a)(2)(B).

[23] 91 Fed. Reg. at 66,805 n.12.

[24] *Id.* at 66,806.

[25] *Id.*

[26] *Id.* at 66,806–07.

[27] Proposed 31 C.F.R. § 36.6(a), 91 Fed. Reg. at 66,824; *see* ROAD to Housing Act, § 1001(a)(2)(C).

[28] 91 Fed. Reg. at 66,807.

[29] Proposed 31 C.F.R. § 36.2, 91 Fed. Reg. at 66,824.

[30] 91 Fed. Reg. at 66,808.

[31] Proposed 31 C.F.R. § 36.6(b), 91 Fed. Reg. at 66,824; 91 Fed. Reg. at 66,808.

[32] 91 Fed. Reg. at 66,807–08.

[33] *Id.* at 66,809.

[34] *Id.* at 66,807–08 (Questions 41 and 52).

[35] Proposed 31 C.F.R. §§ 36.7(a), 36.8(a), 91 Fed. Reg. at 66,824–25; *see* ROAD to Housing Act, § 1001(a)(2)(D)–(E).

[36] Proposed 31 C.F.R. §§ 36.7(b), 36.8(b), 91 Fed. Reg. at 66,825.

[37] Proposed 31 C.F.R. §§ 36.7 (a)(20, 36.8(a)(2), (f), 91 Fed. Reg. at 66,824–25; *see* ROAD to Housing Act, §§ 1001(a)(2)(D)(ii), (a)(2)(E)(ii).

[38] Proposed 31 C.F.R. § 36.8(a)(2), (f), 91 Fed. Reg. at 66,825–26.

[39] Proposed 31 C.F.R. §§ 36.7(a)(5), 36.8(a)(4), 91 Fed. Reg. at 66,825.

[40] Proposed 31 C.F.R. § 36.11, 91 Fed. Reg. at 66,826; *see* ROAD to Housing Act, § 1001(a)(2)(H).

[41] 91 Fed. Reg. at 66,817; *see* ROAD to Housing Act, § 1001(b)(2)(B).

[42] 91 Fed. Reg. at 66,817 (Questions 109–111).

[43] Proposed 31 C.F.R. §§ 36.7(a)(5), 36.8(a)(4), 91 Fed. Reg. at 66,825.

[44] Proposed 31 C.F.R. §§ 36.9, 36.10, 91 Fed. Reg. at 66,826; *see* ROAD to Housing Act, § 1001(a)(2)(F)–(G).

[45] Proposed 31 C.F.R. § 36.17, 91 Fed. Reg. at 66,827; *see* ROAD to Housing Act, § 1001(d)(1).

[46] 91 Fed. Reg. at 66,821 n.18.

[47] ROAD to Housing Act, § 1001(a)(2)(H)–(I), (b)(1); Proposed 31 C.F.R. §§ 36.7(a)(5), 36.8, 36.11, 91 Fed. Reg. at 66,825–26.

[48] Proposed 31 C.F.R. § 36.5, 91 Fed. Reg. at 66,824.

[49] 91 Fed. Reg. at 66,806.

[50] ROAD to Housing Act, § 1001(a)(2)(I).

[51] *See e.g.*, *id.* at § 1001(a)(2)(D).

[52] *See id.* at § 1001(a)(2)(A); 91 Fed. Reg. at 66,800 (describing phased rulemaking).

[53] Proposed 31 C.F.R. §§ 36.2, 36.6, 91 Fed. Reg. at 66,824.

[54] ROAD to Housing Act, § 1001(a)(3)(B).

[55] Proposed 31 C.F.R. §§ 36.2, 36.16, 91 Fed. Reg. at 66,824, 66,827; 91 Fed. Reg. at 66,802 (preamble § II.B.2).

[56] 91 Fed. Reg. at 66,802 (preamble § II.B.2 and Question 6).

[57] ROAD to Housing Act, § 1001(b)(2)(B); Proposed 31 C.F.R. § 36.11, 91 Fed. Reg. at 66,826.

[58] Proposed 31 C.F.R. §§ 36.9, 36.10, 91 Fed. Reg. at 66,826; *see* ROAD to Housing Act, § 1001(a)(2)(F)–(G).

[59] ROAD to Housing Act, § 1001(a)(4).

[60] ROAD to Housing Act, § 1001(a)(2)(F)–(G); 91 Fed. Reg. at 66,816–17 (Questions 100, 104, and 105).

[61] 91 Fed. Reg. at 66,802, 66,816–17 (Questions 7 and 104).

[62] ROAD to Housing Act, § 1001(b)(1)–(2).

[63] *Id.* § 1001(b)(1).

[64] *Id.* § 1001(b)(2).

[65] *Id.* § 1001(b)(3).

[66] *Id.* § 1001(f).

[67] *Id.* § 1001(a)(3).

[68] *Id.* § 1001(a)(5).

[69] *Id.* § 1001(a)(4).

[70] *Id.* § 1001(a)(2).

[71] *Id.* § 1001(d)(1).

[72] *Id.* § 1001(c).

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