



July 29, 2024

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

RE: HOME Investment Partnerships Program: Program Updates and Streamlining
[Docket No. FR-6144-P-01]

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA)¹, on behalf of its state Housing Finance Agency (HFA) members, respectfully submits the following comments in response to the proposed rule to update and streamline the HOME Investment Partnerships (HOME) program regulations. NCSHA greatly appreciates our partnership with the U.S. Department of Housing and Urban Development (HUD) and its thoughtful approach to modifying the HOME regulations to strengthen the program in response to NCSHA's and other stakeholders' suggestions. The HOME program is integral to NCSHA's and HFAs' affordable housing missions. Forty-five state and territorial HFAs and NCSHA associate members administer HOME; 43 of these acted as their state's Participating Jurisdiction (PJ) and two administer a portion of their state's HOME allocation as a subrecipient in most years. In calendar year 2022, these 45 agencies committed over \$365 million in HOME funds to finance 6,405 rental and owner-occupied units.² State HFAs have a strong interest in the effectiveness and success of the HOME program, and we are pleased to offer the following feedback, largely positive, on the proposed rule.

¹ NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

² *State HFA Factbook: 2022 NCSHA Annual Survey Results*, National Council of State Housing Agencies

Rental

Acquisition, construction, and rehabilitation of affordable multifamily rental housing represent the largest share of HOME spending by HFAs, with approximately two-thirds of HFA commitments of HOME funding in calendar year 2022 dedicated to these purposes. We are therefore pleased to see a number of provisions in the proposed rule that would make it simpler and easier to use HOME funds to develop or rehabilitate affordable multifamily housing, particularly in projects with multiple sources of subsidy.

In particular, we strongly support those provisions in the rule to align HOME rent limit requirements with those of other housing resources with which HOME is often used, such as the proposed implementation of the Housing and Economic Recovery Act (HERA) provision allowing a project owner to charge the rent permissible under the Housing Choice Voucher (HCV) program or another Federal or State rental assistance program, even where that rent amount exceeds the HOME rent limits. We believe these changes will not only make it simpler to manage these projects, but in some cases could also make them more sustainable over the long term as capital and operational costs increase.³ For similar reasons, we also support HUD's proposal to restore the option for PJs to use local utility allowances for HOME-assisted rental projects, which will have the additional benefit of eliminating the need for HUD-issued waivers where HOME utility allowance requirements conflict with Project-Based Voucher (PBV) or HUD-VASH PBV requirements.

Specific solicitation of comment #6: Rather than permitting all HOME-assisted projects to use the local PHA's utility allowance, should HUD limit the use of the PHA utility allowance to only HOME-assisted projects which also receive PBV or HUD-VASH PBV assistance?

No, the PHA utility allowance should be allowed to be used on any HOME-assisted project. This already is allowable within the Housing Trust Fund program; thus allowing the PHA utility allowance for all HOME-assisted properties would align these closely related programs. This would not limit owners' ability to use a project-specific utility allowance if they choose to do so. The utility allowance standard should be a business decision left to property owners and HUD should ensure flexibility so that they may determine the best choice for individual properties.

³ One potential area of confusion, however, could occur if the tenant contribution, as determined by the subsidy provider, exceeds the HOME limit. In these circumstances, the Department may wish to consider allowing the project owner to collect the entire payment regardless of the tenant contribution.

Specific solicitation of comment #7: The Department seeks input on whether and how the rule should facilitate the conveyance of a financial benefit to low-income tenants when the project owner makes energy efficiency upgrades such as the installation of small-scale wind or solar facilities in connection with an eligible Federal or State program. HUD has issued guidance that currently describes how certain utility discounts or rebates can be treated under HUD income and utility allowance regulations. HOME is subject to the same income requirements under 24 CFR 5.609 as other program areas issuing guidance on the treatment of these discounts and rebates. The Department therefore also requests comment from the public on whether to go farther than this guidance for HOME projects through this HOME rulemaking. For example, should HUD maintain the same utility allowance for the project following energy efficiency upgrades to allow the tenant to realize the benefit of decreased utility costs? Both the current income regulations at 24 CFR 5.609 and 24 CFR 5.609 as revised in the HOTMA Final Rule exclude lump-sum additions to assets, as well as non-recurring income. However, if a HUD program provided a recurring financial benefit directly to a low-income tenant, should the rule exclude this income from the HOME income determinations?

Generally speaking, the goal should be to encourage energy efficiency upgrades and investment. Implementing additional regulatory or administrative requirements would serve as a disincentive to such investment. Including revenues generated as a result of enhanced energy efficiency as income to the tenant would place an administrative burden on the tenant, the owner, as well as the monitoring PJs for what is likely to be a very small change per month. Also, as mentioned above, an owner who invests in energy efficiency upgrades may well determine that it would be beneficial to obtain an updated project-level utility allowance but should not be required to do so.

Specific solicitation of comment #8: The Department specifically requests public comment from participating jurisdictions, developers, and other affected members of the public about the appropriateness of the length of the HUD-required periods of affordability for HOME-assisted rental housing. The current regulation at 24 CFR 92.252(e) establishes periods of 5 years for a per-unit HOME investment of under \$15,000, 10 years for a per-unit investment between \$15,000 and \$40,000, and 15 years for a per-unit investment of more than \$40,000, 15 years for any unit involving refinancing of existing debt, and 20 years for any unit involving new construction. Section 215(a)(1)(E) of NAHA (42 U.S.C. 12745(a)(1)(E)) requires that the period of affordability be for the remaining useful life of the HOME-assisted property, as determined by HUD, without regard to the term of the mortgage or to transfer of ownership, or for such other period that HUD determines is the longest feasible period of time consistent with sound economics and the purposes of NAHA. Since the Department established these periods of affordability in 1991, costs have increased significantly, LIHTCs have become the primary funding mechanism for rental housing, and the housing affordability crisis in the country has worsened significantly. The Department seeks input about whether the length of the periods of

affordability and the dollar thresholds and activity thresholds that are the basis of the current periods of affordability remain appropriate. In addition, the Department seeks input about any project feasibility challenges of the current HOME periods of affordability and factors that the HUD should consider in contemplating changes to the current periods of affordability.

We believe the periods themselves are appropriate, as many projects with HOME funding also receive other state or federal resources that place rent and income restrictions on the property through a regulatory or use agreement. When the HOME period of affordability ends, that reduces the administrative burden on the property and allows additional flexibility to manage rents, especially for financially challenged properties, subject to any other restrictions still in place. However, we believe it would be appropriate to consider increasing the dollar thresholds to reflect the increase in costs of construction, perhaps by determining the present value of the current dollar thresholds based on price levels at the time they were established in 1991.

Homeownership

In 2022, HFAs and NCSHA Associate members administering HOME committed approximately \$108 million in HOME funds for a range of single-family activities, including owner rehabilitation, downpayment assistance, and new construction and acquisition and rehabilitation of single-family units. We appreciate HUD's efforts to make HOME a more conducive program for assisting homeowners and homebuyers, despite the fact that several of the most needed changes to better facilitate homeownership with HOME require changes to the program's statute and are thus beyond the scope of the proposed rule.

In particular, NCSHA supports HUD's proposal to establish model resale formulas to offer clarity for PJs seeking to utilize the resale option for homeownership. Such formulas should balance the need for the unit to remain affordable and the opportunity of the original homebuyer to realize a fair return on their investment. While it will likely take time before we understand the full implications of the use of these formulas, we appreciate the effort they represent to provide some measure of market flexibility and a degree of compliance certainty for PJs actively monitoring a portfolio of HOME-assisted homebuyer units.

Specific solicitation of comment #11: The Department requests public comment on whether the existing 9-month deadline for the sale of homebuyer units acquired, rehabilitated, or constructed with HOME funds is reasonable and whether extending the deadline to 12 months would increase the use of HOME funds for homeownership programs.

We believe that extending the deadline to 12 months would potentially increase the use of HOME funds for homeownership programs.

Tenant-Based Rental Assistance

While Tenant-Based Rental Assistance (TBRA) represents the smallest proportion of HFA commitments of HOME funding in dollar terms, that funding serves a significant number of households, with over 2,700 households receiving HOME-supported TBRA from an HFA in calendar year 2022. We appreciate the effort made in the proposed rule to simplify the use of HOME for TBRA, including allowing PJs to establish a policy to provide exceptions to the minimum tenant contribution requirement and reducing the frequency of income determinations from annual to every two years.

We would also encourage HUD to consider further steps to align HOME TBRA with Section 8 in a final rule. For instance, currently, the HOME TBRA program requires lease renewals; this is not required for the Section 8 program after new admission (essentially, lease renewal is implied and does not have to be verified). To align with Section 8, the HOME TBRA program should not have a lease renewal requirement after new admission.

Other Items

Maximum Per-Unit Subsidy and Green Building Incentives

As construction costs remain elevated, we appreciate HUD's effort to allow greater flexibility in the setting of maximum per-unit subsidy for HOME-assisted units. Specifically, we look forward to the opportunity to review the methodology HUD plans to publish to align the maximum per-unit HOME subsidy with section 212(e). We also welcome the decision by HUD in the interim to raise the maximum per-unit HOME subsidy to 270 percent of the current section 234 limitation.

Specific solicitation of comment #2: The Department specifically requests public comment from participating jurisdictions, developers, and other affected members of the public about the green building standards that the Department should establish in the Federal Register. In addition, the Department seeks public comment about stakeholder experiences regarding the percentage increase in the cost of constructing or rehabilitating affordable housing to a green building standard and whether a 5 percent increase in the maximum per unit subsidy limit is sufficient. Finally, the Department requests public comment on whether permitting participating jurisdictions to exceed the maximum per unit subsidy limit by an amount in excess of the additional costs of green building measures (i.e., to provide additional HOME funds to cover a larger portion of other HOME-eligible development costs), would create a sufficient incentive to developers and owners to meet green building standards in projects that would otherwise not be designed to meet those standards.

Generally speaking, we applaud HUD's efforts to encourage more efficient building methods by allowing an increase in the maximum per-unit subsidy to account for the additional cost of construction. While it is difficult to evaluate whether an increase of 5 percent in the maximum per-unit subsidy is sufficient to compensate for the additional cost of building to a higher efficiency standard, we expect this amount would need to be higher to achieve the intended effect and propose allowing for no less than a 10 percent increase.

Additionally, we take no position on the specific building standards that HUD should use to determine eligibility for this increased per-unit subsidy; however, we strongly encourage HUD to allow the use of as many different qualifying standards as possible to account for different levels of availability in different parts of the country as well as varying costs of certification for the standards under consideration.

Property Standards and Inspections

As HUD continues to make progress in the implementation of its new National Standard for the Physical Inspection of Real Estate (NSPIRE), we appreciate efforts taken in the proposed rule to better align the HOME program with the NSPIRE regime and reduce duplicative and/or contradictory requirements related to the physical inspection of HOME-assisted units. In particular, we appreciate the provision in the proposed rule to permit PJs to accept the completion or ongoing inspection conducted for another funding source in accordance with NSPIRE to determine that the project and units are decent, safe, sanitary, and in good repair.

Community Housing Development Organizations (CHDOs)

Fostering the development of a community-driven housing nonprofit ecosystem has been a core policy goal of the HOME program since inception. We welcome a number of changes to the CHDO requirements in the proposed rule that will both advance this policy goal while also making the program easier to administer for PJs. In particular, we believe the changes proposed in the rule to CHDO board composition, staff capacity requirements, and decision-making authority will make it easier for entities to qualify as CHDOs and to have access to the necessary expertise to be successful. We also agree that enabling a CHDO to transfer ownership of a property when necessary to maintain compliance with HOME program requirements will help preserve HOME-assisted stock of affordable housing.

Tenant Protections

The rule includes a number of new tenant protections and proposes to provide a universal HOME tenancy addendum to be applied to all leases for HOME-assisted

rental housing units or units receiving HOME TBRA. In general, we believe that to the extent such a universal HOME addendum would ensure compliance with Violence Against Women Act (VAWA) requirements and other federal tenant rights, as well as the model Section 8 lease, it would help reduce the burden on PJs to develop their own addenda or review individual leases for program compliance. However, for this effort to be successful, it is critical that HUD takes special care to ensure that the universal HOME addendum does not conflict with any other lease provisions or addenda required by other federal programs, and furthermore to avoid conflict with applicable state or local laws to the maximum extent possible.

Program Income

The proposed rule would modify the definition of program income to include the phrase "at any time". We respectfully oppose this change. Requiring a PJ to continue to track program income beyond the period of affordability would effectively extend the PJ's monitoring obligations with respect to a property, potentially in perpetuity, placing unnecessary strain on limited PJ resources.

Effective Date of Applicability

With the 2013 HOME final rule, some provisions were made applicable to all HOME-funded developments, while others applied only to properties that received commitments of HOME funds after the effective date of the final rule. As the Department moves towards finalizing the current proposed rule, PJs will need clarity on which changes will apply program-wide and which will apply only to newly funded projects.

Once again, thank you for the opportunity to comment on this proposed rule and for the effort that went into developing it. We look forward to working with you to implement the changes it includes and continuing to improve the HOME program for the benefit of the low-income renters, buyers, and residents of HOME-assisted housing.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman", with a long horizontal flourish extending to the right.

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives