



June 17, 2019

The Honorable Benjamin S. Carson, Jr. MD
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Dear Mr. Secretary,

Thank you for the opportunity to submit recommendations for how HUD can use its existing authorities to promote public and private investments in affordable housing and community development activities in Opportunity Zones (OZ) and other economically distressed areas. On behalf of the National Council of State Housing Agencies (NCSHA), we are sending you the following ideas for ways HUD programs could be amended or modified to facilitate their usage in OZs.

We believe these changes, made on a national, zone-specific, permanent, or temporary/pilot basis could help policy-makers, communities, and other stakeholders realize the promise of OZs and help HUD contribute even more to OZs' success. Many of these ideas are based on past NCSHA suggestions for changes in HUD regulations; some are new and OZ-specific.

Alleviating regulatory burdens and facilitating federal program investments in OZs will encourage increased housing activity in OZs and help HFAs and other program partners stretch scarce resources to leverage investments in OZs. We appreciate the steps HUD has already taken to support OZs and propose the additional ideas described in this letter to further stimulate affordable housing activity and make HUD programs more effective in OZs.

NCSHA is a national nonprofit, nonpartisan organization created by the nation's state HFAs more than 40 years ago to coordinate and leverage their federal advocacy efforts for affordable housing.¹ In addition to our policy and advocacy work, NCSHA provides HFAs education and training and facilitates best practice exchange among them.

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.

HFAs are governmental and quasi-governmental, nonprofit agencies created by their jurisdictions to address the full spectrum of housing need, from homelessness to homeownership. Though they vary widely in their characteristics, including their relationship to state government, HFAs have in common their public-purpose mission to provide affordable housing to the people of their states who need it.

HFAs have a long track record of successfully administering a wide range of affordable housing and community development programs, including the HOME Investment Partnerships (HOME) program, the Housing Trust Fund (HTF), tax-exempt Housing Bonds, the Low Income Housing Tax Credit (Housing Credit), HUD rental assistance programs, and down payment assistance. Many HFAs have been working closely with their governors and other state and local officials to identify their states' OZs and develop plans for increasing investment in them.

With this experience and these principles in mind, we recommend that the Administration consider the following regulatory proposals for making HUD programs easier to use, both within OZs and outside of them. While many of these recommendations could be even more potent with statutory changes, we believe virtually all of them can be realized to some extent through regulatory or administrative action.

HUD Funding Programs

Where possible and within HUD's control, we recommend it propose increased funding for programs grantees can use in OZs and provide more flexibility for program administrators so they can use those programs more effectively to increase affordable housing and community development activity in OZs, including Community Development Block Grants, HOME Investment Partnership program funding, Housing Trust Fund resources, Emergency Shelter Grants, Choice Neighborhood grants, Lead-Based Paint abatement, Housing Opportunities for People With AIDS, Section 202, and Section 811 funding. We also suggest that HUD provide guidance and technical assistance to help grantees and HUD program recipients use these funds in OZs.

However, we want to emphasize that we would not support requirements that state and local program administrators target resources under their control into OZs. HFAs believe that strategically investing housing resources in OZs will provide important benefits to distressed areas, but may not want to limit affordable housing investments to these communities or endure restrictions on their ability to serve other communities.

FHA Multifamily Mortgage Insurance Programs

We support the steps HUD has already taken to expedite FHA multifamily mortgage insurance reviews for mortgages on Housing Credit properties in OZs and to reduce application fees for some multifamily mortgage insurance programs on developments in OZs. We encourage HUD to extend this expedited review and reduced application fee policy

to other FHA multifamily insurance programs and products, particularly the FHA-HFA Multifamily Loan Risk-Sharing Program.

HUD also could streamline the Risk-Sharing program to facilitate faster and more affordable housing production, particularly for refinancing affordable 4 percent and 9 percent Low Income Housing Tax Credit (Housing Credit) developments nearing the end of their first 15-year affordability restrictions. HUD could also allow and assist in new partnership formations and new OZ equity investment in exchange for extensions of affordability restrictions. This would support increased production and preservation of multifamily affordable housing.

We also recommend that HUD allow for increased use of the FHA-HFA Risk-Sharing program for smaller (10-50 unit) developments by allowing insurance on loans financing a number of developments on an aggregated basis, expanding access to credit by reviving the Federal Financing Bank (FFB) program for Risk-Sharing loans, and supporting legislation to allow Ginnie Mae to securitize Risk-Sharing loans. These changes would help create and preserve smaller and rural affordable rental developments. While we would prefer that these changes be available broadly, HUD might want to consider at least allowing them in OZs.

We also support many of the FHA-HFA Risk-Sharing Program changes HUD proposed in its 2016 Proposed Rule, but which have not yet been codified. Many of the proposed changes would improve its functionality, better align it with current industry and HUD policies and practices, and provide greater flexibility for program participants. As NCSHA commented when the proposed rule was published, we believe it will make the program even more effective in preserving and producing affordable housing at less risk to the federal government, especially if HUD amends it to take into account the comments below.

Substantial Rehabilitation ((24 CFR 266.200 (b)(2))

Current regulations define “substantial rehabilitation” as work that costs more than 15 percent of a project’s value. This definition has resulted in disproportionate and negative impacts on developments in high-cost areas, as rehabilitation activities that would meet the definition of substantial rehabilitation in other areas does not pass the 15 percent threshold in such high-cost areas. We support the 2016 Proposed Rule’s provision that would define “substantial rehabilitation” as work that costs more than the FHA base per dwelling unit limit times the applicable high-cost factor and involves the replacement of two or more building systems.

Equity Take-Out Loans (24 CFR 266.200 (c)(2))

HUD’s current Risk-Sharing Program regulations permit equity take-out loans for sales to new owners, but not for owners seeking to refinance. We commend HUD for recognizing the adverse effect this limitation has on affordable housing preservation and for proposing to allow equity take-out loans for refinance and acquisition deals, which would align the Risk-Sharing

Program with other FHA multifamily programs and industry practice.

Underwriting Flexibility (24 CFR 266.200(d))

Current regulations generally require loan underwriting to use the lower of market or Section 8 rents. NCSHA supports allowing Level I HFAs to underwrite supportive housing developments using contract rents even when they exceed market rents, as permitted for Section 202 developments for the elderly. We recommend HUD extend this flexibility to situations in which the Risk-Sharing Program is used to finance loans under other programs, such as Mark-to-Market, Option 4, and some Option 5 Low Income Housing Preservation and Resident Homeownership Act (LIHPRHA) deals, that permit the same underwriting flexibility for non-Risk-Sharing loans.

Amortization (24 CFR 266.410(e))

NCSHA supports allowing Level I HFAs to insure non-fully amortizing loans. This would allow HFAs to follow standard industry practices and conduct more efficient lending executions.

Subordination

HUD requires state HFAs to subordinate their regulatory oversight documents to HUD documents to protect the federal government's position as mortgage insurer. However, HUD's requirements can duplicate existing HFA policies, such as transfer of ownership policies and affordability requirements under Housing Credit regulations. This delays—and in some circumstances prevents—project completion. NCSHA recommends HUD consider allowing state documents to be sufficient where present rather than imposing its own requirements for developments in OZs or more generally.

HOME Investment Partnerships Program

HOME is one of HUD's most important programs, providing states and localities with a flexible resource to meet their most pressing low-income rental and homeownership needs. Since its creation over 25 years ago, HOME has successfully helped finance more than 1.3 million affordable homes, in addition to making homes affordable for hundreds of thousands of families with direct rental assistance. The program is also highly successful in leveraging private and public dollars—for each dollar of HOME funding, \$4.38 of private or other funding resources is invested in rental and home buyer projects.

We support the measures HUD's Spring Regulatory Agenda says it will propose to facilitate the investment of HOME funds in housing located in Opportunity Zones. We also recommend that HUD consider the following amendments that could make the HOME program work even better in OZs and other economically distressed areas.

Consolidated Plan and Related Planning Processes (24 CFR 91)

In 1995, HUD created the Consolidated Plan (ConPlan) to serve as a planning document for state or local grantee governments. The ConPlan process and document merge the planning and application requirements of five HUD block grant programs: HOME, the Community Development Block Grant (CDBG) program, the Emergency Solutions Grants (ESG) program, the Housing Opportunities for Persons With AIDS (HOPWA) program, and the Housing Trust Fund (HTF).

Many HUD program grantees will merge their OZ planning into their ConPlan processes. HUD should try to make this as easy and efficient as possible. For example, we recommend that HUD allow states to update activities in their Annual Plans by simply submitting an updated plan to HUD.

ConPlan requirements have grown in recent years, while funding for the HUD programs subject to them have faced severe cuts. This has increased administrative burden for HFAs and other grantees administering these programs. NCSHA encourages HUD to streamline the ConPlan process so that it is less burdensome and more meaningful as a planning document. We also urge HUD to streamline the process of completing the Annual Action Plan (AAP) and Consolidated Annual Performance and Evaluation Report (CAPER)—onerous tasks which are often duplicative. Further, we urge HUD headquarters to work for more consistency among local HUD offices in how they interpret and implement ConPlan and related planning regulations and guidance.

Property Standards (24 CFR 92.251)

HUD requires HOME Participating Jurisdictions (PJs) to inspect properties for compliance with state or local habitability codes, if they exist. Only if there are no state or local habitability codes may PJs use the often simpler and more readily available Uniform Physical Condition Standards (UPCS). For state PJs, this is especially burdensome, as local codes vary significantly from location to location within a state—including among different OZs—and information about such codes is not always easily obtained. Moreover, local habitability codes may change over time, so states must check to determine if they have changed each time they inspect a property. NCSHA encourages HUD to allow state PJs to inspect their HOME properties in OZs and throughout their states in accordance with UPCS—a single standard that is easy to obtain and apply uniformly across the state.

Minimum Property Standard Exemptions (24 CFR 200.926)

HUD requires PJs to ensure that all properties receiving HOME funds for rehabilitation of any kind meet strict Minimum Property Standards (MPS). We recommend exempting repairs within OZs, particularly emergency repairs within OZs or more generally, from those standards.

This would make HOME a more efficient tool to use in OZ and disaster recovery situations.

Furthermore, we recommend exempting HOME home buyer activities from the MPS requirement. Such housing typically undergoes an inspection by a licensed home inspector. Therefore, it is redundant to also require the PJ to ensure the property meets MPS.

Repayment Requirements (24 CFR 92.252(e))

The HOME repayment regulations go beyond statutory requirements by directing PJs to repay all HOME funds if at any point during the affordability period the property in which those funds were invested falls out of compliance with program rules, regardless of how long the development was in compliance. PJs do their best to recapture HOME funds from noncompliant properties to repay HUD; however, sometimes it is impossible for those properties to repay the funding, and PJs are left with the repayment responsibility. HUD instead should prorate its repayment requirements to reduce what PJs must return based on how much of the affordability period the property has complied with program rules. Proration would better align the HOME program with the Housing Credit program. If a Housing Credit property falls out of compliance within the first 15 years of the affordability period, the IRS may recapture Housing Credits from investors on a prorated basis.

Utility Allowances in HOME-Assisted Projects (24 CFR Part 92.252(d))

Under the HOME final rule, published in 2013, HOME-assisted projects are no longer permitted to use the utility allowances (UA) established by local Public Housing Authorities (PHA). Instead, HOME regulations require PJs to “otherwise determine the utility allowance for the project based on the type of utilities used at the project” by using either the HUD Utility Schedule Model (HUSM) or a project-specific methodology based on actual usage at the project.

This requirement has created processing difficulties and financial burdens for property owners and PJs because the UA methodology requires property owners to annually collect usage data from utility providers specific to their properties in order to adjust the property’s UA each year. After the owner has completed its analysis, it must submit it to the PJ for review and approval.

This HOME regulation also conflicts with regulations governing other HUD programs, as well as rural housing programs administered by the U.S. Department of Agriculture (USDA). In addition, IRS Housing Credit regulations allow projects to choose among five different utility allowances, so providing additional flexibility under HOME would be consistent with other federal programs. The benefits of the new UA determination requirement simply do not justify the burden it imposes on property owners and PJs.

NCSHA urges HUD to return to its previous practice of allowing HOME projects to rely on UAs established by local PHAs. At least, HUD should allow HOME projects in OZs to use the

local PHA UAs.

Income Verification Requirements (24 CFR 92.203)

HOME requires a minimum of eight weeks of pay stubs (if an employee is paid weekly) or two months of source documentation to verify income. NCSHA recommends lowering this requirement to four to six consecutive pay stubs or third-party employment verification to align with Section 8 and Housing Credit policies.

Modest Housing Requirements (24 CFR 92.245(a)(2))

Current HOME regulations permit PJs to use either the Section 203(b) single-family purchase price limits or determine 95 percent of the median purchase price for single-family housing in the jurisdiction for purposes of determining whether homeownership housing is “affordable” and eligible for HOME rehabilitation assistance. HUD has considered whether to abandon the Section 203(b) option and require PJs to use only the 95 percent of median purchase price standard.

NCSHA urges HUD to continue to allow PJs the flexibility to use the Section 203(b) limits when they choose. The Section 203(b) limits reflect modest housing for the areas in which they are located and HOME income limits add sufficient protection to target assistance to those who most need it. Flexibility to use either method is especially important in rural area—and is likely also to be especially important in many OZs—where median home prices can be so low that the 95 percent standard prevents some homes and homeowners from receiving assistance they desperately need. Moreover, shifting to 95 percent of median purchase price as the determinant of “modest housing” could prevent PJs from using HOME to help home buyers and homeowners from receiving purchase or rehabilitation assistance they need on many FHA-insured homes.

Tenant Protections and Selection (24 CFR 92.253)

HUD requires owners of HOME-financed housing to serve a 30-day notice before terminating tenancy for any tenant living in a HOME unit. NCSHA urges HUD to modify this requirement by allowing a shorter notice period in extreme cases when the property, staff, or other tenants in the property are in harmful situations due to the behavior of the to-be evicted tenant.

Community Housing Development Organizations (24 CFR 92.300)

The HOME statute requires that each PJ set aside 15 percent of its HOME funding each year for Community Housing Development Organizations (CHDO). However, HOME regulations impose excessively strict and burdensome guidelines regarding CHDO qualifications. Initial CHDO designation requires organizations to submit a lengthy application, which involves gathering multiple signatures, governing documents, housing development

history and organizational experience, staff resumes, and board certifications, all of which can amount to 50 pages or more. Once approved, the nonprofit developer must annually update and reassemble its application for the remainder of the affordability period of the housing for which it received CHDO set-aside dollars.

These requirements are overly burdensome for both the nonprofit developers and the HOME PJ responsible for reviewing these documents. In many states, there are very few nonprofit developers willing to jump through the hoops necessary to become a CHDO. NCSHA urges HUD to streamline significantly CHDO designation requirements, for CHDOs operating in OZs, if not more generally. This would allow more nonprofit entities to qualify.

We also recommend that HUD allow PJs to count the use of their HOME in partnerships with other nonprofits as counting toward the CHDO set-aside in cases where there is not a sufficiently capable CHDO available.

Furthermore, the new HOME rule imposes an additional requirement that CHDOs employ “paid staff” whose experience qualifies them to undertake HOME-funded activities. HUD has stated that this new requirement will improve the capacity of CHDOs to develop projects, but the regulation has not had the desired outcome. In fact, this onerous requirement has caused many active CHDOs to lose their CHDO designation. PJs should be able to evaluate the capacity of a CHDO as a developer just as they evaluate the capacity of every developer receiving funding under HOME and the many other programs HFAs administer, including the Housing Credit.

Violence Against Women Act Requirements (24 CFR 92.359)

HOME, like many HUD programs, is subject to the Violence Against Women Act (VAWA), which is intended to protect survivors of domestic violence and other crimes from losing their housing assistance. Unfortunately, HUD’s VAWA regulations require PJs to approve external transfers when a tenant seeks to move to another property to be safe. It would expedite this process if HUD were to allow building owners to approve external transfers rather than requiring action by the PJ.

Eligible Activities (24 CFR 92.205(d); 24 CFR 92.252(j))

In comparing HOME-assisted and non-assisted units in a multi-unit development, Sections 92.205(d) and 92.252(j) require comparison of size, features, and number of bedrooms. “Features” is not clearly defined in the regulations and the burden of analyzing all features in the units does not appear to be the most efficient manner of achieving HUD’s goal. NCSHA requests that HUD remove the term features from these sections.

Grant-Based Accounting

In 2015, HUD began a new practice of requiring HOME funds to be committed and disbursed using the grant-based accounting methodology—a significant shift from the first-in, first-out (FIFO) accounting methodology to which HOME and other HUD block grants had previously been subject. The new accounting method has proven to be onerous, disincentivizing PJs from generating program income, and creating difficulties as PJs seek to expend funds in a timely manner. We urge HUD to revisit this decision, including the Office of the Inspector General (OIG) interpretation that led to it, and revert back to the FIFO accounting methodology.

Housing Trust Fund

In general, NCSHA urges HUD to work with grantees to streamline Housing Trust Fund (HTF) regulations so that the program may be better coordinated in OZs and overall with other affordable housing production programs, minimize unnecessary administrative burden, and provide state agencies as much flexibility as possible in program administration.

HTF Allocation Plans (24 CFR 93.100)

Each HTF grantee must prepare an annual HTF Allocation Plan showing how it will distribute HTF resources based on the priority housing needs identified in the state's ConPlan. The HTF allocation plan process has proven to be cumbersome and often duplicative of other planning efforts. Specifically, NCSHA urges HUD to streamline the allocation plan process, including sections related to the maximum per-unit subsidy (§93.300 (a)) and rehabilitation standards (§93.301). This would relax unnecessary recipient planning requirements and better align HTF with other HFA-administered programs, such as HOME and the Housing Credit.

Affordability Period (24 CFR § 93.302 (d))

HTF's interim rule imposes a 30-year period during which the property must meet the regulation's occupancy and rent restrictions. However, the statute authorizing HTF does not set an affordability period of any length; instead, the HTF statute requires states to select projects based, in part, on the duration of the affordability period. NCSHA recommends eliminating the regulatory 30-year affordability requirement and instead allowing states to determine the appropriate affordability period for HTF dollars according to the project in which they are invested. This will also allow states to align affordability periods with other affordable housing programs they are using to finance specific developments in OZs and elsewhere, including HOME and the Housing Credit.

Environmental Review (24 CFR 92.352)

HTF's environmental requirements differ from other HUD programs, most notably HOME. HUD addresses this challenge in Notice CPD-16-14, "Requirements for Housing Trust

Fund Environmental Provisions,” but still requires grantees to comply with conflicting or duplicative requirements when HTF is used with other HUD programs subject to environmental review under 24 CFR Part 50 or Part 58. NCSHA recommends that HUD work with Congress and grantees to address the statutory and regulatory provisions related to environmental provisions to simplify and better align requirements when HTF funds are used in combination with other HUD funding in OZs or more generally.

Section 8 Project-Based Rental Assistance

We suggest the federal government support the availability and use of rental assistance in OZs. This could involve reallocations of Section 8 rental assistance contracts through Section 8bb transfers, increased flexibility to project-base HUD vouchers, or special fee increases or other incentives for Performance-Based Contract Administrators (PBCA) to encourage multifamily development in OZs.

We also recommend that HUD streamline its rental assistance program requirements to reduce the time associated with financing developments in OZs. This could include deferring to state and local rental assistance-administering agencies’ underwriting guidelines for project-based rental assistance in lieu of HUD’s standards. It could also include authorizing administering agencies to perform subsidy layering reviews in lieu of HUD national reviews.

We also recommend that HUD increase the Fair Market Rent (FMR) or allow the use of Small Area FMRs in OZs for the Housing Choice Voucher program. This would allow landlords to receive higher rent, thereby encouraging them to accept voucher-holders, maximizing housing choice and minimizing potential displacement.

Rent Comparability Studies (Chapter 9 of the Section 8 Renewal Policy guidebook)

In 2016, HUD implemented a new Rent Comparability Study (RCS) review policy which requires a state-certified appraiser to perform all substantive reviews. This requirement has created an undue financial burden for PBCAs because they incur the costs of the additional reviews and for forwarding every RCS to state-certified appraisers, rather than just RCSs that need professional reviews, as they had done previously. NCSHA recommends eliminating this new policy by allowing PBCAs to perform most substantive reviews and only forwarding RCSs to state-certified appraisers if they deem it necessary.

Mark-to-Market (Chapter 3 of the Section 8 Renewal Policy guidebook)

The Renewal Guide requirement that makes developments with “use restrictions that cannot be unilaterally eliminated by the owner” ineligible for contract renewal Option 1A (Section 3-3B) makes it very difficult for developments with long-term restrictions, such as Low Income Housing Tax Credit Use Agreements, to be eligible for a market rate increase. Such increases help to maintain adequate cash flow to these properties without unduly burdening

tenants. While the introduction of Option 1B was helpful in this regard, it only covers a limited number of situations and target populations. We suggest eliminating this requirement, possibly including additional safeguards to ensure long-term preservation and capital investment in the property.

Section 811 Project Rental Assistance (PRA) Program

NCSHA calls on HUD to streamline the highly prescriptive Section 811 Project Rental Assistance (PRA) program, authorized in the Frank Melville Supportive Housing Act of 2010 (P.L. 111-374), to improve its delivery to low-income persons with disabilities in OZs and nationwide. HUD guidance on Section 811 PRA has proven to be excessively burdensome to the point which some HFAs and property owners have been disinclined to participate in the program. NCSHA urges HUD to undertake the following steps to improve Section 811 PRA.

Alignment of Section 811 with Other Affordable Housing Programs

Section 811 PRA requirements sometimes conflict with other programs that are the primary funding sources for the developments using the PRA, such as the Housing Credit, Rural Development, a HUD capital resource program, or a combination of these programs. We recommend that HUD allow Section 811 PRA to conform to the requirements of PBRA, the Housing Credit, or whatever funding source is the dominant resource in the development, rather than create additional and burdensome rules and bureaucracy. While the Section 811 PRA is essential for many persons with disabilities to afford these homes, the rental assistance is a small source of funding in comparison to the much greater capital investment from other resources.

For example, Housing Credit income eligibility is based on gross income, whereas the Section 811 PRA program uses adjusted income to determine eligibility. It would be far less burdensome for owners and managers if HUD would allow Section 811 PRA income limits to use gross income levels when used in Housing Credit properties. This simple change would increase owner participation in the program and would ease the burden on HFAs.

We also recommend that HUD allow for rent increases for Section 811 project-based rental assistance contracts on OZ properties. This would encourage apartment owners and managers to participate in the program, adding more units to the stock tenants could occupy.

Public Housing and Rental Assistance Demonstration

We recommend that HUD waive the one-for-one replacement requirement for HUD-funded housing and associated analysis for developments in OZs.

We urge HUD also to develop a streamlined Rental Assistance Demonstration (RAD) and Section 18 application process for Public Housing properties located in OZs. The streamlined process should include more effective coordination to access Tenant Protection Vouchers.

For redevelopment of public housing, we suggest that HUD waive Special Application Center (SAC) review of demolition-disposition program applications for projects in OZs, as long as a project was part of a PHD annual plan or MTW plan.

Cross-Cutting Requirements

NCSHA encourages HUD to take a close look at cross-cutting federal requirements to determine whether they might be simplified and made more flexible for developments in OZs or more generally, while still meeting the policy objectives Congress initially sought by instituting them. Requirements under the National Environmental Policy Act, the Uniform Relocation Act, the Davis-Bacon Act, and other statutes all have laudable goals, but can present excessive burdens when they are applied—particularly when considering their cumulative effect—slowing down construction and driving up cost. These administrative burdens will be particularly problematic in OZs as communities attempt to generate increased affordable housing and community development in them.

Davis-Bacon

We recommend that HUD consider how to “right-size” the Davis-Bacon wage rate triggers in OZs or more generally. HUD should set a minimum federal award size, regardless of program, that triggers federal Davis-Bacon wage rates. Davis-Bacon wage rates make allocating small amounts of certain programmatic funds cost-prohibitive. Establishing a baseline dollar amount for Davis-Bacon wage rate requirements at a high enough level would ensure that the administrative burden associated with federal funds does not prevent a small, but meaningful, amount of federal funding from being brought into the project.

For example, in small deals, it is possible that \$100,000 in funding through CDBG or other federal programs is all that is required to balance sources and uses for a facility. If these funds are part of a \$4 million project, their impact on the overall wage rates and administration (which are a substantial portion of any project cost) would actually be negative because the cost of utilizing the funds under Davis-Bacon rules would exceed the actual funding amount.

Disparate Impact

We recommend that HUD establish a safe-harbor for protection against disparate impact claims related to housing investments in OZs where up to 90 percent of the units are reserved for low-income households. Although OZs establish investment incentives for low-income neighborhoods, housing developers can be sued through a fair housing complaint for furthering a concentration of poverty by developing low-income housing in a low-income neighborhood.

Stating that HUD funds can be used in OZs with up to 90 percent of the units affordable for low-income families without fear of legal action from HUD would reduce litigation risk for

project sponsors and allocating agencies. The 90 percent low-income target for units in a housing development would be consistent with the priority structure articulated in the May 9, 2019 (Notice: H 2019-07) that HUD issued for FHA Mortgage Insurance pricing on deals located in OZs.

Federal Housing Administration (FHA) Single-Family Mortgage Programs

The Federal Housing Administration (FHA) plays an indispensable role in helping low-income families and other traditionally underserved populations achieve homeownership. In particular, FHA supports sustainable low down payment lending, such as that done by HFAs. This is crucial because one of the biggest impediments to purchasing a home for otherwise responsible borrowers is the cost of affording a down payment. In recent years, nearly three-quarters of HFA loans were insured by FHA.

NCSHA recommends that HUD consider the following changes to FHA policies and guidelines to improve FHA's ability to support affordable homeownership in OZs and elsewhere.

Mortgage Insurance Costs

We encourage HUD to lower mortgage insurance application fees or other costs on FHA single-family mortgage insurance and provide or facilitate increased subordinate down payment assistance (DPA) funding in OZs. Additional proposals for lowering costs could include reducing upfront premiums or allowing homebuyers to terminate insurance coverage after certain loan-to-value (LTV) thresholds are reached.

Housing Counseling

Increase incentives to providers of housing counseling and financial coaching for home buyers in QOZs.

FHA Underwriting of Mortgage Credit Certificates

Federal tax law allows HFAs to use their tax-exempt single-family Mortgage Revenue Bond (MRB) authority to provide low- and moderate-income borrowers with Mortgage Credit Certificates (MCCs). MCCs allow borrowers to claim a federal tax credit for a portion of the mortgage interest they pay each year. Specifically, borrowers may claim a credit on up to 30 percent of their mortgage interest costs (50 percent for new construction loans) up to \$2,000 each year.

MCCs have proven to be a valuable tool for HFAs in supporting affordable homeownership opportunities. However, FHA's underwriting guidelines currently reduce the value of a borrower's MCC benefit by not allowing the benefit to be considered when calculating their mortgage payment-to-effective income ratio (PTI) and their total debt-to-income ratio (DTI).

Specifically, page 178, Sec.4 a.iii.(A)(1) of FHA's Single Family Policy Handbook (FHA Handbook) states that, when calculating a borrower's monthly mortgage payment for the purpose of calculating their PTI and DTI, mortgagees "may deduct the amount of the Mortgage Credit Certificate or Section 8 Homeownership Voucher if it is paid directly to the Servicer." MCC benefits are not paid to the servicer, but rather directly claimed by the borrower when filing his or her federal taxes, so this provision effectively prevents MCC benefits from being deducted from a borrower's mortgage payment. This in turn increases the borrower's PTI and DTI ratios and makes it less likely that they will be approved for an FHA loan.

NCSHA requests that HUD amend the FHA Handbook so that the tax savings borrowers realize from their MCCs can be fully incorporated into the FHA underwriting process.

Loan Limits on Title I Mortgages (24 CFR 201)

HUD has not increased the maximum loan limits for FHA Title I Property Home Improvement Loans (\$25,000 for one-unit single family homes and \$60,000 for multifamily properties) since November 1992 (24 CFR 201.10 and 201.11). Since then, inflation has increased 58 percent (\$25,000 in 1992 is worth \$43,050 today), diminishing the program's ability to support critical repair projects.

NCSHA recommends that HUD adjust the Title I home improvement loan limits to reflect increased costs in home renovations and repairs since 1992 and index the limits to inflation so that they will reflect increased costs going forward.

Streamline the Loss Mitigation Process

NCSHA encourages HUD to examine how it can streamline its loss mitigation requirements to allow HFAs and other servicers to more efficiently and effectively assist delinquent borrowers. Currently, the FHA Handbook requires servicers to go through a 12-step process, known as the Loss Mitigation Option Priority Waterfall (III.A.2.iii), to determine whether a borrower is eligible for a loan modification and which option best suits the borrower's needs and circumstance. This long and complex process can be pared back without hindering HFAs' ability to determine which loss mitigation program works best for the borrower.

In addition, the amount of documentation FHA requires from borrowers and mortgagees to enter into a loan modification agreement is unnecessarily burdensome and slows the application process. To cite just one example, if a borrower is no longer employed, they are required to submit their last two federal tax returns, despite the fact that the prior year's return should suffice to document the borrower's income prior to losing his or her job.

Repayment Plan Timelines

When delinquent borrowers with FHA-insured loans are ineligible for FHA's Home Affordable Modification Program (HAMP) because they have already completed HAMP, their loan was funded through MRBs, or the loan has not yet seasoned, HFAs that service loans in-house will offer borrowers forbearance plans to help them keep their homes. Under the FHA Handbook (paragraph III.A.2.k.ii.(A), page 611), such plans cannot exceed six months in duration.

Six months is often an inadequate amount of time to structure a forbearance plan that will meet the borrower's needs. This is especially true for low- and moderate-income borrowers HFAs serve who may lack substantial cash reserves and may be in danger of falling behind on their mortgage payments due to adverse circumstances such as deaths in the family, divorce, or unexpected unemployment. While servicers can request variances for longer repayment plans, the process for applying and securing such variances is cumbersome and servicers have to apply for them on an individual basis.

Given HFAs' public missions and the underserved borrowers they serve, NCSHA urges HUD to amend the FHA Handbook to allow HFAs to offer longer forbearance plans to struggling borrowers.

Timing for Providing Borrowers Loan Modification Agreements

Effective March 1, the FHA Handbook (paragraph III.A.2.K.vi.(F)(5)(A), page 633), requires that servicers provide borrowers with their FHA-HAMP modification agreement at least 30 days before the permanent FHA-HAMP modification goes into effect. Permanent FHA-HAMP modifications go into effect on the first day of the second month after the month following the month when borrowers make their third monthly payment during the Trial Payment Period (TPP).

This requirement is straightforward and simple to comply with in those instances in which a borrower makes their third and final trial modification payment at the beginning of the month. However, when borrowers make their third monthly trial payment near then end of the month, servicers have to scramble to get the loan modification agreement to borrowers by the 30-day advance deadline. This compressed timeline creates needless administrative difficulties for HFAs and other servicers.

Some HFAs have told NCSHA that, in order to ensure that they comply with the 30-day advanced notice, they send borrowers the FHA-HAMP documents after the borrowers pay their *second* trial payment. They are concerned that this could confuse borrowers, who may think they already have been approved for a permanent modification despite still having to make one more trial payment.

NCSHA asks HUD to publish guidance explaining how HFAs and other servicers can

comply with the 30-day advanced notice timeframe without having to send borrowers such documents before they have completed their trial modifications.

Property Preservation Costs for Rural Areas

In the unfortunate cases when an HFA or other servicer must foreclose upon a home, the servicer is responsible for arranging for a number of property preservation and protection activities, including snow removal and changing locks, until the property is conveyed to FHA. FHA typically reimburses servicers for the costs associated with such activities after conveyance.

In rural areas of the country, it is often expensive to hire contractors to perform such activities because there are so few contractors available and they need to travel long distances. The reimbursements FHA offers for such services do not account for these increased costs and are often insufficient to cover the servicer's expenses. In such instances, the servicer effectively pays the difference out of pocket.

As public entities, HFAs cannot afford to consistently realize losses for required property protection and preservation activities without it significantly hampering their affordable homeownership programs. NCSHA recommends that FHA examine its reimbursement rates for property preservation and protection activities to take into account the increased costs of such services for properties in rural areas.

Advance Notice for Repairs to Abandoned Homes

HFAs and other servicers are currently required to send out a notice via mail at least seven days before conducting critical property protection and preservation activities on a foreclosed home, even if they already know the property has been abandoned. This can cause damage to the home as key activities, including rekeying, winterization, and the removal of hazardous materials, are delayed. We recommend HUD remove this advance notice period for those instances in which the servicer has determined that the property is vacant via either inspection or borrower notification.

Student Loan Debt

We recommend that HUD permit FHA single-family insurance on HFA-financed mortgages that provide student loan payoff incentives linked to home purchases. Under this mechanism, FHA would insure single-family loans for purchase of homes in OZs in cases where the mortgage allows homebuyers to make significant student loan payoffs at the time of the home purchase. FHA would allow a combined loan-to-value (CLTV) ratio of up to 120 percent, as long as the subordinate mortgage loans (which generate proceeds that are used to pay off student loans) are forgiven over time (e.g., five years). FHA would agree to manual underwriting of these loans if they are not automatically underwritten through Fannie Mae's Desktop Underwriter (DU) or Freddie Mac's Loan Product Advisor (LPA).

Thank you again for providing NCSHA the opportunity to share our perspectives on how to make HUD program more effective in promoting public and private investments in OZs and other economically distressed areas. We stand ready to assist you further in any way we can.

Sincerely,

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

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives