

July 29, 2024

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

**Re: Request for Comments – Docket No. FR-6144-P-01  
HOME Investment Partnerships Program: Program Updates and Streamlining**

To Whom it May Concern:

The undersigned national associations represent for-profit and non-profit owners, operators, developers, lenders, property managers and housing cooperatives involved in the provision of rental housing, both affordable and conventional. However, we face serious obstacles in addressing rising housing costs, maintaining affordable housing stock and delivering much-needed new supply. We submit the following comments in response to the Department of Housing and Urban Development’s (HUD or the “Department”) notice regarding HOME Investment Partnerships Program: Program Updates and Streamlining (the “Notice”) to show our support for policymakers taking the steps necessary to ensure assistance is available for those that simply cannot afford the housing they so desperately need, including full funding and making reforms that ensure the programs are operating in a cost-effective and efficient manner.

## **I. BACKGROUND AND SUMMARY OF NOTICE**

The HOME program is authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA) and has been in operation since 1992.<sup>1</sup> The HOME program provides grants to States, local jurisdictions, and consortia of local jurisdictions (collectively, “participating jurisdictions” or PJs) and is used, often in partnership with local nonprofit groups, to fund a wide range of activities to build, buy, or rehabilitate affordable housing for rent or homeownership or to fund direct rental assistance to low-income people.

The HOME program regulations are codified in 24 CFR Part 92 and were last substantively revised on July 24, 2013 (the 2013 HOME Final Rule). The 2013 HOME Final Rule focused on improving a PJ’s performance and accountability to HOME grant funds and addressing a PJ’s operational challenges as it adopted more complex program designs and its portfolio of existing projects grew. In 2016, the Department issued an interim regulation, finalized on September 22, 2022

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<sup>1</sup> See the Notice, available at <https://www.federalregister.gov/documents/2024/05/29/2024-10975/home-investment-partnerships-program-program-updates-and-streamlining>. Unless otherwise noted, the information in this comment letter comes from the Notice.

(the “2022 HOME Final Rule”), that implemented a grant-specific method for determining compliance with the 24-month commitment and community housing development organizations set-aside commitment deadlines. The 2022 HOME Final Rule also eliminated the use of first-in-first-out accounting for fiscal year 2015 and later HOME grants.

The Department states that it seeks to modernize eight primary areas of the HOME program: (1) rental housing; (2) tenant-based rental assistance; (3) tenant protections; (4) homebuyer housing; (5) community land trusts; (6) community housing development organizations; (7) maximum per-unit subsidy limits; and (8) green and resilient property standards in HOME-assisted housing, each as further discussed below.<sup>2</sup>

- 1. Rental Housing:** The proposed rule would better align HOME rental housing requirements with those of other funding sources frequently combined with HOME in rental housing, including by (a) implementing Housing and Economic Recovery Act (HERA) provisions that permit an owner of a HOME-assisted unit receiving rental assistance to charge the permissible Housing Choice Voucher, project-based voucher or project-based rental assistance rent instead of the maximum HOME rent, (b) permitting PJs to use PHA-established utility allowances for HOME rental projects, and (c) for rehabilitation projects, permitting PJs to accept the completion or ongoing NSPIRE inspections performed for other funders of the project in lieu of conducting its own final inspection at rehabilitation completion or ongoing periodic inspections during project operation. The proposed rule would also streamline certain procedural requirements for small-scale rental housing.
- 2. Tenant-Based Rental Assistance (TBRA):** The proposed rule would enhance flexibility in HOME TBRA programs to reduce burden, better serve the most vulnerable households, and support wealth building by permitting PJs to permit hardship exceptions to tenant minimum rent contributions, reduce the frequency of income determinations by requiring income redetermination only at TBRA contract renewal instead of annually, and accept physical inspections performed by other HUD programs using Housing Quality Standards (HQS) and eventually NSPIRE.
- 3. Tenant Protections:** The proposed rule would create a mandatory HOME lease addendum that imposes a set of uniform tenant protections for HOME-assisted rental housing tenants and HOME TBRA recipients.
- 4. Homebuyer Housing:** The proposed rule would extend the deadline for sale of HOME-assisted homebuyer housing from 9 months to 12 months after

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<sup>2</sup> See HUD FACT SHEET: HOME Investment Partnership Program Notice of Proposed Rulemaking, available at [https://www.hud.gov/sites/dfiles/CPD/documents/HOME/HOME\\_Proposed\\_Rule\\_Fact\\_Sheet.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/HOME/HOME_Proposed_Rule_Fact_Sheet.pdf).

construction is completed. The proposed rule would also establish four model resale formulas to help PJs comply with HOME resale requirements and permit homebuyer housing acquired with HOME assistance up to 6 months to meet HOME property standards.

5. **Community Land Trusts:** The proposed rule would revise the definition of community land trusts (CLTs) and permit qualified organizations to exercise preemptive rights in the event of resale of a HOME-funded CLT unit.
6. **Community Housing Development Organizations (CHDOs):** The proposed rule would make several changes to the definition of CHDO, with the overall goal of simplifying board composition requirements. Specifically, the definitional changes would permit groups such as Legal Aid, tenants' rights, and other civil rights organizations to count toward the minimum 1/3 low-income board requirement. Other proposed revisions regarding CHDOs would permit nonprofit organizations that serve statewide to be a CHDO for a State PJ and narrow the types of officials who count against the one-third public official cap on board membership.
7. **Maximum Per-Unit Subsidy Limits:** The proposed rule would provide HUD with the flexibility to establish its methodology for determining the maximum per-unit subsidy limits via Federal Register notice, allowing for periodic changes or adjustments.
8. **Green and Resilient Property Standards in HOME-Assisted Housing:** The proposed rule would permit a higher maximum per-unit subsidy limit for projects that meet HUD-identified green and resilient building standards that exceed NSPIRE and HUD-established Energy Efficiency standards.

As noted and further discussed below, it is imperative that policymakers take the steps necessary to ensure assistance is available for those that simply cannot afford the housing they so desperately need, including full funding and making reforms that ensure the programs are operating in a cost-effective and efficient manner. Some of the changes set forth in the Notice are a step in the right direction to achieving this; others could create overlapping and complex new requirements that stymie efforts to increase affordable housing. We appreciate that HUD is soliciting industry feedback and urge it to consider the comments below when making adjustments for the final regulation.

## II. RESPONSES TO REQUEST FOR COMMENTS

We appreciate HUD efforts to streamline, modernize, and create flexibility when participating in the HOME Investment Partnerships Program. As outlined below, we have concerns about proposed changes that would duplicate or create additional complexity to an already complicated program. We understand that much of the program's complexity is dictated by its

statutory framework; thus, we suggest a more expansive approach where possible would be helpful. Furthermore, there are already extensive state and local regulatory frameworks in place with respect to tenant protections. To resolve any conflicts, we do not believe HUD should be engaging in any policymaking in this area.

Below, we respond more specifically to HUD's eleven questions for comments included in the Notice.

***Specific Solicitation of Comment #1: The Department specifically solicits public comment about any additional changes it should consider, within statutory constraints, that will improve CHDO availability and capacity in rural areas.***

Currently, HOME PJs have difficulty identifying organizations that can be designated as CHDOs. CHDOs must meet board composition requirements, including significant low-income representation and limited participation by public officials, all of which can be difficult to meet in rural areas. The proposed definitional changes related to CHDOs will likely improve CHDO availability and capacity in rural areas. For example, the revisions will broaden who can count toward the 1/3 minimum low-income board representation such that designees of low-income neighborhood organizations may be used to meet low-income representation requirements and also such that statewide organizations may be a CHDO for State PJs. The proposed revisions will also narrow who counts against the 1/3 limit on public officials by excluding only officials or staff of a PJ rather than any government entity. Together, these changes are likely to improve CHDO availability and capacity in rural areas. To further reduce barriers to finding low-income representation and participation by public officials, the Department may want to consider further flexibility by counting only elected or appointed officials against the 1/3 exclusion to allow civil service staff to serve on CHDO Boards, subject to a conflicts of interest policy.

Additionally, there is currently a mismatch between the capacity of most neighborhood-based nonprofits and the role of CHDOs outlined in the HOME statute, which requires CHDOs to have staff with demonstrated capacity to "own, develop, or sponsor" housing in order to receive CHDO set-aside funds. The proposed changes in the Notice would help close this gap by permitting the expertise of volunteers who are CHDO board members, officers, or officials to count toward this requirement and also allowing CHDOs to partner with other entities to share responsibilities in the development process. To further bridge this gap and allow more organizations to qualify as CHDOs, the Department may want to consider allowing neighborhood-based non-profits to partner more easily with other non-profits with more capacity and experience for the purpose of qualifying.

Finally, under current regulations, CHDOs sometimes face challenges in meeting the requirement that CHDOs retain ownership of HOME-assisted projects for the duration of the HOME period of affordability, particularly when the status of the CHDO changes and the project must be sold or transferred to another qualified CHDO. The proposed changes will enable CHDOs to transfer ownership when necessary to sustain affordable housing and maintain compliance with HOME requirements, which will help; however, the limitation that HOME requirements must be

maintained further limits the financing options that would otherwise be available to preserve or recapitalize properties as they age at various levels of affordability. To further eliminate this challenge, PJ's should have the flexibility to alternatively define affordability at the time of transfer, if the transfer is for the purpose of refinancing the property under the Low Income Housing Tax Credit (LIHTC) program.

***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.***

The Department should carefully consider the establishment of specific green building standards for the HOME program. Sustainable and energy efficient building practices have proliferated in the housing sector over the past two decades. However, property owners and builders use a wide array of green building programs, codes and standards based on various factors, including jurisdictional requirements and code adoption, building type, market characteristics and availability of incentives, among others. It is therefore important that HOME allow housing providers the flexibility to utilize the green building program or criteria that best meets the needs of individual jurisdictions, properties and their residents.

The cost of prescriptive construction standards, including green building standards, increases the cost of construction, which makes it increasingly difficult to build the housing supply we need to make housing more affordable. Given the income levels that HOME seeks to serve, additional requirements will make it more difficult to use HOME funds for rental housing development.

Finally, regarding whether permitting PJs 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) could be helpful in adding more green features projects, given increased costs of construction and the current interest rate environment, flexibility should be provided to allow a variety of projects to qualify for the additional assistance based on the unique needs of the particular project.

***Specific Solicitation of Comment #3: The Department specifically seeks public comment on the proposal to require HOME-assisted units to comply with NFPA 72, or any successor standard, to use hardwired smoke alarms or sealed or tamper-resistant smoke alarms with ten-year non rechargeable, nonreplaceable batteries, that provide notification for persons with hearing loss. The Department is particularly interested in public comment on the feasibility of these requirements in HOME-funded homeownership programs that do not include rehabilitation or construction of housing (e.g., downpayment assistance programs).***

The subject requirement to comply with National Fire Protection Association Standard (NFPA) 72, or successor standards, currently applies to many federally assisted housing programs, but not HOME. Additional building code standards, beyond those already required by the local jurisdiction, will add additional cost to construction and may make it difficult for certain projects to move forward.

***Specific Solicitation of Comment #4: The Department specifically seeks public comment on the proposal to require that a participating jurisdiction inspect at least 20% of the HOME-assisted units during its ongoing on-site inspections of rental housing.***

Currently, PJs are required to inspect a “statistically valid” sample of units, which can be challenging for PJs if they do not have software capabilities to develop a statistically valid sample of units, similar to other HUD programs.

The proposed rule would also permit PJs to accept NSPIRE inspections of rehabilitation projects performed for other funding sources in lieu of final inspections at completion of rehabilitations and ongoing periodic inspections during project operation. This will reduce the administrative burden on PJs and eliminate the inconvenience to residents of undergoing multiple project inspections due to layered Federal funding, all without compromising housing quality or tenant safety.

***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?***

Permitting all HOME-assisted projects to use the local PHA’s utility allowance will be more effective than limiting use of the allowance to only HOME-assisted projects, which also receive project-based vouchers (PBV) or HUD-VASH PBV assistance. The proposed changes will align HOME requirements with requirements for Section 8 project-based vouchers (PBV), eliminating the need for HOME waivers, as well as provide PJs an additional option for establishing utility allowances on all HOME rental projects.

***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 comments 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?***

Using the HOTMA approach allows for a more simplified, streamlined approach to income calculations, especially given that many residents of HOME-funded projects also receive Section 8 assistance.

***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.***

The affordability restrictions in HOME have made it difficult to use for rental housing development, especially in high-cost areas, given the need to layer financing from multiple sources. Research clearly shows that we have a shortage of rental housing in the United States; therefore, it is critical that HOME become a more effective tool to increase housing supply. Virtually all HOME funded rental housing development projects are driven by an allocation of the Low Income Housing Tax Credit (LIHTC). Allowing HOME funds to align with the affordability requirements of the LIHTC would help jurisdictions to use HOME to help increase housing supply

and, thereby, expand affordable housing opportunities. In addition, it would allow HOME to be more effective in recapitalizing and preserving existing affordable housing properties.

***Specific Solicitation of Comment #9: The Department currently applies only the tenant protections contained in the current § 92.253(a) and (b) to tenants receiving TBRA. The proposed rule would apply proposed paragraphs (a)-(c) and (d)(2) to tenants receiving TBRA, including tenants that only receive HOME security deposit assistance. The Department is seeking public comment on whether the requirements at § 92.253(b) and (d)(2) should be required for tenants that receive TBRA. If not, what tenant protection requirements should apply to tenants that receive TBRA?***

Though HUD only requests comment on its proposal to require tenant protections to tenants receiving TBRA, it is also adding or amending twenty-two other tenant protection provisions to the overall HOME program. Unfortunately, as written, this proposal will deter landlord participation in HOME, ironically, denying tenants the aid we are so urgently trying to give them.

PJs ability to use HOME, including for TBRA, depends on their ability to access the private rental housing market. Changing the relationship between HOME-supported residents and private rental housing providers creates confusion for residents and disincentivizes owners to participate in the program. State and local laws currently include tenant protections that establish the rights and responsibilities for both the resident and the rental housing provider. HUD's legal authority to add new requirements will make it increasingly difficult to use HOME in the private market and for state and local courts to interpret lease agreements. We are not aware of any data that indicates that changing the current requirements would provide additional benefit to residents.

We are concerned that these proposals undermine the operational and financial well-being of these properties in order to provide affordable, safe, and decent homes for their residents. Particularly onerous is the proposed 60-day notice of lease termination (30-days in the TBRA program). The proposal does not provide the help financially distressed tenants actually need, which is financial support. Finally, they interfere with existing state and local tenant protection laws and are made without any evidence supporting their effectiveness and without clear statutory support.

***Specific Solicitation of Comment #10: Currently, a rental assistance contract can be between a participating jurisdiction and either an owner or a tenant. The Department is also aware of many participating jurisdictions that have tri-party rental assistance contracts where the owner, the tenant, and the participating jurisdiction all sign the rental assistance contract. The Department is seeking feedback on whether a rental assistance contract should always be executed by an owner so that the participating jurisdiction can require that the HOME-assisted tenant's lease contain the HOME tenancy addendum and that the owner follow all applicable TBRA requirements.***

From our perspective, PJs can always require that the HOME-assisted tenant's lease contain the HOME tenancy addendum and that the owner follow all applicable TBRA requirements either by



including that requirement in a PJ/owner contract or in a tri-party contract, because, in either case, the owner is a party to the contract and must follow the requirements therein. We are not aware of any data that indicates there would be additional benefits to residents and, again, may create additional disincentives for owners to participate in the program.

***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.***

### **III. CONCLUSION**

Improving housing affordability and availability are key national priorities. As drafted, many of the proposed changes to the HOME program set forth in the Notice are a step in the right direction to better align HOME with other affordable housing funding sources to benefit tenants and residents while also streamlining and modernizing the program such that it is easier and less burdensome for PJs to use. That said, as discussed herein, there are certain additional changes that the Department could make that would increase the benefits of the proposed changes to the program and make it easier to use. We urge HUD to consider our comments when making adjustments to the final regulation.

Respectfully submitted by:

National Multifamily Housing Council  
National Apartment Association  
Council of Affordable & Rural Housing  
National Association of Cooperative Housing  
National Affordable Housing Management Association  
National Leased Housing Association