



Housing Assistance Council

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

Via regulations.gov

RE: Docket No. FR-5563-P-01

HOME Investment Partnerships Program: Improving Performance and Accountability; and Updating Property Standards

To Whom It may Concern:

The Housing Assistance Council (HAC) applauds and supports the U.S. Department of Housing and Urban Development's (HUD) efforts to take such a comprehensive approach and fresh look at the HOME Program. HAC welcomes this opportunity to provide constructive comments on several of the proposed regulations. Overall, in reviewing the proposed changes we mainly support most of the documented revisions. Our comments below address only areas where we feel the proposed regulations will have a direct impact, with specific attention to CHDOs operating in rural communities.

1. **Administrative Funding**

The increased administrative and capacity requirements for rural PJs and CHDOs will have a significant impact if the HOME program does not also consider increases to the administrative and operating funding made available to these entities. While HUD is considering allowing available HOME funds to assist stock such as HOPE VI and public housing, thus limiting the amount of funds for the traditional eligible activities, it should also take this opportunity to consider raising the administrative cap for PJs. This could help provide adequate funding to effectively meet increased responsibilities that PJs may not be able to fund without fee income.

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2. CHDO Definition and Capacity Requirements (Section 92.2)

CHDOs' capacity to develop projects as well as to sustain and grow their organizations does not happen in a vacuum, and often already happens amidst scarce resources; this is particularly true in the rural areas where HAC works. The proposed regulation requires CHDOs to demonstrate internal capacity to develop proposed projects with virtually no external assistance. It explicitly prohibits the use of consultants and volunteer labor to demonstrate capacity. This is concerning for all CHDOs, but most particularly rural organizations, where internal capacity is frequently limited to one staff person. New hires and the required 'demonstrated development experience' may be impossible. These proposed limitations will severely limit the operating capacity of CHDOs, particularly those in rural areas, and their access to the CHDO operating and set-aside funds.

Further, the proposed changes to the definition of "Developer" should be revisited. The proposed language of 'Developer' seems to exclude CHDOs from developing rental housing; we hope that this is an error. Developing affordable permanent housing, ownership or rental, is a typical and expected development role for CHDOs. We are certain that HUD is not suggesting that CHDOs should not pursue multifamily while serving as 'Developer'.

3. CHDOs Sponsored by Governmental Entities (Section 92.2)

The proposed regulation restricts the control of a CHDO by a governmental entity. A number of CHDOs were created by local housing authorities (LHAs), councils of governments (COGs), regional planning commissions (RPCs), and tribal entities (TDHEs) which are frequently incorporated as governmental entities. Permitting LHAs, COGs, RPCs, and TDHEs to spin off CHDO arms is beneficial to all parties as long as the governmental entity is unrelated to the PJ and has separation from political influence. The ability to use shared staff, shared office space, and participation on the board has proven beneficial to the creation of strong CHDOs. Disallowing these relationships can have direct impacts on these CHDOs' capacity to survive without the in-kind support.

4. Reduced Timeline for Income Determination (Section 92.203)

From the Federal Register, "A minimum examination period of 3 months should be sufficient to accurately reflect the income eligibility of applicants for HOME units." This could potentially have an impact on low-income persons with seasonal or inconsistent income. If a three month standard is applied, this may skew an applicant's income eligibility by focusing on a narrower timeframe. HUD should consider a longer examination period, possibly six months for a more reliable assessment of the applicant's true income.

5. Development Timeline Condensed (Section 92.205)

The proposed regulation reduces PJs' time to commit funds from two years to one year and the time for organizations to develop from five years to four years. The regulation allows a PJ to request a twelve-month extension to complete pending approval by HUD officials. Failure to meet the timeline requirement will require the PJ to repay HOME funds invested in

the project. For rural projects, where the need to assemble an array of affordable financing and grant resources and arrange the timing and layering of these commitments is often difficult and time consuming, the proposed timeframes may have a substantial negative impact. HAC requests that HUD leaves the time to commit funds and develop the project as it currently stands.

6. Pre-development Costs and Written Agreements with Jurisdictions (Sections 92.206 and 92.504)

HAC supports the proposal for HOME funds to pay for certain predevelopment costs and services before the HOME funds are committed, but HUD should consider extending the proposed period to 24 months rather than the suggested 18. This would, first, match the period referenced in 92.504(c) (6) where the CHDO has an expectation to receive funds for a project within that time period. Second, the change would reflect that, certainly for rural areas, 24 months is a reasonable timeframe for development, particularly considering the typical need to leverage added financial resources.

7. CHDO Operating Support (Section 92.208)

While HUD is proposing language to tighten CHDOs' internal capacity, it should also consider a minimum amount of operating support that will be provided. This should help ensure that CHDOs planning to and undertaking CHDO-eligible activities will have a determined amount of funding to help support them during the pre-development and construction phases of a project.

8. Inspection Fees (Section 92.214)

While HUD is prohibiting organizations from charging fees to homebuyers and tenants, it will begin permitting PJs to charge inspection fees for annual compliance monitoring visits. The proposed regulation does not give guidance on cost reasonableness of the fees. Further, HUD should also clarify that jurisdictions may charge inspection fees to owners of rental developments during the construction phase, or otherwise accept the inspection of a certified architect or third party verification firm, whose costs are typically included in the development budget.

9. Prohibition to Charging Fees to Homebuyers (Section 92.214)

HAC's understanding is that under the proposed rule organizations would not be permitted to charge fees to the family for HOME homeownership assistance. In addition, the PJs would be required to (1) determine that any fees charged to the family by the first mortgage lender are reasonable, based upon industry practice in the area, and (2) ensure that the family is not being charged fees for a HOME-funded activity. HUD should clarify whether while homebuyers are required to receive pre-purchase counseling HOME assistance, organizations can or cannot include housing counseling as an eligible project cost under the HOME program; many organizations do charge a nominal fee on the HUD-1 to cover a portion of expenses.

Another related question is whether organizations that serve as ‘approved,’ or certified loan packagers, for conventional, government, or other nonprofit agencies can charge packaging or brokerage fees if HOME assistance is part of the construction or homebuyer financing. HUD should allow ‘approved’ or certified loan packagers to charge justifiable, reasonable and customary fees for this service in light of recent safeguards to homebuyers, including the SAFE Act, already in place to help protect buyers.

10. Maximum Per-Unit Subsidy Amount, Underwriting, and Subsidy Layering (Section 92.250 (b) (2))

The underwriting criteria established by PJs include an assessment of the development team’s capacity to undertake the proposed project. First, HUD should specify where the criteria will be made public (e.g. Consolidated Plan, Annual Action Plan, etc.). Second, HUD and PJs should ensure that any experience and financial capacity criteria proposed are reasonable for the type of development proposed, not a blanket standard regardless of the project type. It is important to remember that developers, including CHDOs, do need to ‘stretch or reach’ to higher development capacity levels to take on larger or more complex projects. HAC would want to see that HUD and PJs continue to address the value of building and supporting CHDOs’ development capacity, and the assessment process indicated under this section takes this into account.

11. Leasing Up Rental Properties/Troubled Rental Projects (Section 92.252, 210)

Rental units which have not been leased within three to six months would be required to report marketing plans to HUD. If efforts to market the unit are unsuccessful and a unit is not occupied by an initial tenant after 18 months, HUD would require repayment of HOME funds invested in the units, yet the project owner must maintain compliance and affordability throughout the original performance period. HUD should take into account that for certain rural communities it may be normal for a rental development to fully lease-up beyond a six month period. HUD may consider including waivers if the entity and PJ demonstrates progress towards full lease-up. HAC is satisfied with the rest of these provisions.

12. Tenant and Homebuyer Preferences (Section 92.253)

The proposed rule permits PJs to limit beneficiaries or give preferences to a particular segment of the low-income population only if the limits are described in the action plan and do not violate fair housing requirements. Limiting beneficiaries or giving preferences to such professions as police officers, teachers, or artists would be permissible. Employees of the PJ are not eligible for preferences.

Additionally, a project may have a limitation or preference for people with disabilities who need services offered at a project only if:

- it is limited to households with disabilities that significantly interfere with their ability to obtain and maintain housing;
- the households will not be able to maintain themselves in housing without appropriate supportive services; and,

- the needed services cannot be provided in a non-segregated setting.

However the regulation enforces the current practice to allow HOME projects to restrict programs, such as 202, 811 and HOPWA. The language of this section leads to different interpretations of tenant eligibility and requirements about participating in supportive services. HUD should provide more clarification on PJs setting preferences and establishing tenants' participation requirements in supportive service programs.

13. Initial Purchase Price Limit (Section 92.254)

HUD has proposed language for nonmetro communities, exempting them from the 95 percent of area median purchase price standard for newly constructed homes, [and] allowing states to aggregate sales data from at least two contiguously connected counties with similar attributes to use as the alternative benchmark. First, HUD should consider allowing states to either adopt this as a standard, use the 95 percentile of the U.S. median purchase price for new construction in nonmetro areas, or use other options that would ensure the eligibility of newly constructed homes. States would have to publish the standard they choose in their Action Plans. Second, HUD and the states should address how the purchase price limits would apply to homeowner rehab activity. Alternative proposals should include existing housing as well as new construction. While the proposed changes includes rehab activity in considering the purchase price limits, using the 95 percent of area median purchase price limit makes it extremely difficult to assist existing housing in rural areas. It will limit impact developers' ability to acquire/rehab and sell existing stock in low-value markets because the after-rehabilitation value will exceed the 95 percent limit thereby eliminating possible HOME-eligible assistance. The standard should, just as with new construction, allow for PJs to have maximum flexibility to help generate sales for income eligible and credit-worthy families.

14. Fee Simple Absolute Titles (Section 92.300 (a) (2-4))

To qualify as a CHDO for a HOME-funded project as an owner or sponsor the nonprofit must own the property under fee simple absolute title. HAC is concerned that such a narrow definition may impede or prohibit CHDO development on Native American lands (where title may be held in trust by the tribe) or in existing community land trusts (CLT). HUD should either modify or provide an exemption to this proposal to allow CHDOs who intend to own, develop or build on Native American lands or under the land trust model. In these cases fee simple absolute title is not feasible given issues of trust land or the housing development model. There are models of where this works. The U.S. Department of Agriculture (USDA), for example, provides development-related funds that can be used to purchase or maintain a leasehold interest in a site; to construct housing and to pay construction loan interest on native lands

15. Profit/Nonprofit Partnerships in LIHTC Deals (Section 92.300)

The proposed rule states that for a project to qualify for CHDO funds, the CHDO must be the sole general partner. This requirement would result in a significant change in participation of many CHDOs, particularly those that are rural, in the LIHTC program. Currently CHDOs

may, and should play a substantive role as co-general partners (GP) that will not only attract capital to the real estate project but also build their development capacity. Under the proposed change the resulting partnerships, particularly those with equity and other capital/development partners, may continue to deliver affordable housing to low and very-low income families. It may not be beneficial to those CHDOs seeking to build its development capacity, earn fee income or see any other upside to its participation beyond the goal of delivering affordable rental housing. In rural developments with partnership structures, it might be possible that fewer of these real estate projects may be undertaken without the rural CHDO co-GP who is bringing or rehabilitating affordable rental housing to these areas when no other entity may be mission-oriented to do so. HUD should instead consider language that seeks to strengthen the active role that CHDOs need to play in partnership structures.

Thank you for providing this opportunity to comment. If you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Moises", followed by a long horizontal line extending to the right.

Moises Loza
Executive Director