



July 29, 2024

Virginia Sardone, Director, Office of Affordable Housing Programs  
Office of Community Planning and Development,  
Department of Housing and Urban Development  
451 7th Street SW, Room 7160  
Washington, DC 20410

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

Dear Director Sardone:

I am pleased to submit the following comments on this proposed rule on behalf of the National Community Development Association (NCDA) and its member communities. As you know, NCDA is the primary trade association for local government Participating Jurisdictions (PJs) that receive and administer the HOME Investment Partnerships Program funds that are the subject of this proposed rule. We appreciate the opportunity to comment on the rule.

**General Comments**

In general, NCDA strongly supports the provisions of this proposed rule to make many needed updates to the HOME program's regulations and to streamline provisions of the program to make the program more effective and reduce regulatory barriers to using the HOME program to create much needed affordable housing. At a time when many communities across the country are experiencing a critical need for more affordable housing, making the HOME program more flexible can help communities address this need.

Several important issues are raised in this rule, but the details are left to future rulemaking or other notices. The rule mentions that HUD plans to issue a Federal Register notice or other notice on its website substantially revising the methodology for developing new maximum per-unit subsidy limits. This is potentially one of the most significant changes to the HOME program and it has a direct impact on several other changes, such as the proposal to allow grantees to exceed the per-unit cost limits by 5% as an incentive to meet Green and Resilient Property Standards. NCDA urges HUD to issue this Notice as soon as possible. In the interim, NCDA suggests that HUD continue using the Section 234 elevator condominium mortgage limits as the base for the maximum per-unit subsidy limits but lift the cap for high-cost areas to 270% rather than 240% as provided in the most recent HUD Annual Revisions to Base City High-Cost Percentage and High-Cost Areas notice: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2024-01hsgml.pdf>

As mentioned above, HUD also stated its intent to issue a separate Federal Register or other notice for the Green Building standards. In the proposed rule HUD states that they believe that a 5% increase above the regular maximum subsidy limits would provide a sufficient incentive to cover the additional cost of meeting these new standards. It is difficult to assess whether a 5% increase is sufficient without knowing what the revised per-unit subsidy limits will be and what meeting the Green Building standards will require. Again, NCDA urges HUD to issue the proposed standards as soon as possible.

Another significant issue raised but left without specific proposed changes in this rule is the affordability periods tied to the dollar amount of HOME subsidy. Currently the HOME regulations require 5 years of affordability for HOME investment of less than \$15,000/unit, 10 years for investments of \$15,000 - \$40,000/unit, 15 years for investments over \$40,000/ unit and 20 years for new construction. These requirements have not been updated since the program started in 1991 – 33 years ago. Updating these dollar amounts and/or the affordability periods is long overdue. For example, even a simple adjustment of \$15,000 in 1991 by the basic Consumer Price Index (CPI) would correspond to a little over \$35,000 in June of 2024. NCDA recommends that HUD at least issue an interim adjustment of the dollar amounts by the CPI for the current affordability periods while it explores this issue in greater depth.

### **NCDA Responses to HUD’s Specific solicitation of Comments**

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

**NCDA Comment #1:** (NCDA has no recommendation on this issue)

**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.

**NCDA Comment #2:** NCDA and its member PJs recognize the need to adapt housing policies, programs and projects to address the impact of change. However, this is a particularly difficult challenge at a time when the cost of building housing has skyrocketed and funding for key housing programs such as the HOME program have been cut substantially. NCDA recommends that at least until such time as full funding has been restored for the HOME program that any new Green Building standards be optional and that HUD conduct case studies of projects utilizing Green Building standards to better understand the additional costs and savings resulting of the adoption of the standards. HUD could also consider requesting additional funding in its next budget request to Congress to establish a competitive Green Building pilot program in conjunction with the

HOME program to gather data on the costs of specific proposed Green Building requirements.

**Specific solicitation of comment #3:** The Department specifically seeks public comment on the proposal to require HOME-assisted units 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, which 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).

**NCDA Comment #3:** NCDA supports requiring smoke detectors and carbon monoxide detectors in HOME-funded housing. We would support requiring hard-wired alarms only in HOME-funded new construction. For rehabilitation activities we would support requiring 10-year battery-powered smoke and CO2 alarms. For homebuyer downpayment assistance programs we would support requiring 10-year battery-powered smoke and CO2 alarms, but this should be an eligible HOME cost and not the responsibility of the seller and not included as part of the homebuyer's downpayment assistance. Similarly, smoke and CO2 alarms should be required (if missing) in TBRA-assisted units but paid for and installed by the PJ, not the landlord or tenant. We are concerned that requiring this of landlords may make TBRA-assisted tenants less desirable.

**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.

**NCDA Comment #4:** NCDA supports requiring PJs to inspect 20% of HOME-assisted units. However, over time the number of HOME-assisted units that PJs must inspect on an ongoing basis has grown, placing an increased burden on PJ staff and their administrative budgets. In recognition of the increasing ongoing administrative burden, NCDA requests that HUD explore either increasing the administrative cap from 10% or possibly exempting inspections and other ongoing monitoring costs from the 10% HOME administrative cap.

**Specific solicitation of comment #5:** The Department specifically requests public comment from participating jurisdictions and program participants regarding the challenges they have encountered using HOME funds to assist small-scale housing, as defined in this proposed rule. The Department also requests public comment regarding the costs and benefits of the changes that HUD is proposing for small-scale housing in requirements for the frequency of income determinations and inspections and the use of alternative waiting lists.

**NCDA Comment #5:** NCDA supports the proposed changes to allow for property inspections and income determinations at small-scale HOME-assisted projects on a three-year schedule rather than annually.

**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?

**NCDA Comment #6.** NCDA strongly supports the proposal to allow all HOME-assisted projects to use the local PHA's utility allowances for determining rents. NCDA's member PJs find the HUD Utility Schedule Model confusing and extremely burdensome to apply.

**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?

**NCDA Comment #7:** NCDA believes that the reduction of energy usage is a benefit to the public, regardless of whether the short-term savings accrue to the owner or are shared with the tenants. If the energy efficiency measures are included in the initial HOME-assisted development budget this should be factored into the operating costs and therefore lower rent and/or utility costs for the tenants. If the energy efficiency measures are undertaken later as post-development upgrades paid for by the owner or with assistance from other state or federal resources the issue becomes more complicated. NCDA cautions HUD against reducing an owner's incentives for undertaking energy efficiency upgrades.

**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€ 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)€ of NAHA (42 U.S.C. 12745(a)(1)€) 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.

**NCDA Comment #8:** NCDA recommends that HUD focus on adjusting (increasing) the HOME investment amounts without changing the current 10-, 15- and 20-year affordability periods. The current dollar thresholds have not been adjusted since they were adopted 33 years ago, resulting in the required affordability periods now becoming excessive with respect to the relatively small amounts of HOME assistance being received. NCDA recommends that HUD at least issue an interim adjustment of the dollar amounts by the CPI for the current affordability periods while it explores this issue in greater depth.

**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?

**NCDA Comment #9:** NCDA finds the proposed expansion of tenant protections for tenants receiving HOME-funded TBRA, including those only receiving security deposit assistance, to be well-intentioned. However, member PJs have expressed concerns that if these proposed changes are adopted, fewer landlords will be willing to accept tenants with HOME TBRA, especially in states and communities where the required protections exceed existing laws or ordinances. NCDA recommends that HUD not adopt these proposed changes at the present time and further, that HUD specifically reach out to all PJs currently conducting a HOME TBRA program to obtain input regarding the impact of these proposed changes.

**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.

**NCDA Comment #10:** NCDA recommends that at the present time HUD leave the decision regarding whether to include owners on TBRA rental assistance contracts up to the PJ. We recognize that including owners on the rental assistance contract would give PJ's additional leverage, but it may also result in owners electing not to participate in the program. NCDA suggests that HUD survey PJs currently administering a TBRA program to see how many currently do or do not include owners on the rental assistance contracts and whether they support requiring the HOME tenancy addendum.

**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.

**NCDA Comment #11:** NCDA supports the proposed extension of the deadline from 9 months to 12 months.

### **Additional Comments:**

**Community Housing Development Organizations (CHDOs):** To make it easier to qualify as a CHDO, the proposed rule adds language expanding the types of neighborhood organizations that can satisfy the requirement that one-third of the board of a CHDO must be low-income representatives of community-based organizations. NCDCA appreciates the effort HUD has made to expand the type of eligible organization while complying with the HOME statutory requirements. However, we do not believe this will make any significant difference in the number of organizations that will seek the CHDO designation and that meeting the 15% CHDO set-aside requirement will continue to be a challenge for many PJs. Many Community Development Corporations (CDCs) and other community development entities simply choose not to become CHDOs because they do not want to change their board compositions and they can still access the non-CHDO portion of their PJs HOME funds. For smaller grantees, the 15% CHDO set-aside is simply too small to be useful, especially given the recent reduction in funding for the HOME program. NCDCA believes that the CHDO set-aside has outlived its usefulness and that it is time to address the problem with a statutory amendment to at least eliminate the board composition requirement if not eliminate the CHDO set-aside requirement altogether.

**Community Land Trusts (CLTs):** NCDCA notes that while HUD is proposing to extend the existing 9-month deadline for the sale of homebuyer units acquired, rehabilitated, or constructed with HOME funds to 12 months the proposed rule would require that CLTs sell units acquired through the right of first refusal within 6 months. Units required by the CLT may require renovation before being marketed and resold to eligible buyers. NCDCA believes that the deadline for the resale of units by CLTs should be the same as for any homebuyer unit assisted with HOME funds – 12 months.

The proposed rule also prohibits CLT's from providing additional HOME funds to rehab units acquired through the exercise of their Right of First Refusal or from providing assistance to buyers of such units. The reason for such prohibitions is unclear to NCDCA. A property may need renovations between owners or upgrades to comply with updated building codes or to make Green Building upgrades.

**Green Building Standards:** As an incentive to meet Green Building standards, the proposed rule includes a proposal to allow PJs to exceed the current maximum per-unit subsidy limits by up to 5%. However, another option for HUD to consider would be exempting the amounts of HOME funds spent on green building measures from the calculation of the per-unit assistance for the purposes of determining the required period of affordability.

**Funding:** While NCDCA recognizes that the funding levels for HOME and other HUD programs are set by Congress, not HUD, NCDCA urges HUD to request increased funding for the HOME program in next year's budget request. With today's high interest rates and sky-rocketing construction costs, creating affordable housing has become increasingly expensive. The proposed rule's changes to increase the maximum per-unit subsidy limits and add Green Building standards will not be effective without adequate funding for the program. The HOME program is one of the few resources available to assist the new construction of affordable housing and it leverages substantial additional private and other funding through the Low-income Housing Tax Credit Program and other programs.

NCDA and its member communities appreciate the opportunity to offer comments on this important proposed rule. We thank HUD staff at the Office of Affordable Housing Programs for their work on this rule and we look forward to working with HUD on its implementation.

Sincerely,

*Vicki Watson*

Vicki Watson  
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National Community Development Association