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Council of State Community Development Agencies

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HUD Regulations Division
Office of Community Planning and Development
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410–8000

RE: FR–5246–N–04, Housing Trust Fund: Request for Public Comment on Prior Interim Rule

The Council of State Community Development Agencies (COSCDA) is a national association dedicated to advancing state actions on community development, housing, homelessness, and disaster recovery. Membership includes administrators of the Housing Trust Fund (HTF) program. We appreciate the Office of Affordable Housing (OAHP) under HUD - Community Planning and Development (CPD) and their tremendous work in promoting housing opportunities throughout the nation. COSCDA extends our gratitude as well for the ability to comment on the HTF final rule and offers responses to the following included in the request for public comment:

1. Income targeting requirements, including the requirement at 24 CFR 93.250(a) that 100 percent of HTF funds be used for extremely low-income households or families with incomes at or below the poverty line (whichever is greater) in years when funds made available for HTF is less than $1 billion. For reference, 24 CFR 93.2 defines extremely low-income households as families whose annual incomes do not exceed 30 percent of the median family income of a geographic area, as determined by HUD with adjustments for smaller and larger families.

State administrators propose a broader range of income eligibility under HTF up to 50% AMI. Program restrictions to use HTF funds exclusively for extremely low-income households presents challenges in identifying and investing in applicable developments. As mixed-income residential properties are more readily available, households with higher income levels should be eligible for program support.

Furthermore, we recommend HUD allow grantees to determine the amount of funding dedicated for development of units between extremely and very low-income households. Under this scenario, a maximum percent for each income level (up to 30% and 50% AMI) would be established by HUD. The structure would afford grantees the ability to better respond to housing needs in their respective jurisdictions for improved project outcomes and maximum households served.

2. The rent limitations established at 24 CFR 93.302(b);

We recognize the rent limitations established under 24 CRF 93.302(b) and have no comments on the current standards.

3. The minimum 30-year period of affordability established at 24 CFR 93.302(d) and 24 CFR 93.304(e);

An update to the affordability period would support increased flexibility in program use and expand the pool of potential projects which HTF investment can be directed. The current 30-year period of affordability is too general when accounting for different aspects of project development including varying project scope (number of units), available financing, and site location. COSCDA recommends revising the current period of affordability responsive to the amount of assistance per unit in a project. Similar to HOME, a tiered affordability period would be based on activity type and investment amount. As HTF is often matched in HOME-supported projects, the enhanced period should align with current thresholds to HOME to better connect and target HUD program investments.

Additionally, the current minimum 30-year period of affordability limits additional HTF funds from being applied to projects during this time frame. Grantees are prohibited from continuing to aid developments in the affordability period. However, additional support to developments may be necessary to ensure their long-term success and ability to remain solvent. Stakeholders have a responsibility to protect their investments and ensure projects are sustained. If further HTF aid can be directed through refinancing, loan restructuring, capital costs, or a similar activity as provided under 24 CFR 93.200, additional assistance should be available to an HTF-sponsored project. Grantees are accountable to other areas of program administration and would ensure policies are enacted to continue compliance with program rules.

4. The property standards, including environmental standards established at 24 CFR 93.301;

We have no comments on the property standards outlined in 24 CFR 93.301. However, requirements for local codes can vary and a universal standard such as the Uniform Physical Condition Standards (UPCS) is necessary to ensure states can oversee projects consistently through applicable standards across multiple jurisdictions.

5. The restrictions on the use of HTF funds for operating cost assistance (including reserves) established in 24 CFR 93.200(a)(1) and definition of operating costs at 24 CFR 93.201(e)(1), which defines operating costs as ‘‘costs for insurance, utilities, real property taxes, and maintenance and scheduled payments to a reserve for replacement of major systems (provided that the payments must be based on the useful life of each major system and expected replacement cost) of an HTF-assisted unit;’’

HTF projects would be better assisted through additional eligible operating costs. Staffing, including costs associated with property management, is recommended under this expanded eligibility. Further, as rent loss through vacancies poses risks in overall project solvency, additional financial support becomes increasingly necessary to ensure long-term viability of a development. Revenue loss from vacancy should also be available as a part of the listed operating costs. HUD may provide a reasonable limit for grantees to cover this expense such as up to 10% of total gross rent in a given time period. Additionally, costs related to supportive housing may be helpful for projects housing tenants with specific needs. In cases which other resources have been exhausted for supportive services, HTF may be positioned to sustain this critical aid.

6. What changes to the HTF program could improve program administration and more effectively address the housing needs of the population it is intended to serve?

COSCDA urges the following reforms to the program:

a) To support administrative flexibility and better response to changing conditions in housing development, COSCDA strongly encourages elimination of the two-year commitment deadline. The 24-month deadline presents untenable challenges in determining eligible projects and dedicating funds. Time is limited for grantees to identify investment opportunities and obligate HTF resources. Additionally, if projects are cancelled or a change of scope impacting affordability occurs after the two-year commitment deadline, funds are withdrawn from grantees and returned to the national Housing Trust Fund. Circumstances affecting project eligibility are largely beyond grantee control. Further, funds lost are not allowed to be redirected by the grantee for use on another qualifying development.

COSCDA recognizes that the two-year commitment deadline is statutory and only Congress has the authority to change or remove the requirement.

b) In directing additional resources to HTF, COSCDA recommends increasing the annual assessment on the Federal Housing Finance Agency's (FHFA) contribution to the program. HTF is funded through an annual assessment of 4.2 basis points (0.042%) from the FHFA on the sale volume of Fannie Mae and Freddie Mac's new mortgage purchases. HTF receives 65% of contributions from the assessment while 35% is directed to the Capital Magnet Fund (CMF).

A renewed assessment of 10 basis points would drive further resources to HTF. As a result, states will be better positioned to facilitate affordable housing development and invest in the creation of additional housing units.

COSCDA acknowledges an update to the assessment would need congressional approval.

c) The current level of administrative funding is inadequate to properly oversee HTF grants; therefore, COSCDA encourages an increase of the administrative cap to 15%. Administrative capacity is key to ensure program resources are being managed and implemented as intended. Project development consists of many moving parts. Program requirements must be met to ensure funds are being applied as designed by Congress, and project investments adhere to the goal of supporting affordable housing for very low-income persons. Additionally, as grantees rely on sub-grantees and funding recipients in project development, targeted assistance is required for individual projects. Technical assistance needs continually exist especially among new stakeholders in the program.

As the administrative cap was established by Congress, a legislative change will be required for this update.

d) Regarding the HTF environmental review process, we suggest updates expanding the program's reach and aligning requirements with other federal sources. Regulations under HTF dictate environmental provisions for new construction and rehabilitation. These provisions operate under 24 CFR 93.301(f)(1) and (2) which are similar to HUD's environmental regulations under Parts 50 and 58. HTF environmental provisions however are outcome based whereas Parts 50 and 58 are process based; these include procedures for outreach and public comment when environmental impacts may exist. HTF often complements related federal funding sources including HOME with joint funds invested in projects. HOME and similar programs follow Parts 50 and 58 in the ER process. As a result, separate environmental reviews are required with HTF following the aforementioned outcome based provisions and HOME or likewise program adhering to the process-based Parts 50 and 58.

An expansion of HTF's review process which includes Part 58 would advance investments in areas which would otherwise be ineligible. Currently, many projects are eliminated from receiving HTF funding due to the program's non-mitigation provisions for several environmental categories, such as, but not limited to, farmlands and wetlands. Any development located on wetlands or farmland is absolutely barred from receiving HTF funding with no allowable recourse to mitigate and still use the funding. Instead, in cases of a review triggering a non-mitigation provision, further options should be present to allow HTF funding to still be used. The ability at the PJ's discretion to apply Part 58 or a similar review process that allows for mitigation after a public comment period, would afford further investment opportunity. Additionally, the ability to implement Part 58 if necessary aligns HTF with other federal program environmental review processes.

HUD action on updating this policy through the agency's NEPA standards would be welcomed.

Thank you for your time and commitment to affordable housing programs including HTF. We welcome changes to the program which will streamline administration, promote efficiency, and maximize housing opportunities for disadvantaged populations. Please reach out if we can provide further dialogue and perspective on these and other important issues regarding HUD programs.

Sincerely,

Dianne E. Taylor
Executive Director