

September 8, 2021

The Honorable Sherrod Brown
Chairman
Senate Committee on Banking, Housing, and
Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Pat Toomey
Ranking Member
Senate Committee on Banking, Housing,
and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Maxine Waters
Chairwoman
House Financial Services Committee
2129 Rayburn House Office Building
Washington, District of Columbia 20515

The Honorable Patrick McHenry
Ranking Member
House Financial Services Committee
4340 O'Neill House Office Building
Washington, District of Columbia 20024

The Honorable Tina Smith
Chairwoman
Senate Subcommittee on Housing,
Transportation, and Community Development
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Rounds
Ranking Member
Senate Subcommittee on Housing,
Transportation, and Community Development
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Emmanuel Cleaver
Chairman
House Subcommittee on Housing, Community
Development, and Insurance
2129 Rayburn House Office Building
Washington, District of Columbia 20515

The Honorable French Hill
Ranking Member
House Subcommittee on Housing, Community
Development, and Insurance
4340 O'Neill House Office Building
Washington, District of Columbia 20024

Dear Chairman Brown, Ranking Member Toomey, Chairwoman Waters, Ranking Member McHenry, Chairwoman Smith, Ranking Member Rounds, Chairman Cleaver, and Ranking Member Hill:

As proposed in the approved FY2022 budget resolution¹, significant and comprehensive investments are directed to address longstanding housing and community development needs. The Council of State Community Development Agencies (COSCDA) welcomes renewed resources in response to the nation's ongoing housing crisis as well as widespread infrastructure gaps. It is critical for capacity and administrative processes to be responsive to support this type of robust investment in roads, housing, utilities, and related facilities. Resources

¹ Senate Concurrent Resolution 14, U.S. Congress, approved in Senate (August 11, 2021) & House (August 24, 2021):
<https://www.congress.gov/117/bills/sconres14/BILLS-117sconres14es.pdf>.

many times higher than current annual funding strain the administrative structures that support these important investments, and also present opportunities to improve existing processes. COSCDA offers the following recommendations on key waivers and alternative program requirements to aid delivery of U.S. Department of Housing and Urban Development – Community Planning and Development (HUD-CPD) resources:

Community Development Block Grant

To bolster community development across varying infrastructure, the following recommendations for CDBG would greatly benefit the goals of the budget resolution proposal.

Renewed investment in CDBG responds to significant gaps in infrastructure including affordable housing and water systems. Targeted resources under CDBG, as proposed recently in the *Housing is Infrastructure Act*², is well-intended in supporting listed activities: housing production and preservation across the southern U.S. border and producing manufactured homes. However, due to the provision's specific use of CDBG and varying applicability of these eligible activities to communities, funds will be directed in an unequal and limited basis across the country.

CDBG is an important resource to communities responsive to the specific state and local needs; as such, the program can be used by grantees to complement other dedicated resources to housing and related community assets. From FY2005 to 2020, most CDBG resources supported public improvements with a third of program funds dedicated to roads, bridges, water systems, public buildings and related types of projects³. Other key investment areas follow including housing rehabilitation, economic development, and public services. Each category is not isolated and instead accommodates other areas of community development; adequate utilities and public services for instance are necessary in supporting stable housing and safe neighborhoods. CDBG's flexible use of funds allows localities to address extensive and widespread needs unique to their community.

- Distribute Funds through the CDBG Formula Allocation
 - An allocation of CDBG through the annual formula ensures communities of all locations and populations will be able to access and apply program funds to project needs; other means of distributing funding (ex. competitive process) means only a few jurisdictions generally with more capacity and resources will be positioned to participate i.e. larger, urban communities. Additionally, with the recent influx of federal funds for housing and community development from Treasury and HUD, jurisdictions have even less bandwidth to develop and submit proposals for funding. If adjusted as formula funds with eligible activities therein, CDBG would be an important and necessary resource to support housing development alongside other provisions in the legislation.
- Promote Adequate Resources for Program Administration
 - To sufficiently support costs of carrying out the program, 20% of funds should be reserved for administrative and planning purposes; this level would align supplemental funding for CDBG with the annual CDBG program⁴. Program implementation and oversight oftentimes occurs

² Housing is Infrastructure Act of 2021, Discussion Draft, House Financial Services Committee (July 20, 2021):

https://financialservices.house.gov/uploadedfiles/hiinfr_003_xml.pdf.

³ CDBG National Accomplishment Report, FY2005 – 2020, U.S. Housing and Urban Development – Office of Community Planning and Development (accessed on September 2, 2021): https://www.hudexchange.info/onecpd/assets/File/CDBG_Accomp_Natl.xlsx.

⁴ §570.200 General policies, Subpart C – Eligible Activities, Community Development Block Grants, U.S. Housing and Urban Development: https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=24:3.1.1.3.4&idno=24#se24.3.570_1489.

between different levels of stakeholders. Sufficient administrative capacity and response is expected and can only be met with dedicated funds for staffing and related costs.

- Capacity and technical assistance can be provided from the state to improve response in the states' respective service areas (small and rural communities). An administrative and technical assistance cap of 5% for states would facilitate this critical support (currently capped at 3%). Recently, waivers issued by HUD for CDBG – CARES Act (CDBG-CV)⁵ allowing states to use up to 7% of grant funds for administration and technical assistance.
- In the CDBG formula program, state grantees are required to match every dollar over the first \$100,000 of funding for administration⁶. Due to budgetary uncertainty particularly for small states, an elimination of the match requirement is warranted. At minimum, the threshold should be raised to a reasonable level of \$500,000 to account for wavering budgets at the state level and ensure available funds for administrative purposes.

Housing Trust Fund

- 24-Month Commitment Deadline: A statutory deadline is directed in Sec. 1338 (c)(10)(B) of P.L. 110-289⁷ which requires grantees to commit funding towards projects within two years of receiving grant funds. Any uncommitted amounts beyond the two-year period must be recaptured by HUD.
 - A suspension of the two-year commitment deadline is necessary to allow sufficient time to appropriately identify projects and target resources. The current deadline is too difficult for grantees to meet and presents limited opportunity to facilitate pre-project planning and review. Further, an expenditure deadline ensures funds are being directed to projects within a reasonable timeframe.
- Environmental Review Process: HTF environmental provisions follow 24 CFR § 93.301(f)(1) and (2)⁸. While similar to HUD's environmental regulations under 24 CFR Parts 50 and 58, HTF's process does not include consultation procedures featured in Parts 50 and 58. As a result, HTF investments are drastically limited to projects outside of commonly-designated tracts.
 - The ability to use Part 58 to address HTF's environmental review would accommodate project investments and ensure funds can be applied to sites which would otherwise not offer remediation under the current review requirements. HTF's environmental review process poses challenges for projects located in commonly-designated tracts such as farmlands and wetlands. The process limits where investments may occur without the possibility of recourse. Similar HUD programs follow Parts 50 and 58 which allow for remediation at project sites. Once a non-mitigation provision is triggered in the review process, the ability at the PJ's discretion to apply Part 58 or a similar process should be allowed to address both environmental issues and provide

⁵ Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs. U.S. Housing and Urban Development – Office of the Assistant Secretary for Community Planning and Development. Federal Register Volume 85 No. 162 (August 20, 2020): https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-CV_Notice_Federal_Register_Publication_2002-08.pdf.

⁶ §570.489 Program administrative requirements, State Community Development Block Grant Program, U.S. Housing and Urban Development: https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=24:3.1.1.3.4&idno=24#se24.3.570_1489.

⁷ P.L. 110-289, Housing and Economic Recovery Act of 2008, Sec. 1338 (c)(10)(B), U.S. Department of Housing and Urban Development (September 1, 2021): <https://www.hudexchange.info/resource/4405/housing-and-economic-recovery-act-of-2008/>.

⁸ HTF Environmental Provisions, HUD Exchange, U.S. Department of Housing and Urban Development (September 1, 2021): <https://www.hudexchange.info/programs/environmental-review/htf/>.

ample opportunity to invest in targeted projects. Part 58 or a similar process allows mitigation following a public comment period. The ability to implement Part 58, if necessary, also aligns HTF with other federal program environmental review processes.

- **Administrative Cap:** As directed in Sec. 1338 (c)(10)(D)(iii) of P.L. 110-289⁹, administrative costs cannot exceed ten percent of grant amounts.
 - The current administrative cap of ten percent does not meet capacity and resource needs of grantees and related stakeholders; a 15% administrative cap would better accommodate grantees in program management. Grantees must maintain staff to facilitate all aspects of grant oversight and program requirements. Additionally, HTF projects do not exist solely through the grantee as the state is not the developer of the HTF-invested project. Instead, states partner with local governments and non-profits to accommodate project development and administrative costs are shared between these entities. Technical assistance needs are also involved especially among new funding recipients which require further staff and resources. Therefore, an administrative cap increase to fifteen percent is warranted to ensure accountability and promote sound investment of program resources.

HOME Investment Partnerships

- **24-Month Commitment Deadline:** Sec. 218 (h) of P.L. 101-625¹⁰ requires grantees to commit funds to projects within two years of receipt. Any funding which is not committed within 24 months must be recaptured by HUD.
 - A waiver of the two-year commitment deadline will be necessary to ensure projects can be appropriately identified and reviewed ahead of determining investment. The current deadline proves to be too difficult for grantees to meet. In response, Congress has suspended the commitment deadline in annual appropriations since fiscal year (FY) 2017. An expenditure deadline ensures projects are completed within a reasonable timeframe.
- **Administrative Cap:** Sec. 212 (c) of P.L. 101-625¹¹ limits administrative and planning costs to ten percent of grant funds.
 - The administrative cap of ten percent does not meet grant management and technical assistance needs; the administrative cap should be increased to fifteen percent of the funding amount to ensure sufficient capacity and resources to accommodate grantees. HOME resources are dedicated through both state and local grantees as well as partner entities including local sub-grantees and non-profits. Technical assistance is required especially for newer award recipients. Together, a thorough process must be managed between different levels of project administrators to meet program requirements and intended outcomes. An increase of the administrative cap supports better targeting and oversight of federal resources.

⁹ P.L. 110-289, Sec. 1338 (c)(10)(D)(iii).

¹⁰ PL 101-625, Cranston-Gonzalez National Affordable Housing Act, Title II, Sec. 218 (h), U.S. Housing and Urban Development (accessed on September 2, 2021): https://www.hud.gov/sites/documents/19576_PARTA.PDF.

¹¹ Ibid, Sec. 218 (h)

- Revise the CHDO Set-Aside: Sec. 231 of P.L. 101-625¹² requires Participating Jurisdictions (PJs) to reserve fifteen percent of grant funds for Community Housing Development Organizations (CHDOs). Funds must be directed to CHDOs within two years or any undirected funds are returned to HUD.
 - HOME resources can be better applied to projects if the fifteen percent threshold is updated to include designated non-profits instead of CHDOs. Many housing-based non-profits cannot meet the requirements to become a certified CHDO, or determine CHDO eligibility would involve administrative and organizational changes too burdensome to uphold. In turn, available CHDOs are limited especially for states which primarily serve small cities and rural areas. Recognizing any unspent funds designated for CHDOs are returned to HUD after two years, Congress inserted language to allow unspent funds to instead return to PJs in FY2020 and FY2021 appropriations legislation. Under a revised set-aside, a broader pool of available housing organizations will be eligible to receive HOME funds and in turn, additional projects can be identified for investment by PJs.
- Non-Profit Operating Support: Sec. 212 (4)(g) of P.L. 101-625¹³ limits HOME funds for operating assistance to CHDOs at five percent.
 - An increase from five to ten percent on HOME funds for non-profit operating assistance is important to supporting housing development in service areas. Non-profits provide a critical role in serving disadvantaged and underperforming communities contributing to housing production in areas which generally receive less private-led development. Smaller projects are more likely in these areas and as a result, development fees are typically inadequate to cover operating costs of non-profit sponsors. HOME regulatory compliance as well as adherence to other federal programs can be complicated and requires adequate management. In response, the HOME statute allows up to five percent of HOME funds to CHDOs for operating assistance. Key activities which are eligible under operating assistance include long-term planning, financial and regulatory compliance, and stakeholder capacity-building. Following the abovementioned priority to expand the set-aside from CHDOs to non-profits, an increase of ten percent for non-profit operating assistance is recommended.
- The ability of HUD to provide further waivers and alternatives to program requirements would assist program implementation and delivery of funds to housing development.

Environmental Reviews

- Coordinate Environmental Reviews across Federal Programs: HUD program administrators and related project stakeholders must navigate varying environmental reviews across federal programs. Separate reviews are required to satisfy National Environmental Protection Act (NEPA) requirements for HUD.
 - Any CPD-funded project must meet environmental review standards through the National Environmental Policy Act (NEPA). CPD investments often work alongside other federal resources, primarily U.S. Department of Agriculture – Rural Development (USDA-RD) and Environmental Protection Agency’s State Revolving Loan Fund (EPA - SRLF). For projects receiving both USDA-RD and EPA-SRLF, one environmental review can be completed to meet NEPA compliance however projects supported by HUD have to complete a separate

¹² PL 101-625, Cranston-Gonzalez National Affordable Housing Act, Title II, Sec. 218 (h), U.S. Housing and Urban Development (accessed on September 2, 2021): https://www.hud.gov/sites/documents/19576_PARTA.PDF.

¹³ Ibid, Sec. 212

environmental review. As a result, for projects supported by both HUD and other federal programs, project managers must address NEPA through multiple reviews. The situation proves duplicative and takes additional administrative time and resources away from other project oversight responsibilities.

- To ensure federal environmental standards and greater efficiency in program administration, COSCDA requests the allowance of one environmental review for HOME or CDBG projects supported by multiple federal sources. For instance, NEPA compliance for HUD programs can be addressed through one review process for a project which receives other federal funding. USDA, EPA, or a related federal program's environmental review would satisfy NEPA compliance for HUD as well.

Federal Labor Standards

- **Prevailing Wages:** Both CDBG and HOME abide by Davis Bacon labor standards in the annual formula programs. Since it is not an annually appropriated program, Davis Bacon does not apply to HTF; the program is supported by an assessment on receipts from the Federal Home Loan Mortgage Corporation.
 - For HUD program administrators and related stakeholders, considerable challenges exist in the present reporting framework to meet Davis Bacon compliance. Common issues include limited or no information on wage classifications for both certain positions and in some jurisdictions, insufficient training availability for grantees and contractors, and frequency of reporting requirements is often inconsistent with employer payrolls (reporting of wages weekly vs. contractor's payroll schedule).
 - For states and localities with limited capacity, distribution of supplemental federal resources will require substantial partnerships and effort especially from the private sector. In order to secure stable employment and adequate compensation, laborers on federally-backed projects require participation from their respective employers to engage on stated projects. Present reporting requirements under Davis Bacon can discourage contractors, especially small businesses, from responding to bids of HUD-supported developments. One way to bolster participation from contractors is to promote streamlined processes in federal labor standards.
 - COSCDA recommends that Congress continue to exclude HTF from Davis Bacon labor standards requirements, or allow modified reporting requirements. Similar guidance as directed by Treasury for the American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Fund (SLFRF)¹⁴ would ensure prevailing wages are promoted while offering further flexibilities on meeting this threshold than requirements currently under Davis Bacon.
 - Further, DOL and HUD rulemaking following enactment of the regulation provide an opportunity to modernize reporting requirements across programs while ensuring that prevailing wage rates are implemented.

¹⁴ Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds, U.S. Department of the Treasury, B. Project and Expenditure Report 3. Required Information: All Infrastructure Projects (page 21), June 24, 2021: <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

HUD Administration & Capacity

Lastly, increased support for HUD capacity-building is necessary to carry out the legislation's proposed programs and federal resources. Recently, considerable focus has been directed on the agency's severe shortage of personnel. HUD's Office of Inspector General forecasts 63 percent of employees, and nearly 50 percent of managers and supervisors, will be eligible for retirement in 2022¹⁵. As a result, satisfactory program outcomes cannot be expected without a significant change in personnel and hiring. Technical assistance and planning needs continue to grow and HUD's current path does not facilitate this type of support to grantees and other stakeholders.

Renewed attention and resources are direly needed to address staff and capacity gaps at HUD – CPD as well as across the agency. Specifically, Congress should consider further action on promoting additional staff at the agency, including expediting the federal hiring process, and advancing HUD's technical capabilities to improve data collection, program monitoring and reporting, and coordination of federal resources to maximize project outcomes.

Thank you for your consideration of our recommendations and comments. Please reach out if you have any questions regarding this letter.

Sincerely,



Dianne E. Taylor
Executive Director

¹⁵ Top Management Challenges Facing the U.S. Department of Housing and Urban Development in 2021, Office of Inspector General – U.S. Department of Housing and Urban Development, Recruiting and Attrition (page 45), November 20, 2020: <https://www.hudoig.gov/sites/default/files/2020-12/TMC%202021.pdf>.

CC:

The Honorable Brian Schatz

Chairman

Senate Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies

The Honorable Susan Collins

Ranking Member

Senate Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies

The Honorable David Price

Chairman

House Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies

The Honorable Mario Diaz-Balart

Ranking Member

House Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies