



November 24, 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 Development Building
Washington, DC 20510

The Honorable Mike Rounds
Ranking Member
Senate Subcommittee on Housing,
Transportation, and Community
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:

The Build Back Better Act ([H.R. 5376](#)) advances significant and comprehensive resources to housing needs for low-income and disadvantaged populations. The legislation if enacted would provide \$150 billion to capital improvements on public housing as well as development of affordable housing and community facilities among other key housing-related infrastructure investments. As state and local administrators of Housing and Urban Development (HUD)

programs, NCDA and COSCDA recognize the importance of federal funding in addressing housing instability, strengthening public infrastructure, and promoting quality of life.

NCDA and COSCDA ask for consideration of the following updates to the House-approved legislation:

Ensure resources are responsive to community-led infrastructure development through the Community Development Block Grant program

Renewed investment in CDBG responds to significant gaps in infrastructure including affordable housing and water systems. Targeted resources for CDBG (Section 40101 Community Development Block Grant Funding for Affordable Housing and Infrastructure), as introduced in the House's Build Back Better Act¹, are well-intended in supporting designated areas and activities: housing and infrastructure along the southern U.S. border, and manufactured homes and communities. 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 2021, most CDBG resources supported public improvements with a third of program funds dedicated to roads, bridges, water systems, public buildings and related types of projects²; for states (non-entitlement communities), this is significantly higher with well over 50% of annual funding dedicated to public infrastructure.³ 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.

NCDA and COSCDA encourage CDBG to be distributed through formula in the BBB Act.

An allocation of CDBG through the existing 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 alter and adjust program rules to meet the specific funding pools (colonias) or activities (manufactured housing) as proposed in the Build Back Better Act. Instead, if resources are provided for all eligible program

¹ H.R. 5376, Build Back Better Act (revised November 3, 2021):

<https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR5376RH-RCP117-18.pdf>.

² CDBG National Accomplishment Report, FY2005 – 2021, U.S. Housing and Urban Development – Office of Community Planning and Development (accessed on November 22, 2021):

https://www.hudexchange.info/onecpd/assets/File/CDBG_Expend_NatAll.xlsx.

³ CDBG National Accomplishment Report, FY2005 – 2021 (states), U.S. Housing and Urban Development – Office of Community Planning and Development (accessed on November 22, 2021):

https://www.hudexchange.info/onecpd/assets/File/CDBG_Expend_NatState.xlsx.

activities under CDBG, resources would be an important and necessary way to support housing development alongside other investments in the legislation.

Reallocate unspent funds of related HUD-Community Planning and Development programs to the Community Development Fund and HOME Investment Partnerships accounts

H.R. 5376 directs resources to several new programs aimed at improving access and availability of affordable housing and making key investments in community-based infrastructure. Based on the related eligible activities and goals of existing HUD-CPD programs - Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME), newness of program resources to stakeholders, and adoption of additional program design and rules under HUD, consideration is warranted to dedicate any remaining funds past the expenditure deadlines to CDBG and HOME accounts. In turn, resources can be appropriately reassigned to CDBG and HOME grantees for use to accommodate housing and community development goals responsive to specific local needs.

The following programs are recommended for reallocation of funds past the stated deadline for each (suggested legislative text in bold):

Section 40103 Unlocking Possibilities Program (CDBG)

(a) APPROPRIATION. - —In addition to amounts otherwise available, there is appropriated to the Secretary of Housing and Urban Development for fiscal year 2022, out of any money in the Treasury not otherwise appropriated ... Amounts appropriated by this section shall remain available until September 30, 2031. **Any unexpended funds beyond September 30, 2031 shall be reallocated by the Secretary through formula in accordance with Section 106 (42 U.S. Code § 5306) of the Community Development Fund, as authorized under Sections 101 through 122 of the Housing and Community Development Act of 1974 (42 U.S. Code § 5301-5321). Funds shall remain available until expended.**

Section 40105 Community Restoration and Revitalization Fund (CDBG)

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Community Restoration and Revitalization Fund established under subsection (b) for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, to remain available until September 30, 2031— ... **Any unexpended funds beyond September 30, 2031 shall be reallocated by the Secretary through formula in accordance with Section 106 (42 U.S. Code § 5306) of the Community Development Fund, as authorized under Sections 101 through 122 of the Housing and Community Development Act of 1974 (42 U.S. Code § 5301-5321). Funds shall remain available until expended.**

Section 40201 First Generation Down Payment Assistance (HOME)

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the First Generation Downpayment Fund to increase equal access to homeownership, established

under subsection (b) for fiscal year 2022, out of any money in the Treasury not otherwise appropriated— ... **Any unexpended funds remaining beyond the stated deadlines in subsections (a)(1), (a)(2), (a)(3), and (a)(4) shall be reallocated by the Secretary through formula in accordance with Section 217 (42 U.S. Code § 12747) of the HOME Investment Partnerships Program, as authorized under sections 201 through 290 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721-12753, 42 U.S.C. 12755-12840). Funds shall remain available until expended.**

Adjustments and Flexibilities for HOME & Housing Trust Fund

NCDA and COSCDA recommends retaining specific provisions in the Build Back Better Act under **Section 4002 Investments in Affordable and Accessible Housing Production**. The provisions would greatly benefit grantee administration and capacity.

- (b)(3) Funding Restrictions
- (b)(5) Administration
- (c) Waivers (with exception of labor standards as described below)

Maintain Current Requirements on 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 the 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)⁴

⁴ 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>.

would ensure prevailing wages are promoted while offering further flexibilities on meeting this threshold than requirements currently under Davis Bacon.

- Further, DOL is expected to release a proposed Davis Bacon rule in the coming weeks; when finalized, this should provide an opportunity to modernize reporting requirements across programs while ensuring that prevailing wage rates are implemented.

Waive Section 3 to streamline administration and maximize investment in projects

A revised Section 3 rule was issued on September 30, 2020 with a final notice published in August 2021.⁵ Grantees are underway in navigating the updated requirements and understanding how to implement the policy as intended in new rule. An exemption on Section 3 is requested to streamline administration in carrying out Sections 40002 (Investments in Affordable and Accessible Housing Production) and 40101 (Community Development Block Grant Funding for Affordable Housing and Infrastructure); in turn, additional funds can be dedicated to project development. Legislative text is suggested below (in bold):

Section 40002 Investments in Affordable and Accessible Housing Production

(c) **WAIVERS.**—The Secretary may waive or specify alternative requirements for any provision of the Cranston-Gonzalez National Affordable Housing Act specified in subsection (a)(1) or (a)(2) or regulation for the administration of the amounts made available under this section other than requirements related to tenant rights and protections, fair housing, nondiscrimination, labor standards, and the environment, upon a finding that the waiver or alternative requirement is necessary to facilitate the use of amounts made available under this section. **Requirements under Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90–448) (12 U.S.C. 1701u), as amended by the Housing and Community Development Act of 1992 (P.L. 102-550) shall not apply to the aforementioned subsections.**

Section 40101 Community Development Block Grant Funding for Affordable Housing and Infrastructure

(d) **WAIVERS.**—The Secretary may waive or specify alternative requirements for any provision of title I of the Housing and Community Development Act of 1974 specified in subsection (a)(1), (a)(2), or (a)(3), or regulation that the Secretary administers in connection with use of amounts made available under this section other than requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that the waiver or alternative requirement is not inconsistent with the overall purposes of such Act and that the waiver or alternative requirement is necessary to facilitate the use of amounts made available under this section. **Requirements under Section 3 of the Housing and Urban Development Act of 1968 (P.L. 90–448) (12 U.S.C. 1701u), as amended by the Housing and Community Development Act of 1992 (P.L. 102-550) shall not apply to the aforementioned subsections.**

⁵ Section 3 Notice, US Housing and Urban Development, August 24, 2021: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-09cpdn.pdf>.

Supplemental resources directed through the Build Back Better Act are crucial to preserving and expanding the supply of affordable housing while also investing much-needed resources to distressed and underperforming communities. NCDCA and COSCDA are grateful for your commitment and support to future health, economic, and social outcomes in the 21st century. Thank you for your consideration of our recommendations and please reach out if you have related questions.

Sincerely,

A handwritten signature in cursive script that reads "Vicki Watson".

Vicki Watson
Executive Director
National Community Development Association

A handwritten signature in cursive script that reads "Dianne E. Taylor".

Dianne E. Taylor
Executive Director
Council of State Community Development Agencies