



July 29, 2024

RE: HOME Investment Partnerships Program: Program Updates and Streamlining

The Council of State Community Development Agencies (COSCDA) extends our appreciation to the U.S. Department of Housing and Urban Development (HUD) for their commitment to affordable housing access and availability.

The HOME Investment Partnerships Program (HOME) is the leading federal investment exclusively designed to increase the supply of affordable housing for low-income households, and we welcome the agency's proposed rulemaking. Modernization is essential for the program, which has not received new regulations since early in the last decade, nor comprehensive legislative renewal in over thirty years. Regulatory updates are necessary to enhance program use, ensure funds are directed in a timely and efficient manner, and maximize HOME's support to housing production and preservation. Beyond HUD's scope, statutory issues exist which limit program performance; however, these cannot be changed without legislative action.

The proposed rule contains many provisions COSCDA views as favorable to streamline administration of HOME and further program flexibilities. Increased alignment with the Low-Income Housing Tax Credit and other HUD programs, for instance, ensures HOME complements available subsidies to develop and rehabilitate units of affordable housing as well as support rental assistance. The adoption of new maximum per unit subsidy limits, with annual updates, will be more responsive to modern housing costs. Other proposals will better position HOME to facilitate more units of housing.

COSCDA is especially grateful to HUD's Office of Community Planning and Development (CPD) and Office of Affordable Housing Programs (OAHP) for their dedication to the proposed rulemaking. Our association has engaged HUD leaders on regulatory recommendations offering most recently a comprehensive list through the HOME Coalition in 2022. We understand the process has not been accomplished without considerable work and coordination with federal stakeholders.

The rulemaking, along with statutory reforms, ensures that HOME can expand its ability to accommodate affordable housing for years to come. We offer the following comments on specific areas of the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tess Hembree', with a stylized flourish at the end.

Tess Hembree
Executive Director

General Comments

COSCD A appreciates efforts to protect tenants, but considerations should be made to ensure that developers and landlords are not deterred from participating in the program. Critical lessons were learned from pandemic-era eviction moratoriums and expanding the notice of termination to 60 days for nonpayment of rent will significantly impact landlords who rely on income through timely rent payments.

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

COSCD A recognizes CHDOs as a key factor in the creation of HOME and their continued role in the program moving forward. Guidelines on CHDO eligibility have greatly limited housing non-profits participation as CHDOs though. Overall, HUD's proposed updates would broaden CHDO eligibility and afford states greater ability to accommodate groups as CHDO participants in their respective HOME programs.

HUD should also consider how to better address eligibility in HOME program participation. One recommendation would be to factor in a county's median income compared to median incomes of counties statewide. Further, the county's median income should be considered in addressing

low-income participation on CHDO board participation to meet the representation requirement of low-income resident or organization representation of low-income residents.

Additionally, we request clarification on ownership regarding CHDOs and if CHDOs need to transfer ownership to another CHDO.

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.

As housing prices have risen drastically in recent years, it is critical for federal programs like HOME to ensure materials and supplies meet both quality standards and cost effectiveness. HUD's publishing of green building standards is well-intended and purposeful in addressing energy efficiency and lowering utility costs for residents. While we agree future housing developments should include a level of standards responsive to the environment and energy consumption, we would not recommend new requirements as a condition of HOME or other federal program use.

Affordable housing development relies on various financial conditions and resources, and pricing matters in ensuring production and rehabilitation can be accomplished. Any new mandated green building standards would universally raise costs involved in housing activities; in some cases, cost increases due to required products and practices included in these standards may undermine housing development. As a result, outcomes include fewer housing units being built/preserved and reduced interest in HOME from housing organizations. Alternatively, HUD could encourage the adoption of green building standards by connecting research on modern construction practices and technology with housing developers. Certain incentives incorporating these with use of federal resources such as HOME could be a practical approach as well.

Specific to the cost of constructing or rehabilitating and 5% maximum per unit subsidy limit, COSCDA believes the percentage is sufficient.

Regarding exceeding the maximum per unit subsidy limit as an incentive for green building standards, the added flexibility may help projects fulfill HUD's environment and energy goals. COSCDA recommends instead of applying a number percentage, HUD should implement an "up to or higher" standard to be updated moving forward. The policy would be responsive to ongoing changes in green standards. An incentive provides the basis of achieving this objective. A waiver process from HUD could be completed taking into account the type of activity and technology/product deployed and included as a part of PJs action and consolidated planning.

Due to widening housing shortages and finite amount of federal funds to meet this demand, applying HOME to maximizing the number of quality, affordable units should continue to be the agency's priority. Any pivoting of funds towards green building standards could be complimentary to existing housing production however not elevated as a primary means for PJs to deploy HOME funds instead continuing to focus on construction and preservation.

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, that 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).

COSCDA requests that HUD assess the availability and cost of installing smoke alarms with batteries as stated. While smoke alarm batteries for the ten-year period are commonly available, the information can be helpful to determine the cost implications for assisted projects/homeowners and monitoring required for PJs during the period of affordability.

Regarding homeownership programs, one concern is the responsibility of the homeowner to find and install the specific smoke alarm with battery as well as subsequent monitoring by the PJ. The cost and effort to address both may be inconsequential depending on the specific homeowner and PJ monitoring process, or not necessary if the homeowner and household members do not experience hearing loss.

The primary issue is if this becomes mandated on homeowners and monitoring is to occur following resale. Further clarification is requested on the monitoring requirements upon occupancy and additional occupancy. We recognize that for multifamily developments, later occupancy would involve monitoring. However, for homebuyer activities on small scale units, compliance requirements apply to rental units as opposed to homeowner units after sale.

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.

PJs are likely responding aligned with the proposed requirement already. A concern exists however that if this is mandated, costs and time would increase related to administration with consideration to future funding levels.

Specific solicitation of comment #5: The Department specifically requests public comment from participating jurisdictions and program participants regarding the challenges they have encountered in 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.

Small-scale housing (1-4 units) provides a tremendous investment opportunity for production and preservation of affordable housing. Leading challenges of applying HOME towards small-scale housing include:

1. In rural areas, these units are costly in regard to providing gap financing in HOME.
2. For homebuyer and small-scale rental activities, training is needed on small scale rental projects; on other side, projects can be supported well through property management firm.
3. Small-scale units may work well in certain areas, however HUD policies should be responsive to state and local conditions and empower PJs to use HOME funds for targeted developments accordingly

Significant benefits exist in HUD's proposal on frequency of income determinations/inspections and use of alternative waiting lists. Primarily, as fewer income determinations/inspections would be required, this would lessen burdens on tenants and PJs related to reporting and monitoring. Additionally, more effective and comprehensive reporting may be supported as stakeholders can increase focus on critical matters and information during these reviews on a less frequent basis than current. Regarding alternative waiting lists, HUD's proposed update would empower PJs to create and enact policies aligned with their respective programs and more responsive to owner and tenant needs.

Overall, it is critical more flexibility be granted on recertification requirements to better support residents and assets.

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?

Further flexibility should be extended for PJs to apply PHA utility allowance. If a PJ uses a PHA allowance program-wide, it should also apply to projects. HUD support is critical to ensure PHA utility allowance is updated annually at minimum, and technical assistance provided by the agency for this to occur.

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.²⁵ 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 comment 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?

Any energy efficiency update should be considered by project and benefit to the tenant. Generally, utility discounts and rebates through HOME should align with other federal programs and follow income and utility allowance regulations. It would be beneficial to tenants to go beyond the common regulations as proposed in the example above related to adoption exclusion of income from HOME income determinations.

Tenants residing in energy efficiency upgrades should be allowed to receive a standard utility allowance so the household can benefit from efficiency improvements. Energy improvements should also be excluded from income calculations.

The utility allowance could be difficult to enforce if it becomes mandated. We recommend that the utility allowance be preserved up to tenants receiving net credit on the allowance.

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\(e\)](#) 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)(E) of NAHA ([42 U.S.C. 12745\(a\)\(1\)\(E\)](#)) 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.

As stated in the request for feedback, housing costs have significantly increased over the last several decades and accelerated greatly since the COVID-19 pandemic. Funding for HOME has also not kept up with inflation and continues to fall behind initial funding levels received following establishment. Periods of affordability serve as checks on housing being made available to low-income households a necessary feature of the HOME program. While COSCDA does not have specific timelines or cost adjustments to propose, we recommend further investigation by the agency on ways to modernize the program's period of affordability standards. Scenario planning should be considered in this initiative which takes into account different annual appropriations by Congress and how long tenants typically stay within a HOME-assisted units. Lengths of time for generations could also be a factor worth studying as a part of this research. Whether it is included as a part of this rulemaking or further actions by HUD, we recommend updates which account for the average cost of repairs and how long such repairs may be in place to accommodate low-income households residing in HOME-assisted units.

Regarding single family homeowner programs, longer periods deterred prospective households from participating. Different periods of affordability are recommended for rental and homeowner activities.

For single family homeowner programs, longer periods is a deterrent. For rental properties, many use the tax credit.

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?

The expanded tenant protection requirements as proposed by HUD would better support tenants occupying HOME-assisted units through TBRA. However, due to the extent of requirements in place, landlords have shown increasing reluctance to accept HUD rental assistance. While we acknowledge the benefits of extending tenant protections, especially in jurisdictions without considerable policies for tenants, an expansion of requirements would likely deter available units from being accessed.

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.

The current market of few housing units available means sales are happening in a shorter period than usual. However, market conditions will shift and inevitably cause units to go without being sold for a longer time. The added time as proposed may incentivize some PJs to add or expand homeownership programs using HOME funds.

HOME projects must meet local code which results in acquisition/rehab. It is recommended that the policy should revert to allowing downpayment assistance then rehab through HOME or other funding streams like 504 or private.