



July 29, 2024

Marion McFadden
Principal Deputy Assistant Secretary
Office of Community Planning and Development
Department of Housing and Urban Development
457 7th Street SW
Washington, DC 20410

RE: Notice of Proposed Rulemaking -- HOME Investment Partnerships Program: Program Updates and Streamlining

Dear Ms. McFadden:

On behalf of NeighborWorks America (statutorily the Neighborhood Reinvestment Corporation) I want to thank the Department of Housing and Urban Development (“HUD”) for the opportunity to provide comments regarding the proposed changes to the HOME Investment Partnerships regulations. Please note that these comments were developed in consultation with members of the NeighborWorks network but have not been submitted to or approved by NeighborWorks America’s Board. They reflect the view of NeighborWorks America’s management and do not necessarily represent the views of its Board members, either collectively or as individuals.

For 45 years, the Neighborhood Reinvestment Corp. (doing business as NeighborWorks America®), a Congressionally-chartered, national, nonpartisan nonprofit, has worked with our network of high-performing local and regional nonprofits to create opportunities for people to improve their lives and strengthen their communities by providing access to homeownership and safe, affordable rental housing, increasing financial capability, and promoting community and economic development.

Our country is in the midst of a national housing crisis, with affordable opportunities to rent or buy a home in short supply in nearly every urban, suburban, and rural community. To address this need, over the last five years, the NeighborWorks network has acquired, developed, or preserved 66,646 units of affordable rental housing and helped create over 106,675 new homeowners. Resources to support these efforts are a principal limiting factor, and much work remains. The HOME Investment Partnerships Program (HOME) is a key source of development and preservation funding, but time and again we hear from our network organizations that the regulatory and compliance burden that the funds carry simply outweighs their economic value.

While we wholeheartedly appreciate the Department's need to steward precious taxpayer resources, we encourage HUD to approach this rulemaking through a lens that prioritizes balance between the scale of the program's financial contribution and the attendant requirements and restrictions. In most instances, HOME funds make up only a relatively small percentage of a project's total capital stack. At the same time, the regulations cover a broad range of issues affecting tenancy and tenants' rights, construction, environmental issues, and more. In other words, program participants must comply with a full programmatic slate of requirements while only receiving a fraction of the resources required to carry out the project. The future success of the program will depend on HUD's ability to thoughtfully prioritize those requirements that are fundamental to the purposes of HOME without succumbing to the temptation to attempt to achieve a more comprehensive set of policy goals. For many would-be users of HOME funds, this tipping point has already been breached, and we encourage the Department to use this rulemaking to streamline the program and reduce the regulatory and compliance burdens that detract from the value of the resources.

It is with this focus on balance and prioritization that we offer the following comments:

Community Housing Development Organizations (CHDOs)

CHDOs play an important role in HOME, ensuring that low-income communities have a seat at the table in governing how these resources are directed. The CHDO set-aside creates an opportunity for agency and self-determination, as well as an opportunity to build capacity from within the community. Since our inception, resident leadership and representation has been a cornerstone of the NeighborWorks model. We require that each of our affiliated network organizations maintains a Board where at least one-third of the members are low-income residents or low-income resident representatives of the NeighborWorks organization's service area. This is to ensure that the partnership represented by the board remains grounded in and accountable to its customer base.

NeighborWorks urges caution as the Department reconsiders the CHDO qualifications. There is an inherent tension created by changes that broaden the definition, making it easier both for the intended program participants to qualify but also increasing the opening for bad actors or those who meet only the letter of the requirements but not the spirit of the designation. The CHDO set-aside has created an important niche for some deeply responsive organizations to participate in housing development and build their own capacity, and changes that would increase competition should be considered very carefully to ensure that unintended consequences do not crowd out the potential benefits. While NeighborWorks is supportive of some of the proposed changes, we urge the Department to consider whether additional policy safeguards are available to preserve the purpose of the set-aside.

Government Entity Limitations: NeighborWorks supports the proposal to narrow the definition of who is counted towards the limitation on government entity representation on CHDO boards for those CHDOs that are created by government entities.

Low-Income Board Representation: Although not firmly opposed, NeighborWorks is somewhat concerned about the potential of the proposed changes to water down the representation of low-income people in CHDO governance. This is an important source of accountability, and NeighborWorks encourages the Department to consider the possibility of layering using a tandem requirement to preserve the opportunities for low-income people to participate in this process.

Statewide Service: NeighborWorks is pleased to see the limitations on rural statewide services areas lifted. Rural communities already face innumerable barriers to accessing resources, and all efforts to make it easier to bring investment and services to these areas are welcome.

Capacity Requirement: The proposed change to allow for consideration of capacity and experience of volunteers who serve as board members or officers of the organization is a helpful access point to building capacity of organizations. Because the expectation is that the organization will use this opportunity to develop its capacity, NeighborWorks recommends that the Department consider applying a time limit for how many years a volunteer's experience can count. NeighborWorks is also deeply supportive of the proposal to allow a CHDO to demonstrate experience through other state or federal programs in addition to HOME.

Community Land Trusts (CLTs)

Shared equity housing, including community land trusts, holds tremendous potential for creating affordable homeownership and wealth building opportunities for families while also creating long-term affordability and bringing stability to communities. Since 2019, NeighborWorks has been building capacity around shared equity housing models, both within our network as well as in the broader field. HOME can be an important funding source for CLTs, and NeighborWorks believes the proposed regulatory definition within the HOME regulations is appropriate for describing the unique characteristics of these entities. Providing safe harbors for four types of pre-approved resale formulas is a helpful clarification for CLTs.

However, we are concerned by the proposed prohibition on CLTs from using additional HOME funds to obtain ownership, rehabilitate the housing, hold the housing pending resale to another homebuyer, or provide downpayment assistance to the subsequent eligible homebuyer, though the PJ itself is permitted to undertake these activities directly. NeighborWorks does not see the policy rationale behind this distinction and urges that CLTs

be empowered with the full range of tools needed to preserve the structure and affordability of their housing units. Prohibiting CLTs' use of additional HOME funds runs counter to the purpose of enshrining the preemptive right to purchase in the regulatory definition.

Rental Streamlining

NeighborWorks appreciates the Department's continued work to align rental assistance programs. In an environment of ever-increasing complexity in capital stacks, organizations doing development must cobble together multi-layered financing plans, with each funding source bringing its own set of requirements. It is incumbent upon HUD to exploit all available streamlining opportunities and remove duplicative or incompatible regulations. To that end, we are supportive of the change to require PJs to accept income determinations made by owners and administrators of Section 8 and rental assistance programs. We are also pleased by the proposal to allow PJs to forego their own physical inspection and instead rely on an inspection conducted for another HUD program. Reducing unnecessary inspections lowers operating costs and is a significant benefit to residents burdened by the intrusion of multiple inspections.

Carbon Monoxide Detectors: While NeighborWorks does not object to the Department's intention to apply carbon monoxide detector requirements to HOME, we do recommend that an exception be made for those housing units where a gas line or similar hazard is not present.

Small Scale Housing: NeighborWorks is encouraged by the Department's interest in exploring ways to assist small-scale housing by removing some of the challenges to utilizing HOME funds. We recommend expanding the definition further to provide regulatory relief to projects up to ten units, particularly in rural communities.

HOME Rent Limits: Removing the applicability of the HOME rent limits to payments provided under a federal or state rental assistance or subsidy program provides helpful alignment.

Notice Requirements: NeighborWorks is opposed to the proposal to increase the eviction notice requirement from 30 to 60 days. This change would cause serious operational challenges, with different rules applying to different units even within the same development. At a time when owners of rental properties are already facing serious financial peril due to the existing arrears crisis, the proposal to allow for 60-day delinquencies is would put owners of affordable housing in an untenable position. NeighborWorks organizations are already engaged in wide-ranging approaches to eviction prevention, and the Department should consider opportunities to promote, support, and scale these initiatives as a more reasonable means of promoting stable tenancies and preventing homelessness.

Benefit Sharing: The Department requests input on whether and how tenants should benefit from energy efficiency upgrades. In buildings with tenant-paid utilities, these benefits will directly accrue to the residents. However, even in buildings with owner-paid utilities, there are residual benefits that are likely to flow to residents as a result of reduced operating costs. By reducing the budgetary pressures from utility costs, owners can redirect resources to improve physical conditions or provide enhanced levels of service. Any scheme that would seek to prorate payments or create some other process requiring active management would impose undue management burdens.

Maximum Per Unit Subsidy

In some places, the maximum per unit subsidy is a major barrier to effective use of HOME. NeighborWorks appreciates the Department's willingness to revisit the meaning of the statute and clarify that it sets a floor, not a cap, for the maximum subsidy. While it would be preferable to have the predictability and stability of a methodology enshrined in regulation and not just *Federal Register* notice, NeighborWorks looks forward to engaging with the Department as it develops the methodology for making annual subsidy maximum determinations.

Harkening back to our earlier comments, NeighborWorks encourages the Department not to layer additional requirements onto the use of HOME funds. While building to green standards is laudable and an important priority for many of our network organizations, the diversity of building contexts and local codes, not to mention the real-time improvements to green building technology, mean that a unified green standard would be a blunt tool ill-suited to meaningfully enhancing energy efficiency. While estimates of the marginal cost increase of green building varied among the NeighborWorks network organizations with whom we consulted, there was universal agreement that a five percent increase to the maximum subsidy limit would be insufficient. In some jurisdictions, local codes have already been rewritten to require all those enhancements that are cost effective. Additionally, in many places, the PJ has made the decision not to award the maximum subsidy amount, rendering any increase to the maximum moot. Finally, given that HOME funds are finite, any increase to the per unit expenditure has the necessary consequence of a decrease to the total number of units. While NeighborWorks is deeply committed to supporting our network organizations as they seek to green their portfolios, we simply cannot support establishing a universal standard as part of the HOME regulations.

Homeownership

NeighborWorks has previously relayed to the Department the consistent frustration from organizations struggling to utilize the available resources to support homeownership promotion. These challenges are evident in the proportion of funds directed towards homeownership projects. When the HOME program was created in the early 1990s, over

two-thirds of its funding supported homeownership. Today, less than one-third of HOME funds are used to increase access to homeownership.

For low-income and minority families, accumulating the funds for a down payment is often one of the most significant hurdles to achieving homeownership, but throughout the industry, a consensus has formed that HOME funds are simply too difficult and/or risky to be used for down payment assistance (DPA), particularly since the 2013 revisions to the regulations.

Underwriting: While NeighborWorks recognizes that the Department is attempting to streamline the requirements by requiring underwriting the homebuyer's ability to repay only for the amortizing portion of the loan funded with HOME. However, rather than requiring de facto mortgage underwriting through the development of debt and expense ratios by each PJ, NeighborWorks recommends employing the Qualified Mortgage (QM) standard as a much more streamlined alternative. Applying a well-understood, clear standard will ensure borrowers receive safe mortgage products without necessitating the complexity and uncertainty of an underwriting overlay. HUD should issue guidance explicitly creating a safe harbor, declaring that all first mortgages that meet QM standards are considered to have met the HOME underwriting requirements.

Homeownership Value Limits: NeighborWorks is disappointed that, despite outreach from NeighborWorks and others in the industry, the Department did not take up the issue of homeownership value limits, which present one of the greatest barriers to promoting homeownership with HOME funds. While we acknowledge that statute dictates that, to be eligible for assistance, the home purchase price must be below 95% of the area median, there are several things HUD could do to develop a standard that more accurately measure the market while still complying with the statute. We ask that HUD investigate the suggestions provided below and determine how best to reflect the true median cost of housing in a given community.

The FHA dataset currently being used as a proxy for the area median provides an artificially low upper bound, given that FHA loan limits are significantly lower than those of the GSEs and thereby only reflect a portion of the market. HUD could explore the use of an adjustment factor to more fully encompass the true market. In addition, because data inherently lags, HUD could consider an inflation factor to bring the standard into present circumstances. We recommend that HUD explore ways to provide these calculations to the PJs in a manner that creates consistency across locales and does not increase their burden. We predict that such an effort would also reduce burden for HUD, preempting the need for individual PJs to request review of their own market analyses.

HUD could consider applying a similar approach to defining "area" as it does in rental assistance, using Small Area Fair Market Rents as the model. By defining smaller units of

geography, HUD could capture much more localized market dynamics. These changes could keep to the spirit and statutory requirements of the “modest housing” standard without unnecessarily restricting buyers from receiving subsidy towards a purchase in many high opportunity areas.

Another potential approach being offered by NeighborWorks network organization Fahe would revert to using the 203(b) limits that were in use prior to the 2013 HOME Rule. At that time, the Department said that the 203(b) limits “no longer reflected the median purchase price, because they were now set by statute at “125 percent of the area median purchase price”¹. However, it would be possible to use these limits to back into the amount that represents 100%, and from there take 95% to calculate an area’s HOME program Homeownership Value Limit.

Appropriateness Standard: NeighborWorks was disappointed to see that the Department did not adopt our suggestion to provide safe harbors to address the legal risk and uncertainty in the regulations. Specifically, safe harbors are needed around underwriting and the “appropriateness” standard for the amount of assistance (92.254(f)). Addressing this legal risk will help attract banks and other financial institutions to this market.

The “appropriateness” standard creates significant confusion and complexity, both for program administrators and potential program beneficiaries. HUD could significantly reduce these issues by creating a safe harbor for assistance amounts below a given threshold, adjusted by market. Such a threshold could be determined as a percentage of the local median home value. A safe harbor could simplify program marketing and facilitate the entire mortgage process by providing certainty of the assistance amount at the front end.

Down Payment Assistance: In practice, NeighborWorks organizations have found that the HOME recapture and resale requirements make it inordinately challenging to get the second mortgage instrument for the HOME funds to dovetail with FHA or other first mortgage products. Some organizations have overcome these challenges by working with local banks and CRA products to develop specialized financing rather than going to the open market.

Sale Requirement: While NeighborWorks is supportive of extending the sale requirements from 9 to 12 months, this change by itself will marginally assist organizations trying to use HOME funds for homeownership. Particularly in places where homebuying seasons are dramatically affected by extreme weather, having an entire year will provide relief.

Operational Consistency

There is significant variation among Field Offices when it comes to interpretation and application of program rules. NeighborWorks is hopeful that many of the revisions being

¹ <https://www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/>

proposed will help create the clarity and certainty needed for the program to function more effectively. NeighborWorks again encourages the Department to create an official procedure or pathway for disputing a Field Office's interpretation or determination. Additional guidance, training, and dispute resolution procedures will also help to create consistency and streamline the program.

Fixing these issues with HOME will also help make other tools available, as programs like the Capital Magnet Fund, as well as many other state and local programs, adopt the standards and definitions of the HOME Program.

NeighborWorks appreciates the opportunity to provide input on these issues and would welcome the opportunity to work with you to make HOME a driver to increasing affordable housing opportunities across the country. We thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Marietta Rodriguez". The signature is written in a cursive, flowing style.

Marietta Rodriguez
President & CEO