

September 2, 2022

The Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Secretary Fudge:

As you begin the process of evaluating updates to the HOME Investment Partnerships (HOME) Program regulations and the role of community housing development organizations (CHDOs) in a modern program, the undersigned HOME program stakeholders have developed a set of recommendations for you to consider. The recommendations presented by these organizations are based on decades of experience or advocacy in communities across the nation.

CHDOs have played an important role in implementing HOME supported projects in places and neighborhoods that otherwise would be left without housing opportunities. Under research funded by NACEDA, the Urban Institute recently identified a noticeable contraction in the number of community-based development organizations in the years following the last HOME regulatory changes, potentially due to the way the 2013 rule change treated CHDOs. We want to avoid future rule changes having a similar impact. Rather, we think the HOME Program is uniquely designed to build local community and housing capacity that will last over the long term.

Below, we suggest modifications to the HOME program that will:

- a) help HUD fulfill Congress' stated statutory purpose related to the HOME Program to "[expand the capacity of nonprofit community housing development organizations to develop and manage decent, safe, sanitary, and affordable housing](#)" (42 USC 12722);
- b) enable CHDOs to more effectively meet the needs of the communities they serve;
- c) to eliminate inequities that currently exist in the HOME regulations.

We commend you and your staff's commitment to improving the HOME program as a tool for empowering communities across the country to organize, develop, and expand housing opportunities in low and moderate income neighborhoods. We appreciate the opportunity to offer the below recommendations that will enhance the ability of CHDOs to support HUD and other HOME stakeholders in this shared mission.

Sincerely,

1) Demonstrating Accountability to Low-Income Community Residents (24 CFR 92.2(8))

The concept of community accountability is very important in the CHDO program. However, we propose broadening the manner in which organizations can demonstrate accountability beyond only board composition.

We recommend changing the rather stringent rules around board composition, allowing for other standards to meet the community accountability goal. We think a more general, somewhat more flexible to meet community accountability standard would help more community organizations access the program, especially those in small PJs and rural areas, community land trusts or other nonprofits with shared-equity homeownership programs, and other mission driven non-profit developers that have demonstrated accountability to the community they serve.

Recommendation: HUD should look at ways to remove barriers and include additional flexibilities and options to meet CHDO community accountability requirements while maintaining adequate standards to ensure CHDOs are accountable to the low-income residents and neighborhoods they serve. For example, as alternative options for meeting CHDO community accountability requirements, HUD should consider board composition, advisory board formation and composition, or an organization's history and activities as they relate to low-income and minority communities and geographies.

2) CHDO Staffing Requirements (24 CFR 92.2(9))

The current HOME definition related to “demonstrated capacity” is overly burdensome and fails to acknowledge that capacity can be demonstrated through alternative means. The current on-staff requirement is a tremendous barrier for many small and large nonprofit organizations, particularly those that serve rural areas and small cities where that type of staff capacity is more difficult to find and financially support. Our proposed organizational requirements recommendations are intended to make the process easier and more flexible for both the applicant CHDO and the PJ.

Recommendation: Allow CHDOs to meet capacity requirements not just through paid staff, but also through consultants, volunteers, shared services arrangements, working partnerships, donated services, operating agreements, and other forms of joint operation between a CHDO and a developer.

3) CHDO Certification Process (24 CFR 92.300)

The CHDO certification process, as it currently exists, is prohibitively onerous for organizations and PJs alike. As with staffing requirements, the process is more likely to exclude smaller and rural communities. Lengthening the certification period, as well as making the process itself more flexible would be key to increasing the number of participating CHDOs and improving the diversity of CHDOs participating in the program.

Recommendation A: Allow PJs the option to sub-contract all or part of the CHDO certification process to a statewide or regional capacity building community development organization or network with the history and experience of working directly with the local organizations and communities that the set aside program is intended to benefit. The sub-contract could allow for full authorization to make certifications. OR the sub-contract could simply allow the sub-contracted organization to implement a process by which

they make a set of recommendations for certification to the PJ, with the PJ retaining final decision-making authority.

Recommendation B: Section 92.300 (a)(1) Remove the current requirement that only allows CHDO certification when it is tied to a HOME-funded project. Make certification independent of any project-based funding considerations.

Recommendation C: Allow certification to be valid for three years. If desired, PJs could confirm an organization is still CHDO eligible at any point a funding consideration is made for a CHDO.

Recommendation D: Amend the last full sentence of 92.300(a) to read, “and must document that the organization will materially participate in the ownership, development, or sponsorship of affordable housing.”

4) Inappropriate Application of the Community Land Trust Definition (42 USC §12773)

Community Land Trusts are nonprofit entities meeting Internal Revenue Service requirements for nonprofit tax status, and should be treated as nonprofits for purposes of their involvement in the HOME program. However, HUD associates CLTs with CHDOs due to a statutory definition of CLTs, which Congress intended to be narrowly applied to eligibility to receive HUD technical assistance and capacity building under Part B—Community Housing Partnership. This confusion is stymying CLT involvement in HOME because HUD is applying the CLT definition specific to technical assistance to all aspects of the HOME program; thus, treating CLTs differently than it does other nonprofits. This disparate treatment is not what Congress intended when it created the CLT definition applicable to technical assistance. Recently, the Office of Affordable Housing Programs (OAHP) provided a determination to a HUD TA provider that a CLT must meet not only the CLT definition for technical assistance, but also the CHDO definition, and that the CLT would only be able to use CHDO set-aside dollars and not general HOME dollars. This determination is extremely problematic, as it prevents CLTs from participating in the HOME program the way other nonprofits are able to participate.

Moreover, the 2013 HOME program final rule further complicates the problem because it made it more difficult for a CLT to qualify as a CHDO. The 2013 rule specifies at least one third of the board of a CHDO are low-income representatives (Part 92.2). However, the current statutory definition of CLT states that the board of directors, “is composed of equal numbers of (i) lessees pursuant to paragraph (3)(B), (ii) corporate members who are not lessees, and (iii) any other category of persons described in the bylaws of the organization.” While most lessee members likely qualify as low-income representatives, this will not always be true if they experience economic mobility.

In practice, many CLTs do not meet the definitional requirements of a CHDO, and thus should not be eligible for CHDO set-aside funds unless the CLT also meets CHDO requirements. However, CLTs—like other housing and community development nonprofits—should be eligible to receive other HOME resources outside of the CHDO set-aside.

Recommendation A: HUD should treat CLTs like all other entities that have nonprofit tax status under IRS rules. All CLTs should be able to access general HOME funding the same way other nonprofit entities are able to do so. Should the CLT also meet CHDO requirements, it should be able to access CHDO set-aside

funds. Should the CLT meet the definition of CLT under Part B—Community Housing Partnership, it should be able to access CHDO set-aside funds, technical assistance, and capacity building funds.

Recommendation B: HUD should clarify that CLT board composition requirements meet the CHDO requirements for low-income representation even if individual members who were low-income when they joined the board experience economic mobility during their tenure on the board. In addition, HUD should clarify that demonstrated capacity and a history of serving the local community are not required for CLTs per the statute.

5) CHDO Sponsorship of Homeownership Activities

The HOME statute broadly authorizes CHDOs to use HOME funds to be sponsors, developers, and owners. Subsequent to the 2013 HOME rule change, CHDOs are still able to sponsor a rental development. The rule change, however, eliminated a CHDOs ability to be a “sponsor” for homeownership housing. This has limited how CHDO set-aside dollars may be used and fails to recognize that CHDOs can provide a unique value to homeownership activities, including the ability to engage low-income populations in siting, design, finance, and management decisions while leveraging the technical expertise of developers to execute the project. Some CHDOs unfortunately do not have the capacity to be able to own and develop a homeownership project, but can have a significant positive impact, engage the community and ensure their needs are met by playing the role of sponsor and partnering with a different developer to complete the more resource-intensive development activities.

Recommendation: HUD should reinstate a CHDOs ability to sponsor homeownership projects in 92.300, which was eliminated by the 2013 rule as broadly authorized by the HOME statute and allowed under the pre-2013 rule by adding a new subsection 92.300(a)(7) (and renumbering the current subsection (7) as subsection (8)) as follows: “Housing for homeownership is ‘sponsored’ by the community development housing organization if the community housing development organization owns the property and engages a developer to complete the development of the project or transfers title to the developer at a predetermined time to complete the project and convey title to eligible homebuyers.”

6) CHDO Technical Assistance

Since the 2013 rule change, HUD’s centralized TA delivery model for HOME has systematically left behind organizations in smaller communities, rural areas, and organizations led by people of color. Making CHDO participation more accessible in these communities will require an active approach by HUD to assist them in learning new CHDO rules.

Recommendation A: Allow PJs the discretion to dedicate CHDO set aside funds for TA. This flexibility for PJs helps ensure TA gets to the communities that national TA programs are challenged to reach. Allowing PJ discretion also helps ensure TA providers know the local context and markets in which CHDOs operate.

Recommendation B: Allow CHDOs to access technical assistance for three purposes: (1) Help CHDOs effectively use HOME funds and implement HOME-funded projects, (2) Train the nonprofit affordable housing community about changes to the HOME program and the CHDO set-aside, and (3) provide TA to help non-CHDOs become CHDOs targeting nonprofit organizations with a track record of successful

affordable housing development and programming in low-income communities similar to how the CDFI Fund treats “emerging” CDFIs seeking CDFI certification in the near future.

7) CHDO Program Research

Changes to the HOME rule in 2013 had a significant negative impact on the number and type of organizations that have been eligible and willing to become CHDOs. Under research funded by NACEDA, the Urban Institute recently identified a noticeable contraction in the number of community-based development organizations in the years following the last HOME regulatory changes, potentially due to the way the 2013 rule change treated CHDOs. As a result, HUD has neglected one of Congress’ statutory purposes of the HOME Program to [“expand the capacity of nonprofit community housing development organizations to develop and manage decent, safe, sanitary, and affordable housing”](#) (42 USC 12722).

In addition to other recommendations made in this letter, HUD can fulfill Congress’ intent by taking two modest research-oriented actions aimed at understanding the role CHDOs play in the HOME Program specifically, and the nonprofit affordable housing field more broadly. Improving data accessibility related to CHDOs allows HUD to craft informed responses to the outcomes of regulations. HUD should actively aggregate and retain the information on the field of non-profit organizations which are so key to HUD achieving its mission and serving Congress’ intent of the HOME Program. Collecting and retaining this information would give HUD and Congress the data necessary to calibrate a national standard against trends in the sector, economy, and society, while also supporting the mission of HUD to create strong, sustainable, inclusive communities.

Recommendation A: HUD should create, maintain, and make publicly available on its website the organizations certified as CHDOs. The list should not impose an additional burden on PJs, but should instead be based on the information that HUD already receives.

Recommendation B: In alignment with HOME’s statutory purpose of expanding CHDO capacity, HUD should commission a study every 3-5 years on the universe of nonprofit organizations that could potentially become CHDOs. The research could evaluate trends in CHDO certification, CHDO financial health, production, organizational needs, among other topics. The study could be performed through resources made available to PD&R. It should be led by a national organization with credibility among CHDOs and the broader field of community based development organizations.

8) Preemptive Purchase Options and Resale Restrictions (CLTs, Shared Equity Programs, and Non-Profit Developers)

As noted in recommendation 4, the definition of CLT provided in the statute is meant to be applied to the narrow purposes of determining eligibility to access CHDO resources and technical assistance. In practice, many CLTs do not conform to this definition.

Congress has determined that CLTs, due to the shared equity model these entities use, should be able to have preemptive purchase rights in order to preserve the homeownership housing in which they are involved. As such, preemptive purchase rights by CLTs were codified in law in the 2016 Appropriations Act (Publ. L. 114-0113 div. L, title II), which states, “That with respect to funds made available under this heading pursuant to such Act and funds provided in prior and subsequent appropriations acts that were

or are used by community land trusts for the development of affordable homeownership housing pursuant to section 215(b) of such Act, such community land trusts, notwithstanding section 215(b)(3)(A) of such Act, may hold and exercise purchase options, rights of first refusal or other preemptive rights to purchase the housing to preserve affordability, including but not limited to the right to purchase the housing in lieu of foreclosure.”

It is our contention that Congress meant to apply this right to community land trusts broadly, and not just to those that adhere to the specific definition of CLT that was enacted to extend access to CHDO resources and technical assistance. Furthermore, we contend that HUD has opted to apply the narrower definition to preemptive purchase rights in an overly technical manner that runs contrary to the intent to allow shared equity programs to preserve more housing for income-eligible homebuyers.

Statutory precedent suggests that Congress supports the use of HOME funds to create homeownership units with lasting affordability. Providing permanently affordable homeownership units can be done by community land trusts or other nonprofits with shared equity homeownership programs (collectively referred to as “SEH programs”).

Additionally, HUD understandably is focused on ensuring the housing unit continues to be owned by an eligible homeowner for the HOME affordability period, even when the developer doesn’t use a permanent affordability model. Non-profit developers have the unique ability to provide and preserve the affordability of for-sale homes for low- and moderate-income families over a long period of time. Because many PJs do not want to expend the time or resources to repurchase properties, they should be able to allow nonprofit developers to use a preemptive purchase option or assign the PJ’s preemptive purchase option to nonprofit developers to ensure the long-term affordability requirement of the HOME program is satisfied by facilitating the resale to another eligible homebuyer.

The statute and the regulation currently do not expressly prohibit non-profit developers from holding and exercising preemptive purchase options in order to facilitate the resale to another homeowner; rather both authorities “allow for” the transfer to the next eligible homeowner, which provides some flexibility regarding a temporary break in the chain of title from one eligible homeowner to the next.

Recommendation A: To optimize perpetual affordability after the original low-income owner leaves a HOME-financed homeownership unit, HUD should allow CLTs broadly and similar entities that administer SEH programs to claim a preemptive purchase option for properties in their programs. HUD should not limit preemptive purchase options to only those CLTs that meet the narrow definition for CLT entities for purposes of accessing CHDO resources and technical assistance. Preemptive purchase options should be exercised in a manner that facilitates resale restrictions in compliance with their terms to serve a subsequent low- or moderate-income homebuyer in a timely manner.

9) Reasonable Return on Investment for nonprofit developers ((92.250(b))

Currently, HUD has provided guidance that PJs may allow developers to retain sales proceeds as a reasonable return on their investment: “Developers of for-sale properties may keep some or all of the sales proceeds as deemed reasonable by the PJ,” (HUD Notice CPD-15-11, p. 17). PJs may also allow CHDOs to retain sales proceeds of their HOME-assisted units, in recognition that a CHDO must have among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws

(see 92.504(c)(3)(x)). Charitable, non-profit developers are bound to similar requirements by their IRS-approved charitable organizational (charter docs) and operational parameters.

However, despite HUD's guidance, some third party consultants or auditors hired by PJs have challenged written agreements with developers that provided the developer would retain the proceeds as a reasonable return on investment, to be used for additional affordable housing activities. In some cases, these challenges were made retroactively, requiring developers to return the HOME investment. Sales proceeds are one of the key incentives for developers of for-sale housing to participate in the HOME program and be able to continue to serve low-income families. And without them, accepting the HOME proceeds may not be financially viable for non-profit developers.

Recommendation: HUD should reiterate and clarify for any third party advisors to PJs, that its guidance in HUD Notice CPD-15-11 permits PJs to allow charitable, nonprofit developers (whose tax-exempt status is based on the entities' organizational and operational requirements to engage in charitable purposes, including the provision of affordable housing solutions to income-eligible individuals and families) to retain all sales proceeds of a HOME-assisted unit as a reasonable return on their investment, to be used for HOME-eligible or other housing activities to benefit low-income families, in the same manner that PJs may allow CHDOs to retain sales proceeds.

Sincerely,

National Alliance of Community and Economic Development Associations (NACEDA)

National Low Income Housing Coalition (NLIHC)

Grounded Solutions Network

Habitat for Humanity International