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Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500

Docket No. FR-5563-P-01: RIN 2501-AC94
Office of the Assistant Secretary for Community Planning and Development, HUD HOME
Investment Partnerships Program: Improving Performance and Accountability; and Updating
Property Standards

To Whom It May Concern:

The Council of State Community Development Agencies (COSCARDA) represents state housing and community development agencies responsible for administering the Department of Housing and Urban Development (HUD) programs, including the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program and the McKinney-Vento Homeless Assistance Programs.

We commend HUD for including in these regulations many proposals that will lead to improvements in the HOME program, particularly those that address ongoing compliance, underwriting practices, and timely spending. COSCARDA supports most of the provisions in the proposed regulation; however, we offer the following comments.

Definitions

Proposed: The definition of “commitment” requires the date of the signature of each person signing the agreement. (§92.2(1))

COSCARDA asks that this requirement be made prospective to avoid having to have all documents subject to audit exception.

Proposed: The definition of housing excludes housing for students and dormitories (including farmworker dormitories) and other types of excluded housing. (§92.2)

Many types of nontraditional and temporary housing arrangements for seasonal workers or temporary workforces are critical in many communities- farm communities, gas/oil drilling areas. If the PJ is willing to use HOME funds for these types of facilities to meet the demands for "housing" in their communities, the use for these purposes should not automatically be disqualified by HUD. **COSCARDA asks that HUD**

let the state and local PJs decide what meets their needs for "housing" as long as it fulfills the other requirements- (as long as there is a lease for the unit.) Students would be prohibited from participating in the HOME program independent of their families. COSCDA recommends that HUD use a different standard to define eligibility that may rely on tax dependency status and other indicators of independence from parents/guardians as well as children and youth-caring systems (child welfare).

Proposed: An exception would permit housing that was destroyed or severely damaged and subsequently demolished to be rebuilt on the same lot under the reconstruction category, if the HOME funds are committed within 12 months of the date of destruction or damage. (§92.2)

One year may not be an adequate period. **COSCDAs asks that HUD allow for an 18 month period** – many PJs may not have additional funds available, and the extended time would allow the PJ to straddle funding years.

CHDOs

Proposed: CHDOs must have paid employee staff with housing development experience. Nonprofit organizations would no longer be able to meet the demonstrated capacity requirement through the use of consultants and through a plan for staff to be trained by the consultants. (§92.2)

States have provided HOME funding to many CHDOs that will no longer be able to participate in the program if this restriction is upheld. **COSCDAs recommends that the definition of CHDO be revised to include CHDOs that are on a path to developing staff capacity or CHDOs that may have sound economic reasons for not carrying paid housing development staff.** For many CHDOs, the flexibility of the original definition has allowed them to build capacity by using consultants and volunteer board members, and to maintain CHDO status during a capacity-building period. This option is especially important to PJs in small communities, where CHDO capacity may be more limited. Further, given the scarcity of HOME resources, it is challenging for many CHDOs to retain paid housing development staff. Volunteers, with the requisite commitment and skills, are used extensively in some types of organizations and they often do an outstanding job.

Proposed: The CHDO must be separate from and not under the control of a government entity. (§92.2)

COSCDAs asks that HUD reconsider the section that requires a CHDO to be separate from and not under the control of a government entity. The requirement is intended to assure that the CHDO maintain accountability to the low-income community it serves. The presence and involvement of public entity personnel in the composition of the CHDO does not necessarily lead to less accountability. Often the public entity has representatives to help make helpful connections to low-income communities.

Proposed: HUD would redefine “reservation” of CHDO funds as occurring when a PJ enters into a written agreement with the CHDO committing the funds to a specific project to be owned, developed, or sponsored by the CHDO. (§92.300)

This requirement will affect the 15% CHDO commitment level and timeframe. It will be difficult for subrecipients to know if the CHDO set aside has been reached by the PJ without an IDIS screen enhancement to allow these screens to be seen by all participants in a PJ. **COSCDAs asks for additional guidance about how the 24 month commitment period and the 4 year timeline for project completion apply for CHDOs.**

Income Determinations

Proposed: HUD requires that a PJ must determine one definition of income to be used for each HOME program category. (§92.203)

COSCDAs asks that HUD clarify the requirement for state recipients regarding use of the definition of income. When the state allocates funds to many subrecipients, must each subrecipient use the same definition? Also, HUD is using a different standard than other housing programs such as Section 8 and LIHTC. If possible, HOME should follow these existing programs rather than create additional categories and confusion.

Eligible Activities

Proposed: Projects not completed within four years from the date of project commitment would be considered terminated and the jurisdiction must repay HOME funds invested in the project. (§92.205(e))

COSCDAs supports this four-year deadline, with the option to extend for up to one year. We suggest a flexible option for the PJ to provide an alternative housing subsidy within the jurisdiction which meets program rules rather than a requirement that the PJ pay all the money back as the only alternative. The waiver and extension processes should be clearly articulated to allow PJs to take full advantage of the HUD waiver as soon as they anticipate a delay or failure of a project.

Proposed: HUD proposes to allow for the use of HOME funds to pay architectural and engineering and other professional services costs incurred within 18 months prior to commitment of HOME funds to a project, provided that the PJ authorizes payment of the costs in the written agreement. (92.206(d) (1))

COSCDAs recommends a longer period of soft costs eligibility-- of at least 24 months or perhaps 36 months. In many states, demand for all affordable housing resources, including HOME, has greatly exceeded supply even more so in recent years. As a result, developers have experienced longer predevelopment periods, as they submit applications over multiple funding cycles, waiting for resources to become available for their projects. In the last two to three years, many states have been unable to award funds to projects upon first application because of the heavy demand for resources. Furthermore, approval processes such as zoning can take a considerable amount of time in larger cities, and funding from other financing sources may also take significant time. By limiting eligible costs of pre-development to only 18 months prior to award, developers in many states will have to rely on non-HOME resources for reimbursement of legitimate pre-development project costs. They cannot always rely on other sources.

Proposed: The rule adds language to condition refinancing as an eligible cost to projects in which the cost of the actual rehabilitation is greater than the amount of debt that is refinanced with HOME funds. (§92.206(b))

COSCDAs recommends that this section be revised to permit refinancing with minimal rehabilitation if the refinance will create new affordability or preserve existing affordability. Recently, projects with high acquisition and refinance costs and minimal rehabilitation have applied for non-HOME funding in order to create affordability where there was none, or to preserve expiring affordability. While HOME has not been used in such projects, we believe such a scenario is an appropriate HOME cost.

Proposed: HUD proposes to strengthen and clarify the prohibition against PJs and other program participants from charging fees to cover their administrative costs, especially fees charged directly to low-income beneficiaries. (§92.214(b)(1)(ii))

The proposed rule allows participating jurisdictions, state recipients, and subrecipients to charge reasonable and customary fees commonly charged to a loan application. To ensure that the language clarifies what fees are eligible under the HOME program, **HUD should identify the costs that can be charged to the beneficiaries, and the lender origination fees and other lending charges that are allowable.**

Proposed: Refinancing or restructuring is limited to projects that do not have federal funds. (§92.206)

This proposal would make it very difficult to apply resources to older projects to extend their life and improve the quality. **COSCDAs asks HUD to allow PJs to assist projects that were funded with federal insurance or under one of the older HUD assistance programs or Rural Development programs.**

Subsidy Layering

Proposed: Repayment of HOME funds would be required for any unit that is not rented to eligible tenants within 18 months of project completion. (§92.252)

COSCDAs supports an 18-month deadline, but encourages an option to extend for up to six months, if there is good cause.

Also, due to several uncertainties in the current rental housing market, PJs should be allowed 9 months from the date of project completion rather than the proposed 3-6 month period to occupy a unit with the initial tenant before being required to submit or develop a more aggressive marketing strategy. **COSCDAs asks HUD to allow 9 months from the date of project completion for submitting a strategy.**

Proposed: PJs must evaluate subsidy layering and conduct or examine the underwriting of all projects. (§92.250)

COSCDAs asks HUD to clarify if this requirement applies to down-payment and closing cost assistance.

Rental

Proposed: Homebuyer units that are not sold within 6 months of completion of rehabilitation or construction would be required to be converted to rental projects (§92.254(a) (3))

COSCDAs understands HUD's need to insure that unsold HOME-assisted homebuyer units do not sit vacant for years, however, the difficulties that state PJs face regarding the conversion of these units to rental projects requires additional time. We urge HUD to consider the difficulty of leasing units if no market study is conducted beforehand, the time needed to decide the correct types of rental units to provide given the perceived market demand (elderly, family, etc.), the difficulty in managing scattered-site units, and problems caused by the lack of reserve funds for the rental units. Scattered-site management is extremely difficult and should only be done if an entity is fully prepared to do so. Many projects that are conceived as homebuyer projects may not be as well-suited to rental housing. **COSCDAs asks HUD to extend the time allowed for conversion by a few months to 12 months, with a provision**

for extension requests. We also ask that HUD provide technical assistance and capacity building support for PJs that engage in scattered-site rental management.

Proposed: The written agreement between the PJ and a project owner must state whether HOME rental units will be fixed or floating during the period of affordability. (§92.251)

COSCD A encourages HUD to allow these agreements and designations to be modified during the life of the project should the needs of the project change in the future.

Proposed: PJs would be required to examine annually the financial condition of rental projects with at least ten HOME-assisted units. (§92.504(d)(2))

COSCD A urges HUD to modify this section requiring jurisdictions to annually examine the financial condition of all rental projects. **We suggest that all projects with ten or more units be subject to annual financial inspections, smaller rental projects should be every 2 or 3 years.**

Proposed: PJs must perform on-site inspections of rental projects at least once every 3 years during the period of affordability. (§92.504(d)(1)(ii)(A)&(B))

COSCD A supports the proposed change to reduce on-site inspections to every three years, regardless of the number of units. This is a more manageable requirement to impose.

Proposed: One HOME-unit may be converted to an on-site manager' unit. (§92.205(d))

As proposed, such a reduction will result in a recalculation of the maximum subsidy per unit. The effect may be that all projects going forward will be provided less funding to ensure that the maximum subsidy per unit is not exceeded in the future. **HUD should consider an alternative idea - for the PJ to require that project to repay the amount for one unit or provide an additional housing subsidy elsewhere if the time comes without jeopardizing the whole project.**

Maximum Purchase Price Limits

Proposed: HUD proposes to establish an alternative to the 95% limit to facilitate the use of HOME funds for new construction of HOME-assisted homeownership housing. The alternative figure is the Census Bureau's median sales price for single family houses sold outside of Metropolitan Statistical Areas. (§92.254(a)(2)(iii))

COSCD A welcomes the use of the Census Bureau's median sales figure for single family houses sold outside of MSAs. Although it is clear why HUD proposes to establish an alternative method for new construction housing, the alternative proposal should include existing housing as well. Just as it is extremely difficult to provide HOME-assisted new construction of single-family homes in many rural areas, it is also difficult to assist existing housing using the 95% of area median purchase price as defined by HUD, particularly in counties hardest hit by high number of foreclosure sales. The 95% limits are very low due to the same reasons cited in the proposed regulations – “age, size, and poor condition of the housing stock; the relatively small number of sales of existing housing that takes place, and the small number of new housing units that are produced and sold annually.” As a result, housing rehabilitation will be halted in many states due solely to this requirement. The rural areas will suffer due to limited availability of assistance because the after-rehabilitation value will exceed the 95% limits. These low

limits will slow down the home sales and lengthen the amount of time it takes to revitalize a depressed community or neighborhood. **COSCD A asks that HUD allow PJs to use the Census Bureau’s median sales price figure for existing home sales also.**

Homeownership

Proposed: Homebuyer counseling will now be mandated. (§92.254(a)(3) and §92.214)

COSCD A suggests that costs associated with the counseling should be able to be applied to homeowners.

Proposed: HUD would be required to provide approval to submitted plans from each PJ regarding resale and recapture requirements. (§92.254)

COSCD A asks HUD to clarify the timeframe for this approval process.

Property Standards

Proposed: Under the rehabilitation standards for rental housing, the remaining useful life of each major system should be, at a minimum, 15 years after project completion, or the major system must be rehabilitated or replaced to have a minimum useful life of 15 years. (§92.251(b) (2) (iii))

While COSCD A agrees that the major systems in a HOME-funded rental unit should have a reasonable remaining useful life, **we recommend that HUD recognize adequate replacement reserves that complement a current project Capital Needs Assessment.** If the Capital Needs Assessment indicates that there is useful life beyond five years, PJs should underwrite with these reserves in mind. If there are other sufficient non-HOME sources in the project, it does not seem necessary to replace systems with measurable remaining life. We believe that this would be a more cost effective and sustainable compromise.

Proposed: At a minimum, HUD proposes that all HOME units must pass an inspection that addresses all of the inspectable items under HUD’s Uniform Physical Condition Standards (UPCS) notice. (§92.251(b))

COSCD A supports the adoption of UPCS as the minimum standard for this purpose.

Proposed: HUD has stated in the rule that it will propose new standards for energy and water efficiency in a separate proposed rule. (§92.251)

COSCD A recommends that HUD propose all property standards within the same time frame as the final rule and be made effective simultaneously to avoid confusion at the local level on the timing and applicability of various property standards.

Proposed: Where applicable, housing is required to be improved to mitigate the impact of disasters such as earthquake, hurricane, flooding, and fires. (§92.251)

In some states, mitigating the impact of disasters could require raising the height of buildings to prevent the possibility of flooding and providing an above-ground “safe room” for protection against tornadoes, both of which will significantly increase costs. **COSCD A asks HUD to provide specific examples/guidance on how PJs can meet the requirement.**

Proposed: PJs are required to conduct an inspection within 30 days of the commitment of HOME assistance. (§92.251(c))

The requirement to conduct an inspection within 30 days of the commitment of HOME assistance is an impediment outside of the traditional lending process and does not allow sufficient time to commit HOME funds after an inspection has taken place. In some states, the entire mortgage process after inspection takes over 100 days due to the time required to get closing documents from the closing attorney, review the closing packages for program and regulatory compliance, purchase the loan from the originating lender, after which funds are “committed” by entering data into IDIS. More time is needed for this process to be completed.

In contrast to this proposal for the HOME program, an FHA appraisal is required within 120 days of the loan closing date. Given the poor housing market that currently exists in many states throughout the nation, HUD should minimize the use of any requirement that is outside of the traditional mortgage lending process approved by FHA. HUD should make every effort to eliminate barriers that will impede the recovery of the housing market and seek conformance of standards within its agency. **This standard time period, 120 days, should be applied to the HOME program as well.**

Thank you for allowing us to provide comments on the proposed regulations. Please do not hesitate to contact me if you need further clarification of our comments.

Sincerely,



Dianne E. Taylor
Executive Director